

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [The Appellant]
AICAC File No.: AC-10-180**

PANEL: Ms Jacqueline Freedman, Chairperson
Ms Laura Diamond
Dr. Chandulal Shah

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

HEARING DATE: December 9, 2013

ISSUE(S): Whether the Appellant is entitled to any further permanent
impairment award with respect to injuries to his teeth.

RELEVANT SECTIONS: Subsection 129(2) of The Manitoba Public Insurance
Corporation Act ('MPIC Act'), Subsection 184(1) of the
MPIC Act and Division 3, Subdivision 1, Section 4 and
Division 3, Subdivision 3, Section 2 of Manitoba Regulation
41/94 ('Regulation')

**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

Background:

The Appellant, [text deleted], was involved in a motor vehicle accident on November 21, 2008, in which he suffered multiple injuries. He was awarded permanent impairment benefits under the MPIC Act and the Regulation in respect of these injuries. Relevant to this appeal are the injuries to eight of his front teeth, for which he was initially awarded 9% of the maximum

permanent impairment benefits. These benefits were confirmed by MPIC's Internal Review Decision dated November 8, 2010.

The Appellant disagreed with the amount of the permanent impairment award regarding his teeth and filed an appeal of the Internal Review Decision with the Commission. As part of the appeal process, MPIC further reviewed the injuries to his teeth and mouth and determined that he suffered an additional permanent impairment by virtue of numbness of his gums and a lisp. Under subsection 129(2) of the MPIC Act, the Appellant was awarded a further 2.5% of the maximum permanent impairment benefits regarding the injuries to his teeth.

The Appellant remained of the view that the aggregate permanent impairment award to him was insufficient to compensate him for the totality of the injuries to his eight injured teeth and proceeded with the appeal. The issue which requires determination on this appeal is whether the Appellant is entitled to additional permanent impairment benefits with respect to the injuries to his teeth.

Decision:

For the reasons set out below, the Commission finds that the Appellant is entitled to a further 2% permanent impairment benefit.

Evidence of the Appellant:

The Appellant testified that he lost eight teeth at the front of his mouth and he said that this is very different than eight teeth spread throughout the mouth. He said that the bone grafting for the teeth implants didn't work the first time and that the implants had to be put in a second time. He

said that these teeth are supposed to last him a lifetime, but eating is completely different than it used to be.

He said that he can't bite into anything hard anymore; he can only bite into things like bananas. He can't bite into apples or corn-on-the-cob. He can't even bite tape. He can chew food in the back of his mouth, but he can't bite anything with his front teeth. He can't feel things in his teeth, and things get stuck.

The Appellant's father, [text deleted], also testified and said that his son is a meat lover and the accident has significantly affected him. Everything he eats has to be eaten differently than prior to the accident. All of the food that he eats goes in at the side of his son's mouth, which is very different than the way other people eat. The Appellant testified that everything is more of a hassle and a pain than it was prior to the accident. He never had these problems before; he has to be far more cautious in biting and chewing than he used to be.

In cross-examination of the Appellant, MPIC asked the Appellant about food getting stuck in his teeth. The Appellant acknowledged that this relates to the numbness in his gums and that he already received compensation for this.

Submission of the Appellant:

The Appellant submits that the permanent impairment award of 1% or 2% in respect of the injury to each tooth may be appropriate where one or two teeth get injured or where many teeth get injured in various areas around the mouth, but it is not appropriate where all of the injury takes place in one area of the mouth and "a whole area is totally banged out of there". In the Appellant's case, all the bone at the front of his mouth had to be reconstructed twice and he

submits that the Regulation is not suitable for compensating him for the change in his lifestyle, specifically the change to the way he has to eat now. He says he has a permanent inability to bite at the front of his mouth due to the injury to his eight front teeth.

Submission of MPIC:

MPIC submits that the issue under appeal is whether the permanent impairment benefits with respect to the injured teeth were properly calculated. Permanent impairment awards are meant to compensate based on what the Regulation says. The Appellant already received 9% of the maximum benefit in respect of the injuries to his teeth. This decision was further reviewed by MPIC's Health Care Services for taste and dietary factors and the Appellant was awarded an additional 2.5% in respect of numbness and his lisp under subsection 129(2) of the MPIC Act. MPIC submits that all items have already been addressed, and in this case the Appellant simply disagrees with what the Regulation says. MPIC submits that this situation does not warrant a further award under subsection 129(2), as an award has already been made under that subsection.

Reasons for Decision:

Section 127 of the MPIC Act provides a lump sum indemnity for permanent impairments that are caused by an accident. The Regulation sets out the amount to be awarded for particular types of permanent impairments, expressed as a percentage of the maximum indemnity (originally \$100,000, now indexed).

