



Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-05-125

PANEL: Ms. Laura Diamond, Chairperson

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

HEARING DATE: April 26, 2006

ISSUE(S): Whether the Appellant has provided a reasonable excuse for failing to file her Notice of Appeal within the statutory 90-day time limit

RELEVANT SECTIONS: Section 174 of The Manitoba Public Insurance Corporation Act ('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 was injured in a motor vehicle accident on July 9, 1998. As a result of her injuries she was in receipt of Personal Injury Protection Plan benefits under the Act. The Appellant is requesting an extension of time in order to file a Notice of Appeal from two decisions of MPIC's Internal Review Officers, dated November 27, 2002 and November 1, 2004. The Appellant filed her Notice of Appeal in regard to the two (2) Internal Review Decisions on June 20, 2005.

The Appellant provided written submissions to the Commission outlining various reasons for her failure to file her Notice of Appeal within the statutory time frame. The Commission has reviewed submissions from the Appellant, dated August 27, 2005, October 11, 2005, January 11, 2006 and January 18, 2006.

In a letter dated December 15, 2005, MPIC objected to the extension of time for the Appellant to file her Notice of Appeal. Following the review of additional documentation submitted by the Appellant, MPIC reiterated its position, on February 10, 2006, that there was nothing in the material which provides a reasonable excuse for the Appellant failing to file her Notice of Appeal within the statutory ninety (90) day time limit.

Submissions

At the hearing, the Appellant reviewed the submissions she had made in writing. She advised that she had delayed so long to appeal the Internal Review decision because she had difficulty obtaining medical reports. She had been forced to attend at several different general practitioners, who then referred her to specialists, and, because of the poor continuity of care in the medical system, as well as the delays by various doctors in providing reports, she had difficulty obtaining the medical evidence she wished to file in support of her appeal. She also advised that she had been under the impression that she had to include this updated medical evidence in order to proceed with her appeal.

The Appellant also noted challenges she encountered because of distance from her home in [text deleted] to the MPIC Claim Centre, forty-five (45) minutes away, in [text deleted]. She also

complained of staff changes in the [text deleted] Office and had difficulty in dealing with her first case manager at that office, as she did not find him supportive.

Finally, the Appellant submitted that the effects of the accident, which included chronic pain and fatigue and cognitive difficulties, interfered with her ability to focus sufficiently to understand the MPIC system and to file the required documents for her appeal.

Counsel for MPIC submitted that the Appellant had not provided a reasonable excuse for failing to file the Notice of Appeal within the ninety (90) day time limit, or for the significant delay thereafter. In spite of the various reasons which the Appellant had put forward in her written submissions, counsel for MPIC argued that the Appellant had not provided a reasonable excuse for failing to file within the statutory time limits.

Counsel for MPIC argued that there was nothing in the documentation or the Appellant's submission which indicated she was unaware of the ninety (90) day time period. As well, there was nothing in the materials to cause her to believe that medical reports must be in hand before a claimant is allowed to file an appeal. The Appellant had indicated that she felt defeated and frustrated by her attempts to deal with MPIC, but this does not change the fact that she was fully aware of the ninety (90) day time limit and simply decided, at that time, not to appeal. At various points in correspondence from the Internal Review Officers, it was pointed out to the Appellant that there was a right of appeal, within specific time limits, and that the appeal was to an independent body.

Counsel for MPIC also noted the significant length of time involved in the delay, as the Internal Review decisions which were issued in 2002 and 2004. The decisions involved significant case management opportunities which had been missed over the last four (4) years.

Counsel for MPIC also submitted that the Appellant's timeliness in filing her past Applications for Review indicated that, in spite of her arguments regarding cognitive and physical difficulties, she was capable of recognizing and adhering to the time limit set out in the legislation. Therefore, her argument that cognitive difficulties were a cause for the failure to file her Notice of Appeal on a timely basis lacks foundation.

Discussion

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

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.

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 decisions to the Commission, within the ninety (90) day time limit set out in s. 174 of the MPIC Act.

The submission of the Appellant was that it took some time to accumulate the medical evidence she was seeking to support her claim, that she was still suffering from cognitive and physical effects of the motor vehicle accident during this period, and that she experienced frustration with the MPIC process, which she did not fully understand.

However, the Commission finds that the Appellant was advised of the ninety (90) day time limit set out in the Act and has not argued that she was not aware of it. The delay has been quite lengthy, resulting in significant missed case opportunities and prejudice to MPIC. Further, the Commission finds that the Appellant's frustration with previous MPIC decisions was a more significant factor in preventing her from filing her Notice of Appeal on a timely basis than were cognitive or physical difficulties, and the Appellant had, as argued by counsel for MPIC, demonstrated an ability to file her Applications for Review within the prescribed time limits.

The Commission accepts the submissions of counsel for MPIC that the Appellant has not provided a reasonable excuse for failing to appeal the Internal Review decisions to the Commission within the time period set out by the Act. As a result, the Commission will not extend the time within which the Appellant may appeal the Internal Review decisions dated November 27, 2002 and November 1, 2004.

For these reasons, the Appellant's appeal is dismissed.

Dated at Winnipeg this 10th day of May, 2006.

LAURA DIAMOND