

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-10-04**

PANEL: Ms Yvonne Tavares

APPEARANCES: The Appellant, [text deleted], was represented by [text deleted], who did not appear at the appeal hearing; Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Terry Kumka.

HEARING DATE: December 6, 2010

ISSUE(S): Extension of time to file Application for Review

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 December 15, 2009 with regards to whether she has provided a reasonable excuse for failing to file her Application for Review within the 60-day time limit set out in Section 172(1) of the MPIC Act.

Section 172 of the MPIC Act provides as follows:

Application for review of claim by corporation

[172\(1\)](#) A claimant may, within 60 days after receiving notice of a decision under this Part, apply in writing to the corporation for a review of the decision.

Corporation may extend time

[172\(2\)](#) The corporation may extend the time set out in subsection (1) if it is satisfied that the claimant has a reasonable excuse for failing to apply for a review of the decision within that time.

The Appellant, [text deleted], was involved in a motor vehicle accident on May 16, 2002, wherein she suffered a closed head injury and soft tissue injuries to her back, right shoulder and left side ribs. On February 23, 2007, MPIC's case manager issued a decision letter respecting the Appellant's two-year determination of employment in accordance with Section 107 of the MPIC Act. The Appellant filed an Application for Review of that decision. The Application for Review was dated June 19, 2009 and stamped received by MPIC on June 24, 2009. The Internal Review Decision dated December 15, 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. A letter dated November 20, 2009 from counsel for the Appellant to MPIC's Internal Review Office advised that the Appellant attributed the delay in filing to depression and reduced mental capacity and in particular to her efforts to find a doctor who might corroborate her self assessment.

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. He 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, he rejected the Appellant's Application for Review on that basis.

Counsel for the Appellant filed a Notice of Appeal with the Commission on January 22, 2010. The Commission subsequently determined that a case conference was required in order to deal

with certain preliminary matters prior to scheduling a hearing. Numerous attempts were made by the Commission's secretary to contact counsel for the Appellant in order to set a mutually convenient date for the case conference. However, counsel for the Appellant did not respond to any of the messages left by the Commission's secretary. As a result, the Commission unilaterally set a date for the case conference on Monday, December 6, 2010 at 9:30 a.m. Notice of the case conference was personally served upon the office of counsel for the Appellant. In addition, a letter from the Chief Commissioner of the Commission dated November 5, 2010 was personally delivered to the office of counsel for the Appellant. That letter confirmed the attempts which had been made to contact counsel for the Appellant for the purpose of setting a date for the case conference and provided that:

Please be advised that if you fail to attend the Case Conference Hearing the Commission may proceed at that time to hear submissions from Mr. Kumka in respect of the issue whether the Appellant had a reasonable excuse for the late filing of her Application for Review and render a decision in this respect.

At the case conference on December 6, 2010, neither the Appellant, nor her counsel, were present. Counsel for MPIC appeared in person. The Commission proceeded with the hearing of the appeal.

Counsel for MPIC submitted that the onus is on the Appellant to establish a reasonable excuse for her failure to file the Application for Review within the statutory time limit. Counsel for MPIC submitted that the Appellant had not provided a reasonable excuse for her delay in filing the Application for Review of the case manager's decision. He maintains that the Application for Review was received in excess of 28 months out of time and that constituted a significant delay which was unreasonable in the circumstances. Additionally, counsel for MPIC submitted that there was no evidence before the Commission to establish a reasonable excuse for the Appellant's delay. Specifically, counsel for MPIC noted that there was no medical evidence

filed with the Commission or with MPIC to explain the Appellant's significant delay in filing her Application for 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 totality of the evidence before it, 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. There was no medical evidence filed with the Commission to explain the Appellant's significant delay in filing her Application for Review. In the circumstances, the Commission finds that the Appellant has not provided any reason for filing her Application for Review more than 28 months out of time. Accordingly, the Appellant's appeal is dismissed and the decision of MPIC's Internal Review Officer dated December 15, 2009 is confirmed.

Dated at Winnipeg this 11th day of January, 2011.

YVONNE TAVARES