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## Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by R.H.Y.  
AICAC File No.: AC-04-165**

**PANEL:** Ms Laura Diamond, Chairperson  
Ms Mary Lynn Brooks  
Dr. Patrick Doyle

**APPEARANCES:** The Appellant, R.H.Y., appeared on her own behalf, via teleconference call;  
Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Terry Kumka.

**HEARING DATE:** April 13, 2005

**ISSUE(S):** To determine whether an extension of time should be granted to the Appellant to file her Notice of Appeal

**RELEVANT SECTIONS:** Section 174 of The Manitoba Public Insurance Corporation Act ('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

On September 21, 2004, the Appellant filed an appeal in regards to an Internal Review decision by Mr. Tom Strutt, dated December 29, 2003.

MPIC has taken the position that additional time should not be allowed to the Claimant for the filing of her Notice of Appeal, as she is well beyond the 90-day deadline and her explanation for the delay is not reasonable, credible or corroborated.

The Appellant argues that she should be granted an extension of time. She indicated that she did not receive Mr. Strutt's decision letter until sometime in the spring of 2004. She did not receive the decision because she was in Winnipeg taking care of her sister, who was seriously ill, and was not regularly checking her mail, as it was too costly to travel back and forth between Winnipeg and her home in [text deleted]. However, she did indicate that she traveled back to her home approximately every two (2) months.

The Appellant also submitted that she did not file an appeal because she was too busy caring for her sister, who had been ill and confined to a wheelchair, since May 18, 2003.

Counsel for MPIC submitted that the Appellant had failed to produce evidence that she was required to care for her sister and that this care was required to such degree that she had been unable to deal with her own appeal. He noted that a similar argument had been made on the merits of the rehabilitation issue dealt with in the Internal Review Officer's decision, and that the Appellant had failed to produce such evidence at that time.

Further, he submitted that the Appellant had admitted on cross-examination that she had a telephone discussion with the Internal Review Officer, Mr. Strutt, on January 8, 2004, and that he had advised her of the results of the Internal Review and the process for appealing the Internal Review decision, at that time.

Section 174 of the MPIC Act provides that:

**Application to appeal from review**

**174** A claimant may, within 90 days after receiving notice of a review decision by the corporation or within such further time as the commission may allow, appeal the review decision to the commission.

The Commission may allow, in its discretion, a Claimant who has failed to meet the 90-day statutory time limit to appeal the review decision to the Commission. The Appellant must satisfy the Commission that there is a reasonable excuse for failing to appeal within the time limits and a good reason for extending that time.

The Commission finds that the Appellant has failed to establish, on a balance of probabilities, that there is a reasonable excuse for her failure to meet the statutory time limit for filing an appeal. She has failed to provide evidence to corroborate her position that her sister's illness required care from her to such a degree, and for such lengthy periods of time, during the period following the Internal Review decision of December 29, 2003, that she was unable to attend to her appeal. Further, the evidence fails to establish that she was not aware of the Internal Review decision or the process for appealing that decision prior to September 2004.

Accordingly, the Commission finds that the Appellant has failed to establish, on the balance of probabilities, a reasonable excuse for failing to meet the statutory time limit, and as such, the Commission determines that her request for an extension of time should not be granted.

Dated at Winnipeg this 19<sup>th</sup> day of April, 2005.

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**LAURA DIAMOND**

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**MARY LYNN BROOKS**

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**DR. PATRICK DOYLE**