

Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by B. R.
AICAC File No.: AC-01-118

PANEL: Mr. Mel Myers, Q.C., Chairman
Mr. Paul Johnston
Mr. Les Marks

APPEARANCES: The Appellant, B. R., was represented by Mr. Bob Tyre of the Claimant Adviser Office, which hearing took place in Brandon, Manitoba;
Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Terry Kumka.

HEARING DATE: April 26 & 27, 2007

ISSUE(S): Application for an extension of time to file an Application for Review

RELEVANT SECTIONS: Sections 172 and 173 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

B. R. (hereinafter referred to as the 'Appellant') was involved in a motor vehicle accident on September 16, 1994 and suffered soft tissue injuries to his neck and back. As a result, he was unable to return to his work as a carpenter and was in receipt of Income Replacement Indemnity ('IRI') benefits. The Appellant was treated by his personal physician, Dr. Lindsay, and was subsequently referred to Dr. Richert, a Clinical Psychologist, because the Appellant apparently

appeared to be experiencing depressive symptoms and possibly substance abuse as a result of his motor vehicle accident injuries.

The Appellant was referred by MPIC's case manager to Dr. Richert for counseling. In a report to MPIC dated April 24, 1997, Dr. Richert states that the Appellant had a number of non-motor vehicle related psychosocial issues including "*an unstable and declining relationship with a long-time girlfriend, plus a highly ambivalent relationship with a father who has a history of alcoholism and who continues to abuse alcohol at the present time*".

In a further report from Dr. Richert to Dr. Gilbert Lee, the Appellant's Psychiatrist, Dr. Richert stated that:

1. the Appellant was approaching a return to the work force but began to experience severe psychological pressures which included "*slow disintegration of a longstanding relationship with a girlfriend, an experience which has been very painful for [B.R.] as well*".
2. the Appellant had stopped taking his anti-depressant medication over the last few months and since that time had discontinued his medication and had begun to consume alcohol "*to a fairly high degree, a problem that has been identified previously with [B.R.]*".
3. "*What is of urgent concern, however, is the fact that last week [B.R.] began to experience paranoid ideation. He started to feel that co-patients at the Westman Evaluation and Rehabilitation Centre were planted there to spy on him and he became increasingly suspicious that the staff were tapping his phone conversations or otherwise invading his personal life, playing mind games with him, and trying to destabilize him mentally*".

4. the Appellant may be suffering from a bi-polar mood disorder with paranoid features characteristic of a manic phase or if, in fact, he has a paranoid condition per se, and requested a psychiatric evaluation be provided by Dr. Lee.

In a further report by Dr. Richert dated January 13, 1998 he indicated that:

1. a case conference had taken place at the Westman Evaluation and Rehabilitation Centre where it was determined that the Appellant could not return to his previous employment performing regular carpentry work but could return to the workplace doing finishing carpentry which is of a light duty nature.
2. the Appellant was attending AA on a regular basis and was continuing to take anti-depressant medication (Effexor) as prescribed by Dr. Lindsay, his family physician.

A final report from Dr. Richert dated February 26, 1998 stated that the claimant no longer desired to see Dr. Richert because *“he has developed a belief that I have been talking about him on the media – specifically the radio. As far as I can tell, he may have come to this conclusion if he has heard my name in radio advertising spots sponsored by Assiniboine Community College, with whom I am teaching a teleconference course”*.

On March 25, 1998 Dr. Lindsay, in a report to Mr. Dan Chafe, Occupational Rehabilitation Group of Canada, reported that the Appellant:

1. was no longer seeing Dr. Dubo, the Psychiatrist.
2. did not follow through on his physiotherapy rehabilitation program.
3. was no longer seeing the Psychologist, Dr. Richert.
4. no longer wishes any further follow-up with Dr. Lee the Psychiatrist.

Dr. Lindsay, in his report, further stated that:

1. the Appellant's depression was certainly under control, the Appellant continued to take the anti-depressant medication Effexor and, in his opinion, the Appellant was able to do light construction or a similar type of job.
2. *“ . . . at the present time, his depression is quite well controlled. I think that he may still have some future problems with inappropriate alcohol use, but he is attending Alcoholic Anonymous intermittently. He still requires to be followed with respect to his depression and the drugs prescribed for this”.* (underlining added)

On October 29, 1998 Dr. Dubo wrote to Mr. Chafe and advised that he had re-examined that Appellant on October 14, 1998 at the request of Mr. Chafe. In this letter Dr. Dubo indicated that the Appellant had developed emotional problems with paranoid ideation but was not receiving treatments from a Psychologist or a Psychiatrist. Dr. Dubo opined that at this time the Appellant did not appear depressed.

