

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-06-135**

PANEL: Mr. Mel Myers, Q.C., Chairperson
Dr. Patrick Doyle
Ms Carole Wylie

APPEARANCES: The Appellant, [text deleted], appeared on his own behalf;
Manitoba Public Insurance Corporation ('MPIC') was
represented by Ms Pardip Nunrha.

HEARING DATE: December 12, 2007

ISSUE(S): Entitlement to additional permanent impairment benefits

RELEVANT SECTIONS: Section 127 of The Manitoba Public Insurance Corporation
Act ('MPIC Act') and Manitoba Regulation 41/94 (as
amended by Manitoba Regulation 41/2000), Division 1,
Subdivision 1, Item 12(a) and Table 13.3, Division 13.1(a).

**AICAC NOTE: THIS DECISION HAS BEEN EDITED TO PROTECT THE PERSONAL
HEALTH INFORMATION OF INDIVIDUALS BY REMOVING PERSONAL
IDENTIFIERS AND OTHER IDENTIFYING INFORMATION.**

Reasons For Decision

[The Appellant] was involved in a motor vehicle accident on June 20, 2002. He was a passenger in a single vehicle rollover accident while traveling on [text deleted] near [text deleted]. The Appellant was a Manitoba resident, traveling in an [text deleted]-plated vehicle, and he suffered injuries including a fractured sternum and soft tissue injuries affecting his neck and back. At the time of the accident the Appellant was [text deleted] years of age and was working as a [text

deleted] for [text deleted]. As a result of the injuries the Appellant sustained in the motor vehicle accident, the Appellant had not been able to continue his employment as a [text deleted].

On March 27, 2006 [MPIC's Doctor], Medical Consultant with MPIC's Health Care Services Team, met with the case manager to review potential permanent impairment awards associated with a fractured sternum of the Appellant. [MPIC's Doctor] reported that he reviewed the photographs taken by the case manager and the medical reports on file and, in his opinion, the Appellant was entitled to the following awards pursuant to the provisions of M.R. 41/94 (as revised):

1. A 1% award for a fracture to the sternum with abnormal healing. This award is provided as per the Schedule of Permanent Impairments (Revised), Division 1, Subdivision 1, Item 1.2(a).
2. The claimant would be entitled to an award for change in form and symmetry of the trunk. This would be for a mild to moderate change and would equate to a 2% award as per the Schedule of Permanent Impairments (Revised), Table 13.3, Division 13.

Case Manager's Decision

On April 6, 2006 the case manager wrote to the Appellant and advised him that he had determined the Appellant's permanent impairment entitlement based on the medical opinions of [MPIC's Doctor] as follows:

Fracture to the sternum with abnormal healing	1%
Mild to moderate change in form and symmetry of the trunk	<u>2%</u>
Total	3%

The case manager further reported:

The maximum amount payable for permanent impairments on the date of your accident was \$118,192.00. You are entitled to 3% of this amount resulting in an entitlement of \$3,545.76. (\$118,192.00 x 3%) A cheque in this amount was provided to you on April 5, 2006.

On April 18, 2006 the Appellant filed an Application for Review of the case manager's decision. In this Application for Review the Appellant did not challenge the amount of the Personal Injury Protection Plan ('PIPP') benefits assessed, but detailed the impacts the injuries had on his quality of life.

Internal Review Officer's Decision

On June 26, 2006 the Internal Review Officer wrote to the Appellant and informed him that she was confirming the case manager's decision and dismissing his Application for Review. In her decision the Internal Review Officer stated:

Manitoba Regulation 41/94 (as amended by 41/2000) sets out the amount to be awarded for particular types of permanent impairments. The Regulation expresses the amount available for each type of permanent impairment as a percentage of the maximum indemnity. Neither the claims staff, nor the Review Office, has discretion to amend the legislation governing PIPP. None of us has the authority to expand a coverage prescribed by the legislation.

Permanent Impairment awards are not intended to be compensation for what used to be called "pain, suffering, and loss of amenities". This type of compensation is not available. The awards are based upon objective impairments specifically listed in the Schedule, and your entitlement is based solely on the medical information on your file.

The benefits assessed appear consistent both with the available medical evidence and the Schedule of Permanent Impairments created by legislation. Should further impairments be identified in the future, your case manager will address these issues by way of a subsequent decision letter. Accordingly, there is no basis for interfering with the April 6, 2006 decision, and this review will confirm it.

