



Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-02-103

PANEL: Ms. Yvonne Tavares, Chairperson
Ms. Deborah Stewart
Mr. Antoine Frechette

APPEARANCES: The Appellant, [text deleted], appeared on her own behalf;
Manitoba Public Insurance Corporation ('MPIC') was
represented by Mr. Morley Hoffman.

HEARING DATE: April 7, 2004

ISSUE(S): Extension of time to file Notice of Appeal.

RELEVANT SECTIONS: Section 174 of The Manitoba Public Insurance Corporation
Act (the 'MPIC Act').

**AICAC NOTE: THIS DECISION HAS BEEN EDITED TO PROTECT THE APPELLANT'S PRIVACY
AND TO KEEP PERSONAL INFORMATION CONFIDENTIAL. REFERENCES TO THE APPELLANT'S
PERSONAL HEALTH INFORMATION AND OTHER PERSONAL IDENTIFYING INFORMATION
HAVE BEEN REMOVED.**

Reasons For Decision

The Appellant, [text deleted], is requesting an extension of time in order to file a Notice of Appeal from a decision of the Internal Review Officer dated July 10, 2001.

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.

The Appellant was involved in a motor vehicle accident on January 24, 2000, wherein she sustained certain injuries. As a result of these injuries, the Appellant became entitled to Personal Injury Protection Plan benefits in accordance with Part 2 of the MPIC Act. The Appellant received Income Replacement Indemnity ('IRI') benefits, as well as coverage for paramedical treatment expenses. In a decision letter dated November 9, 2000, the case manager informed the Appellant that MPIC would no longer fund any further treatments incurred as a result of her continuing complaints/symptoms since those complaints/symptoms were related to a pre-existing condition and not to the injuries suffered in the motor vehicle accident. The Appellant was also advised that her IRI benefits would cease as of November 9, 2000.

The Appellant sought an internal review of the case manager's decision. In a letter dated July 10, 2001, the Internal Review Officer confirmed the decision of MPIC's case manager and dismissed the Appellant's Application for Review.

The Appellant subsequently filed a Notice of Appeal from the Internal Review decision of July 10, 2001, with this Commission, on September 18, 2002. On September 20, 2002, the Appellant forwarded a letter to the Commission outlining various reasons for her failure to file her Notice of Appeal within the statutory time frame. In this correspondence, the Appellant explained that she took so long to file her appeal because:

1. she was waiting for an appeal form from MPIC;
2. she was trying to obtain a further diagnosis from her doctors;
3. her pain was unbearable and she relied heavily on pain medication; and
4. receipts she submitted to MPIC had gone missing.

In a letter dated December 12, 2002, MPIC objected to the extension of time for the Appellant to

file her Notice of Appeal. Subsequently, the Commission attempted on several occasions to contact the Appellant to discuss the scheduling of a hearing to determine this matter. No response was received from the Appellant until January 26, 2004, when she contacted the Commission to inquire as to the status of her appeal. In due course, a hearing was convened in order to consider submissions from the Appellant and from MPIC with respect to the Appellant's request for an extension of time to appeal the internal review decision to the Commission.

At the hearing, the Appellant advised that she had delayed so long to appeal the internal review decision because she was working and she did not have the time to deal with the appeal in addition to her employment duties and her responsibilities at home. She also advised that she was under the impression that she had to include updated medical evidence in order to proceed with her appeal. The Appellant also reiterated several of the excuses which she had set out in her correspondence to the Commission dated September 20, 2002.

Counsel for MPIC submits that the Appellant has not provided a reasonable excuse for failing to file the Notice of Appeal within the 90 day time limit, or for the significant delay thereafter. He insists that the Appellant only chose to deal with the matter when it became convenient for her to do so and in the meantime the resultant delay has been greatly prejudicial to MPIC because of its loss of case management opportunity. As a result, counsel for MPIC submits that the Appellant's request for an extension of time to appeal the internal review decision to the Commission should be denied.

Pursuant to Section 174 of the MPIC Act, the Commission has the discretionary power to extend the time for appealing a 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.

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 her failure to appeal the internal review decision to the Commission, within the 90 day time limit set out in s. 174 of the MPIC Act, or for the significant delay in failing to proceed with this matter thereafter and in responding to the Commission in a timely fashion. As a result, the Commission will not extend the time limit within which the Appellant may appeal the Internal Review decision dated July 10, 2001 to the Commission.

Dated at Winnipeg this 22nd day of April, 2004.

YVONNE TAVARES

DEBORAH STEWART

ANTOINE FRECHETTE