

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-05-94**

PANEL: Ms Yvonne Tavares

APPEARANCES: The Appellant, [text deleted], was represented by Ms Marla Garinger Niekamp of the Claimant Adviser Office; Manitoba Public Insurance Corporation ('MPIC') was represented by Ms Pardip Nunrha.

HEARING DATE: January 9, 2007

ISSUE(S): Entitlement to further permanent impairment benefits.

RELEVANT SECTIONS: Section 127 of *The Manitoba Public Insurance Corporation Act* (the 'MPIC Act') and Section 1 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 on January 18, 1996. As a result of the injuries which the Appellant suffered in that accident, the Appellant sustained permanent physical impairments which, pursuant to Section 127 of the MPIC Act, entitle him to a lump sum indemnity in accordance with the Regulations to the MPIC Act.

The Appellant had previously appeared before the Commission seeking an appeal from the Internal Review decision dated April 8, 2002 with respect to the adequacy of his permanent

impairment benefits. In its decision dated February 21, 2003, the Commission determined that there was insufficient evidence to determine whether the problems the Appellant had with his left foot would attract a permanent impairment benefit. As a result, the Commission referred the matter back to MPIC for an assessment and determination of whether or not a permanent impairment benefit was applicable for the Appellant with respect to the impairment of his left foot.

MPIC's case manager, in a decision letter dated December 2, 2004 determined that there were no further permanent impairment benefits payable to the Appellant arising out of his accident of January 10, 1996.

The Appellant sought an Internal Review of that decision. In a decision dated March 31, 2005, the Internal Review Officer dismissed the Appellant's Application for Review and confirmed the case manager's decision. The Internal Review Officer determined that there was no new neurologic loss affecting the Appellant's lower limb that was not previously compensated for with his left S1 nerve impairment. Therefore, she found there was no entitlement to any further permanent impairment benefits.

The Appellant has now appealed from the Internal Review decision dated March 31, 2005 to this Commission. The issue which arises on this appeal is whether the weakness experienced by [the Appellant] in his left foot is related to a neurological loss, thereby attracting a permanent impairment benefit.

In a report dated January 23, 2007, [Appellant's neurologist], [text deleted], advised as follows:

The weakness in [the Appellant] left foot is attributable to a neurological loss. The MRI of the lumbosacral spine showed gadolinium enhancement of the left S1 nerve root, consistent epidural fibrosis. This is consistent with the surgery in 1998 for a left L5 – S1 disc herniation which would have compressed the left S1 nerve root. This innervates the medial gastrocnemium muscle which is the muscle responsible for plantar flexion of the foot. This is the area of his noted weakness. EMG confirmed mild chronic denervation in that muscle. This also fits with the distribution of numbness on the bottom of the left foot.

[Appellant's neurologist's] report was subsequently reviewed by [MPIC's doctor] of MPIC's Health Care Services Team. In his report dated February 26, 2007, [MPIC's doctor] concludes as follows:

In summary the following facts are medically probable:

- ◆ The claimant has evidence of left S1 perineural fibrosis.
- ◆ This condition is a complication of his L5-S1 discectomy.
- ◆ He continues to complain of symptoms that are in the distribution of the left S1 spinal nerve. This is consistent with the diagnosis of left S1 perineural fibrosis.
- ◆ There is evidence of a neurologic injury (based on the positive EMG study in 2004) that implies past and possibly current (as of 2004) nerve injury.

The following statements remain possible, but have not been confirmed as medically probable:

- ◆ The EMG is consistent with a left S1 spinal nerve injury (radiculopathy)
- ◆ If so, then some of the weakness observed may be apportioned to a left S1 nerve injury.
- ◆ When the above is confirmed, and if causation is accepted, the claimant's weakness may be rated for permanent impairment.

Upon a review of all of the evidence made available to it, both oral and documentary, the Commission accepts [Appellant's neurologist's] opinion that the weakness of the Appellant's left foot is attributable to a neurological loss. The Commission finds that [Appellant's neurologist], [text deleted], who had the benefit of personally observing and assessing the Appellant, is in the best position to opine as to the cause of the Appellant's left foot weakness. Accordingly, pursuant to Part 1: Division 2, Subdivision 4, Table 4, and in accordance with [Appellant's neurologist's] opinion that the Appellant has sustained a class 3 motor impairment, the

Commission finds that the Appellant is entitled to an eight (8%) percent permanent impairment benefit for S1 motor impairment. The Appellant, shall also be entitled to interest on the sum awarded by virtue of this decision, from the date of the motor vehicle accident, to the date of payment.

Dated at Winnipeg this 19th day of April, 2007.

YVONNE TAVARES