

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [The Appellant]
AICAC File No.: AC-11-159**

PANEL: Ms Laura Diamond, Chairperson
Ms Jean Moor
Ms Linda Newton

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

HEARING DATE: May 9, 2013

ISSUE(S): Entitlement to a permanent impairment benefit for dental
injuries (central incisor)

RELEVANT SECTIONS: Section 127 of The Manitoba Public Insurance Corporation
Act ('MPIC Act') and Division 3, Subdivision 3, Section 4.1
and 4.2 of Manitoba Regulation 41/94.

**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 injured in a motor vehicle accident on April 13, 2008. Following the motor vehicle accident, the Appellant filed appeals to the Commission regarding several issues, which resulted in the following decisions of the Commission:

AC-08-117 dated June 25, 2009

AC-09-111 dated August 27, 2010

AC-09-148 dated February 23, 2011

AC-09-148 and AC-11-049 dated September 15, 2011

AC-11-010 and AC-11-077 dated December 12, 2011

AC-11-010 and AC-11-077 dated August 9, 2012

At a hearing regarding permanent impairment benefits sought under appeals in AC-09-148 and AC-11-049, the Appellant requested a permanent impairment benefit for a loose tooth following the motor vehicle accident. However, the relevant case manager's decision of July 17, 2009, dealing with dental injury had not been the subject of an Application for Review or Internal Review Decision. The Commission found, on September 15, 2011 that the issue of permanent impairment benefit for dental injury in regard to the Appellant's loose tooth was not the subject of an Internal Review Decision by MPIC and not within the jurisdiction of the Commission at that time. However, the panel noted:

“However, the panel understands, given the Appellant's evidence and the number of appeals and proceedings with which the Appellant was involved before the Commission, that the Appellant could have been confused regarding this question. We recommend that she proceed to file an Application for Review in regard to a permanent impairment entitlement for a loose tooth, in the hope that the Internal Review Officer may allow an extension of time against the time limit set out in Section 172 of the Act and hear the Appellant's Application for Review on this issue.”

On September 27, 2011 an Internal Review Officer for MPIC reviewed the question of the Appellant's late filing of her Application for Review in regard to a permanent impairment for a loose tooth and agreed to extend the time limit for filing of the application and to proceed with an Internal Review Decision.

The Internal Review Officer went on to review the Appellant's claim for a permanent impairment for dental injuries. The Appellant's Application for Review requested a permanent impairment entitlement for “central incisor loosened 1% - as per Subdivision 4”.

The Internal Review Officer upheld the case manager's decision stating:

“Alteration means to change or modify. Your tooth was only loose for a short period of time – not permanently. Based on the information on file, I would have to agree with the case manager's decision that the information on file indicates that the treatment you have had to date has been for preventative measures and there has been no dental injury resulting in a ratable permanent impairment at this time. In other words, your “central incisor” was not altered or removed as a result of the accident.”

It is from this decision of the Internal Review Officer that the Appellant has now appealed.

Evidence and Submission for the Appellant:

In her Notice of Appeal, the Appellant addressed the dental injury as follows:

“permanent impairment for Central Incisor alteration – listed in schedule. [Appellant's Dentist #1] (xrays) noted it.”

The Appellant provided evidence and submissions at the hearing into her appeal. She referred the Commission to a dental report provided by [Appellant's Dentist #1] following the motor vehicle accident. That report stated:

“Discomfort from upper left central incisor subsequent to trauma suffered in recent automobile accident.

First examined 14 Apr 08 tooth tender to touch and loose – no sign of root fracture on radiograph.

Second examination 14 May 08.

Tooth much less loose but still tender to tap and touch...”

The Appellant noted that MPIC had funded relevant testing which [Appellant's Dentist #1] performed, and acknowledged that the loose tooth was the result of the motor vehicle accident. However, the Appellant indicated that not much treatment could be provided and so she had not received further treatment for that particular tooth. She had it checked again when she had a bruxism guard prepared for her. The Appellant indicated that the only treatment which could be

provided was to follow up when she went for check-ups, in order to ensure that no nerve roots had died and that there were no changes. She indicated that she wore her retainer for a while to keep the tooth a little tighter.

The Appellant submitted that, in a report dated September 6, 2008, MPIC's dental consultant, [MPIC's Dentist], had pre-authorized any treatment which might be necessary for the healing of her teeth. In the end, no treatment was provided, but the Appellant is seeking a permanent impairment benefit for the loosening of the tooth.

She submitted that pursuant to Division 3, Subdivision 3, Section 4.1 of Regulation 41/94, she would be entitled to a permanent impairment award for alteration or loss of teeth, in the amount of 1%. However, she noted that because this particular tooth had been previously damaged (when it was chipped 30 years ago), she should be entitled to a .5% permanent impairment entitlement under Section 4.2 of the Regulation.

The Appellant submitted that the tooth was loosened, which meets the definition of alteration. MPIC was not questioning causal connection between the motor vehicle accident and the loose tooth, and accordingly, she submitted that her tooth is still loose and that she should be entitled to a permanent impairment in that regard.

Evidence and Submission for MPIC:

Counsel for MPIC acknowledged that there was no issue regarding causation in the Appellant's current appeal. [Appellant's Dentist #1] saw the Appellant soon after the motor vehicle accident and noted at that time that the Appellant's tooth was tender to the touch and loose, with no sign of a root fracture. A few weeks later, on May 14, 2008, he noted that the tooth was much less

loose but still tender and noted the possibility that the tooth may in the future require endodontic treatment with post and crown.

