

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-05-110**

- PANEL:** Mr. Mel Myers, Q.C., Chairperson
- APPEARANCES:** The Appellant, [text deleted], appeared on his own behalf by teleconference;
Manitoba Public Insurance Corporation ('MPIC') was represented by Ms Pardip Nunrha.
- HEARING DATE:** March 7, 2007
- ISSUE(S):** Entitlement to further permanent impairment benefits
- RELEVANT SECTIONS:** Section 127 of *The Manitoba Public Insurance Corporation Act* (the 'Act') and 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] was involved in a motor vehicle accident on November 26, 1998 wherein he suffered an injury to his nose which resulted in permanent scarring. The MPIC case manager sent a letter to the Appellant dated March 6, 2000 indicating that he was entitled to an impairment award for scarring to his nose in the amount of \$543 under Section 127 of the Act. MPIC's case manager wrote a further letter to the Appellant dated April 22, 2002 informing him that MPIC had initially failed to assess an additional scar to the Appellant's nose and, as a result, based on the report from MPIC's Health Care Services consultant, an additional 0.1% for scarring was awarded to the Appellant. However, the case manager further advised the

Appellant that the 0.1% for scarring did not take the Appellant over the minimum payment of \$543 which had been previously paid to him.

The Appellant applied to review both of the case manager's decisions dated March 6, 2000 and April 22, 2002. The Internal Review Officer conducted an Internal Review hearing and sent a decision letter to the Appellant dated March 10, 2005. In this letter the Internal Review Officer confirmed both case manager's decisions and dismissed the Appellant's Application for Review.

In her decision the Internal Review Officer stated:

[Appellant's doctor] advised that when questioned about which side of your nose was obstructed, you advised that you weren't sure and that it might be either side. [Appellant's doctor] also questioned you about seasonal variations but he was not able to get a clear answer from you. You also advised that you were concerned about an irregular bump on the dorsum of your nose slightly to the left of the mid line. On examination, [Appellant's doctor] advises that your nose is reasonably straight. He also states that there is a palpable irregular spicule of bone to the left of the nasal bridge. [Appellant's doctor] then advises that otherwise your nose appears essentially normal. There is no mechanical obstruction, your septum is straight and there were no other ENT abnormalities.

After reading this information, I conclude that there is no further permanent impairment that you have suffered as a result of your accident of November 26, 1998 and therefore, I am confirming your Case Manager's decisions that you have received all the permanent impairments to which you are entitled and I am dismissing your Application for Review.

The Appellant filed a Notice of Appeal dated June 5, 2005 and in this Notice of Appeal indicated that his mailing address was [text deleted].

Appeal Hearing

The appeal hearing commenced on March 7, 2007 at 9:30 a.m. at the Commission office in Winnipeg. Ms Pardip Nunrha, MPIC's legal counsel, attended this hearing. The Appellant was not physically present but the Notice of Hearing indicated that the Appellant would not be

attending the hearing at the Commission office, but would participate in this hearing via teleconference from his home in [text deleted].

At the commencement of the appeal hearing this writer, who presided over the appeal hearing, attempted on two (2) occasions to contact the Appellant by telephone but I was only able to reach his answering machine. On the first occasion I telephoned the Appellant at 9:30 a.m. and I advised the Appellant's answering machine that the hearing would commence in fifteen (15) minutes and requested the Appellant to contact the Commission office in order to participate in the hearing prior to 10:10 a.m. Having received no response from the Appellant by 10:10 a.m., I again attempted to contact the Appellant and I was only able to reach the Appellant's answering machine. At that time I left a message that I intended to proceed with the appeal hearing at that time.

The Commission is satisfied, upon examination of the Commission records that, pursuant to Section 184 of the Act, the Appellant was properly served with notice of the hearing to proceed with his appeal on March 7, 2007. An examination of the Commission's records indicates that on December 21, 2006 the Commission scheduled the hearing for March 7, 2007 at 9:30 a.m. at the Commission office. The Commission records further indicated that the Commission's secretary, [text deleted], personally contacted the Appellant by telephone on December 21, 2006 and in her telephone discussion with the Appellant he agreed to participate via teleconference in his appeal on March 7, 2007 at 9:30 a.m. [Commission's secretary] also contacted Ms Pardip Nurra, MPIC's legal counsel, who also agreed to proceed with the appeal hearing on this date.

On December 21, 2006 a Notice of Hearing was sent to the Appellant by regular mail to his mailing address of [text deleted], which was the Appellant's mailing address as indicated in his

Notice of Appeal. The Commission finds that the Appellant, pursuant to Section 184(1) and (2) of the Act, is deemed to have received the Notice of Hearing on January 18, 2007. Subsequent to January 18, 2007, and prior to March 7, 2007, the Commission did not receive communication from the Appellant that he was unable to participate in the appeal hearing because of absence, accident, illness or other cause beyond his control. The Commission further notes that the Notice of Hearing contained the following paragraph:

Should either party fail to appear or to be represented at the above time and place, the Commission may proceed with the hearing and render its decision. Alternatively, it may dismiss the appeal, adjourn the hearing to a new time and date, or take such other steps as it deems appropriate.

The Commission determined that notwithstanding that the Appellant failed to participate in the appeal via teleconference to proceed with the hearing and render a decision. The Commission requested MPIC's legal counsel to proceed with her submission and MPIC's legal counsel provided a written submission to the Commission wherein she reviewed the evidence that had been filed at the appeal hearing and concluded that MPIC had correctly interpreted the provisions of Manitoba Regulation 41/94 when awarding the permanent impairment award to the Appellant. MPIC's legal counsel further submitted that the Appellant's submissions, as reflected in the material filed in the proceedings, did not establish, on a balance of probabilities, that MPIC had erred in determining the amount of the Appellant's permanent impairment award. MPIC's legal counsel requested that the Commission dismiss the Appellant's appeal and confirm the Internal Review Officer's decision.

The Commission, after reviewing the evidence that was filed at the appeal hearing, agrees with the submission of MPIC's legal counsel, adopts the decision of the Internal Review Officer (a copy of which is attached hereto as Schedule 'A' and intended to form part of this decision) and,

as a result, confirms the decision of the Internal Review Officer dated March 10, 2005 and dismisses the Appellant's appeal.

Dated at Winnipeg this 9th day of March, 2007.

MEL MYERS, Q.C.