The Appellant filed a Notice of Appeal on August 25, 2006.

The Appellant provided further documents to MPIC in this matter and, as a result, MPIC requested [MPIC's Doctor] to review this documentation. [MPIC's Doctor] provided an Inter-Departmental Memorandum dated September 6, 2007 to MPIC wherein he stated:

In reviewing the medical documentation on file, there was an indication that the claimant had a fractured sternum with angulation which had healed in an abnormal manner. According to the revised Schedule of Permanent Impairments, the award applicable for this injury is the 1% previously provided, per Division 1, Subdivision 1, Item 1.2(a). The claimant also received an award for alteration in form and symmetry. It should be stated that this award was provided for a moderate change in form and symmetry. More recent interpretations of the Impairment Manual have determined that the change in form and symmetry award should only be applied for alterations in the skin and not due to altered appearances related to fractures. Thus, the claimant had been awarded the 2% but with the more recent interpretation would not have been rated for a change in form and symmetry. (underlining added)

...

Finally, the claimant had a fracture of the 11th rib identified only on bone scan. For an award to be provided for a fracture of the rib, there must be a malalignment present. As there had been no x-ray indication of an abnormality in the 11th rib causing a malalignment, an award would not be applicable in this case.”

Appeal

The relevant provisions of the MPIC Act and Regulations in respect of this appeal are:

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.

(MPIC allows for indexing. The index maximum for June 20, 2002 was \$118,192.)

Manitoba Regulation 41/94, revised, provides the following schedule of permanent impairments:

Subdivision 1: Upper Limb

- a) Division 1, Subdivision 1, Item 1.2(a)
 1.2 Fractures
 (a) fracture of the sternum, 1%

Table 13.3: Evaluation Of Disfigurement For Other Parts Of The Body

Body Region	Alteration in Form and Symmetry	Scarring	Maximum Impairment Rating
Trunk	Minor or moderate change	2% Conspicuous 0.5%/cm ²	6%

Severe change

6%

DIVISION 13: THE SKIN

1. Definitions

In this Division,

“alteration in form and symmetry” means a skin disfigurement that results in a change in tissue bulk, consistency, length or texture. It does not refer to the presence of a scar;

Appeal hearing

At the appeal hearing the Appellant testified as to the severe impact that the fractured sternum has caused to his quality of life. The Commission notes that [MPIC’s Doctor], in his Inter-Departmental Memorandum, dated September 6, 2007, stated that the Appellant had a fractured sternum with angulation which had healed in an abnormal manner. The Appellant demonstrated that his trunk (which is the main part of his body to which his head and limbs are attached) had been seriously disfigured as a result of the motor vehicle accident.

The Appellant testified that deformity of his trunk:

1. was readily apparent to anyone observing him, made him extremely self conscious, and caused a loss of his self-esteem.
2. made it extremely difficult for him to perform his every day activities such as washing his hair, showering or dressing.
3. required that he could only sleep sitting on an easy chair.
4. prevented him from returning to his previous employment as a [text deleted].
5. he was easily frustrated and suffered from mood swings and depression.

The Appellant further testified that as a result of the motor vehicle accident, which caused him to have a fractured sternum with angulation which healed in an abnormal manner, he was in constant pain which he can only relieve by taking Tylenol on a daily basis.

The Appellant, in his submission, reviewed his testimony and asserted that the permanent impairment award of three (3%) percent was totally inadequate due to:

1. the injuries he suffered to his sternum which had a traumatic effect on the quality of his every day life.
2. the severe changes in the form and symmetry of his trunk.

In response, MPIC's legal counsel submitted that the permanent impairment awards granted to the Appellant were in accordance with Section 127 of the MPIC Act, and Schedule A of Manitoba Regulation 41/94 (as revised). MPIC's legal counsel submitted that [MPIC's Doctor] had objectively assessed the Appellant's impairments in accordance with the Schedules set out in the MPIC Act and that as a result the Appellant was not entitled to any further benefits than those that he had already received.