At the request of Dr. Dubo the Appellant was assessed by Dr. El-Khatib, a Clinical Psychologist. Dr. El-Khatib had two (2) meetings with the Appellant on December 7 & 17, 1998. In a report to Mr. Chafe dated December 21, 1998, Dr. El-Khatib stated:

1. that the Appellant did not suffer post traumatic stress disorder as a result of the motor vehicle accident and at the time of his assessment Dr. El-Khatib concluded that the Appellant was not significantly depressed and that his depressive symptoms were in remission.
2. *“Psychologically, he seems to be stable at present.”* (underlining added)
3. *“ . . . he should continue using his medication in consultation with his family physician and psychiatrist in Brandon”.*

4. ongoing psychological support should be in place for the Appellant during his return to work and that he was concerned about the Appellant's inappropriate use of alcohol in the past.

Dr. Dubo provided a report to Mr. Chafe on January 13, 1999 wherein he stated:

1. the Appellant took part in a physical restoration program over a six (6) week period at Par Services.
2. "There was no evidence of emotional instability or depression." (underlining added)
3. "I would expect him to be able to return to work in the field of carpentry".

MPIC's Brandon Claims Adjuster requested Dr. Neil Craton, Medical Director of MPIC's Medical Services, to provide an assessment of the Appellant's current working capabilities in relationship to the motor vehicle accident.

Dr. Craton reviewed the Appellant's medical file and advised the Claims Adjuster, on March 4, 1999, "In the best interests of the patient it would be my view, and apparently the view of Dr. Dubo, for this patient to return to work. He may need some assistance of care in lifting objects more than 80 pounds. There appear to be no contraindications to his return to work". (underlining added)

Dr. Lindsay, the Appellant's personal physician, in a report to MPIC dated June 27, 2001, was of the view that the Appellant should not be doing heavy construction because this was aggravating the Appellant's back. Dr. Lindsay stated in this report "I think that he needs some anti-inflammatories for pain relief and would probably benefit from some increased physiotherapy and work hardening, as well as motivation to return to work. I think that he should not do heavy

physical carpentry, but rather should stay with finishing, lighter, carpentry work". (underlining added)

The Appellant was referred to Dr. McIntyre, a Brandon Psychiatrist. Dr. McIntyre's handwritten notes from numerous sessions he had with the Appellant were filed in evidence before the Commission. These reports commenced on June 2, 1998 and conclude on April 7, 2005. In Dr. McIntyre's initial handwritten notes he stated that:

1. the Appellant was attending the Society for Depression and Manic Depression and the Appellant felt he was clinically depressed.
2. he recommended that the Appellant receive Risperidol 0.5 mg in the morning and at bedtime, as well as Clonazepam in the morning and at bedtime.
3. the Appellant indicated that his return to work was a real problem due to physical limitations and that he likely could not do all of the framing and finishing carpentry work.
4. the Appellant further advised him that there was no recurrence or paranoid delusions of reference and that his concentration was recovering. For example he was now scoring in dart games.
5. the Appellant further stated that his mood was good.
6. he had discussed bi-polar risks with the Appellant.

Dr. McIntyre, in his note of September 29, 1998 indicated that:

1. the Appellant was having some difficulty sleeping as well as pain.
2. emotionally "*things going well*", that he is going out socially and has a new girlfriend.

3. It is noted that the claimant's current limits to employment are 1) "*physical requirements*" and 2) "*salary*".
4. the plan is to help the Appellant "*normalize his lifestyle and get to work*".

Dr. McIntyre's notes of February 1, 1999 indicated that:

1. the Appellant did attend the PAR Services in Winnipeg between November 1998 and January 1999 and that was "*really positive*".
2. the Appellant had a new vocational worker and there was a plan to find the Appellant a job as a carpenter.

Case Manager's Decision

On July 8, 1999 the case manager wrote to the Appellant and his solicitor and advised them that a two (2) year determination process had been completed and it was determined that the Appellant's occupation would be that of a finishing carpenter. The case manager further stated:

Based on the medical information gathered and taking into account [B.R.'s] training, skills and abilities, we feel that he is capable of employment as a finishing carpenter. In referring to Schedule C of the Manitoba Regulations 39/94, and with reference to the National Occupational Classifications (NOC), it is felt that [B.R.] is capable of earning a gross yearly employment income equal to or greater than the gross yearly employment income that his Income Replacement Indemnity benefits have been based on. The gross yearly employment for a finishing carpenter with [B.R.'s] level of experience is \$40,348.00.

