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## Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by E.M.  
AICAC File No.: AC-05-78-DF**

**PANEL:** Ms. Laura Diamond, Chairperson  
Paul Johnson  
Mary Lynn Brooks

**APPEARANCES:** The Appellant, E.M., was represented by Mr. Robert Sample;  
Manitoba Public Insurance Corporation ('MPIC') was represented by Morley Hoffman .

**HEARING DATE:** June 23, 2005

**ISSUE(S):** Extention of time to file Notice of Appeal

**RELEVANT SECTIONS:** Section 174 and 171(1) 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

The Appellant, E.M., is requesting an extension of time in order to file a Notice of Appeal from a decision of the Internal Review Officer dated June 18, 2004.

The Appellant was involved in a motor vehicle accident on August 7, 2003, wherein he sustained certain injuries. As a result of these injuries, the Appellant became entitled to Personal Injury

Protection Plan Benefits in accordance with Part Two (2) of the MPIC Act, including Income Replacement Indemnity ('IRI') benefits.

In a decision letter dated February 23, 2004, his case manager informed the Appellant that his IRI benefits would end, as he was able to return to his pre-accident employment as a truck driver.

The Appellant sought an internal review of the case manager's decision. In a letter dated June 18, 2004, the Internal Review Officer amended the case manager's decision to allow an extension of IRI benefits for thirty days, but confirmed the case manager's decision that the Appellant was able to return to work as a truck driver and that IRI benefits should cease after the further extension of thirty days, dismissing the Appellant's application for review.

The Appellant subsequently filed a Notice of Appeal from the Internal Review decision of June 18, 2004, with this Commission, on May 4, 2005. On May 4, 2005, the Appellant also forwarded a letter to the Commission outlining the reasons for his failure to file the Notice of Appeal within the statutory time frame of ninety (90) days, pursuant to Section 174 of the Act.

The Appellant noted the following reasons for the late filing:

1. There were injuries from the accident that had not been addressed, including, constant pain, fatigue and headaches, combined with memory attention difficulties.
2. The effects of pain killers.
3. Frustration with the bureaucratic system in place.
4. Financial difficulties he had been experiencing since the accident.

In a letter dated May 24, 2005, MPIC objected to the extension of time for the Appellant to file his Notice of Appeal. In MPIC's view, the late filing of approximately seven and half months

beyond the ninety (90) day time period was prejudicial to MPIC. Further, it was submitted by MPIC that the allegation that the Appellant's injuries prevented him from filing the Notice of Appeal were not supported by the medical evidence.

At the hearing, it was submitted on behalf of the Appellant that he had presented a reasonable and credible explanation for his failure to attend to the Notice of Appeal within the time limits. The Appellant's frustration with his pain and on-going symptoms, as well as with his loss of trust and confidence in MPIC, led to a feeling of hopelessness and alienation. This was compounded by the loss of his previous health, as well as his active, self-reliant and self supporting lifestyle. When friends urged him to pursue the matter further, he contacted various political representatives and was ultimately referred to the office of the Claimant Adviser. This is when he submitted his Notice of Appeal.

It was submitted that a whole variety of factors, including his pain, financial hardship, loss of independence, loss of hope and frustration contributed to the delay in filing the Notice of Appeal.

Counsel for MPIC submitted that the Commission should not exercise its discretion to extend the time limits for filing a Notice of Appeal, when it considers the lengthy delay and its prejudicial effect upon MPIC, as well as the reasons advanced by the Appellant for the delay.

Counsel for MPIC submitted that a significant delay of almost eight months had occurred. There was no medical evidence to support the Appellant's contention that his injuries had prevented him from the timely filing of the Notice of Appeal, and there was no suggestion that the Appellant had suffered any cognitive problems as a result of the accident which would have affected his abilities to deal with the matter.

Counsel for MPIC also submitted that the Appellant's contention that he had lost hope through his frustration with the system and MPIC was not a valid excuse for failing to file a Notice of Appeal, nor was it one which could be considered exclusive to the Appellant's situation.

MPIC had lost a significant opportunity for case management, including the passage of deadlines for such issues as the "180 day determination", work hardening programs etc.

He noted that should the Appellant come into possession of new medical information which might, for example, dispute the results of the Functional Capacity Evaluation performed in this case, the option would remain open to him to present such fresh evidence to his case manager under Section 171(1) of the Act.

### **Discussion**

Section 174 of the MPIC Act provides as follows:

#### **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.

Section 171(1) of the MPIC Act provides as follows:

#### **Corporation may reconsider new information**

171(1) The corporation may at any time make a fresh decision in respect of a claim for compensation where it is satisfied that new information is available in respect of the claim.

Pursuant to Section 174 of the MPIC Act, the Commission has the discretionary power to extend the time for appealing an Internal Review Decision. In exercising its discretion, the Commission may consider various relevant factors, such as:

1. the actual length of the delay compared to the 90 day time period set out in s.174 of the MPIC Act;
2. the reasons for the delay;
3. whether there has been any prejudice resulting from the delay;
4. whether there was any waiver respecting the delay; and
5. any other factors which argue to the justice of the proceeding.

The panel has reviewed the evidence and submissions before it, and upon a consideration of the relevant factors surrounding the delay, the Commission finds that the Appellant has failed to establish, on a balance of probabilities, a reasonable excuse for failing to appeal the Internal Review Decision to the Commission, within the ninety (90) day time limit set out to him in Section 174 of the MPIC Act, and on the final page of the Internal Review Decision dated June 18, 2004.

We note, however, as Counsel for MPIC has pointed out in his submission, that should the Appellant be in possession of new and relevant medical information which demonstrates an entitlement to benefits arising under the motor vehicle accident of August 7, 2003, he or his representative can present this new information to his case manager, in accordance with the provisions of Section 171(1) of the Act.

As a result, and for these reasons, the Commission will not extend the time limit in which the Appellant may appeal the Internal Review Decision dated June 18, 2004 to the Commission.

Dated at Winnipeg this 14<sup>th</sup> day of July, 2005.

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**MS. LAURA DIAMOND, CHAIRPERSON**

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**PAUL JOHNSTON**

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**MARY LYNN BROOKS**