

Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by [the Appellant]

AICAC File Nos.: AC-16-046, AC-16-047, AC-16-048, AC-16-49, AC-16-050, AC-16-051

PANEL: Ms Laura Diamond, Chairperson
Ms Janet Frohlich
Ms Sandra Oakley

APPEARANCES: The Appellant, [text deleted], appeared on her own behalf; Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Andrew Robertson.

HEARING DATE: April 6, 2017

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

RELEVANT SECTIONS: Section 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 was injured in a motor vehicle accident on June 30, 2013. She suffered injuries including severe bruising, dental injuries, a fractured clavicle, concussion and hematoma in the right cheek. She was hospitalized for several days and continued to complain of mild headache and blurred vision. Further medical investigation and treatment led to a review by MPIC's Health Care Services consultants.

The Appellant was in receipt of benefits from MPIC pursuant to the Personal Injury Protection Plan (PIPP). Decisions regarding her benefits were communicated to her in the form of case manager's decisions.

The Appellant filed Applications for Review from case management decisions concerning personal care assistance benefits and funding for supportive footwear and an electronic tablet. Internal Review decisions were issued in regard to these matters on April 28, 2014. The Appellant filed Notices of Appeal with the Commission from these three Internal Review decisions on April 10, 2016.

Case management decisions dealing with permanent impairment benefits and the connection between the motor vehicle accident and the Appellant's incontinence were also the subject of Applications for Review by the Appellant. Internal Review decisions regarding these two issues were provided on October 22, 2014. The Appellant filed Notices of Appeal from these Internal Review decisions with the Commission on April 10, 2016.

A case management decision regarding the Appellant's vision issues and eye surgery and their connection to the motor vehicle accident was provided to the Appellant on November 3, 2015. She sought Internal Review of this decision and, on July 13, 2016, an Internal Review Officer upheld the case managers' decision. On January 3, 2017, the Appellant filed a Notice of Appeal from this decision with the Commission.

The Internal Review decisions referred to above stated:

APPEAL RIGHTS

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 can be reached at:

301-428 Portage Avenue
Winnipeg, MB R3C 0E2
Telephone Number: 204-945-4155
Fax Number: 204-948-2402
Toll Free: 1-800-282-8069

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

CLAIMANT ADVISER OFFICE

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

Claimant Adviser Office
200 – 330 Portage Avenue
Winnipeg, MB 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 MPIC 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 dates the decisions were received. Rather, the Appellant filed Notices of Appeal dated April 10, 2016 and January 1, 2017, after the 90 day deadlines had passed.

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 decisions of the Internal Review Officer dated April 28, 2014, October 22, 2016 and July 13, 2016.

A hearing was held on April 6, 2017 regarding the Appellant's application for an extension of time. In addition to material on the Appellant's indexed file, the Appellant gave testimony and provided submissions at the hearing. Counsel for MPIC submitted that the Commission should not exercise its discretion to extend the time for filing Notices of Appeal.

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 Notices of Appeal.

Evidence and Submission for the Appellant:

The Appellant described the motor vehicle accident and her meetings with MPIC after her discharge from hospital. She still had health issues at the time of her discharge and told the nurse that she could not see well. She had to walk with a cane, but felt she would do better at home in spite of problems with her vision and walking. She explained that she has a disabled son who lives with her, so family came to try and help her through this time.

The Appellant explained that she had many medical appointments both in Winnipeg and in Portage la Prairie where she lived. She saw dentists, eye doctors, physiotherapists, mental health workers, a psychologist, massage therapists and her own medical doctors. She estimated that she had approximately 200 appointments from the beginning of the motor vehicle accident until about six or seven months before the hearing.

In addition, she was dealing with phone calls and paperwork from MPIC and meetings with them. Whoever was available (including her husband, a friend and her daughter) helped her to fill out the paperwork. Her husband helped her to fill out and file her Applications for Review and he also helped her with filling out the Notices of Appeal.

The Appellant indicated that she paces herself in life to accommodate her limited energy. She says that she gets overwhelmed about all this stuff and so her husband reads it for her and summarizes it. She cannot read more than a page or two at a time.

At the same time, the family tried to help her make arrangements for her son and his needs and also to provide space in her backyard so that she could have some quiet times and comfort. She had to lie down often due to the stress and the pain. Although she sought counselling and tried to be positive, there were still many challenges. She sought help from family and from a counsellor, but still found everything overwhelming.

On cross-examination, the Appellant recalled meeting once with an Internal Review Officer. She thought that the Internal Review Officer would have told her that she could appeal decisions to the Commission, but she does not recall that. She also believed that, after reading the decisions, her husband would have told her that she had the right to appeal, but she doesn't recall him telling her about that either.

When asked why, if she was feeling overwhelmed and still wanted to appeal, she did not contact the Commission to ask for assistance, she indicated that she relied upon her husband. She said that because she had bad experiences with things like that she preferred to trust her husband and

tell him how she felt. She said that her energy was too low to put an effort into exploring other options.

When asked why she did not contact the Claimant Adviser Office (referred to in the Internal Review decisions) for assistance, the Appellant said that she thought about it but did not end up calling them because she has a problem trusting people and because other things always came up with her doctors' appointments etc. She said that big things have happened in her life that resulted from trusting other people and she had no energy to go through that again without getting anywhere, so why would she put her time and energy into this when she could be doing other important things?

