



AMA Guides to Impairment Rating

Canadian Memorial Chiropractic College (CMCC)
Canadian Society of Chiropractic Evaluators

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Determining Catastrophic Impairment: The Role of the Health Care Professional

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KEY CASES

AMA Guides: Whole person impairment to include Percentage Assessment of Psychological Impairment

- *Desbiens*
- *Arts*
- *McMichael*
- *Augello*
- *H. and Lombard*
- *M.R. and Gore*
- *Jaggernaut and Economical*
- *Pastore*
- *C v. Coachman*
- *Kusnierz*

KEY CASES

“Analogous impairment”
• *Mrs. G. and Pilot, 2007.*

KEY CASES

1 GCS of 9 or less is sufficient, no matter when

- *Holland*
- *Young*
- *Tournay*
- *Liu*

KEY CASES

Mental or Behavioural Disorders

- One “Marked Impairment” is enough for

CAT

- *Pastore + Pastore Appeal* (the requirement is that all four areas of function be considered)
- *Desbiens*
- *McMichael*
- *Fournie*

AMA Guides, Chapter 3 – Musculoskeletal System

Clinical Considerations for Assessment

- ROM
- Joint Disorders
- Amputation
 - “Whole person”
 - *B.P. and Primum*
- The unique expanding definition of “ADLs”

AMA Guides, Chapter 13 - The Skin

Clinical Considerations for Assessment

- **Scarring**
- **Disfigurement**
- **Temperature Regulation**
- **Sensory Impairment**
- **Limitation in performance of ADLs**

AMA Guides, Chapter 4 - The Nervous System

Table 1 – Impairments Related to Aphasia or Dysphasia

- Communication Disorders
- Sensory Disturbances

Description	% Impairment of the whole person
Minimal disturbance of comprehension and production of language symbols of daily living	0 – 9
Moderate impairment in comprehension and production of language symbols of daily living	10 – 24
Inability to comprehend language symbols; production of unintelligible or inappropriate language for daily activities	25 – 39
Complete inability to communicate or comprehend language symbols	40 – 60

AMA Guides, Chapter 4

- The Nervous System

- List of Neuro or Mental disturbances to evaluate as a percentage using tables
- p. 142 from Chapter 4

THREE KEY TABLES WITH PERCENT IMPAIRMENT RATINGS:

Table 3 – Emotional or Behavioural Impairments, p. 12 of paper

Impairment Description	% Impairment of the whole person
Mild limitation of daily social and interpersonal functioning	0 – 14
Moderate limitation of some but not all social and interpersonal daily living functions	15 - 29
Severe limitation impeding useful action in almost all social and interpersonal daily functions	30 - 49
Severe limitation of all daily functions requiring total dependence on another person	50 – 70

AMA Guides, Chapter 4 - The Nervous System

Table 2 – Mental Status Impairments, p. 13 of paper

Impairment Description	% Impairment of the whole person
Impairment exists, but ability remains to perform satisfactorily most activities of daily living	1 – 14
Impairment requires direction and supervision of daily living activities	15 – 29
Impairment requires directed care under continued supervision and confinement in home or other facility	30 – 49
Individual is unable without supervision to care for self and be safe in any situation	50 – 70

AMA Guides, Chapter 4 - The Nervous System

Table 6 – Impairment Criteria for Sleep and Arousal Disorders,
p. 13 of paper

Impairment Description	% Impairment of the whole person
Reduced daytime alertness with sleep pattern such that patient can carry out most daily activities	1 – 9
Reduced daytime alertness requiring some supervision in carrying out daytime activities	10 – 19
Reduced daytime alertness that significantly limits daily activities and requires supervision by caretakers	20 – 39
Severe reduction of daytime alertness that cause the patient to be unable to care for self in any situation or manner	40 – 60

MENTAL AND BEHAVIOURAL DISORDERS:

QUESTION: IS THERE A ROLE FOR:

- **Chiropractor**
- **The Occupational Therapist**
- **Speech Language Pathologist**
- **Physiotherapist**
- **Psychologist, and**
- **Neuropsychologist**
- **Other Health Care Professionals**

in helping to evaluate whether a person has sustained a mental or behavioural disorder?

ANSWER: YES!

