

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [The Appellant]
AICAC File No.: AC-09-19**

PANEL: Ms Yvonne Tavares

APPEARANCES: The Appellant, [text deleted], was represented by Ms Bridgette Poitras of the Claimant Adviser Office; Manitoba Public Insurance Corporation ('MPIC') was represented by Ms Cynthia Lau.

HEARING DATE: September 8, 2009

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

RELEVANT SECTIONS: Section 174 of The Manitoba Public Insurance Corporation Act ('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 May 9, 2008.

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.

The Appellant's Notice of Appeal from the Internal Review Decision of May 9, 2008 was received by this Commission on February 19, 2009, beyond the 90-day time limit set out in Section 174 of the MPIC Act. A letter dated February 8, 2009 accompanied the Notice of Appeal outlining the reasons for the late filing of the appeal. This correspondence was provided by the Appellant's husband, [text deleted], who was assisting the Appellant with her claim with MPIC. In this letter, [the Appellant's husband] explained that he misplaced and forgot about the appeal form. He advised that he believed that once the time limit for filing the appeal had passed, he was out of time and had no further recourse.

A hearing was subsequently convened in order to determine whether or not the Appellant had a reasonable excuse for her failure to appeal the Internal Review Decision dated May 9, 2008 to the Commission, within the 90-day time limit set out in Section 174 of the MPIC Act.

At the hearing, the Appellant testified that she is unable to look after her personal affairs due to her psychological condition. She advised that [text deleted], her family physician, has diagnosed her with post-traumatic stress disorder due to the motor vehicle accident. As a result, her husband has always been actively involved with her claim with MPIC and she relies upon him to assist her with her claim and "look after everything" for her.

The Appellant's husband, [text deleted], also testified at the hearing. He explained that when they received the Internal Review Decision, they took note of the information respecting the Claimant Adviser Office, which provides assistance to claimants in their appeals of Internal Review Decisions to the Commission. He testified that the Appellant made some inquiries of the case manager and of the Claimant Adviser Office in order to determine if the Claimant Adviser Office could assist them with the Appellant's appeal. After talking with the Claimant Adviser

Office, they received the appeal forms from the Claimant Adviser Office; however, those forms were subsequently misplaced and forgotten about, until the deadline for filing the appeal had lapsed. [The Appellant's husband] further testified that since the motor vehicle accident, he has taken over the majority of the duties in the family business. As a result, he is very busy; he works very long hours and is very tired. He advised that he simply forgot about the appeal forms until the time for filing for an appeal had passed and he thought he had no further recourse at that stage.

[The Appellant's husband] also testified that it wasn't until he was contacted by the Claimant Adviser Office in February 2009, following up on the appeal forms that they had sent to the Appellant, that he was advised that he could have filed the appeal, even if it had been late, and requested an extension of time to appeal. Acting upon that advice from the Claimant Adviser Office, [the Appellant's husband] wrote the letter dated February 8, 2009 requesting an extension of time to file the Notice of Appeal from the Internal Review Decision dated May 9, 2008. [The Appellant's husband] also confirmed that he became involved with the Appellant's claim from the outset, because she often could not understand correspondence sent from the case manager and what was happening with her claim. He would often discuss the Appellant's case with the case manager with the Appellant's consent. He further testified that he filled out most of the paperwork for the Appellant, and that he would have filed the Application for Review of Injury Claim Decision on behalf of the Appellant, although he could not recall how he had done that.

At the hearing, the Claimant Adviser submitted that the Appellant was unable to file the Notice of Appeal on her own behalf and relied upon her husband to look after those matters for her. The Claimant Adviser maintains that the Appellant sustained a psychological injury as a result of the

motor vehicle accident, which impaired her ability to file the appeal on her own behalf. The Claimant Adviser argues that the Appellant should not be prejudiced by her husband's delay.

The Claimant Adviser also contends that the Appellant's husband had the onerous task of handling all of the business affairs and looking after his and the Appellant's personal affairs. She submits that he did not realize that he could file the appeal late and ask for an extension of time. The Claimant Adviser maintains that MPIC should have advised the Appellant and her husband that they had the right to ask for an extension of time to file the Notice of Appeal and that MPIC had an obligation to do so. The Claimant Adviser argues that the six month delay in filing the Notice of Appeal is not excessive and that there has been no prejudice to MPIC by the delay. Accordingly, the Claimant Adviser requests that the Appellant be allowed an extension of time in order to file the Notice of Appeal from the Internal Review Decision dated May 9, 2008.

At the hearing, counsel for MPIC submitted that additional time should not be allowed to the Appellant for the filing of her Notice of Appeal as she was well beyond the 90-day deadline. Counsel for MPIC maintains that the six month delay in filing the Notice of Appeal was excessive and unreasonable in the circumstances and an extension of time should therefore not be granted. Additionally, counsel for MPIC submits that:

1. The Appellant and her husband were aware of the 90-day time limit, and the stated reason for late filing, that being that they simply forgot about the documents, is not reasonable.
2. The Notice of Appeal is basic and could easily have been filled out, even by the Appellant.
3. The Appellant and her husband had previously shown an ability to file appeal documents within time limits. They provided no reasons to support why they were

able to file the Application for Review of the Injury Claim Decision in a timely fashion, but not the Notice of Appeal.

Accordingly, counsel for MPIC submits that an extension of time should not be allowed for the Appellant to file a Notice of Appeal from the Internal Review Decision of May 9, 2008.

Pursuant to Section 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 limit set out in the MPIC Act and a good reason for extending that time. 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 Section 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 has been any waiver respecting the delay;
5. the likelihood of a successful appeal on the merits of the claim, should the extension be granted; and
6. any other factors which argue to the justice of the proceedings.

Upon a consideration of the totality of 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 dated May 9, 2008 to the Commission, within the 90-day time limit set out in Section 174 of the MPIC Act. The Commission finds that the stated reasons for the delay, being that the

appeal forms were misplaced and forgotten about, simply do not provide a reasonable excuse for failing to meet the statutory time limit. The Commission finds that the Appellant and her husband had set the Internal Review Decision aside and had no intention of appealing the decision until they were contacted by the Claimant Adviser Office in February of 2009. The Commission also finds that it was not until that time that the Appellant and her husband formed the intent to appeal the Internal Review Decision of May 9, 2008 and this does not provide a satisfactory basis for extending the time to file a Notice of Appeal.

Additionally, the Commission finds that Appellant had not appointed her husband as her representative to handle her claim with MPIC and any resulting appeals. Rather the evidence was that the Appellant participated in the claims process with MPIC. She would contact the case manager and provide verbal approval for the case manager to discuss matters with her husband. The Appellant's husband also testified that the Appellant was the one who made inquiries of the case manager regarding the Claimant Advisor Office and the Appellant followed up with the Claimant Adviser Office directly. The Commission finds that the Appellant and her husband were handling the Appellant's claim with MPIC together. She was involved in the process throughout. Therefore, the Commission finds that there was no prejudice to the Appellant as a result of the unilateral actions of a representative who delayed in filing the appeal forms.

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 May 9, 2008 to the Commission.

Dated at Winnipeg this 16th day of October, 2009.

YVONNE TAVARES