The Appellant has already been awarded 9% under Division 3, Subdivision 1, Section 4 of the Regulation, Alteration or Loss of Teeth, in respect of the injury to eight teeth that he suffered as a result of the accident.

In addition, he received a further award of 2.5% regarding his lisp and numbness of his gums under subsection 129(2) of the MPIC Act, which provides as follows:

Impairment not listed on schedule

129(2) The corporation shall determine a percentage for any permanent impairment that is not listed in the prescribed schedule, using the schedule as a guideline.

The Appellant now seeks additional benefits. The onus is on the Appellant to show, on a balance of probabilities, that he is entitled to additional permanent impairment benefits. The panel has paid careful attention to the Appellant's evidence and his description of the limitation that he now faces in his ability to bite. We found him to be a convincing witness who testified in a clear and direct manner. We find that he does have a permanent impairment in respect of his inability to bite at the front of his mouth and that this is different from the numbness and lisp for which he was already awarded a benefit.

The issue that next arises is the amount of the benefit to be awarded to the Appellant in respect of this permanent impairment.

This type of impairment in bite is not specifically dealt with in the Regulation. As noted above, subsection 129(2) of the MPIC Act allows MPIC to determine a benefit for a permanent impairment where that impairment is not found in the Regulation. Under paragraph 184(1)(b) of the MPIC Act, following an appeal hearing the Commission may make any decision that MPIC could have made. Therefore, the panel will determine the appropriate benefit under subsection 129(2) of the MPIC Act (we note that there is nothing in the MPIC Act which precludes making more than one award to the Appellant under this subsection).

In accordance with subsection 129(2), the panel looks for guidance to analogous provisions of the Regulation. The closest provision in the Regulation would be Division 3, Subdivision 3, Section 2, Mastication and Deglutition. Section 2.1 covers dietary restriction. Subsection (a) provides a 5% permanent impairment award where: “diet is limited to semisolid or soft foods”. The panel finds that the Appellant’s permanent impairment is analogous to this limitation but we find that the Appellant’s impairment is not as severe as the impairment described here.

The panel also has reference to the AICAC decision in appeal AC-96-51. In that case, the Appellant was injured in a motor vehicle accident and suffered injuries to her face. In addition to numbness and sensory loss, for which the Appellant was compensated by a permanent impairment award, the Appellant suffered functional losses for which she was seeking compensation. Those losses are set forth on page two of the decision as follows:

“However, over and above the sensory loss the nerve severance has given rise to certain forms of functional loss as well. More specifically, because of the numbness of a large area of the inner surface of her mouth, [the Appellant] has difficulty brushing her teeth effectively; she loses food inside her mouth because, not having any sensory awareness on the inner surface of her mouth, she is unaware of the presence of small portions of food and, therefore, loses the functional ability to move those food particles around properly. She has difficulty eating on the right side of her mouth with any degree of comfort because, when doing so, she frequently bites her cheek. This necessitates restricting her chewing to the left side, almost exclusively. It is both difficult to eat particular foods and embarrassing, because she now chews in an awkward manner, which affects her appearance. She also has difficulty with drinking, having had to use a straw for about a year following the accident and, later, positioning any drinking vessel at the left side of her mouth in order to avoid having the liquid dribble down her chin. She now finds the best solution is to drink and eat from the left side of her mouth at all times. Articulation is a problem as well: her words lose clarity and become garbled, especially when she is excited or required to give quick instruction or guidance to her children. Even kissing, with the full vigour sometimes required of an active participant, presents problems.”

The Appellant in that case was awarded an additional 3.5% permanent impairment benefit under subsection 129(2) of the MPIC Act with respect to the functional losses that she suffered. The

panel finds that the permanent impairment suffered by the Appellant here is not as severe as the impairment suffered by the Appellant in AICAC appeal AC-96-51.

Based on the analogous provision of the Regulation, and the amount awarded to the Appellant in AICAC appeal AC-96-51, the panel finds that an appropriate benefit with respect to the Appellant's permanent impairment would be 2%.

Disposition:

Accordingly, based on the foregoing, under subsection 129(2) of the MPIC Act, we find that the Appellant is entitled to a further 2% of the maximum permanent impairment benefit in respect of his permanent inability to bite at the front of his mouth. The Appellant's appeal is therefore allowed and the Internal Review Decision of November 8, 2010 is rescinded.

Dated at Winnipeg this 8th day of January, 2014.

JACQUELINE FREEDMAN

LAURA DIAMOND

DR. CHANDULAL SHAH