

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-11-124**

PANEL: Ms Yvonne Tavares

APPEARANCES: The Appellant, [text deleted], was not present at the appeal hearing;
Manitoba Public Insurance Corporation ('MPIC') was represented by Ms Cynthia Lau.

HEARING DATE: October 3, 2012

ISSUE(S): Entitlement to Income Replacement Indemnity benefits.

RELEVANT SECTIONS: Section 85(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, [text deleted], is appealing the Internal Review Decision dated September 15, 2011, with regards to her entitlement to income replacement indemnity ("IRI") benefits arising from a motor vehicle accident of May 21, 2011. The appeal hearing was held on October 3, 2012 commencing at 10:00 a.m. The Appellant did not attend the hearing, or provide any written submissions to the Commission in support of her appeal. As the Appellant's residence was noted to be in [Ontario], the Commission telephoned the Appellant at the commencement of the hearing. However, the Appellant did not answer the telephone call. The Commission did leave a voicemail message for the Appellant advising her that the hearing was proceeding and

that she could call the Commission back in order to partake in the hearing. The Commission did not receive a return phone call from the Appellant.

At the outset of the hearing it was determined that the Appellant had received a Notice of Hearing by virtue of her signature claiming the Xpresspost letter (containing the Notice of Hearing from the Commission) from Canada Post. As a result, the Commission proceeded with the hearing of the appeal.

Upon a careful review of all of the medical, paramedical and other reports and documentary evidence filed in connection with this appeal, and after hearing the submission of counsel for MPIC, the Commission finds that the Appellant has abandoned her appeal of the Internal Review Decision dated September 15, 2011.

The criteria to be considered in order to determine whether an appeal has been abandoned are:

1. there must have been a continuous intention to prosecute the appeal;
2. there must be a reasonable explanation for any delay in prosecuting the appeal; and
3. there must be arguable grounds of appeal.

Upon reviewing the foregoing factors, the Commission finds that:

1. The Appellant has not diligently proceeded with the prosecution of her appeal. The Commission has attempted to send the indexed file containing all of the relevant appeal documents to the Appellant on four occasions - on February 6, 2012, March 2, 2012, April 16, 2012 and May 13, 2012. On each of these occasions, the package sent by the Commission was returned marked either "moved" or "unclaimed". Accordingly, the Commission finds that the Appellant's failure to claim the indexed file establishes a lack

of interest in the appeal proceedings. As a result, the Commission finds that the Appellant has not displayed a continuous intention to pursue and prosecute her appeal due to her lack of interest in claiming the indexed file.

2. The Appellant has not provided any explanation for failing to pursue her appeal. In fact the Appellant advised the Commission on July 10, 2012 that she did not want to proceed with her appeal. The Commission finds that her inaction and expressed words contradict an intention to pursue her appeal.
3. The Appellant has not provided any new evidence in order to support her appeal. The onus is on the Appellant to establish that she is entitled to IRI benefits as a result of the motor vehicle accident of May 21, 2011. IRI benefits were denied to the Appellant since the evidence before the case manager and the Internal Review Officer did not establish that the Appellant was terminated from her position with [text deleted] due to accident related injuries/restrictions. The Appellant did not provide any additional oral or documentary evidence in support of her appeal. The Commission finds that no evidence has been submitted to causally link the termination from [text deleted] to the motor vehicle accident of May 21, 2011. As a result, upon a consideration of the totality of the evidence before it, the Commission finds that the Appellant has not established, on a balance of probabilities, that she is entitled to IRI benefits.

As a result, the Appellant's appeal is dismissed and the Internal Review Decision dated September 15, 2011 is confirmed.

Dated at Winnipeg this 9th day of October, 2012.

YVONNE TAVARES