

Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-10-26

PANEL: Ms Yvonne Tavares

APPEARANCES: Written submissions were received by the Commission from the Appellant, [text deleted] and from counsel for Manitoba Public Insurance Corporation (“MPIC”), Mr. Michael Triggs.

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.

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 October 20, 2009.

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 October 20, 2009 was received by this Commission on February 4, 2010, beyond the 90-day time limit set out in Section 174 of the MPIC Act. As the Notice of Appeal was filed beyond the 90-day time limit, an explanation was sought from the Appellant outlining her reasons for the late filing of the appeal.

On February 17, 2010, the Appellant forwarded a letter to the Commission outlining her reasons for the late filing of the appeal. She advised that she had mailed her Notice of Appeal on November 12, 2009. She then attempted to contact [text deleted] (the Internal Review Officer) to confirm that the letter had been received. However, [the Internal Review Officer] did not return her calls. The Appellant continued to telephone [the Internal Review Officer], until she finally spoke with her, at which time she was advised that the Notice of Appeal had not been received. The Appellant maintains that had the Internal Review Officer returned her calls in a timely fashion, she would have known sooner that her Notice of Appeal had not been received by the Commission. She would then have been able to remedy the situation and file her Notice of Appeal within the 90 days required under Section 174 of the MPIC Act.

When asked for its comments on this matter, MPIC responded that:

Given the fact that [the Appellant] is less than 3 weeks late in getting her application for appeal to the Commission and she is stating that she did file an appeal that was not received by your office MPI will not be opposing her request to extend the time for her application for appeal.

However, MPI would like to clarify for the record that it takes issue with [the Appellant's] assertion that [the Internal Review Officer] did not return her voice messages. On at least 3 occasions [the Internal Review Officer] telephoned the relay operator to respond to [the Appellant's] messages. It is also my understanding that [the Appellant] has filed a previous appeal with the Commission and therefore should know the process does not involve contacting [the Internal Review Officer] to see if she received an application for appeal.

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 had been any prejudice resulting from the delay;
4. whether there had 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, 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 October 20, 2009 to the Commission, within the 90-day time limit set out in Section 174 of the MPIC Act. The Commission finds that the Appellant's stated reasons for the delay simply do not provide a reasonable excuse for failing to meet the statutory time limit. There is no explanation provided by the Appellant as to why she was contacting [the Internal Review Officer] in order to file an appeal with the Commission. As noted by counsel for MPIC, [the Appellant] has filed a previous appeal with the Commission and therefore should know that the process does not involve contacting the Internal Review Officer in order to determine whether or not the

Commission (which is a separate entity) has received her Notice of Appeal. As a result, the Commission finds that the fact that the Appellant was attempting to contact the Internal Review Officer does not provide a satisfactory basis for extending the time to file a Notice of Appeal.

Additionally, the Commission has considered the Appellant's reasons for appeal as stated in her Notice of Appeal dated February 4, 2010. She notes that she is currently jobless and not able to return to her previous job as [text deleted] due to the pains in her right shoulder. She requests that MPIC reconsider and change her payment to a permanent monthly benefit. Further, the Appellant notes that the pains in her right hip have gotten a lot worse since the accident. She feels that MPIC should pay for treatment at a chiropractor to adjust her hip.

The Internal Review Decision of October 20, 2009 confirmed the case manager's decision in regard to a permanent impairment award of 2% for the right rotator cuff tear and 8% for right shoulder loss of range of motion. With respect to the Appellant's request for a permanent impairment award for her right hip, the Internal Review Officer referred that matter back to the case manager to review new information and request additional information (if need be). A new decision letter would then be issued by the case manager and should the Appellant not agree with the decision, she would have the right to file for a subsequent review and appeal.

The Commission having reviewed the Internal Review Decision of October 20, 2009 finds that the Appellant has not expressed any grounds for appeal relating to the permanent impairment award for the right rotator cuff tear and right shoulder loss of range of motion. These were the only matters confirmed by the Internal Review Officer in her decision. Rather, the Appellant appears to be claiming an income replacement indemnity benefit and chiropractic treatments for her right hip by way of her Notice of Appeal dated February 4, 2010. The Commission cannot

review or consider those matters until they have been the subject of an Internal Review Decision. Accordingly, the Appellant should file a claim with her case manager for income replacement indemnity benefits and chiropractic treatments if those are issues which she wishes to pursue. The Commission finds that the Appellant has not articulated any reasons for appealing the Permanent impairment awards confirmed by the Internal Review Officer in her decision dated October 20, 2009 and that in fact, she is not taking issue with those permanent impairment awards.

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 October 20, 2009 to the Commission.

Dated at Winnipeg this 21st day of April, 2010.

YVONNE TAVARES