

Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by D.F.
AICAC File No.: AC-07-65

PANEL: Ms Yvonne Tavares

APPEARANCES: The Appellant, D.F., appeared on her own behalf;
Manitoba Public Insurance Corporation ('MPIC') was
represented by Ms Cynthia Lau.

HEARING DATE: March 25, 2009

ISSUE(S):

1. Whether the Appellant has provided a reasonable excuse for the late filing of her Application for Review.
2. Entitlement to reimbursement of physiotherapy treatment expenses between August 30, 2006 and February 8, 2007.

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 May 31, 2007 with regards to the following issues:

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

2. Entitlement to reimbursement of physiotherapy treatment expenses from August 30, 2006 to February 8, 2007.

The Appellant, D.F., was involved in a motor vehicle accident on April 19, 2001. On August 30, 2006, MPIC's case manager issued a decision letter respecting the Appellant's entitlement to reimbursement of further physiotherapy treatment expenses. The Appellant filed an Application for Review of that decision. The Application for Review was dated May 5, 2007 and received by MPIC on May 8, 2007. The Internal Review Decision dated May 31, 2007 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 Section 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 she had not applied for a review of the August 30, 2006 case manager's decision within 60 days due to a miscommunication between herself and her case manager. She advised that when she spoke with her case manager by phone on September 1, 2006, she was left with the impression that she was to provide a further report or referral from Dr. Sommer respecting her ongoing requirement for physiotherapy. The Appellant further advised that she was under the impression that MPIC would review their decision on the entitlement to physiotherapy treatments upon receipt of Dr. Sommer's report. She further expected that MPIC would approve funding for further physiotherapy treatments based upon Dr. Sommer's ongoing recommendation for such treatment.

Counsel for MPIC submits that the onus is on the Appellant to establish a reasonable excuse for her failure to file the Application for Review within the statutory time limit. She argues that the Appellant was well aware of the Internal Review process, having undergone prior Internal Reviews on no fewer than two occasions. Counsel for MPIC maintains that the Appellant had experience with the Internal Review procedure and that the evidence does not support a misunderstanding between the Appellant and her case manager. As a result, Counsel for MPIC argues 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 her reason for failing to file the Application for Review within the time period set out in Section 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 limit set out in Section 172(1) of the MPIC Act.

The Commission finds that the case manager's letter dated August 30, 2006 contained the standard notice advising the Appellant of her right to request a review pursuant to Section 172(1) of the MPIC Act within 60 days of receipt of the letter. The decision itself makes no reference to the lack of a medical referral as the basis for the denial of further physiotherapy treatment. The Commission finds that the case manager's decision dated August 30, 2006 was clear that MPIC would not consider the cost of further physiotherapy treatment effective August 30, 2006. This decision was further reiterated by the case manager directly to the Appellant in their telephone conversation of September 1, 2006. The Appellant was advised during that telephone conversation of her option to file for an Internal Review. Had the Appellant read the case manager's decision of August 30, 2006 there could have been no misunderstanding about the

requirement to file for a review within 60 days. Accordingly, the Commission finds that the Appellant has not provided 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 May 31, 2007 is confirmed.

Dated at Winnipeg this 8th day of April, 2009.

MS YVONNE TAVARES