The Appellant submitted that with so many things happening and recommendations coming from her doctors and specialists, she still felt that every time she went to MPIC they denied all of it, by saying no, it was not related to the motor vehicle accident. She explained how frustrated she became trying to cope with life and survive, even with her family's help. She had other priorities like a sick son and a dying brother. She has been to different places to ask for help and nothing has come of it. She explained that now she is pursuing her appeal because she knows in her heart that what she says is not a lie and she should not give up. But the stacks of paperwork get her all confused and mess up her mind. However, she explained that her position is just expressing the truth and that's why she has sought an extension of time to appeal the Internal Review decisions.

Submission for MPIC:

Counsel for MPIC submitted that the most relevant factors for the Commission to consider are the length of delay, the prejudice resulting from the delay and reasons for the delay.

He noted that the delay in this case is almost two years, which is quite significant given the 90 day time frame set out in the legislation. He indicated that there is inherent prejudice in such delay.

However, he acknowledged that the most important consideration in this case is the reason for the delay. The reasons the Appellant has provided do not provide a reasonable excuse for missing the timelines for filing a Notice of Appeal. He cited the clear language in the Internal Review decisions setting out the 90 day time limit within which an appeal can be made, the contact number for the Commission and the availability and contact information of the Claimant Adviser Office should the Appellant require assistance. On cross-examination, the Appellant said she believed that her husband had reviewed those sections regarding her appeal rights, so these are all things that should have been known to her and her family in considering whether to file a Notice of Appeal. There is no evidence that the Appellant contacted the Commission or the Claimant Adviser Office for any assistance within the 90 day time frame. Resources were made available to assist her even if she was feeling confused or overwhelmed, but she did not take advantage of this.

Further, counsel submitted that the Appellant's conduct during the Internal Review process shows that she had the capacity and ability to file a Notice of Appeal. The Appellant filed multiple Applications for Review in February and August 2014 and in December of 2015. She not only requested review of case manager decisions but provided specific quotes from the medical consultant who had submitted questions to her gynecologist. She was not only able to pursue the Internal Review by filing the Application, but she and her family were also able to review the documents that they had obtained and provide specific quotes from them in the

Applications for Review. The Appellant recalled attending at least one hearing with the Internal Review Officer, although the decisions do indicate that more than one hearing was held.

So, over a fairly long period of time, in 2014 and 2015, the Appellant was able to pursue her Internal Reviews with MPIC by way of preparing documents, filing them on time, setting out her case and attending a hearing. This suggests that if she had chosen to do so, she also had the ability to pursue appeals with the Commission within that timeframe.

When questioned regarding her ability to trust in others, the Appellant testified that she had little energy and questioned why she should put the time and energy into pursuing this, suggesting that she chose to prioritize other things over pursuing her appeals. The appeal form for the Commission is no more complex, it was submitted, than those required for the Internal Review. The Notice of Appeal form is a single page form whose filing does not require a lawyer. Even if the Appellant felt that she could not handle that process, there were resources available to help her, and she did not take advantage of them.

Therefore, overall, counsel for MPIC submitted that the Appellant has not provided a reasonable excuse for the late filing of her Notices of Appeal.

Discussion:

Section 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 Notices of Appeal were not received by the Commission within 90 days after she received the Internal Review decisions. Accordingly, she has asked the Commission to exercise its discretion to allow an extension of time to file the Notices of Appeal which were received by the Commission on April 10, 2016 and January 3, 2017.

In considering whether to exercise its discretion under section 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;
- 5) any other factors which argue to the justice of the proceedings.

The panel has reviewed the documentary evidence on file, the evidence of the Appellant, and the submissions of the Appellant and counsel for MPIC. Upon a consideration of the totality of the evidence, both oral and documentary, 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 Officers' decisions to the Commission within the 90 day time limit set out in section 174(1) of the MPIC Act.

The Appellant submitted that she was overwhelmed by all of the things that were going on in her life, including deaths, illnesses, her own injuries and other family matters. She required assistance from her family in dealing with MPIC and felt frustrated by MPIC's denials of her

claims. Still she remained convinced of the truth behind her position and was determined to pursue her appeal at the Commission.

There was no medical evidence or other evidence provided to establish that the Appellant suffered from a condition which might prevent her from pursuing her appeals in the way she had pursued her Internal Reviews. The Appellant explained that she had no energy to attend to this and in fact had given priority to other considerations in her life.

As noted by counsel for MPIC, the Appellant, in her testimony, acknowledged that, perhaps due to her frustration with MPIC's denials, she prioritized other considerations over the timely filing of her Notices of Appeal. Although she exhibited an ability, perhaps with assistance, to comprehend and manage the process for filing an Application for Review and pursue that through the Internal Review process, she has not explained why she was not able to do the same for her appeals to the Commission. Her options for appeal and the resources offered to assist with that were set out in clear language in the Internal Review decision. The Appellant showed the capacity and ability to manage the aspects of the Internal Review process. As counsel for MPIC has pointed out, the Commission's process for filing a Notice of Appeal is no more complex.

The explanation offered by the Appellant that she chose to conserve her energy by giving priority to other considerations in her life does not meet her onus to establish a reasonable explanation for her delay.

The panel agrees with counsel for MPIC that the Appellant has failed to provide 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. Accordingly, the Commission will not extend the time limit within which the Appellant may appeal the Internal Review decisions dated April 28, 2014, October 22, 2014 and July 13, 2016 to the Commission.

Dated at Winnipeg this 9th day of May, 2017.

LAURA DIAMOND

JANET FROHLICH

SANDRA OAKLEY