



Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by C.P.H.
AICAC File No.: AC-00-87**

PANEL: Ms. Yvonne Tavares, Chairperson
Dr. Patrick Doyle
Ms. Wendy Sol

APPEARANCES: The Appellant, C.P.H., was represented by Mr. George Ulyatt;
Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Terry Kumka.

HEARING DATE: September 24, 2004

ISSUE(S): Extension of time to file Application for Review.

RELEVANT SECTIONS: Section 172 of The Manitoba Public Insurance Corporation Act (the 'MPIC Act').

MAIC 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, C.P.H., is seeking an extension of time in order to file an Application for Review from the case manager's decision dated October 2, 1997.

Subsections 172(1) and 172(2) of the MPIC Act provide as follows:

Application for review of claim by corporation

172(1) A claimant may, within 60 days after receiving notice of a decision under this Part, apply in writing to the corporation for a review of the decision.

Corporation may extend time

172(2) The corporation may extend the time set out in subsection (1) if it is satisfied that the claimant has a reasonable excuse for failing to apply for a review of the decision within that time.

The Appellant was involved in a motor vehicle accident on November 17, 1994, wherein she sustained certain injuries. As a result of those injuries, the Appellant became entitled to Personal Injury Protection Plan ('PIPP') benefits pursuant to Part 2 of the MPIC Act. In a decision dated October 2, 1997, the case manager informed the Appellant that MPIC was terminating all further benefits with respect to the motor vehicle accident of November 17, 1994, and therefore would not consider any further treatment costs, nor process further Income Replacement Indemnity benefits.

Criminal charges of fraud were subsequently laid against the Appellant involving her claim with MPIC. A preliminary hearing and a trial were conducted and the Appellant was acquitted of the criminal charges in December 1998. Thereafter, counsel for the Appellant contacted MPIC by telephone requesting reinstatement of the Appellant's PIPP benefits. In a letter dated February 4, 1999, MPIC's case manager responded as follows:

Further to our telephone conversation of January 26, 1999 regarding this matter. We are enclosing a copy of our letter dated October 2, 1997, and advise that our position with respect to entitlement has not changed. You will note that we carbon copied your office in regards to this letter.

Counsel for the Appellant wrote to MPIC once again on December 29, 1999 seeking, in effect, a review and reinstatement of PIPP benefits for the Appellant. MPIC treated this letter as an "Application for Review" of the case manager's decision of October 2, 1997. Since the

“Application for Review” was received beyond the sixty-day time limit referred to in ss. 172(1) of the MPIC Act, the Internal Review Officer requested a written explanation for the Appellant’s failure to apply for the review within the statutory time limit.

In a letter dated March 6, 2000, counsel for the Appellant advised MPIC that the Appellant’s failure to apply for a review within the statutory time limit was due in part to her psychological and emotional problems resulting from the motor vehicle accident, and the stress of the criminal trial. Counsel further argued that while MPIC provided verbal advice that benefits were being terminated, no formal notification was provided to the Appellant, or to himself as counsel, that benefits were being terminated.

The Internal Review Officer in his decision dated March 28, 2000, considered the Appellant’s request for an extension of time pursuant to ss. 172(2) of the MPIC Act and determined that an extension of time was not appropriate in the circumstances of this case. Accordingly, the Internal Review Officer denied the Appellant’s request for same.

The Appellant has now appealed from the Internal Review decision, dated March 28, 2000, to this Commission. The issue which requires determination in this appeal is whether the Appellant has a reasonable excuse for failing to apply for a review of the case manager’s decision of October 2, 1997 within the sixty-day time limit set out in ss. 172(1) of the MPIC Act.

At the hearing of this matter, counsel for the Appellant submitted that since neither the Appellant nor her lawyer received written notice of the October 2, 1997 decision, they assumed that the review period was not triggered. Counsel argued that the Appellant was unaware of her right to file for a review of the case manager’s decision, since she was not notified by MPIC of such.

Furthermore, he maintains that with the intervening criminal trial, the Appellant was emotionally and psychologically distraught. With the stress of the pending criminal charges, the Appellant simply did not turn her mind to dealing with the termination of her benefits through the appropriate channels at MPIC. Rather, she was focused on the criminal trial and dealing with the charges against her. Counsel for the Appellant maintains that when the criminal charges were dismissed, the Appellant then proceeded to promptly seek a review of the case manager's decision. He therefore insists that the Appellant acted reasonably and there was a good explanation for her failure to apply for a review of the case manager's decision within the sixty-day time limit set out in the MPIC Act.

Counsel for MPIC submits that the Appellant was aware that her benefits were terminated in August 1997. Counsel argues that since the Appellant was relying on legal counsel for representation, her lawyer should have properly advised her to seek a review of the case manager's decision within the time limit set out in the MPIC Act, in order to protect her interests while the criminal trial progressed. Counsel for MPIC further argues that the Appellant provided no explanation for the delay in seeking a review of the case manager's decision once she and her lawyer were notified of such in February 1999. A request for review was not received until December 22, 1999, and counsel for MPIC maintains that there was no explanation for that delay.

Counsel for MPIC further submits that there has been a considerable delay since the Notice of Appeal to the Commission was filed (over four years have elapsed) and that it was the Appellant's conduct during that time that caused the significant delay. Counsel for MPIC maintains that there will be tremendous prejudice to MPIC to attempt to go back and case manage the matter now, if the appeal is allowed to proceed. He therefore submits that taking

into account the Appellant's reasons for delay, which were not significant, and her conduct since the appeal was filed, which led to considerable more delay, her request for an extension of time to file for an Application for Review should be denied, and the Internal Review decision dated March 28, 2000 confirmed.

Upon a careful review of all of the evidence, both oral and documentary, the Commission finds that the Appellant has not provided a reasonable excuse for failing to apply for a review of the case manager's decision within the sixty-day time limit set out in the MPIC Act. We find that it was the Appellant's own conduct which resulted in her not receiving the original case manager's decision dated October 2, 1997. As noted in the Internal Review Officer's decision, the registered copy of the decision letter dated October 2, 1997 which was sent to the Appellant was returned unclaimed. It remained unclaimed even though she was sent three reminders by Canada Post. While the Appellant testified at the appeal hearing that she never received notice of this letter, the Commission does not accept her testimony in this regard. Rather, we find that the Appellant knowingly failed to claim the decision letter and, as a result of her own actions, was responsible for the lack of written notice of the case manager's decision.

The Commission also finds that even if we accepted the lack of written notice and the intervening criminal trial as being a reasonable explanation for the Appellant's failure to seek an Application for Review within the statutory time limit, we find that no reasonable explanation was provided by the Appellant for the delay in seeking a review after the criminal charges were dismissed. Although the Appellant was aware of MPIC's position as of February 4, 1999, no further action was taken by the Appellant or her counsel until December 29, 1999. No explanation was offered for the delay during this time by the Appellant in seeking a review of the termination of her benefits. As such, the Commission finds that even after the criminal charges

were dismissed, there was an unreasonable delay by the Appellant to seek a reinstatement of her benefits. As a result, the Appellant's appeal is dismissed and the Internal Review decision dated March 28, 2000 is confirmed.

Dated at Winnipeg this 30th day of December, 2004.

YVONNE TAVARES

DR. PATRICK DOYLE

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