

**Automobile Injury Compensation Appeal Commission**

**IN THE MATTER OF an Appeal by [the Appellant]  
AICAC File No.: AC-15-214**

**PANEL:** Ms Karin Linnebach, Chairperson  
Dr. Arnold Kapitz  
Ms. Sandra Oakley

**APPEARANCES:** The Appellant, [text deleted], did not appear at the appeal hearing;  
Manitoba Public Insurance Corporation ('MPIC') was represented by Ms Danielle Robinson.

**HEARING DATE:** July 26, 2016

**ISSUE(S):** Whether the Commission will grant the Appellant an extension of time for the filing of her Notice of Appeal.

**RELEVANT SECTIONS:** Subsection 174(1) 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.**

**Reasons for Decision**

**Background:**

The Appellant, [text deleted], was injured in a motor vehicle accident ("MVA") on February 28, 2013. Following the MVA, she received Personal Injury Protection Plan benefits, including Personal Care Assistance ("PCA") benefits. After an assessment of the Appellant's personal care needs was completed on September 20, 2014, the Appellant's case manager issued a decision on

October 9, 2014, finding that the Appellant was no longer entitled to PCA and therefore did not qualify for reimbursement of PCA expenses as of October 10, 2014.

The Appellant filed an Application for Review of the case manager's October 9, 2014 decision within the 60 day time limit under the MPIC Act. In a decision dated December 23, 2014, the Internal Review Officer upheld the case manager's decision, finding that the Appellant's PCA benefits were correctly assessed and that the Appellant was not entitled to further PCA benefits.

The Internal Review Decision further stated:

**“RIGHT OF APPEAL**

If you are unsatisfied with this decision, you have ninety (90) days within which to appeal in writing to the Automobile Injury Compensation Appeal Commission, which Commission can be reached at:

301 – 428 Portage Avenue  
Winnipeg, Manitoba  
R3C 0E2

Telephone Number: 204-945-4155  
Fax Number: 204-948-2402  
Toll Free: 1-855-548-7443

Please note that the Commission operates independently from the Manitoba Public Insurance Corporation and its decisions are binding on MPIC subject to the appeal provisions of Section 187 of *The Manitoba Public Insurance Corporation Act*.

If you need assistance in appealing this decision to the Commission, you can contact:

Claimant Adviser Office  
200 – 330 Portage Avenue  
Winnipeg, Manitoba  
R3C 0C4

Telephone Number: 204-945-7413 or 204-945-7442  
Fax Number: 204-948-3157  
Toll Free: 1-800-282-8069, Ext. 7413

The Claimant Adviser Office operates independently of both MPI and the Commission and is available to you at no charge.”

The Appellant did not make application in writing to appeal the Internal Review Officer's decision within 90 days from the date the decision was received by the Appellant. Rather, the Appellant's Notice of Appeal dated October 28, 2015 was received by the Commission on November 4, 2015, more than 7 months after the expiry of the 90 days within which to appeal.

The Appellant made application to the Commission for an extension of time for filing the Notice of Appeal pursuant to section 174 of the MPIC Act. The issue which requires determination is whether the Commission will grant such an extension of time to the Appellant in order to allow her to file a Notice of Appeal in respect of the decision of the Internal Review Officer dated December 23, 2014.

**Decision:**

For the reasons set out below, the Commission will not exercise its discretion to grant an extension of time for the Appellant to file a Notice of Appeal.

**Preliminary and Procedural Matters:**

The Appellant's appeal was scheduled for hearing on July 26, 2016 at 9:30 a.m., with the Appellant to participate via teleconference. The Appellant was served with a Notice of Hearing dated May 3, 2016 sent to her by regular mail and Xpresspost. The Notice of Hearing sent by Xpresspost was accepted and signed by the Appellant on May 6, 2016. The Notice sent by regular mail was not returned to the Commission.

On July 26, 2016, the hearing of the Appellant's appeal was convened with counsel for MPIC present. The Chair dialed the home telephone number which had been provided by the Appellant

to the Commission on the Notice of Appeal and confirmed as the telephone number to use for the teleconference. There was no answer. The Chair then called the cell phone number which had been provided by the Appellant to the Commission on the Notice of Appeal. The cell phone number was out of service. The Chair dialed the home telephone number again. A gentleman answered the telephone and advised that the Appellant no longer lived at this location, can no longer be reached at this telephone number and that he does not know how to reach the Appellant. He then stated he would try to find an alternate telephone number for the Appellant and that the Chair should call back in a few minutes.

The panel waited 5 minutes and the Chair called back. The panel was then provided an alternate telephone number to try to reach the Appellant. The Chair dialed this telephone number, but there was no answer. The Chair left a message on this number's voicemail, advising that the Commission was trying to contact the Appellant and asking the Appellant to call the Commission as soon as possible. The Chair then called the Appellant's home telephone number to advise the gentleman who answered that the Appellant did not answer the telephone at the alternate number he provided and to ask whether there was another way to reach the Appellant. The gentleman indicated he knew of no other way to reach the Appellant. The Chair again dialed the alternate telephone number provided by the gentleman and again there was no answer. No telephone call from the Appellant was received by the Commission's staff.

The Commission's Notice of Hearing provided that the time and date of the hearing are firm and that postponements will only be granted under unusual circumstances of a compelling nature. The Notice also provided that should either party fail to appear or be represented at the time and place of the hearing, the Commission may proceed with the hearing and render its decision.

Accordingly, the appeal hearing proceeded and the panel heard submissions from counsel for MPIC.

