

## Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by [APPELLANT]  
AICAC File No.: AC-19-100

PANEL: Pamela Reilly, Chairperson

APPEARANCES: The Appellant, [Text Deleted], did not appear.  
Manitoba Public Insurance Corporation (“MPIC”) was represented by Vivian Li (“Counsel”).

HEARING DATE: April 25, 2023.

ISSUE: Whether the Appellant failed to pursue her appeal diligently.

RELEVANT SECTIONS: Sections 182(3) and (4), 182.1 and 184.1 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:

On February 18, 2018, the Appellant provided the Winnipeg Police Service with a statement in which she stated that someone stole her relative’s vehicle (“the vehicle”), which was parked outside the Appellant’s residence. On March 22, 2018, the Appellant signed an MPIC Statutory Declaration in which she stated that she did not drive, nor allow anyone else to drive, the vehicle.

On August 31, 2018, an MPIC Case Manager (“CM”) denied the Appellant’s Personal Injury Protection Plan (“PIPP”) claim for a head laceration, on the basis that there was no evidence the Appellant was involved in a motor vehicle accident (“MVA”). The Appellant filed a Request for an Internal Review. The Internal Review Office issued a decision dated September 25, 2018, which concluded that no MVA had occurred and therefore, PIPP benefits did not apply.

The Appellant then submitted medical records to the CM. On December 18, 2018, the CM issued a second decision stating that the medical records showed the Appellant’s head laceration resulted from an assault on February 18, 2018, and denied PIPP benefits on the basis that the Appellant’s injuries were not MVA-related (“the CMD”). The Appellant requested another Internal Review.

The Claimant Advisor Office (“the CAO”) then represented the Appellant pending her appeal to the Commission. The Internal Review Office determined it was appropriate to conduct a second review and met with the Appellant on May 23, 2019. The Appellant stated that her memory was foggy on specific details due to her head injury. However, she elaborated that, in fact, she did drive the vehicle, and a tow-truck collision caused damage to the vehicle’s front end. The Appellant said that she did not exchange particulars with the tow-truck driver, and that she left the vehicle at the scene of the accident to walk to the hospital for medical treatment of her head laceration.

On June 19, 2019, the Internal Review Office issued a second internal review decision (“the IRD”), which denied PIPP benefits on the basis that there was insufficient evidence to show that the Appellant sustained an MVA-related injury. On July 9, 2019, the Appellant filed a Notice of Appeal (“NOA”) with the Commission. On September 18, 2019, the CAO advised that it no longer represented the Appellant.

The Commission assigns an Appeals Officer (“AO”) to an Appellant. The Commission compiles an Indexed File of documents (the “Indexed File”) relevant to the appeal, and sends this to the parties. On May 26, 2020, the AO mailed the Indexed File to the Appellant and requested that she provide certain information in furtherance of her appeal. On September 2, 2020, the Appellant emailed the AO and updated her address. The Appellant also stated that she had not heard from the Commission since its letter dated May 26, 2020. The Appellant did not provide the information requested in the Commission’s letter.

On November 19, 2020, the AO responded to the Appellant’s September 2, 2020 email and advised that the status of her appeal had not changed. The AO’s email explained, in detail, the Commission’s role and the Appellant’s responsibility to move her appeal forward, including arranging and obtaining documentation to substantiate her position. The email stated that the Appellant should advise whether she planned to submit further information so that the Commission could arrange a Case Conference Hearing (“CCH”). The email explained that a CCH involved a preliminary discussion of her file to determine if it was ready for hearing.

On February 18, 2021, the Commission assigned a new AO who mailed a letter to the Appellant, which noted that the Commission had sent the Indexed File and requested that the Appellant contact the new AO to discuss the next steps in her appeal.

On July 30, 2021, the CAO provided an additional email address and two potential phone numbers for the Appellant. The AO utilized the email address to send the February 18, 2021 letter to the Appellant. The email stated that the Commission had been trying to reach the Appellant, without success. The email requested that the Appellant respond and advise whether she wanted to pursue her appeal.

On August 3, 2021, the AO mailed a letter to the address shown in the Appellant's NOA, as well as to an address that MPIC had provided for the Appellant. The August 3, 2021 letter itemized the steps the Commission had taken to contact the Appellant, which included an April 19, 2021 voice mail (with no response), and a May 13, 2021 letter to the address provided by the Appellant in writing on September 2, 2020. Canada Post records show it returned the letter from the address provided by MPIC.

On August 27, 2021, the AO sent a letter utilizing the Appellant's three email addresses, as well as regular mail and Xpresspost to the two lettermail addresses. This letter detailed the various letters and emails the Commission had sent to the Appellant's various addresses, without receiving a response. It also detailed the different telephone numbers the Commission had used to try to contact the Appellant, without success.