MENTAL AND BEHAVIOURAL DISORDERS:

THE FOUR AREAS OF POTENTIAL FUNCTIONAL LIMITATION:

- **Activities of Daily Living**
- **Social Functioning**
- **Concentration**
- **Adaptation**

See Chapter 14, Guides to the Evaluation of Permanent Impairment, 4th Edition

MENTAL AND BEHAVIOURAL DISORDERS:

POSSIBLE LEVELS OF IMPAIRMENT

- **Class I – No Impairment**
- **Class II – Mild Impairment**
- **Class III – Moderate Impairment**
- **Class IV – Marked Impairment**
- **Class V – Extreme Impairment**

MENTAL AND BEHAVIOURAL DISORDERS:

QUESTION: What does it take to have a Catastrophic Impairment?:

- Class IV – Marked Impairment

“impairment levels *significantly impede* useful functioning”

Significant = more than minimal

Impede = hinder

MENTAL AND BEHAVIOURAL DISORDERS:

DETERMINING LEVEL OF IMPAIRMENT:

- History of Pre-Accident Function
- Activities of Daily Living (ADL)
- Social functioning
- Concentration
- Adaptation

Critical to obtain baseline of pre-accident function to determine the degree of impairment.

- Broad definition of activities of daily living

MENTAL AND BEHAVIOURAL DISORDERS:

ACTIVITIES OF DAILY LIVING include, but are not limited to:
(page 317 of the AMA Guides)

- **Self Care**
- **Personal Hygiene**
- **Communication**
- **Physical Activity**
- **Sensory Function**
- **Hand Function**
- **Travel Function**
- **Sexual Function**
- **Sleep Function**
- **Social and Recreational Activities**

MENTAL AND BEHAVIOURAL DISORDERS:

SOCIAL FUNCTIONING:

In assessing social functioning an assessor determines:

“An individual’s capacity to interact appropriately and communicate effectively with other individuals...it is not only the number of aspects in which social functioning is impaired that is significant, but also the overall degree of impairment with a particular aspect or combination of aspects.”

MENTAL AND BEHAVIOURAL DISORDERS:

CONCENTRATION, PERSISTENCE AND PACE:

“Refers to the ability to sustain focused attention long enough to permit timely completion of tasks commonly found in work settings”.

MENTAL AND BEHAVIOURAL DISORDERS:

DETERIORATION OR DECOMPENSATION IN WORK OR WORK-LIKE SETTINGS (Adaptation):

“Refers to repeated failure to adapt to stressful circumstances. In the face of such circumstances, the individual may withdraw from the situation or experience exacerbation of signs and symptoms of a mental disorder; that is, to decompensate and have difficulty maintaining activities of daily living, continuing social relationships and completing tasks.”

MENTAL AND BEHAVIOURAL DISORDERS:

Pastore v. Aviva

Pastore was hit by a car while crossing the street on November 16, 2002.

Her injury was a fractured left ankle that did not heal properly, requiring a number of surgeries over the next five years and also resulting in a right knee replacement when the ankle pain led to a change in her gait.

MENTAL AND BEHAVIOURAL DISORDERS:

Pastore v. Aviva

She was first assessed for catastrophic impairment at a designated assessment centre(DAC) by a team that included a physiatrist, a psychologist, a psychiatrist and an occupational therapist.

MENTAL AND BEHAVIOURAL DISORDERS:

Pastore v. Aviva

The DAC assessment concluded that that appellant had a class 4 impairment in the activities of daily living with an overall assessment of class 3 (moderate).

It was because of the one class 4 (marked impairment) that the DAC report concluded that the appellant qualified as catastrophically impaired in accordance with Section 2(1.1)(g).

MENTAL AND BEHAVIOURAL DISORDERS:

Pastore v. Aviva

Two issues were before the Ontario Court of Appeal.

1. Does Section 2(1.1)(g) require an overall assessment of marked impairment in all four categories or can marked impairment in one category result in a finding of catastrophic impairment?

MENTAL AND BEHAVIOURAL DISORDERS:

Pastore v. Aviva

2. Was it an error for the DAC assessors to include physical pain in the assessment of mental disorder in order to comply with the *Guides*?