**Submission for the Appellant:**

The Appellant's Notice of Appeal stated that she wished to appeal the Internal Review Decision because her arm wasn't healing and she was having a lot of trouble using it. She also stated that she was on very strong medication and could not work outside and inside of the house.

After the Appellant attempted to file the Notice of Appeal on November 4, 2015, the Commission wrote to the Appellant requesting a written explanation why her Notice of Appeal was not received in time. The Appellant provided a response to the Commission dated November 17, 2015 that was received on November 19, 2015. It stated:

“I have not responded within the 90 days because I was waiting for a response from my new worker out of [text deleted]. He wanted me to get all my medications that I paid for sent to the [text deleted] Office, which I did. He was saying that I could be reimbursed for the monies I have paid. I also talked to a few people and they said I was treated unfairly. I wasn't given a chance to say how I wanted my money, for example if it could have been paid to me monthly. I also found out about your appeals board through the computer as I was researching. And lastly my arm wasn't and still hasn't healed. I was still to see a physiotherapist but it was cut short as I still had a lot more of visits allotted to me. That is why I have not gotten in touch sooner as I was waiting for my worker in [text deleted] to get in touch. I hope this letter is sufficient enough to get me back in the MPI program.”

**Submission for MPIC:**

Counsel for MPIC submitted that the onus is on the Appellant to satisfy the Commission that it should exercise its discretion to extend the time within which to appeal to the Commission. Counsel submitted that given that the Appellant did not attend the hearing, her request should be denied on that basis alone.

Counsel submitted that the Internal Review Decision on page 4 clearly outlines how the Appellant can appeal. The Internal Review Decision states that the Appellant had 90 days within which to appeal and includes contact information for both the Commission and the Claimant Adviser Office. Despite receiving this information, the Appellant did not attempt to file the Notice of Appeal until almost a year after the IRD was issued.

Counsel acknowledged that the Appellant provided reasons for her late filing in a letter to the Commission dated November 17, 2015. However, counsel submitted that these reasons do not constitute a reasonable excuse for the late filing. The first reason provided was that the Appellant was waiting for her case manager to contact her. Counsel submitted that there is nothing in the Internal Review Decision that states the Appellant needs to contact her case manager. As such, counsel submitted that there was no reason for the Appellant to be waiting to hear from her case manager regarding her appeal of the December 23, 2014 Internal Review Decision.

The second reason the Appellant provided for her late filing was that she talked to a few people and they said she wasn't treated fairly. Counsel submitted that this demonstrates that the Appellant was aware of the 90 day time period, decided not to pursue an appeal, and then changed her mind when she discussed the Internal Review Decision with others. Counsel submitted this was not a good reason for the late filing.

With respect to the Appellant's comments that she discovered the Commission through doing computer research, counsel submitted that the appeal provisions at the end of the Internal Review decision clearly set out the Commission's contact information so it would have been unnecessary for the Appellant to have to do computer research to further her appeal.

Counsel submitted that the Appellant has the onus to satisfy the Commission that it should extend the time to appeal. The Appellant has not met this onus and therefore no extension ought to be granted.

**Discussion:**

Subsection 174(1) 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.

In this case, the Appellant's Notice of Appeal was not received by the Commission within 90 days after she received the Internal Review Decision dated December 23, 2014. Accordingly, she has asked the Commission to exercise its discretion to allow an extension of time to file the Notice of Appeal, which was received by the Commission on November 4, 2015.

In considering whether to exercise its discretion under Subsection 174(1) of the MPIC Act, 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 has been any prejudice resulting from the delay;
4. whether there has been any waiver respecting the delay; and,
5. any other factors which argue to the justice of the proceeding.

The panel has reviewed the documentary evidence on file, including the written reasons provided by the Appellant for the late filing of her appeal, and the submission of counsel for MPIC. Upon

a consideration of the totality of the evidence 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 Officer's decision to the Commission within the 90 day time limit set out in subsection 174(1) of the MPIC Act.

The panel agrees with counsel for MPIC that waiting to get a response from the Appellant's case manager in [text deleted] does not constitute a valid reason for not appealing in a timely manner. The Internal Review Decision clearly stated that the Appellant had 90 days to appeal in writing to the Commission. There was no reason for the Appellant to need to discuss this with her case manager and it was not reasonable for the Appellant to wait for her case manager to contact her rather than the Appellant contacting the Commission as outlined.

The Appellant stated that some people have advised her that she wasn't treated fairly. She also stated that her arm still hasn't healed and that she was to continue to see a physiotherapist. These statements do not explain why the Appellant did not appeal the Internal Review Decision in a timely manner.

The Appellant indicated that she found out about the Commission through computer research. As indicated, the Commission's contact information, including a toll free telephone number, were provided to the Appellant in the Internal Review Decision. The fact that the Appellant also read about the Commission while doing computer research does not explain why she did not contact the Commission within the 90 days within which to appeal.

Based on the foregoing, the Commission finds that the Appellant has not provided a reasonable excuse for her failure to appeal the Internal Review decision within the 90-day limit set out in

section 174 of the MPIC Act. The panel notes that the delay in filing in this case is not insignificant. Accordingly, the Commission will not extend the time limit within which the Appellant may appeal the Internal Review decision dated December 23, 2014 to the Commission.

**Disposition:**

The Appellant's appeal is dismissed and the decision of the Internal Review Officer dated December 23, 2014 is upheld.

Dated at Winnipeg this 8<sup>th</sup> day of September, 2016.

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**KARIN LINNEBACH**

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**ARNOLD KAPITZ**

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**SANDRA OAKLEY**