The August 27, 2021 letter quoted MPIC Act section 182.1(1), “Dismissal for failure to pursue appeal” (“the Warning Letter”). The letter explained that if the Appellant did not contact the Commission within the next six (6) months, the Commission would schedule a failure to pursue hearing (“FTP Hearing”), which could result in the Commission dismissing her appeal.

Canada Post records show that in September 2021, Canada Post returned all of the lettermail and Xpresspost Warning Letters. The notation for both the Xpresspost and regular mail letters addressed to the Appellant’s September 2, 2020 address stated, “MOVED”.

In response to the Warning Letter, the Appellant telephoned and spoke to the AO on September 2, 2021. The Appellant provided her current mailing address and stated that she wished to continue with her appeal. On September 9, 2021, the AO mailed a letter to the current address, which requested that the Appellant write or email the AO to confirm her current address in writing. The AO advised that upon receipt of this information, the Commission would contact the Appellant to arrange another delivery of her Indexed File. The Appellant did not respond.

On February 1, 2023, the AO mailed a letter to the Appellant’s current address, which included a copy of the Warning Letter. The February 1, 2023 letter referred to the September 2021 telephone call from the Appellant, in which she had provided the updated mailing address and telephone number.

The February 1, 2023 letter stated that the Appellant had not contacted the Commission since September 2021, nor responded to the Commission's request that she confirm her current address in writing. This letter again quoted s. 182.1(1) and requested that the Appellant respond by February 15, 2023, failing which; the Commission would schedule a FTP Hearing.

Having received no response, the Commission issued a Failure to Pursue Notice of Hearing ("FTP NOH") on February 24, 2023, which scheduled a FTP Hearing for April 25, 2023. The Commission utilized regular mail and Xpresspost to deliver the FTP NOH to the three addresses previously provided by the Appellant, including the address on her NOA.

Canada Post returned the regular mail and Xpresspost mail from the September 2, 2020 address with the notation, "MOVED". Canada Post returned the regular mail from the NOA address with the notation, "REFUSED". Canada Post returned the Xpresspost delivery from the Appellant's September 2, 2021 address with the notation, "Reason: Unclaimed".

**Issue:**

The Commission must decide whether the Appellant failed to pursue her appeal diligently, and if so, whether the Commission will dismiss the appeal.

**Decision:**

The Commission finds, on a balance of probabilities, that the Appellant has failed to pursue her appeal diligently and therefore dismisses the Appellant's appeal.

**The Hearing:**

Because of safety considerations arising from the pandemic, and with written notice to the parties, the Commission conducted the FTP Hearing by teleconference. The FTP NOH contains teleconference instructions.

In preparation for hearings, the Commission compiles an FTP Indexed File, which contains all documents relevant to the FTP Hearing. The documents constitute evidence that either party may rely upon at the hearing. The Commission numbers these documents for ease of reference, and sends the FTP Index to all parties. Attached to these reasons and marked as Schedule "A" is a copy of the FTP Indexed File Table of Contents.

**Appellant submissions:**

The Appellant did not appear at the scheduled time for the hearing. The Appellant did not file any written submission. In accordance with Commission policy, the Commission Chairperson waited 15 minutes for the Appellant to attend the hearing. The Appellant did not appear and therefore the hearing proceeded without her.

**MPIC submissions:**

Counsel adopted MPIC's written submission, which listed some factors that the Commission has considered in prior decisions on the failure to pursue issue, as follows:

- 1) Did the Appellant receive proper notice of the hearing?
- 2) If so, did the Appellant fail to pursue their appeal diligently?
- 3) If so, did the Appellant provide an adequate explanation for their failure?
- 4) Are there any other reasons the Commission should consider?

Counsel referred to subsections 184.1(1)(b) and 184.1(2) in relation to the documentary evidence that detailed the various addresses (both email and regular mail) utilized by the Commission over the years, to contact the Appellant. Counsel submitted that the Commission provided proper notice of the hearing to the Appellant, in compliance with the legislation that governs how the Commission may give notices.

Counsel submitted that the Commission has previously stated that "diligence" means that an Appellant must show a careful and persistent application of effort to their matter.

Again referring to the Commission's documented history of attempted contact with the Appellant, Counsel noted the Appellant's lack of response to the Commission's numerous letters, including the Warning Letter. Counsel submitted that the Appellant's lack of response demonstrates her failure to move her appeal forward. Counsel submitted that the Appellant has not provided any explanation for her failure to pursue her appeal.