Section 110(1)(d) and Section 115 of the Manitoba Public Insurance Corporation Act provide that entitlement to Income Replacement Indemnity ceases one year from the date that an individual becomes able to hold an employment determined for them under these procedures. The one year period starts from the date of this letter.

During this one year period, payment of Income Replacement Indemnity will continue at the same rate unless employment is secured during this period. Any net income from that employment will be reduced from the Income Replacement Indemnity being paid. At the end of the one year grace period, regardless of whether or (sic) employment is secured, entitlement to Income Replacement Indemnity will cease.

As with any decisions we make under the Personal Injury Protection Plan, should [B.R.] disagree with the above decision, he does have the right to apply for a review. Any request for a review must be made in writing and within 60 days of the date of this letter. Applications for Review can be obtained from any of our claims locations. (underlining added)

The Commission notes that the Appellant did not apply for a review of the case manager's decision within sixty (60) days as required by Section 172(1) of the MPIC Act but filed an Application for Review dated November 22, 2004, which is a period of five (5) years beyond the time limit set for under Section 172(1) of the MPIC Act.

Dr. McIntyre, in a note dated July 28, 1999, stated that:

1. the Appellant advised him that his IRI will be terminated with MPIC in one (1) year's time.
2. the Appellant has issues with Dr. Richert at this point and that he is "*increasingly paranoid*".
3. the Appellant's credit cards are maxed out.
4. he increased the Appellant's Risperidol.

Dr. McIntyre's note of September 13, 1999 indicated that the Appellant is updating his Resume in regards to finding a carpentry position. Dr. McIntyre further noted that the Appellant is exercising every day and he is able to "*cope with any negative stuff that comes up*".

Dr. McIntyre, in a note dated November 22, 1999, indicated that the Appellant is looking for work and talking to people; is going out socially; is walking; reading and considering a fitness program.

Dr. McIntyre, in a note dated January 10, 2000, indicated that the Appellant continues to look for work and that the Appellant has reported to him that his gambling problems are under control and that he has no specific complaints, major conflicts or anxieties at that point.

In a note dated April 26, 2000, Dr. McIntyre reported that the Appellant has advised him that he has taken himself off medication at that point, and that his alcohol consumption has decreased considerably. Dr. McIntyre reports that in his view the Appellant has “*good insight*”.

In a note dated December 18, 2000 Dr. McIntyre reported that the Appellant is demonstrating “*clear thinking/good insight*” and his sleep is normal.

In a letter dated February 1, 2001 Dr. McIntyre requested that the Psychosocial Rehabilitation Program for Employment Development Services accept the Appellant into their program. Dr. McIntyre reported that the Appellant’s “*expectations are more consistent with his abilities. He has better insight, more appropriate motivation and is less generally grandiose and defensive*”.

In a note dated April 5, 2001 Dr. McIntyre reported that the Appellant’s mood was stable and the primary difficulty with him not working at this point was because he did not have a vehicle. He also noted the Appellant had good and bad days “*but generally feels could work through bad days*”.

In a letter to MPIC dated June 27, 2001 Dr. Lindsay, the Appellant’s personal physician, indicated that he saw the Appellant on June 5, 2001 and June 27, 2001 and stated that:

1. the Appellant was complaining of increasing low back pain.

2. the Appellant's symptoms were similar to what he had after the motor vehicle accident in 1994.
3. he is of the view that the most aggravating factor is the fact that the Appellant was doing heavy construction.
4. the Appellant should not do heavy physical carpentry but rather stay with finishing, lighter, carpentry work.

The Appellant applied to MPIC for IRI benefits and physiotherapy treatments in respect of the injury to his back that he sustained while doing construction carpentry work. The Appellant's claim for compensation to MPIC was rejected in the case manager's letter to the Appellant dated July 24, 2001. On July 26, 2001 the Appellant made an application to MPIC to have an Internal Review Officer review the case manager's decision rejecting his claim.

In a note dated August 13, 2001 Dr. McIntyre indicated that the Appellant is exercising daily and is "*looking into schooling*". He also noted that the Appellant's anxiety/paranoia/interpersonal are "*better*" on medication.

Dr. McIntyre's note of November 13, 2001 indicated that the Appellant is taking a computer course, has purchased a vehicle and his mood seemed relatively good.