Discussion

Appellant's Fractured Sternum

[MPIC's Doctor], in his Inter-departmental Memorandum dated March 27, 2006, determined that the Appellant had a fractured sternum with angulation which had healed in an abnormal manner and recommended the Appellant receive the maximum award provided in the Regulation of one (1%) percent. The case manager accepted [MPIC's Doctor's] opinion and provided a permanent impairment award to the Appellant of one (1%) percent, which amounted to \$1,180, in respect of

the fractured sternum which had healed in an abnormal manner. [MPIC's Doctor] was again requested by MPIC to review his previous assessment in respect of the Appellant's fractured sternum. In an Inter-Departmental Memorandum, dated September 6, 2007, [MPIC's Doctor] confirmed his assessment of one (1%) percent in respect of the Appellant's fractured sternum.

The Commission, upon consideration of the documentary evidence, and the testimony of the Appellant, concluded that:

- (a) the fractured sternum had not healed in a normal manner;
- (b) the fractured sternum had caused an alteration to the form and symmetry of the Appellant's trunk;
- (c) this alteration constituted a severe, and not a minor or moderate, change.

The Commission, therefore, determined that this alteration:

1. was of a conspicuous nature which caused the Appellant to be extremely self-conscious, and which has resulted in a loss of his self-esteem.
2. has had a significant adverse effect to the Appellant's quality of life which has prevented him from continuing with his lifetime trade as a plasterer, requiring him to sleep only on an easy chair, making it extremely difficult for him to carry on such daily activities as washing, showering or dressing.

Decision

Unfortunately, the Commission is not able to increase the impairment award since the Regulation only provides for an award of one (1%) percent for a fracture of the Appellant's sternum. The Commission, therefore, reluctantly dismisses the Appellant's appeal in this respect and confirms the decision of the Internal Review Officer dated June 26, 2006.

Alteration in the Form and Symmetry of the Appellant's Trunk

The Commission notes the Appellant made a separate submission in respect of an increase in the impairment award of two (2%) percent in respect of the alteration to the form and symmetry of his trunk. [MPIC's Doctor], in his Inter-Departmental Memorandum to MPIC dated March 27, 2006, assessed this alteration as a minor or moderate change and not a severe change. As a result, he recommended an impairment award of two (2%) percent and did not consider an increase in the impairment award under the severe change at that time.

The case manager accepted [MPIC's Doctor's] assessment that the change to the Appellant's form and symmetry of his trunk was a mild to moderate change and awarded the Appellant a permanent impairment award of two (2%) percent.

The Internal Review Officer, in June of 2006, confirmed the case manager's decision and, as a result, the Appellant filed a Notice of Appeal on August 25, 2006.

[MPIC's Doctor], in his Inter-Departmental Memorandum to MPIC dated September 6, 2007, stated, having regard to the interpretation of MPIC's Impairment Manual, the Appellant's impairment award in respect of form and symmetry of his trunk was governed by the regulation relating to alterations in skin and not by any regulation in respect of altered appearances relating to fractures of the sternum. He further stated that although MPIC had provided an impairment award of two (2%) percent to the Appellant in respect of the alteration to the form and symmetry of his trunk, having regard to the more recent interpretations the Appellant should not have received this impairment award for a change in the form and symmetry of his trunk.

In arriving at this conclusion the Commission finds that [MPIC's Doctor] misinterpreted the

definition of alteration in form and symmetry as set out in the revised Manitoba Regulation 41/94 as follows:

DIVISION 13: THE SKIN

1. Definitions

In this Division,

“alteration in form and symmetry” means a skin disfigurement that results in a change in tissue bulk, consistency, length or texture. It does not refer to the presence of a scar;

This definition applies only to skin alterations and has no relation to an alteration of the Appellant’s trunk as a result of a fractured sternum, which is governed by the following Regulation:

DIVISION 1: THE MUSCULOSKELETAL SYSTEM

Subdivision 1: The Upper Limb

1. Shoulder and arm

...

1.2 Fractures

- (a) fracture of the sternum, clavicle, scapula
or humerus with non-specified abnormal healing1%

The Commission further notes that notwithstanding the traumatic effect upon the Appellant caused by the fractured sternum, the Appellant received the maximum award of one (1%) percent as provided in the Regulation. As a result, the Commission is unable to increase the amount of this award.

Decision

The Commission therefore reluctantly affirms the decision of the Internal Review Officer dated June 26, 2006 in respect of the impairment award the Appellant received relating to the change

in the form and symmetry of his trunk and dismisses the Appellant's appeal in this respect.

Dated at Winnipeg this 8th day of January, 2008.

MEL MYERS, Q.C.

DR. PATRICK DOYLE

CAROLE WYLIE