

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by THE ESTATE OF [the Appellant]
AICAC File No.: AC-11-106**

PANEL: Ms Yvonne Tavares, Chairperson
Ms Mary Lynn Brooks
Ms Linda Newton

APPEARANCES: The Appellant, The Estate of [text deleted], was represented by [text deleted];
Manitoba Public Insurance Corporation ('MPIC') was represented by Ms Dianne Pemkowski, by teleconference.

HEARING DATE: April 4, 2013

ISSUE(S): 1. Whether the Appellant had a reasonable excuse for the late filing of her Application for Review;
2. Whether the Appellant is entitled to Personal Injury Protection Plan Benefits.

RELEVANT SECTIONS: Sections 71(1) and 172(2) 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], passed away on March 22, 2012. Prior to her death, the Appellant had filed an Appeal to this Commission from a decision of MPIC's Internal Review Officer dated May 30, 2011. The issues under appeal are:

1. whether the Appellant had a reasonable excuse for the late filing of her Application for Review; and

2. whether the Appellant is entitled to further Personal Injury Protection Plan (“PIPP”) benefits as a result of the motor vehicle accident of August 20, 1997.

Initially, [the Appellant] was represented by the Claimant Adviser Office. The Appellant also authorized her son, [text deleted], to represent her and assist her with her appeal. On October 3, 2012, the Claimant Adviser Office advised the Commission that they were no longer representing the Appellant as they had been unable to contact [Appellant’s son]. The Claimant Adviser Office confirmed the Appellant’s address as the one that was indicated on the Notice of Appeal.

From October 2012 to January 2013, the Commission staff attempted to contact [Appellant’s son] by both letter and by telephone in order to discuss the appeal. [Appellant’s son] did respond on two occasions, but only to advise that he would call again. On January 10, 2013, the Commission Appeals Officer did speak to [Appellant’s son]. [Appellant’s son] confirmed his address to the Appeals Officer (still the address as indicated on the Notice of Appeal), but was unable to deal with the matter further during that telephone discussion. Thereafter, the Commission staff again left various voicemail messages for [Appellant’s son]. However, [Appellant’s son] did not respond to any of those messages.

The Commission subsequently fixed a hearing date for the hearing of the Appellant’s appeal on April 4, 2013. A Notice of Hearing was prepared and sent to [Appellant’s son] as the Appellant’s representative, by Xpresspost and by regular mail to the address indicated on the Notice of Appeal. [Appellant’s son] did not claim the Xpresspost delivery and it was returned to the Commission. The Notice of Hearing sent by regular mail was similarly returned to the

Commission, unclaimed. On April 2, 2013, [Appellant's son] was contacted by the Commission by telephone. [Appellant's son] confirmed that he was aware of the hearing set for April 4, 2013 at 9:30 a.m.

The Appellant's appeal hearing convened on April 4, 2013 at 9:30 a.m. [Appellant's son] attended on behalf of the Estate of [the Appellant]. Ms Pemkowski, counsel for MPIC, participated in the hearing by teleconference. At the outset of the hearing, [Appellant's son] advised that he had moved and had not received the correspondence from the Commission. The Commission inquired as to whether [Appellant's son] wished to seek an adjournment of the hearing. [Appellant's son] did not request an adjournment of the hearing and proceeded to provide an oral submission to the Commission in support of his deceased mother's appeal.

In the Internal Review decision dated May 30, 2011, the Internal Review Officer set out the following relevant facts to this appeal:

1. On August 20, 1997, you were involved in an accident while you were making a left hand turn at the intersection of [text deleted] and [text deleted].
2. You were transported to [Hospital] by ambulance where you were seen in Emergency. You were released the same day.
3. A PIPP claim was opened in which you reported an injury to your chest and knee. The only expense that was received was for an ambulance bill which was paid. The file was subsequently closed.
4. In May 2008, your son [text deleted] contacted MPI to have your file reopened. [Appellant's son] indicated that shortly after the accident, your license was taken away due to medical reasons. He indicated that your health progressively worsened following the accident.
5. After gathering the medical information, the file was reviewed by a Psychological and Medical Consultant with MPI's Health Care Services. Based on their reviews, the case manager determined you were not entitled to benefits under PIPP on the basis that you had not sustained a head injury or concussion in the accident that would account for your cognitive decline.

6. In your Application, you state your quality of life has declined after the accident and that appropriate tests or analysis by the medical or MPI system were not performed accordingly. You are seeking reimbursement for caregiver, homecare and other associated expenses.

The Internal Review Officer reviewed the medical reports on file and concurred with the conclusions expressed by the psychological and medical consultants. The Internal Review Officer found that the medical information on the Appellant's file did not support an accident or trauma related onset of her cognitive impairment. He concurred with the Health Care Services consultants that the Appellant's cognitive decline was not causally related to the motor vehicle accident. The Internal Review Officer also rejected the Application for Review on the basis that a reasonable excuse had not been provided for the late filing.

At the appeal hearing, [Appellant's son] submitted that his mother's symptomatology commenced shortly after the motor vehicle accident of August 20, 1997. [Appellant's son] claimed that his mother started showing signs of deterioration shortly after the motor vehicle accident and therefore he attributes her decline to the motor vehicle accident. After the motor vehicle accident, [Appellant's son] notes that his mother began walking with a limp and thereafter he became involved with her care. [Appellant's son] maintains that there was an acceleration of his mother's dementia and memory loss following the motor vehicle accident of August 20, 1997.