Dr. McIntyre's note of January 14, 2002 indicated that the Appellant is continuing to take a computer course and that this is going well and that his mood, sleep and family situation all seem to be good at this point.

On May 13, 2002 in a note Dr. McIntyre indicated that the Appellant was considering other work, was taking a computer course and that his mood was good.

Further chart notes from Dr. McIntyre dated August 29, 2002, December 11, 2002 and February 17, 2003 indicated that the Appellant is continuing to look for work, his sleep is good and he is demonstrating good problem solving.

Dr. McIntyre in his note dated May 12, 2003 indicated that:

1. the Appellant had difficulty remembering carpentry details and apparently turned down a job as a result thereof.
2. the Appellant was “*generally more negative in his perception of employment*” and that the Appellant was looking into retraining at that point.

Application for Review

In an Application for Review dated November 22, 2004 the Appellant sought to review the case manager’s decision dated July 8, 1999 and stated in part:

Mental health issues impeded my ability to respond to the 1999 decision and appealing the decision regarding the end of my IRI payments.

In support of that late application, the Appellant filed with the Commission a letter from Dr. McIntyre dated September 9, 2004 which stated:

[B.R.] has of late requested a summary and comment with respect to his mental status in and around the year 1999. My understanding is that this is for his use in an appeal process regarding whether there were significant mitigating circumstances in 1999 such that [B.R.] was unable to comply with a deadline to appeal the status of his claim from an automobile injury in 1994.

A review of his file indicates that in 1999 [B.R.] was being followed quite intensively. He had, at that time, an acute Bipolar Mood episode which included severe anxiety and

elements of paranoid anxiety. Mixed moods feature bouts of severe depression, lack of energy and marked social isolation.

It is the opinion of this writer that [B.R.'s] mental status during the time in question (1998 and 1999) would most likely have represented a major mitigating circumstance with respect to his social decision making at the time. He was quite fixed in his paranoid ideation. The severity of his social anxiety and mistrust would, in all likelihood, have been a significant influence on his judgment with respect to whether he continued to pursue his claim with MPI adjudicators etc.

[B.R.] continues to suffer from Bipolar Mood Disorder. His social experience and judgment, however, are very significantly improved since the period in question. It is the opinion of this writer that his psychiatric condition no longer constitutes a mitigating circumstance with respect to his judgment in pursuing an appeal to his Autopac claim. (underlining added)

In a further letter to MPIC dated October 12, 2004 Dr. McIntyre stated that:

Having experienced an acute relapse in the summer of 2000 [B.R.] could expect significant impairment related to the illness for a period of the next one to two years even with good medication compliance and relatively good control over acute psychotic symptoms.

Finally, [B.R.] was also being tried on different medications until January 2002 at which time the essential elements of his antipsychotic and antidepressant medication regimen were established.

My handwritten clinical notes of that period indicate superficial good judgment and relatively stable mental status on [B.R.'s] part. Concern remained, however, with respect to his persistent anxiety stemming from and related to paranoid delusional ideation. Also, there were persistent concerns regarding the stability of his mood, his impulsivity and judgment.

In hindsight, these type of "competency" assessments are difficult to make with any degree of accuracy. A reasonable approximation, however, would be that [B.R.'s] psychiatric condition presented a mitigating circumstance until approximately the summer months of 2002. (underlining added)

Internal Review Officer's Decision

On July 15, 2005 the Internal Review Officer issued a decision confirming the case manager's decision dated July 8, 1999 and rejected the Appellant's Application for Review. In her reasons for decision the Internal Review Officer stated:

Your psychiatrist, Dr. McIntyre provided a report dated October 12, 2004 to Terry Kumka. In that report, he states that you were off medications in the summer of 2000. He then approximates that your psychiatric condition was a mitigating circumstance until the summer of 2002.

.....

There is a report from the Psychosocial Rehabilitation Program dated September 27, 2004 which states that you were referred to this program in February 2001 after an acute psychotic episode. I do note that you were then able to submit an Application for Review in July 2001.

As I had stated to you previously, your explanation for the delay that you had mental health issues certainly had ended by the time you filed your Application for Review July 26, 2001. This occurred two days after your Case Manager's decision letter and in my opinion, you were certainly psychologically capable at that point of deciding the action that was necessary to take and then taking that action. Even if I accept psychiatric statements that you were not capable of dealing with these issues from 1999 to 2002, which I do not, this means then that you legitimately have an over three year delay in requesting a review of your Case Manager's decision letter of July 8, 1999. There has been no explanation for that delay and therefore I will not accept your Application for Review. (underlining added)

Notice of Appeal

The Appellant filed a Notice of Appeal dated July 26, 2005 to this Commission.

