

**Automobile Injury Compensation Appeal Commission**

**IN THE MATTER OF an Appeal by E.M.  
AICAC File No.: AC-08-39**

**PANEL:** Ms Yvonne Tavares, Chairperson

**APPEARANCES:** The Appellant, E.M., appeared on his own behalf; Manitoba Public Insurance Corporation ('MPIC') was represented by Ms Cynthia Lau.

**HEARING DATE:** October 7, 2008

**ISSUE(S):** Whether the Appellant has provided a reasonable excuse for failing to file his Application for Review within the 60-day time limit set out in Section 172(1) of The Manitoba Public Insurance Corporation Act

**RELEVANT SECTIONS:** Section 172(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 is appealing the Internal Review decision dated January 21, 2008 with regards to the following issues:

1. Whether the Appellant has provided a reasonable excuse for failing to file his Application for Review within the 60-day time limit set out in Section 172(1) of the MPIC Act; and
2. Entitlement to Income Replacement Indemnity benefits.

The Appellant, E.M., was involved in a motor vehicle accident on April 28, 2007. On June 21, 2007, MPIC's case manager issued a decision letter respecting the Appellant's entitlement to Income Replacement Indemnity ('IRI') benefits. The Appellant filed an Application for Review of that decision. The Application for Review was dated November 27, 2007, yet received by MPIC on December 17, 2007. The Internal Review decision dated January 21, 2008 rejected the Appellant's Application for Review for failure to comply with Section 172(1) of the MPIC Act. The Appellant's Application for Review was filed after the 60-day time limit set out in ss. 172(1) had expired. The Internal Review Officer considered whether the Appellant had a reasonable excuse for failing to apply for a review of the case manager's decision within the time period provided in the MPIC Act. She found that the Appellant had not provided a reasonable excuse for pursuing and filing for a review of the case manager's decision within the statutory 60-day time period. Accordingly, she rejected the Appellant's Application for Review on that basis.

At the hearing of the appeal, the Appellant explained that he had not applied for a review of the June 21, 2007 case manager's decision sooner because he was completely frustrated with the process. The Appellant advised that he was so upset with the treatment he received from his case manager that he thought the decision to deny him IRI benefits was pure "nonsense". He claimed that if MPIC had done their job properly in the first place, there would have been no need for an Internal Review and then a subsequent appeal of the Internal Review decision. He argues that MPIC should not have dismissed his claim for IRI benefits and he wasn't certain whether it was worth the hassle to challenge the decision. He also explained that he was dealing with his injury on top of handling the claim with MPIC and all of these factors taken together lead to the delay in filing the Application for Review.

The Appellant also maintains that when he attended at the MPIC office in Selkirk, MB, the Regional Manager advised him to go ahead and file for the Internal Review. It was only on the urging of MPIC's Regional Manager that he proceeded to file his Application for Review.

Counsel for MPIC submitted that the onus is on E.M. to establish a reasonable excuse for his failure to file the Application for Review within the statutory time limit. She maintains that the Appellant was well aware of the Internal Review process and the time limits set out in the MPIC Act. She contends that the review process was discussed on no fewer than four (4) occasions with the Appellant prior to the decision letter being rendered by the case manager. Further, counsel for MPIC maintains that there was no waiver by MPIC's Regional Manager of the time limits for filing the Internal Review decision. As a result, counsel for MPIC maintains that the Appellant's appeal should be dismissed on the basis of the late filing of the Application for Review.

The Commission, having considered the testimony of the Appellant and his reason for failing to file the Application for Review within the time period set out in ss. 172(1) of the MPIC Act, finds that the Appellant has not provided a reasonable excuse for the failure to file the Application for Review within the time limits set out in Section 172(1) of the MPIC Act.

The Commission finds that it was the Appellant's disgruntlement and frustration with the need to seek a review from the case manager's decision which delayed his Application for Review. The Appellant testified at the hearing that if his claim had been handled properly from the outset, there would have been no need for the whole process. The Commission

finds that this is not a reasonable excuse for failing to apply for a review of the case manager's decision within the 60-day statutory time limit. As noted by the Internal Review Officer in her decision dated January 21, 2008, the Application for Review is not a sophisticated form for anyone to fill out. The form merely requires a claimant to fill out their name, address, claim number, date and sign it. The Appellant's failure to do so within the 60-day time limit due to his frustration and anger with the process does not constitute a reasonable excuse for failure to comply with the time limit set out in the MPIC Act.

Accordingly, the Appellant's appeal is dismissed and the decision of MPIC's Internal Review Officer dated January 21, 2008 is confirmed.

Dated at Winnipeg this 20<sup>th</sup> day of November, 2008.

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**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.