[Appellant's son] argues that his mother was a private person who would not report illness or injury. [Appellant's son] insists that this accounts for the delay in reporting her mental and functional decline following the motor vehicle accident, as his mother was not one to complain. In response to the file reviews conducted by MPIC's psychological and medical consultants, [Appellant's son] notes that neither of MPIC's consultants assessed his mother personally.

Whereas, [Appellant's Doctor #1], her personal treating physician, regularly examined his mother and was therefore in the best position to opine on her cognitive status. [Appellant's son] argues that his mother's health progressively worsened following the accident and that she was entitled to additional PIPP benefits, including reimbursement of physiotherapy expenses, caregiver, homecare and other associated expenses arising out of the accident of August 20, 1997.

Counsel for MPIC notes that the Appellant's Application for Review was not filed within the 60 day time period required by Section 171 of the MPIC Act. The case manager's decision was dated November 5, 2010. The Appellant's Application for Review was dated May 4, 2011, which was over 4½ months past the time limit set out in Section 171 of the MPIC Act. Counsel for MPIC submits that [Appellant's son] has not provided a reasonable explanation for the delay in filing the Application for Review. The Internal Review Officer states that [Appellant's son] explained that he was never given the right of appeal in November 2010. However, counsel for MPIC argues that the case manager's decision letter of November 5, 2010 contains the standard paragraph setting out the 60 day time limit for filing an Application for Review at the end of the letter. Counsel for MPIC further notes that [Appellant's son] had been in contact with the case manager since May of 2008, acting on his mother's behalf with regard to her claim. As a result, counsel for MPIC submits that [Appellant's son] was aware of the 60 day time limit as it was clearly set out in the case manager's decision and he has not provided a reasonable explanation for delay in filing the Application for Review from the case manager's decision. Accordingly, counsel for MPIC argues that the appeal should be dismissed for the lateness in filing the Application for Review.

With regards to the merits of the claim, counsel for MPIC submits that the medical information on the Appellant's file does not support an accident or trauma related onset of her cognitive impairment. Counsel for MPIC contends that there was no head injury sustained by the Appellant in the motor vehicle accident. Additionally, there was no concussion reported as a result of the motor vehicle accident. Counsel for MPIC therefore relies upon the Health Care Services reviews of October 27 and November 29, 2010 completed by the psychological and medical consultants of MPIC's Health Care Services team. She maintains that the Appellant did not sustain a head injury as a result of the motor vehicle accident of August 20, 1997. Further, she notes that prior to the motor vehicle accident, the Appellant had reported a five plus year history of slow memory loss. She notes that the Appellant was assessed at the [Hospital] at [text deleted] on September 8, 1997, based on a referral dated before the accident. [Appellant's Doctor #2], in a report dated September 9, 1997, rendered a medical diagnosis of mild cognitive decline. Additionally, in the [text deleted] March 17, 2005 report, [Appellant's Doctor #3] noted that the Appellant's son reported that she had a gradual decline with activities of daily living but more so in the last year. [Appellant's Doctor #3] noted an abnormal CT scan which showed an old left thalamic lacunar stroke. She indicated these findings would suggest a vascular etiology to the Appellant's cognitive impairment.

Based upon the medical evidence on the file, counsel for MPIC submits that the Appellant's cognitive decline was not related to the motor vehicle accident. Accordingly, counsel for MPIC contends that the Appellant is not entitled to any further PIPP benefits arising from the motor vehicle accident of August 20, 1997. Counsel for MPIC therefore maintains that the Appellant's appeal should be dismissed and the Internal Review decision dated May 30, 2011 should be confirmed.

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 submissions of the Appellant's representative and of counsel for MPIC, the Commission finds that the Appellant has not provided a reasonable excuse for the failure to file the Application for Review within the time period set out in Section 172(1) of the MPIC Act.

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 period set out in Section 172(1) of the MPIC Act. We find that the Appellant's representative was well aware of the time limits for filing an Application for Review. The case manager's decision of November 5, 2010 contained the standard paragraph stating the 60 day time limit for filing an Application for Review at the end of the letter. At the appeal hearing, [Appellant's son] did not provide any explanation for the lateness in filing the Application for Review. As a result, the Commission finds that the Appellant has not provided a reasonable excuse for the failure to file the Application for Review within the time limit provided within Section 172(1) the MPIC Act.

Notwithstanding the Commission's findings that the Appellant had not provided a reasonable excuse for the late filing of the Application for Review, the Commission did consider the merits of the appeal in order to assess whether or not the time limit should be extended for the filing of the Application for Review. Upon a careful review of all of the documentary evidence filed in connection with this appeal, the Commission finds that the Appellant has not established an entitlement to further PIPP benefits as a result of the motor vehicle accident of August 20, 1997. We find that the case manager's decision carefully considered and relied upon the Health Care Services' reviews of October 27 and November 29, 2010 (completed by MPIC's psychological

and medical consultants, respectively). The medical information does not support that the Appellant sustained a head injury in the motor vehicle accident of August 20, 1997. As a result, the Commission finds that the evidence on the file does not support an accident or trauma related onset of the Appellant's cognitive impairment and decline. Therefore, the Commission finds that the Appellant's cognitive decline was not causally related to the motor vehicle accident of August 20, 1997. Accordingly, the Commission is unable to find that an error on the merits of the Appellant's appeal would justify extending the time limit for filing the Application for Review.

As a result, in the circumstances, the Commission finds that the Appellant has not provided a reasonable excuse for failing to file the Application for Review within the time period set out in Section 172(1) of the MPIC Act. Accordingly, the Appellant's appeal is dismissed and the Internal Review decision dated May 30, 2011 is confirmed.

Dated at Winnipeg this 13th day of June, 2013.

YVONNE TAVARES

MARY LYNN BROOKS

LINDA NEWTON