

AUTOMOBILE INJURY COMPENSATION APPEAL COMMISSION (AICAC)

GUIDELINES FOR HEARINGS

(Updated August 6, 2009)

These Guidelines are not intended to hinder the AICAC's general ability to govern its own affairs, but will normally be followed in the absence of acceptable reasons to the contrary.

1. GENERAL INFORMATION

- 1.1 These guidelines are provided to assist you in your Automobile Injury Compensation Appeal Commission (AICAC) hearing.
- 1.2 All AICAC hearings are informal but all persons appearing are expected to conduct themselves in a respectful manner.

2. ACCESS TO HEARINGS AND DOCUMENTS

- 2.1 All AICAC hearings, as well as its Reasons for Decisions, are open to the public unless AICAC, at the request of the appellant or The Manitoba Public Insurance Corporation (MPIC), finds compelling reason(s) to hold a hearing in private.
- 2.2 All Reasons for Decisions are available for review at our offices during normal business hours and on our web site. www.gov.mb.ca/fs/cca/auto
- 2.3 You are entitled to one copy of MPIC'S complete file on your claim, except for exempt information as defined under *The Freedom of Information and Protection Act*, without charge.
- 2.4 An appellant who does not reside in Winnipeg, and may have difficulty attending a hearing in Winnipeg, may request a teleconference hearing. AICAC may also consider conducting hearings outside of Winnipeg.
- 2.5 AICAC may cover certain expenses incurred by appellants living outside of Winnipeg, but in the Province of Manitoba, when attending their hearing.

3. REPRESENTATIVES

- 3.1 Parties to an appeal may represent themselves or be represented by someone else of their own choosing who may, but need not necessarily, be a lawyer. The Claimant Adviser Office, which may be contacted at 945-7413, or Toll-free at 1-800-282-8069, ext 7413, is available to help people who want to appeal MPIC's Internal Review Decisions to AICAC.
- 3.2 Representative means legal counsel, a Claimant Adviser Officer, or an agent who AICAC is satisfied is competent and who is authorized to represent a party in the appeal.
- 3.3 If a party (or witness) requires an interpreter, the party shall notify AICAC as early as possible, or at the time they are ready to proceed to hearing, and if necessary, AICAC will arrange for an interpreter at its expense.

4. FILING A NOTICE OF APPEAL

- 4.1 A Notice of Appeal must be filed within 90 days from receipt of an MPIC Internal Review Decision, or within such further time as AICAC may allow. You must provide reasons in writing to AICAC should you file your Notice of Appeal after the 90 days. AICAC will ask MPIC for their comments and a hearing may be held to determine if you should be allowed the extension.

- 4.2** Once you have filed your Notice of Appeal and a copy of your Internal Review Decision with AICAC, we will notify MPIC of your appeal. MPIC will send your original file to AICAC. We will send you a copy of the portions of the file that are relevant to your appeal. This is referred to as the **indexed file**.

5. PRELIMINARY MATTERS

- 5.1** The Commission may hold a pre-hearing meeting prior to or during the hearing. Such preliminary issues may include any of the following:
- a) an application for a closed hearing;
 - b) an extension of time to file an appeal;
 - c) simplification of the issues;
 - d) dates by which any steps in the proceeding are to be taken or begun;
 - e) scheduling of witnesses;
 - f) facts or evidence that may be agreed upon;
 - g) adjournment requests;
 - h) any other matter that may assist in the just and most expeditious disposition of the hearing/appeal.
- 5.2** Pre-hearings may also be requested by the parties **at least thirty (30) days prior to the hearing**.

6. EVIDENCE

- 6.1** AICAC considers each case on its own merits, based on the evidence presented. Evidence consists of your indexed file and, if necessary:
- oral testimony given by yourself or anyone else having knowledge of your case;
 - additional relevant documents, letters, contracts of employment, medical reports, x-rays, pay-slips, cancelled cheques, invoices, accounts, photographs and any other forms of written or visual material that you believe will help to shed some light on your claim.

Remember to bring all your documents with you to the hearing including your copy of the indexed file.

- 6.2** You have the right, and will be given the opportunity, to challenge any evidence brought forward by MPIC. You can challenge that evidence by:
- producing witnesses or documents of your own which you feel support your appeal;
 - cross examining MPIC's witnesses, that is to say: asking MPIC's witnesses relevant questions in order to determine if their evidence will hold up under careful scrutiny;
 - drawing AICAC's attention to any relevant evidence produced by MPIC which seems to be self-contradictory or to be in conflict with some other part of MPIC's position.

Remember that MPIC has the same rights that you do and, in particular, the right to challenge your evidence.

7. NEW EVIDENCE

- 7.1** All new documentary evidence not already in your indexed file must normally be filed with AICAC at least **30 days prior to the hearing**. A copy will be sent to MPIC. MPIC must also file any new evidence with AICAC within the same time frame and a copy will be sent to you. AICAC has the discretion, on proper grounds, to allow for a shorter period of notice to permit the filing of new documentary evidence.

