

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-05-121**

PANEL: Ms Laura Diamond, Chairperson

APPEARANCES: The Appellant, [text deleted], was represented by [text deleted] on February 13, 2007;
The Appellant was self-represented on May 14, 2008;
Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Terry Kumka.

HEARING DATE: February 13, 2007 and May 14, 2008

ISSUE(S): Whether the Appellant has provided a reasonable excuse for failing to file an Application for Review within the 60 day time period and whether an extension should be granted pursuant to Section 172(2) of the MPIC Act.

RELEVANT SECTIONS: Section 172(1)&(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 was injured in a motor vehicle accident on February 12, 2003 and again on March 7, 2003. As a result of his injuries, the Appellant sought benefits under the Personal Injury Protection Plan of the MPIC Act.

On August 6, 2003, his case manager issued a decision letter advising the Appellant that an investigation had revealed he had exaggerated his injuries and was capable of returning to his pre-accident employment as of February 2003. The letter advised that he was in contravention of the MPIC Act, that there was no impairment in function preventing him from returning to his pre-accident employment, and that all benefits would end as of the date of the letter. The case manager's letter also noted that he would be responsible for reimbursing the amount of benefits he had received as a result of his failure to notify and provide MPIC with accurate information and that he would receive notification so that suitable arrangements could be made for reimbursement of his debt.

The Appellant filed an Application for Review of this injury claim decision. His Application for Review was dated April 14, 2005.

The Internal Review Officer for MPIC requested that the Appellant provide him with particulars of the reasons for the Appellant's failure to file the Application within the 60 day time limit specified in the decision letter dated August 6, 2003.

Following his review of the file, the Internal Review Officer, in a decision dated May 20, 2005, concluded that the Appellant had not provided a reasonable excuse for failing to file the Application in time and that no extension of time would be granted before filing an Application for Review. As well, the Internal Review Officer commented upon the merits of the decision letter in question and found that the material on the file supported the case manager's decision.

It is from this decision of the Internal Review Officer that the Appellant has now appealed. A hearing was held on February 13, 2007 to deal with the issue of the Appellant's failure to file his

Application for Review within the 60 day time limit and his request for an extension of time in order to do so.

Evidence and submissions were heard from both the Appellant's counsel and counsel for MPIC.

However, during the course of the hearing, the Appellant referred to a document which his counsel indicated had been left behind at his office. According to the Appellant, this document, an envelope, bore a sticker or stamp which showed that it had been successfully forwarded from the [Text deleted] address, pursuant to a change of address form he had completed when he moved to [Text deleted] from [Text deleted]. Counsel for the Appellant undertook to provide a copy of this envelope to the Commission and to MPIC.

The Appellant's counsel forwarded a copy of this envelope to the Commission and counsel for MPIC on February 13, 2007.

As well, by letter dated May 16, 2007, he forwarded a photocopy of the "claimant's copy" of an Application for Internal Review, dated October 2, 2003. His letter indicated that he had been told that the Appellant found this document amongst a bunch of other documents stuck in the back of a drawer while he was doing some cleaning.

Following receipt of this document, counsel for MPIC requested that the hearing be reconvened, as he wished to call further evidence, in rebuttal.

On January 23, 2008 counsel for the Appellant advised that he was withdrawing as counsel for the Appellant. The Appellant then indicated that he wished to proceed with his appeal and represent himself.

The hearing was reconvened on May 14, 2008.

Hearing of February 13, 2007

Evidence and Submission of the Appellant

The Appellant took the position that he did not receive the case manager's decision of August 6, 2003.

The Appellant described his home and financial situation and provided details regarding the accident and its effects upon him and his ability to work as a [text deleted] and at various [text deleted] jobs. He testified that as a result of being unable to continue [text deleted], he had to move, with his young family, from his home on [Text deleted]. This is the location to which the case manager's letter dated August 6, 2003 was addressed.

He moved first to a house at [Text deleted] and then to [Text deleted]. He indicated that after he moved, he renewed his car insurance coverage, with MPIC, and at that time updated his personal information, including his address. The Appellant noted that he had advised his case manager of his intention to move, and that his insurance renewal was completed by July 16, 2003.

He testified that he had filled out a change of address form prior to moving from [Text deleted] to [Text deleted] and that much of his mail was rerouted by the Post Office to [Text deleted]. He produced an example of such an envelope.

In spite of this, the case manager's letter dated August 6, 2003, was still sent to the [Text deleted] address, even though he had moved from there by the end of June, and another tenant had moved in by July 29, 2003.