MPIC requested Dr. D. Andrew Jones, Psychological Consultant to MPIC's Health Care Services, to review the Appellant's medical file and to provide an opinion whether or not the Appellant had a reasonable excuse for filing his Application for Review well beyond the 60-day period prescribed by the MPIC Act. Dr. Jones proceeded to provide an extensive report wherein he reviewed all of the relevant medical reports provided to MPIC including the two (2) letters of Dr. McIntyre dated September 9, 2004 and October 12, 2004.

In response to Dr. McIntyre's letter dated September 9, 2004 Dr. Jones stated:

Reviewer's Comment

As indicated above, the claimant did appear to be expressing paranoid ideation regarding co-patients attending the rehabilitation centre in Brandon in late 1997. This appeared to then also involve Dr. Richert as indicated in his report of February 26, 1998. Further documentation from Dr. Lindsey in March 1998, however, indicates that the claimant's depression is "well controlled" and that he can return to work in a light carpentry work. This opinion is echoed by Dr. Dubo. Dr. El-Khatib in December, 1998 describes the claimant as psychologically stable. Dr. Dubo (January 13, 1999) then comments on the claimant's involvement in the PAR program and notes that he participated well, he was emotionally stable and he could return to carpentry work. Dr. Craton's review of the file information supported the return to work plan. Dr. McIntyre's own notes of June and September, 1998 indicate that the claimant's mood is good, he is attending a self help group, he is going out socially and has a new girlfriend. Dr. McIntyre indicates that his plan is to assist him with normalizing his lifestyle and getting back to work. Dr. McIntyre's notes of February 1999 indicate that the claimant had a "really positive" experience at the PAR program. In the summer of 1999 the claimant did demonstrate some increased paranoia, but by September 1999 he is exercising regularly, updating his resume and coping well with anything negative. In November, 1999 he is going out socially, he is walking, reading and actively looking for work. Based on the reports of Dr. Lindsey, Dubo, El-Khatib and even Dr. McIntyre's own notes, it does not appear, in the writer's opinion that the claimant's mental status (e.g., social anxiety) would have been a mitigating circumstance as suggested by Dr. McIntyre. (underlining added)

Dr. Jones also responds to Dr. McIntyre's letter dated October 12, 2004 and states:

Reviewer's Comment

As indicated above, the writer's review of Dr. McIntyre's handwritten notes as well as reports from other health care providers indicate that the claimant was doing well mentally and physically through the spring of 1998 and 1999. In December 2000, Dr. McIntyre indicates the claimant is demonstrating good insight and clear thinking. In February, 2001 he referred the claimant for employment assistance noting that his "*expectations are more consistent with his abilities. He has better insight, more appropriate motivation and is less generally grandiose and defensive*". In the summer of 2001, as noted above, Dr. McIntyre described the claimant's mental status as calm and having good cognition. He was exercising daily and looking into schooling. His anxiety, paranoia and interpersonal problems were described as "better" on medication. This presentation would be consistent with someone who was able to respond within two days to a decision letter sent by their case manager as was the case when the claimant filed an Application for Review dated July 26, 2001. Furthermore, other information in Dr. McIntyre's notes indicate that in the fall of 2001, and the winter and spring of 2002, the claimant was taking a computer course, he was looking for work and his mood, sleep and family situation was stable. None of this information would suggest that the claimant's psychiatric condition would present a mitigating circumstance until the summer of 2002.

Dr. Jones further reviewed Dr. McIntyre's letter dated April 18, 2005 wherein Dr. McIntyre stated that in his view the Appellant was medically ineligible to work from his first contact with the Appellant in 1998, for a period of several years. In response Dr. Jones stated:

Reviewer's Comment

As noted above, there is clear evidence from Dr. Lindsey, Dr. Dubo, Dr. El-Khatib, Dr. Craton, and even from Dr. McIntyre's own notes that the claimant was psychologically and physically capable of being employed at the time the decision regarding the issue was made in July, 1999. The claimant, by his own actions also demonstrated that he was capable of working as he did take a construction type job where he re-injured his back despite being told to limit himself to lighter, finishing carpentry work. Dr. McIntyre indicates in his notes of September 29, 1998 that the claimant's limits to employment as "physical requirements" and "salary". He then describes the claimant's participation in the PAR program as being "really positive" and notes that the claimant will be looking for work as a carpenter. There is no indication from Dr. McIntyre that the claimant is "not medically eligible to work". His notes throughout 1999 and 2000 indicate that the claimant is looking for work; he is socially involved and engaging in leisure activities. There is no indication in these notes that Dr. McIntyre feels the claimant is unable to work for psychiatric reasons.