If, for example, MPIC has submitted new evidence later than **30 days prior to the date fixed for the hearing** of your appeal, and if you believe that this does not allow you enough time to consider and respond to that new evidence, you may:

- a) Ask AICAC to adjourn the hearing in order to give you more time. You will need to provide AICAC with the reasons why you are requesting an adjournment in writing; or
- b) You may object to the filing of new evidence. An objection of this kind may be considered by AICAC at, prior to, or during the hearing.

If your own material is late then MPIC has the same right.

8. WITNESSES

- 8.1 If you intend to have witnesses appear at the hearing, confirm their attendance when you are ready to set a hearing date. You may be asked by your Appeals Officer whether you intend to call any witnesses, and to provide particulars regarding their evidence such as the names of your witnesses and a brief summary of what they are expected to say. If you have any doubt about the willingness of a witness to attend, ask your Appeals Officer for a "Request for Subpoena" form or obtain a copy of the form on our web site. www.gov.mb.ca/fs/cca/auto
- 8.2 Oral examinations of witnesses are conducted under oath or affirmation that their evidence will be true.

9. SUBPOENAS

- 9.1 AICAC has the power to issue Subpoenas, which are Orders having the force of law requiring the person(s) named in them to appear at the hearing to give relevant evidence and, if necessary, to bring documents and other physical evidence with them. In order to be fair to your witness, a request for Subpoena must be made to your Appeals Officer **at least 30 days prior to your hearing**.
- 9.2 A Subpoena may be issued by AICAC and given to you to serve personally on your witness. If you choose to send the Subpoena through the mail it should be sent registered mail (ensure that you obtain a receipt or proof of delivery.)

10. AFFIDAVITS AND MEDICAL REPORTS

- 10.1 Affidavits or other written statements by a witness may be admitted in evidence. Sometimes you and MPIC will be able to agree that a medical report, for example, is relevant, in which case AICAC will accept that report as evidence of its content without requiring the attendance of the witness.
- 10.2 If it is your intention to bring forward a new medical report to be used as evidence at your hearing, AICAC will pay for the reasonable cost of the report to a maximum of \$250.00. This is subject to certain conditions. Your Appeals Officer can give you more details.
- 10.3 If your indexed file seems to contain two or more conflicting medical reports, you may consider consulting your medical advisor to arrange for him or her to attend at the hearing of your appeal to explain why his or her report or opinion differs from that of MPIC's medical advisor.
- 10.4 If your doctor or other expert witness is expected to give evidence for you, but a report from that doctor or expert witness is not contained in the indexed file, then a report from either the doctor or expert witness setting out what he/she is expected to testify to shall be filed with the Commission at least **30 days** prior to the hearing. The Commission will provide a

copy to MPIC. This same rule applies to MPIC.

11. AT THE HEARING

- 11.1 You will usually be asked to present your evidence first and tell the Commissioner(s) why you believe that MPIC's decision was wrong and what decision you feel the Commissioner(s) should make. You will be asked to produce any witnesses you may have, and you may give evidence on your own behalf.
- 11.2 A representative of MPIC may question you and your witnesses about this evidence and about the material in your indexed file.
- 11.3 After the witnesses have answered MPIC's questions, you may be allowed to ask further questions.
- 11.4 Once all your evidence has been presented, MPIC will have an opportunity to respond with evidence of its own, in the same way, and you will be invited to ask MPIC's witnesses any relevant questions that you have.
- 11.5 When all available evidence has been heard, you will be given an opportunity to make a statement of your final position respecting your appeal. MPIC will then present their position and you will be given a chance to respond to MPIC's argument.
- 11.6 If you do not appear at the hearing, and if no one else is there to speak on your behalf, AICAC may:
 - a) dismiss your appeal; or
 - b) adjourn the hearing of your appeal to a new date; or
 - c) if you and MPIC have agreed that neither of you will be present, proceed to hear and decide your appeal on the basis of the material already before it; or
 - d) take such other steps as it deems appropriate.
- 11.7 You should be aware that AICAC may increase or decrease the benefits awarded to you by MPIC. Your appeal will take the form of a new hearing, and AICAC is not bound by any decision of MPIC.

12. AFTER THE HEARING

- 12.1 Once AICAC has reached a decision, AICAC will provide both parties with a written decision by mail. The Reasons for Decisions are posted on our web site.
- 12.2 Either party may appeal the decision of AICAC to The Court of Appeal within 30 days from the date of receipt of the decision. Such appeals are limited to a question of jurisdiction or of law and only with the permission obtained from a judge of The Court of Appeal.

13. ACTS AND REGULATIONS

- 13.1 If you wish to examine *The Manitoba Public Insurance Corporation Act*, and/or its Regulations, you may do so at AICAC'S office, on our web site, on MPIC's web site www.mpi.mb.ca, at the Legislative Library (200 Vaughan Street) or in the Reading Room in the Legislative Building. Alternatively, you may purchase the Act from Statutory Publications (200 Vaughan Street.)

These guidelines are subject to change. Please check with your Appeals Officer to ensure that they are current. The guidelines are also available on our web site.

www.gov.mb.ca/fs/cca/auto