Finally, there is no evidence of additional reasons that might weigh in favour of continuing the appeal.

Counsel submitted that s.182.1(1) encourages Appellants to advance their appeals promptly. Further, the legislature designed the section to find and remove those appeals from the Commission docket that are otherwise doomed to languish in perpetuity. She submitted that the evidence in this appeal conclusively shows that the Appellant has not diligently pursued her appeal and she has no explanation for this failure. Counsel submitted that the Commission can and should dismiss the appeal in its entirety.

### **Legislation:**

The applicable sections of the MPIC Act and Regulations are as follows:

#### **Commission to determine its practice and procedures**

**182(3)** The commission shall determine its own practice and procedures and shall give full opportunity to the appellant and the corporation to present evidence and make submissions.

#### **Hearing may be conducted orally or in writing**

**182(4)** The Commission may conduct a hearing orally, including by telephone, or in writing or partly orally and partly in writing.

#### **Dismissal for failure to pursue appeal**

**182.1(1)** Despite subsection 182(1), the commission may dismiss all or part of an appeal at any time if the commission is of the opinion that the appellant has failed to diligently pursue the appeal.

#### **Opportunity to be heard**

**182.1(2)** Before making a decision under subsection (1), the commission must give the appellant the opportunity to make written submissions or otherwise be heard in respect of the dismissal.

#### **Informing parties of decision**

**182.1(3)** The commission must give the appellant and the corporation a copy of the decision made under subsection (1), with written reasons.

#### **How notices and orders may be given to appellant**

**184.1(1)** Under sections 182, 182.1 and 184, a notice of a hearing, a copy of a decision or a copy of the reasons for a decision must be given to an appellant

(a) personally; or

(b) by sending the notice, decision or reasons by regular lettermail to the address provided by him or her under subsection 174(2), or if he or she has provided another address in writing to the commission, to that other address.

**When mailed notice received**

**184.1(2)** A notice, a copy of a decision or a copy of reasons sent by regular lettermail under clause (1)(b) is deemed to be received on the fifth day after the day of mailing, unless the person to whom it is sent establishes that, acting in good faith, he or she did not receive it, or did not receive it until a later date, because of absence, accident, illness or other cause beyond that person's control.

**Issue:**

The Commission must decide whether the Appellant has failed to pursue her appeal diligently and if so, whether the Commission should dismiss the appeal.

**Discussion:**

Section 182.1(1) of the MPIC Act grants the Commission authority to dismiss an appeal at any time, if the Commission determines an appellant has failed to pursue the appeal diligently. This section does not require the Commission to consider the merits of the appeal. The Commission finds that the word “diligently” requires some evidence of careful, steady and persistent effort. The onus is on the Appellant to show, on a balance of probabilities, that she has not breached section 182.1(1).

Section 184.1(1)(b) states that notice must be given to the Appellant by regular lettermail to an address provided in writing either on the NOA or another address provided in writing to the Commission. Section 184.1(2) states that a notice sent by regular lettermail is deemed to be delivered on the 5<sup>th</sup> day after the mailing, unless the Appellant otherwise establishes that she did not receive it.

The Commission finds that on February 24, 2023, it utilized Xpresspost and regular mail delivery to the Appellant's September 2, 2020 written address, the September 2, 2021 verbal address, and the written address on her July 20, 2019 NOA, to provide notice of the FTP Hearing. The Appellant did not otherwise establish non-receipt. Therefore, the Commission deems that the Appellant received the FTP NOH. The Commission finds that it has complied with the notice requirements in sections 184.1(1) and 184.1(2).

The Appellant acknowledged receipt of her Indexed File. Early in the process, the Commission advised the Appellant of her responsibility to pursue her appeal, and warned her of the consequences for failing to pursue her appeal.

The Commission acknowledges that the Appellant responded to the Warning Letter and stated that she wished to pursue her appeal. However, the Commission finds that merely stating a desire to pursue is not sufficient to establish that the Appellant has applied a careful and persistent effort to her appeal.

The Appellant must take the initiative to follow-up and at least respond to and provide the Commission with the information requested. The Commission finds that the Appellant did not take any initiative to maintain contact with the Commission or to move her appeal forward in any way, for almost four years. The Commission finds that the Appellant has not established that she pursued her appeal "diligently."

**Disposition:**

The Commission finds, on a balance of probabilities that the Appellant has failed to pursue her appeal diligently. Consequently, in accordance with section 182.1(1), the Commission dismisses the appeal.

Dated at the City of Winnipeg, in the Province of Manitoba, this 4<sup>th</sup> day of May 2023.

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**PAMELA REILLY**

**SCHEDULE “A”**

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