OPINION

Based on the review of the claimant's file information, it is the writer's opinion, as discussed above, that the claimant did not have a reasonable excuse (due to his psychiatric condition) for not filing his application for review in a timely manner. Given the review of the medical information, it is the writer's opinion that Dr. McIntyre's statements as expressed in his letters of September 9, and October 12, 2004 and April 18, 2005 regarding the claimant's inability to file for review or that he "was not medically eligible to work for a period of several years" are not supported by the file documentation. (underlining added)

Appeal

The relevant provisions of the MPIC Act in respect of this appeal are Sections 172(1) and (2) of the MPIC Act:

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 appeal hearing took place in Brandon, Manitoba on April 26 & 27, 2007. The Appellant testified that:

1. he suffered from numerous problems subsequent to the injuries he sustained in the motor vehicle accident on September 16, 1994.
2. he was employed prior to the motor vehicle accident as a heavy construction carpenter, but after the accident was unable to continue with this employment.
3. his personal physician, Dr. Lindsay, had referred him to Dr. Richert, a clinical psychologist, to deal with his depression and substance abuse subsequent to the motor vehicle accident.
4. he refused to continue to see Dr. Richert because he believed Dr. Richert was talking about him on the public radio.
5. he was having problems with Westman Evaluation and Rehabilitation Centre.
6. his personal physician had referred him to Dr. McIntyre, a Brandon psychiatrist, who commenced treating the Appellant on June 2, 1998 and continued to see him until April 7, 2005.

The Appellant further testified that in July of 1999 he was advised by MPIC's case manager that:

1. although he could no longer be employed as a heavy construction carpenter, he was capable of returning to work as a finishing carpenter.
2. his entitlement to IRI benefits would cease one (1) year from July 8, 1999.
3. he did not apply to review the case manager's decision for a period of five (5) years because he had emotional difficulties which prevented him from making the appropriate application in a timely fashion.
4. he had a relapse in 2000 and was incapable of making the appropriate Application for

Review.

5. his bi-polar mood disorder caused him to suffer from periods of depression, anxiety, loss of concentration, poor judgment, failure to take his medication on a timely basis, and together with his alcohol addiction, he was unable in a timely fashion to make the Application for Review within sixty (60) days of receipt of MPIC's two (2) year determination on July 8, 1999.

Dr. Ian McIntyre testified on behalf of the Appellant that:

1. he commenced seeing the Appellant in the month of June 1998 and continued to see him from time to time until the month of April 2005.
2. the Appellant suffered from a bipolar mood disorder which included severe anxiety and elements of paranoid anxiety, with mixed moods featuring bouts of severe depression, lack of energy and marked social isolation.
3. in 1999, having regard to the significant psychiatric problems that the Appellant had, he was incapable of making a timely Application for Review following the two (2) year determination.
4. subsequently, there was really no change in the condition of the Appellant.
5. in the summer of 2000 the Appellant suffered a significant relapse and although the Appellant improved over a period of time, the Appellant had a number of severe problems which would have prevented him from making a timely Application.
6. having regard to the numerous psychological problems the Appellant suffered from, he was unable to make a timely Application for Review.

MPIC's legal counsel reviewed with Dr. McIntyre the notes that he had recorded in respect of the Appellant's visits with him between the month of June 1998 and April 7, 2005, as well as Dr.

McIntyre's letters dated September 9, 2004, October 12, 2004 and April 18, 2005. Dr. McIntyre rejected the suggestion of MPIC's counsel that he had changed his position in respect of the Appellant's incapacity to make a timely Application for Review. In respect of his letter of September 9, 2004, Dr. McIntyre indicated that he was requested by the Appellant to provide an assessment of the Appellant's mental status in and around the year 1999 and he did provide such an assessment. In respect of the letter of October 12, 2004, he indicated that during the period from the summer of 2000 to the month of January 2002, he acknowledged that the Appellant was relatively stable, psychologically, but he was concerned about the Appellant's persistent anxiety as a result of his paranoia and was also concerned about his judgment and mood changes. He maintained that in his opinion, having regard to the psychological condition of the Appellant, that the Appellant had a reasonable excuse for not being able to file the Application for Review within the described period as set out in the MPIC Act.

