

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-09-60**

PANEL: Ms Yvonne Tavares

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

HEARING DATE: February 8, 2010

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')

AICAC 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 April 22, 2009 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 ss. 172(1) of the MPIC Act; and
2. Entitlement to Personal Injury Protection Plan ("PIPP") benefits.

The Appellant, [text deleted], was involved in a motor vehicle accident on March 1, 2007. He was a passenger of a [text deleted] bus eastbound on [text deleted] when the bus rearended a flatbed truck. On August 1, 2008, MPIC's case manager issued a decision letter respecting the Appellant's entitlement to PIPP benefits. The Appellant filed an Application for Review of that decision. The Application for Review was dated March 3, 2009 and stamped received by MPIC on March 9, 2009. The Internal Review Decision dated April 22, 2009 rejected the Appellant's Application for Review for failure to comply with Ss. 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. The Internal Review Officer also dismissed the Appellant's Application for Review on the merits of the application. The Internal Review Officer found that the Appellant's right knee condition was not causally related to the accident of March 1, 2007 and therefore he was not entitled to PIPP benefits in relation to same.

At the hearing of the appeal, the Appellant explained that he and his wife had faxed the Application for Review to MPIC. The Appellant provided no further explanation regarding the delay in filing the Application for Review.

Counsel for MPIC submitted that the onus is on the Appellant to establish a reasonable excuse for his failure to file the Application for Review within the statutory time limit. Counsel for MPIC submits that the Appellant has not provided a reasonable excuse for his delay in filing the

Application for Review of the case manager's decision. She maintains that the Application for Review was five months out of time and that constitutes a significant delay which is unreasonable in the circumstances. Further, she maintains that MPIC has suffered a significant prejudice due to the loss of its case management opportunity through the delay in proceeding with the Review. 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 limit set out in Ss. 172(1) of the MPIC Act. In the circumstances, the Commission finds that the Appellant has not provided any reason for filing his Application for Review five months out of time. Accordingly, the Appellant's appeal is dismissed and the decision of MPIC's Internal Review Officer dated April 22, 2009 is confirmed.

Dated at Winnipeg this 18th day of February, 2010.

YVONNE TAVARES