

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-00-110**

PANEL: Mr. Mel Myers, Q.C., Chairperson
Ms. Yvonne Tavares
Ms. Laura Diamond

APPEARANCES: The Appellant, [text deleted], was represented by her husband, [text deleted]; Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Keith Addison.

HEARING DATE: May 29, 2001

ISSUE(S): The Assessment of Permanent Impairment Benefits

RELEVANT SECTIONS: Section 127 of the MPIC Act and Schedule A of Manitoba Regulation 41/94.

AICAC NOTE: THIS DECISION HAS BEEN EDITED TO PROTECT THE APPELLANT'S PRIVACY AND TO KEEP PERSONAL INFORMATION CONFIDENTIAL. REFERENCES TO THE APPELLANT'S PERSONAL HEALTH INFORMATION AND OTHER PERSONAL IDENTIFYING INFORMATION HAVE BEEN REMOVED.

Reasons For Decision

The Appellant, [text deleted], was involved in a motor vehicle accident ("MVA") on March 30, 1996, wherein she sustained a significant brain injury. As a result of this injury, the Appellant suffered permanent neuropsychological defects in the following areas: higher problem solving, lowered intellectual level, difficulty processing and memory.

In the Claims decision of March 31, 2000, [text deleted], Senior Case Manager, wrote to the Appellant to advise her of MPIC's decision regarding her entitlement to a permanent impairment benefit. Based on [Appellant's doctor's] recommendations, MPIC categorized the Appellant's permanent injury under Part 1; Division 9; Subdivision 1; Item 3 of the Schedule of Permanent Impairments, which states as follows:

3. Alteration of the higher cognitive or integrative mental functions which moderately impair the performance of the tasks necessary for every day life and require occasional supervision for performing such activities, including any side effects of medication: 20 to 45 %

Under that category, the Appellant was awarded an impairment benefit of 45%. An additional Permanent Impairment Benefit was awarded to the Appellant under Part 1; Division 2; Subdivision 1; Skull, Brain, and Carotids; Item 5(a) which reads:

5. Alteration of cerebral tissue following a concussion, contusion, laceration or intracerebral haematoma:

- (a) Severe: 3 %

The two awards when combined resulted in a permanent impairment benefit of 48%. The total of 48% when applied against the 1996 maximum impairment benefit payable of \$104,138.00 translates to a total impairment benefit in the amount of \$49,986.24.

The Appellant sought an Internal Review of the Case Manager's decision. In his letter dated June 13, 2000, the Internal Review Officer confirmed the decision of MPIC's Case Manager. He also ordered that the claim file be returned to the Case Manager for follow up on the follow matters:

- (a) obtaining an urological assessment;
- (b) arranging a medical referral to assess what anti-depression medication may be advisable; and
- (c) arranging a neurological assessment.

The Appellant has appealed the decision of the Internal Review Officer dated June 13, 2000 to this Commission, with respect to the amount of the permanent impairment benefit.

Discussion

Section 127 of the MPIC Act provides that,

Lump sum indemnity for permanent impairment

127 Subject to this Division and the regulations, a victim who suffers permanent physical or mental impairment because of an accident is entitled to a lump sum indemnity of not less than \$500. and not more than \$100,000. for the permanent impairment.

The regulations set out the amount available for each type of permanent impairment as a percentage of the total amount available.

Alteration of Cerebral Tissue

The Appellant was awarded a 3% impairment rating under Part 1; Division 2; Subdivision 1; Skull, Brain, and Carotids; Item 5(a). While there is a range of 3-5 % in the regulation, no medical evidence was presented at the hearing to substantiate a greater award for the alteration of cerebral tissue. The Commission finds no reason to disturb the permanent impairment benefit as calculated by MPIC and accordingly the Commission confirms that aspect of the decision of the Internal Review Officer dated June 13, 2000.

Alteration of Cognitive Function

As noted previously, the Appellant was awarded a 45% impairment rating for alteration of cognitive function. Pursuant to Schedule A, Part 1, Division 9, Subdivision 1 - Organic Brain Syndromes, Item 3, 45% is the maximum benefit payable. At the hearing of the appeal, the

Appellant's husband argued on behalf of the Appellant, that she should be reclassified into Item 2 of the "Organic Brain Syndrome" Subdivision. Item 2 states as follows:

2. Alteration of the higher cognitive or integrative mental functions which significantly impair the performance of the tasks necessary for every day life and require near-continuous supervision for performing such activities, including any side effects of medication: 50 to 80 %

The Appellant's husband submits that his wife should be awarded an impairment benefit rating of 50 - 55%. In his opinion, the MVA has altered her mental function to a degree which significantly impairs her life. He cites the fact that she has errors in judgment, that she has developed a urological condition which restricts their mobility and that her disposition has changed since the MVA. She is no longer the outgoing, energetic individual that she was before the MVA, but rather, she is depressed and withdrawn. She also has residual problems with her feet, balance and a constant tingling in the foot.

[Appellant's husband] advises that [the Appellant's] own perception of her capabilities caused her to over state her ability to cope with the tasks of everyday life. He cites this as a major flaw in [Appellant's doctor's] report, which MPIC relied upon to assess the Appellant's impairment rating. [Appellant's husband] submits that the Appellant was trying to impress [Appellant's doctor] with her accomplishments rather than accurately describing her limitations during the assessment interview.

Finally, [Appellant's husband] notes that the delay in preparing the assessment has resulted in a lower impairment rating being applied since the case manager who made the decision was not as familiar with the entire background of [the Appellant's] case as the previous case manager had

been; and the previous case manager had indicated that [the Appellant] should be categorized in the 50 - 55% range.

Counsel for MPIC submitted that [the Appellant] does not need constant supervision, which is the critical distinction between Item 2 and Item 3. In order to qualify for an impairment rating under Item 2, an individual is basically confined and needs a caregiver around almost all of the time to assist with activities of daily living. He noted that the Appellant is capable of driving - she drives herself to [text deleted] to do volunteer work at the hospital; she does the laundry, housework, part of the cooking, she operates the lawn mower. She is basically independent in most activities of daily living. Counsel for MPIC also notes that if there is a deterioration in the Appellant's condition in the future, as a result of the MVA, she can always be re-assessed. Therefore, he submits that the decision of the Internal Review Officer dated June 13, 2000 should be confirmed.

Despite the compelling arguments advanced by [Appellant's husband] on behalf of his wife, we are unable to find that the difficulties described by [Appellant's husband] justify categorizing the Appellant under Item 2 of the "Organic Brain Syndrome" Subdivision. This would necessitate a significant degree of impairment requiring near-continuous supervision, which we are unable to attribute to the Appellant. We are mindful that the problems which appear to be at the root of [the Appellant's] present difficulties are not a result of the alteration of her cognitive function, rather they are a consequence of the depression, the urological condition, and the balance and motor difficulties which inhibit her walking. The recommendations suggested by the Internal

Review Officer in his decision should be followed up on in order to properly address the underlying basis for [the Appellant's] ongoing difficulties.

Accordingly, for these reasons, the Commission dismisses the Appellant's appeal and confirms the decision of MPIC's Internal Review Officer bearing date June 13, 2000.

Dated at Winnipeg this 5th day of July, 2001.

MEL MYERS, Q.C.

YVONNE TAVARES

LAURA DIAMOND