MENTAL AND BEHAVIOURAL DISORDERS:

Pastore v. Aviva

On the first issue, the Court held:

“In reaching the opposite conclusion, the Divisional Court did not have the benefit of this court’s decision in *Kusnierz v. Economical Mutual Insurance Co.*, 2011 ONCA 823, 108 O.R. (3d) 272 (Ont. C.A.), the majority relying instead on the trial judge’s decision which was reversed by this court. In that case, this court (at para. 25) approved the view expressed by Spiegel J. in *Desbiens*, that the definition of ‘catastrophic impairment’ was intended by the legislature to be inclusive and not restrictive.

MENTAL AND BEHAVIOURAL DISORDERS:

Pastore v. Aviva cont'd

In *Kusnierz*, the issue was whether psychological impairments could be quantified under cl. (g) and combined with physical impairments under cl. (f) to reach a 55 per cent whole person impairment. This court held that there was nothing preventing such a combination and that it would meet the intent of the *SABS* to do so. The court noted that counsel had advised that the number of extra cases from such combinations would be small.”

MENTAL AND BEHAVIOURAL DISORDERS:

Pastore v. Aviva

“In my view, the decision of the delegate, in which he concludes that the use of ‘a’ in the definition of ‘catastrophic impairment’ in cl. (g) refers to a single, functional impairment due to mental or behavioural disorder at the marked level, constituting a catastrophic impairment, is a reasonable decision. The reasoning process was logical and transparent and the result is within the range of reasonable, acceptable determinations.”

MENTAL AND BEHAVIOURAL DISORDERS:

Pastore v. Aviva

On the second issue, the Court stated:

“In my view, the assessors and adjudicators applied the *Guides* in their approach to determining whether Pastore’s functional impairments were due to her diagnosed mental disorder. The *Guides* acknowledge how difficult it is to separate out pain from physical causes and they suggest a multi-disciplinary approach. That approach was taken, but the assessors were not able to factor out physical causes of pain and therefore took a cumulative approach.”

MENTAL AND BEHAVIOURAL DISORDERS:

Pastore v. Aviva

“In his decision, the delegate approved that approach. In my review, his decision to do so was a reasonable one; it was within a range of reasonable, acceptable outcomes. The diagnosed mental disorder was ‘Pain Disorder Associated with Psychological Factors and a General Medical Condition’. Because the mental disorder itself involves pain and includes pain associated with a general medical condition, in this case it is certainly reasonable to include pain from the general medical condition to the extent that such pain is connected with the diagnosed mental disorder.”

MENTAL AND BEHAVIOURAL DISORDERS:

Pastore v. Aviva

“A further argument that was raised on this issue was that there could be double counting of the pain impairment under clauses (f) and (g) in certain cases because, following this court’s decision in *Kusnierz*, the impairments under cl. (g) can be put together with physical impairments for a whole body impairment total under cl. (f). Since that did not occur in this case, the possibility of double counting under cl. (f) does not change the reasonableness of the delegate’s conclusion. In a case where that is a concern, the assessors and adjudicators may have to address the issue directly.”

MENTAL AND BEHAVIOURAL DISORDERS:

Fournie v. Coachman

Mr. Fournie, age 45 sustained comminuted fractures to his left ankle when he was a cyclist and struck from behind.

- **Required two crutches or two canes to ambulate outside the home.**
- **40% whole person impairment relating to his physical impairments.**
- **Reduction in activity level after the accident and a high self perception of pain.**

MENTAL AND BEHAVIOURAL DISORDERS:

Fournie v. Coachman

- Depression, anxiety, concern about his future and a low level activity due to pain management.
- Diagnosed with major depressive disorder and post traumatic stress disorder.
- He could participate in recreation and socialization but was precluded from carrying them out adequately and in full.

MENTAL AND BEHAVIOURAL DISORDERS:

Fournie v. Coachman

[2010] OFSCP 15

An occupational therapist completed a three hour functional ability evaluation.

An insurer examination with a psychiatrist found Mr. Fournie had a pain disorder but the disorder was associated with his foot injury and not with psychological factors (which is different from the *Pastore* case where physical and psychological pain condition was “intertwined”).

MENTAL AND BEHAVIOURAL DISORDERS:

Fournie v. Coachman

Dr. Alvin Shapiro, clinical psychologist and Dr. Harold Merskey, psychiatrist, found that Mr. Fournie suffered a Class IV Marked Impairment in his activities of daily living, adaptation to work and social functioning.