MPIC called Dr. D. Andrew Jones, their psychological consultant, as a witness. Dr. Jones stated that:

1. he was requested by MPIC to review the Appellant's medical file to provide an opinion as to whether or not the Appellant had a reasonable excuse for filing his Application for Review well beyond the sixty (60) day period as prescribed in the MPIC Act.
2. he had provided an extensive report dated November 9, 2006 to MPIC wherein he had reviewed all of the relevant medical reports on the Appellant's medical file, including all of Dr. McIntyre's clinical notes, and Dr. McIntyre's three (3) letters dated September 9, 2004, October 12, 2004 and April 18, 2005.
3. he reviewed the clinical reports of Dr. McIntyre, the medical reports of Dr. Lindsay, Dr. Dubo, Dr. El-Khatib and Dr. Craton and found that these reports were

- inconsistent with Dr. McIntyre's three (3) letters.
4. he disagreed with Dr. McIntyre as to the capacity of the Appellant to make a timely Application for Review to MPIC.
 5. as a result, he concluded that the Appellant has not established that, due to his psychological condition, he was incapable of providing a timely Application for Review to MPIC.

Submissions

The Appellant's representative submitted that, having regard to the testimony of the Appellant and Dr. McIntyre, the Appellant has established, on a balance of probabilities, as a result of his bipolar disorder, the anxiety, delusions, mood changes, poor judgment and alcohol addiction, the Appellant had provided a reasonable excuse for failing to make a timely Application for Review to MPIC. The Appellant's representative emphasized Dr. McIntyre's three (3) letters corroborated the Appellant's position that he had a reasonable excuse for failing to make a timely Application for Review.

MPIC's legal counsel, after reviewing the medical reports of Dr. Lindsay, Dr. Dubo, Dr. El-Khatib, as well as the clinical notes of Dr. McIntyre, together with Dr. Jones' report, submitted that:

1. the Appellant has not established, on a balance of probabilities, that he had a reasonable excuse for failing to file a timely Application for Review.
2. the Internal Review Officer was correct in her decision in asserting that since the Appellant had been capable of making an Application for Review in July of 2001, two (2) days after a case manager's decision, he was capable of making a timely Application for Review in respect of the case manager's decision of July 8, 1999.

3. the Internal Review Officer was correct in her decision in asserting that if the Appellant was incapable, psychologically, of making a decision within the first couple of years subsequent to the motor vehicle accident, he was capable thereafter to have made a timely application, but he failed to do so.

MPIC's legal counsel also submitted that the Internal Review Officer was correct in her decision when she determined that if the Appellant was psychologically incapable of dealing with his claim between 1999 and 2002, he had not provided any reasonable excuse for not being able to make a timely Application thereafter. MPIC's legal counsel further submitted that the Commission should reject Dr. McIntyre's opinion and accept Dr. Jones' opinion who found that the Appellant was psychologically capable of making a timely Application for Review subsequent to the case manager's two (2) year determination, but failed to do so.

Decision

The Commission finds that, having regard to the medical documentation on file, the testimony of the Appellant, Dr. McIntyre and Dr. Jones, the Appellant has failed to establish, on a balance of probabilities, that he had a reasonable excuse for failing to make an Application for Review to MPIC pursuant to Sections 172(1) and (2) of the MPIC Act.

Section 172(1) of the MPIC Act requires that a claimant apply in writing to the corporation for a review of the decision within sixty (60) days of receipt of a decision from MPIC. This requirement is quite simple and requires only the ability of a claimant to read and write and to have the capacity of understanding when MPIC has rendered a decision denying a claimant a benefit under the MPIC Act. The Commission noted that the Appellant did file an Application for Review in July of 2001 and therefore certainly had the ability to read and write, and the

ability to understand when MPIC has rendered a decision adverse in interest to his position. As well, the Commission observed the manner in which the Appellant testified in both examination-in-chief and in cross-examination in the appeal proceedings and noted that the Appellant was able to understand the questions that were put to him and was able to intelligently respond to these questions.

The Commission determines that although, subsequent to the motor vehicle accident, the Appellant did experience difficulties from time to time, these difficulties did not prevent the Appellant from filing a timely Application for Review.

The Commission agrees with the testimony of Dr. Jones that the clinical notes of Dr. McIntyre, and the medical reports of Dr. Lindsay, Dr. Dubo and Dr. El-Khatib are inconsistent with Dr. McIntyre's testimony that at no time after the two (2) year determination did the Appellant have the capacity, due to his psychological problems, to make a timely Application for Review.