MPIC's dental consultant reviewed this report and provided a report dated May 22, 2008, asking for an update on the condition of the claimant in two months, as it was not yet known whether any dental treatment would be required. The Appellant's file also indicated that [MPIC's Dentist], MPIC's dental consultant, thought that a bruxism guard might be useful to preserve healing of the Appellant's teeth.

Counsel then reviewed clinic notes received from [Appellant's Dentist #1]. In an entry dated April 14, 2008, [Appellant's Dentist #1] noted that the patient was in a car accident and that tooth #21 "feels funny". On May 14, 2008, [Appellant's Dentist #1] noted that tooth #21 was still a little sensitive to percussion and seemed to be a little mobile and tender.

An entry on August 14, 2008 indicated that tooth #21 looked good. Counsel pointed out that [Appellant's Dentist #1's] clinical notes went through to August 2, 2009 without any further mention of tooth #21 in the subsequent notes.

When the case manager provided his decision of July 17, 2009 regarding permanent impairment for this tooth, he found that the information on the Appellant's file indicated that the treatment she received to date had been for preventative measures and at that time, there was no dental injury resulting in a ratable permanent impairment.

Further dental information was later received from [Appellant's Dentist #1], who reported on October 9, 2009. He stated:

“She has been a patient of mine since August 26, 1999 and has received regular preventive care to date, active orthodontic from September 1999 to November 2000, retention orthodontics from November 2000 to November 2007 and then numerous appointments secondary to the above mentioned accident.”

Although [Appellant's Dentist #1's] report mentioned clicking on the right TMJ and TMJ therapy and possible or probable permanent impairment in that regard, the report made no mention of a loose tooth.

A report from [Appellant's Dentist #2], dated December 7, 2010, also made no mention of a loose tooth.

The Internal Review decision dated September 27, 2011 found that the Appellant received preventative treatment but that her central incisor was not altered or removed as a result of the motor vehicle accident. It had only been loose for a short period of time, not permanently, and accordingly, there was no entitlement to a permanent impairment benefit.

Subsequent to that decision, more medical information was received by MPIC. [Appellant's Dentist #1] completed a Musculoskeletal – Occlusal Signs Exam Form on October 25, 2011. On that form Box No. 9 addresses symptoms for “loose teeth”. [Appellant's Dentist #1] did not check off Box No. 9.

[Appellant's Dentist #1] provided another clinical exam form on November 2, 2011. [Appellant's Dentist #1] answered “no” to the section regarding mobility and answered “no” to the section regarding missing teeth.

Counsel for MPIC acknowledged that the Appellant’s dentist did document discomfort and loosening of the tooth close in time to the motor vehicle accident. However, she submitted that permanent impairment benefits are only awarded when a permanent injury occurs as a result of the motor vehicle accident. The medical information on the Appellant’s file does not indicate that there was a permanent injury to the Appellant’s central incisor. The injury was not permanent. Despite the Appellant’s testimony, the objective medical information on file does not support her contention that the tooth is still loose. Accordingly, counsel for MPIC submitted that the Appellant was not entitled to a permanent benefit regarding her upper left central incisor. The Appellant’s appeal should be dismissed and the decision of the Internal Review Officer upheld.

Discussion:

The MPIC Act provides:

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.

Manitoba Regulation 41/94 provides:

4. Alteration or loss of teeth

- 4.1 Previously healthy teeth
 - (a) central incisor 1%
- 4.2 Previously damaged teeth
 - (a) central incisor 0.5%

The onus is on the Appellant to show, on a balance of probabilities, that she is entitled to a permanent impairment benefit for alteration to her tooth.

The panel has reviewed the evidence on the Appellant’s file, the evidence and submission of the Appellant at the appeal hearing and the submission of counsel for MPIC.

The panel agrees with counsel for MPIC that the Appellant has failed to meet the onus upon her to show, on a balance of probabilities, that she suffered a permanent injury to her tooth.

The evidence showed that the Appellant did suffer a loose tooth in the motor vehicle accident which was documented to be loose by her dental caregiver on April 14, 2008 and May 14, 2008. Although the Appellant testified that the tooth is still loose, counsel for MPIC pointed to contrary evidence which indicated that there were no further findings of that tooth continuing to be loose.

On August 14, 2008, [Appellant’s Dentist #1] indicated that the tooth “looks good”. On October 25, 2011, [Appellant’s Dentist #1] failed to place any check mark beside Box No. 9 of the Musculoskeletal – Occlusal Signs Exam Form to indicate that the Appellant had any loose teeth. Then, on November 2, 2011, [Appellant’s Doctor #1] provided no indication that there were any issues of mobility or missing teeth:

“Mobility	Tooth No.: <u> <i>No</i> </u>
Missing teeth	Tooth No.: <u> <i>No</i> </u> “

Accordingly, based upon the evidence before it, the panel has concluded that the Appellant has failed to meet the onus upon of her of showing, on a balance of probabilities, that she suffered from a permanent impairment benefit for a dental injury to her central incisor as a result of the motor vehicle accident.

Accordingly, the decision of the Internal Review Officer dated September 27, 2011 is upheld and the Appellant's appeal is dismissed.

Dated at Winnipeg this 10th day of June, 2013.

LAURA DIAMOND

JEAN MOOR

LINDA NEWTON