



## Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by [the Appellant]  
AICAC File No.: AC-03-22

**PANEL:** Ms. Yvonne Tavares, Chairperson  
Ms. Laura Diamond  
Mr. Bill Joyce

**APPEARANCES:** The Appellant, [text deleted], was represented by  
[Appellant's representative];  
Manitoba Public Insurance Corporation ('MPIC') was  
represented by Mr. Tom Strutt.

**HEARING DATE:** June 8, 2004

**ISSUE(S):** Extension of time to file Notice of Appeal

**RELEVANT SECTIONS:** Section 174 of The Manitoba Public Insurance Corporation  
Act (the '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

The Appellant, [text deleted], is requesting an extension of time in order to file a Notice of Appeal from a decision of the Internal Review Officer dated January 27, 2003.

Section 174 of the MPIC Act provides as follows:

#### **Application to appeal from review**

**174** 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.

The Appellant initially contacted the Commission on February 4, 2003 in order to open an appeal file with the Commission respecting the Internal Review decision dated January 27, 2003. Although the Notice of Appeal form was forwarded to the Appellant at that time, she did not submit the Notice of Appeal to the Commission until the following year, on February 16, 2004.

At the hearing, the Appellant's representative advised that the Appellant delayed filing the Notice of Appeal because she had another internal review pending with MPIC. The Appellant's representative maintains that they were advised by the Commission and by the Internal Review Officer that the Appellant should hold off on her appeal, until the pending internal review was completed, so that all appeals could be dealt with together. The Appellant's representative also advised that the Appellant was under the understanding that the Internal Review Officer would revisit his earlier decision regarding the method utilized to calculate her income replacement indemnity benefits. By letter dated February 2, 2004, the Internal Review Officer advised that he would not reconsider his previous decision. In accordance with her understanding at the time, the Appellant filed two Notices of Appeal with the Commission on February 16, 2004, shortly after receipt of the Internal Review Officer's decision of February 6, 2004, respecting the second issue under review.

Counsel for MPIC submits that the Appellant has not provided a reasonable excuse for failing to file the Notice of Appeal within the 90-day time limit set out in the MPIC Act. Although counsel for MPIC accepts that the Appellant was confused about the process to be followed and that there was some misunderstanding on her part with regards to the appeal process, he maintains that the explanation provided by the Appellant is not acceptable, especially given the clear notice regarding the appeal provisions set out in the Internal Review decisions. As a result, counsel for MPIC submits that the Appellant's request for an extension of time to appeal the

Internal Review decision of January 27, 2003 should be denied.

Pursuant to Section 174 of the MPIC Act, the Commission has the discretionary power to extend the time for appealing a review decision. Generally, it will do so where it is satisfied that the Appellant has provided a reasonable excuse for the delay and the delay has not been overly prejudicial to MPIC.

Upon a consideration of the totality of the evidence before it, both oral and documentary, and upon consideration of the relevant factors surrounding the delay, the Commission finds that the Appellant has provided a reasonable excuse for her failure to appeal the Internal Review decision to the Commission, within the 90 day time limit set out in Section 174 of the MPIC Act. We accept that the Appellant was confused about the process to be followed. Although we find that she was not misinformed about the process to be followed, she obviously did not appreciate the fact that the Notice of Appeal should have been filed, and then the matter could be held in abeyance pending the subsequent internal review and then any and all appeals could be dealt with simultaneously. In these circumstances, we find that the Appellant was under an honest mistaken assumption about the procedure to be followed, and we find that this explanation is reasonable given all of the facts surrounding this particular appeal. As a result, the Commission will extend the time limit within which the Appellant may appeal the Internal Review decision dated January 27, 2003 to the Commission.

Dated at Winnipeg this 14<sup>th</sup> day of June, 2004.

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**YVONNE TAVARES**

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**LAURA DIAMOND**

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**BILL JOYCE**