Dr. Jones reviewed all of the relevant medical reports provided to MPIC, as well as Dr. McIntyre's three (3) letters, and stated that:

1. while the Appellant expressed paranoid ideation in late 1997 and in 1998, Dr. Lindsay in March 1998 indicated the Appellant's depression was "*well controlled and that he could return to work in light carpentry work*" and this opinion was echoed by Dr. Dubo.
2. Dr. El-Khatib, in December 1998, described the claimant as psychologically stable.
3. Dr. Dubo, on January 13, 1999, commented on the Appellant's involvement in the PAR program, and noted that he participated well, was emotionally stable and could return to carpentry work.

4. Dr. McIntyre's clinical notes of June and September 1998 indicate the Appellant's mood was good, that he was attending a self-help group, he was going out socially and had a new girlfriend.
5. Dr. McIntyre's clinical notes of February 1999 indicate that the Appellant had a real positive experience at the PAR program.
6. in November 1999 Dr. McIntyre reports that the Appellant was going out socially, was walking, reading and actively looking for work.
7. *"Based on the reports of Dr. Lindsey, Dubo, El-Khatib and even Dr. McIntyre's own notes, it does not appear, in the writer's opinion that the claimant's mental status (e.g., social anxiety) would have been a mitigating circumstance as suggested by Dr. McIntyre."*

In respect of Dr. McIntyre's letter of October 12, 2004, Dr. Jones again reviewed Dr. McIntyre's handwritten notes, as well as the reports from other health care providers, and indicated that the Appellant was doing well mentally and physically during the spring of 1998 and 1999. Dr. McIntyre further reported in December of 2000 that the Appellant was demonstrating good insight and clear thinking and, in February 2001, the Appellant had better insight, more appropriate motivation and was less generally grandiose and defensive. In the summer of 2001 Dr. Jones noted that Dr. McIntyre described the Appellant's mental status as calm, having good cognition, exercising daily and looking into schooling, his anxiety, paranoia and inter-personal problems were described as better on medication. Dr. Jones stated:

This presentation would be consistent with someone who was able to respond within two days to a decision letter sent by their case manager as was the case when the claimant filed an Application for Review dated July 26, 2001.

As well, further information contained in Dr. McIntyre's notes indicated that in the fall of 2001 and the spring of 2002 the Appellant was taking a computer course, looking for work, his mood,

sleep and family situation was stable. In this respect Dr. Jones stated:

None of this information would suggest that the claimant's psychiatric condition would present a mitigating circumstance until the summer of 2002.

In addition, Dr. Jones, upon review of Dr. McIntyre's letter of April 18, 2005, disagreed with Dr. McIntyre's statement that the Appellant was not medically eligible to work. Dr. Jones testified that Dr. McIntyre's clinical notes in 1999 and 2000 indicate a contrary position. Having regard to the medical reports of Dr. Lindsay, Dr. Dubo, Dr. El-Khatib, and Dr. McIntyre's own clinical notes, the Commission gives greater weight to the opinion of Dr. Jones than it does to the opinion of Dr. McIntyre and the testimony of the Appellant in respect of his capacity to make a timely Application for Review.

In the alternative, if the Appellant did not have the capacity to make a timely Application for Review for a period of time after the motor vehicle accident, the Commission finds that he did have this capacity as of July 26, 2001 when he made an Application for Review within two (2) days of a case manager's decision in respect of a different claim which does not form part of this appeal. The Appellant was never able to explain to the satisfaction of the Commission why he was able to file a timely Application for Review on July 26, 2001, within two (2) days of the case manager's decision, but in the present case was unable, after July 26, 2001, to file a timely Application for Review in respect of the case manager's two (2) year determination dated July 8, 1999. The Commission therefore determines that since the Appellant was able to file a timely Application for Review on July 26, 2001 in respect of another claim, he was therefore capable of filing a timely Application for Review after July 26, 2001 in respect of the case manager's decision relating to the two (2) year determination in this appeal and failed to do so,

For these reasons the Commission determines that the Appellant has failed to establish, on a balance of probabilities, that he had a reasonable excuse for failing to make an Application for Review to MPIC pursuant to Sections 172(1) and (2) of the MPIC Act. The Commission therefore dismisses the Appellant's Application for Review and confirms the Internal Review Officer's decision dated July 15, 2005.

Dated at Winnipeg this 16th day of July, 2007.

MEL MYERS, Q.C.

PAUL JOHNSTON

LES MARKS