

Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by D.M.
AICAC File No.: AC-08-32

PANEL: Ms Yvonne Tavares, Chairperson

APPEARANCES: The Appellant, D.M., appeared on his own behalf, via teleconference call;
Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Dean Scaletta.

HEARING DATE: June 26, 2008

ISSUE(S): Extension of time to file a 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.

Decision

The Appellant, D.M., is requesting an extension of time in order to file a Notice of Appeal from a decision of the Internal Review Officer dated December 19, 2007.

Section 174 of the MPIC Act provides as follows:

Appeal from review decision

174(1) 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.

Requirements for appeal

174(2) An appeal of a review decision must be made in writing and must include the claimant's mailing address.

The Appellant's Notice of Appeal from the Internal Review decision of December 19, 2007 was received by this Commission on April 8, 2008. As the Notice of Appeal was filed beyond the 90-day time limit set out in Section 174 of the MPIC Act, an explanation was sought from the Appellant outlining his reasons for the late filing of the appeal. On April 29, 2008 the Appellant forwarded a letter to the Commission outlining his reasons for his failure to file the Notice of Appeal within the statutory time frame. In this correspondence, the Appellant explained that he was late filing his appeal because of the mail and because he was waiting to get an appointment with a medical specialist.

A hearing was subsequently convened in order to determine whether or not the Appellant had a reasonable excuse for his failure to appeal the Internal Review decision dated December 19, 2007 to the Commission, within the 90-day time limit set out in Section 174 of the MPIC Act.

At the hearing, MPIC took the position that additional time should not be allowed to the Appellant for the filing of his Notice of Appeal as he was well beyond the 90-day deadline; that his explanation for the delay was too vague and not reasonable; and that the Appellant had no likelihood of success on appeal. The Appellant reiterated his reasons set out in his correspondence to the Commission of April 29, 2008.

Pursuant to s. 174 of the MPIC Act, the Commission may, in its discretion, allow an Appellant who has failed to meet the 90-day statutory time limit to appeal a review

decision to the Commission, an extension of time to do so. The Appellant must satisfy the Commission that there is a reasonable excuse for failing to appeal within the time limits set out in the MPIC Act and a good reason for extending that time.

Upon a consideration of the totality of the evidence before it, both oral and documentary, and upon a consideration of the relevant factors surrounding the delay, the Commission finds that the Appellant has not provided a reasonable excuse for his failure to appeal the Internal Review decision dated December 19, 2007 to the Commission, within the 90-day time limit set out in Section 174 of the MPIC Act. The Commission finds that the Appellant's stated reasons for the delay simply do not provide a reasonable excuse for failing to meet the statutory time limit. Additionally, his excuse respecting the fact that he was on a waiting list to see a medical specialist had nothing to do with filing the Notice of Appeal.

Accordingly, by the authority of Section 174 of the MPIC Act, the Commission will not extend the time limit within which the Appellant may appeal the Internal Review decision dated December 19, 2007 to the Commission.

Dated at Winnipeg this 28th day of July, 2008.

YVONNE TAVARES

* **Please see attached Notice.**

Notice

Appeal to Court of Appeal on Question of Law or Jurisdiction

Appeal to Court of Appeal

187(1) The Appellant or the Corporation may appeal the decision of the Commission to The Court of Appeal.

Appeal with Leave

187(2) An appeal under Subsection (1) may be taken only on a question of jurisdiction or of law and only with leave obtained from a Judge of The Court of Appeal.

Application for Leave to Appeal

187(3) An application for leave to appeal shall be made within 30 days after the Applicant receives a copy of the decision of the Commission, or within such further time as the Judge allows.

Commission Entitled to be Heard

187(4) The Commission is entitled to be heard, by counsel or otherwise, on the argument of an application for leave to appeal and on an appeal.

Order of Commission Stayed

187(5) An appeal from a decision of the Commission stays the decision pending the hearing of the appeal, unless a Judge of The Court of Appeal orders otherwise.

Powers of Court on Appeal

187(6) The Court of Appeal on hearing the appeal may

- (a) make any decision that in its opinion ought to have been made;
- (b) quash, vary or confirm the decision of the Commission; or
- (c) refer the matter back to the Commission for further consideration in accordance with any direction of the Court.

Decision Not Subject to Appeal to Court

188 Except as provided in this Part, a decision of the Corporation or the Commission is final and binding and not subject to appeal or review by a Court.