MENTAL AND BEHAVIOURAL DISORDERS:

Fournie v. Coachman

Dr. Merskey noted:

“Looking at the 4th edition of the AMA Guides, Chapter 14, page 310, I consider that the psychological disabilities, difficulty in focus, difficulty in concentration, etc., as outlined by Dr. Shapiro, [clinical psychologist] reflect a Class IV – Marked Impairment level which significantly impedes useful functioning. Domestic care, ordinary pleasures in every respect, recreation, establishment of relationships with a suitable partner, ability to travel and shop are all significantly impaired. Mobility and work are significantly impaired.”

MENTAL AND BEHAVIOURAL DISORDERS:

Fournie v. Coachman

Arbitrator stated:

Dr. Merskey believes that Mr. Fournie qualifies as catastrophically impaired because of pain. He did not specify which of the four aspects of functioning (ADL, Social Functioning, Concentration and Adaptation) were affected by Mr. Fournie's pain.

Dr. Merskey used the Pain Intensity Frequency Grid in the Guides (Chapter 15 page 310) to indicate that Mr. Fournie had "Marked" Impairments.

MENTAL AND BEHAVIOURAL DISORDERS:

Kusnierz v. Economical

The issue for determination by the Court was:

“A. Whether it is permissible to assign percentage ratings in respect of Kusnierz’s psychological impairments under clause 2(1.1)(g) of the SABS and combine them with percentage ratings in respect of Kusnierz’s physical impairments under clause 2(1.1)(f) of the SABS, for the purposes of determining whether Kusnierz is catastrophically impaired pursuant to the SABS and the 4th Edition of the AMA’s Guide to the Evaluation of Permanent Impairment?”

MENTAL AND BEHAVIOURAL DISORDERS:

Kusnierz v. Economical

The Court held:

“The language of the SABS, the purpose of the Guides, the Guides’ references to combining physical and psychological impairments, and the goals of the SABS lead me to conclude that the combination of physical and psychological impairments is appropriate under cl. 2(1.1)(f).”

MENTAL AND BEHAVIOURAL DISORDERS:

Kusnierz v. Economical

The plain language of 2(1.1)(f) seems to suggest that the combination of both kinds of impairment is possible.

The definition of impairment:

“a loss of abnormality of a psychological, physiological or anatomical structure or function.”

MENTAL AND BEHAVIOURAL DISORDERS:

Kusnierz v. Economical

An aim of the Guides is to assess the total effect of a person's impairment on his or her everyday activities.

The Guides describe a number of situations where an assessment of a person's physical impairment should take into account Chapter 14 Mental and Behavioural Impairments.

MENTAL AND BEHAVIOURAL DISORDERS:

Kusnierz v. Economical

“Finally, allowing combination promotes fairness and the objectives of the statutory scheme. The trial judge acknowledged that interpreting the SABS and the Guides to prevent mental and behavioural impairments from being considered under cl. 2(1.1)(f) would leave a gap in the definition of catastrophic impairment. I agree that it seems unfair to deny to persons with combined physical and psychiatric impairments the enhanced benefits that are available to persons with similarly extensive impairments that fall entirely into one category or the other.”

CHAPTER 15 – PAIN INTENSITY FREQUENCY GRID

		Frequency			
		Intermittent	Occasional	Frequent	Constant
Intensity	Minimal				
	Slight				
	Moderate				
	Marked				

CHAPTER 15 – PAIN INTENSITY FREQUENCY GRID

PAIN INTENSITY FREQUENCY GRID:

Marked: The pain precludes carrying out most activities of daily living. Sleep is disrupted. Recreation and socialization are impossible. Narcotic medication or invasive procedures are required and may not result in complete pain control.

GLASGOW OUTCOME SCALE

Severe Disability

- Need for attendant care
- “Not independent = severely disabled”, see pp. 24-27 of paper, Jennett and Teasdale definition
- Wilson’s standard direct structured interview may enhance GOS scoring accuracy

CAUSATION

If accident made a material (more than minimal) contribution to the impairment or to its worsening, then the impairment was directly caused by the accident and should be rated or assessed under CAT criteria

- *Monks*
- *Athey*

There is no room for the “crumbling skull” theory in accident benefit cases

- *Monks*

SUBSEQUENT APPLICATION FOR A DETERMINATION OF CAT

- An applicant may bring a subsequent application based on the same sub-paragraph as a previous application.
- There must be a material change in the condition of the applicant

THANK YOU

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