The Appellant testified that he never received the case manager's letter dated August 6, 2003. He recognized that MPIC had produced an Advice of Receipt card allegedly signed by him, but maintained that, upon examination, the signature on that card was not his. He stated that he never signed his signature in that way.

On cross examination, the Appellant was asked to compare other examples of his signature with the signature on the Advice of Receipt card. It was suggested that while there were minor variances, they were quite similar. The Appellant did not agree.

He was also asked about a comment he had made to the Internal Review Officer in a telephone conversation on May 10, 2005. In a note to the Appellant's file dated May 10, 2005, the Internal Review Officer stated:

I went through the whole scenario with him again. I noted that I had sent him a copy of the original August 6, 2003 decision, along with the AR card indicating he had received (and signed for) the letter on August 14, 2003. I reiterated that there was then no activity at all on the files until April, 2005, and that was why I was asking for an explanation.

He then said he may have read the first line of the decision letter then ripped it up, feeling that he had been "kicked" once again by the "corrupt monopoly insurance company". He asked where he could go to ask for a review of MPI and where else he could go to buy his insurance.

The Appellant indicated that at the time of this conversation with the Internal Review Officer, he was just "being sarcastic" because he was upset. He now denied having received and ripped up

the letter. He indicated that he only became aware of the decision when his chiropractor told him that he was no longer eligible for chiropractic benefits from MPIC. However, he still took no action until he called MPIC to make inquiries some time before April 2005, some eighteen (18) months later. He indicated that he had made several unsuccessful attempts to contact MPIC.

It was submitted on behalf of the Appellant that he had not received the case manager's letter and that somebody else, perhaps another tenant in the [Text deleted] apartment had forged his signature on the Advice of Receipt card.

The Appellant denied, as was suggested to him by counsel for MPIC, that he had attended at the postal outlet at the [text deleted] at [Text deleted] and [Text deleted], picked up the letter and signed the Advice of Receipt card, although he admitted that his home on [Text deleted] was within a few blocks of that outlet.

Counsel for the Appellant submitted that the difficulties encountered by the Appellant after suffering serious injuries in two (2) very serious motor vehicle accidents caused the Appellant's failure to seek Internal Review of the case manager's decision within the proper time limits. The Appellant suffered a debilitating accident and could not work. He had young children at home and was faced with such serious financial difficulties that the family had to move. Although he advised MPIC that he would be moving and that he would let them know the forwarding address when he had it, MPIC still sent him letters to the wrong address. Due to the nature of its investigation, MPIC even had the Appellant under surveillance, and so had no reasonable argument for not knowing his location.

Counsel for the Appellant argued that Canada Post's system was not foolproof and maintained that the Appellant had not signed the Advice of Receipt card produced by MPIC. The Appellant did not know who picked up that package, but maintained that it was not him. It was submitted that the signature was not entirely legible and that no handwriting expert had testified that it belonged to the Appellant. It was further submitted that the Appellant's conversation with the Internal Review Officer when he admitted to opening and ripping up the letter, was entirely sarcastic.

Given the confusion regarding the delivery of the letter, and the Appellant's difficulties at the time, counsel argued that he should be given the opportunity to present his case on the merits, and that the time limit for filing his Application for Review should be extended by the Commission.

Evidence and Submissions for MPIC

MPIC takes the position that the Appellant has not provided a reasonable excuse for failing to file an Application for Review within the appropriate time limits.

The Commission heard evidence from [text deleted], a Manager of Retail Business Operations for Canada Post. [Canada Post Manager] described the procedures for picking up mail from a postal outlet. He indicated that a card would be left at the residence to which the letter was addressed, if no one was at home to answer the door upon the delivery attempt. A Delivery Notice card would have been left in the Appellant's post box at the [Text deleted] address.

An individual wishing to pick up the letter must produce that card along with a piece of identification showing that he resides at that address. Examples of appropriate identification

given were a photo driver's license or a picture ID from a government agency. If an individual does not possess a driver's license, the outlet would request some other government issued identification. Acceptable pieces of identification are outlined in a written policy manual provided to retail postal outlet clerks. Excerpts from this policy manual are in fact laminated and posted at each outlet, in order to clearly explain the steps for the clerks to follow when an individual is collecting such mail.

Once identification is produced, the individual is asked to sign their name on the Advice of Receipt card and they are given the item. This is then noted in the electronic system.

[Canada Post Manager] indicated that this was the general procedure. He indicated that the Advice of Receipt card in this matter was signed at the postal outlet in the [text deleted] at [Text deleted] on August 14, 2003. He had been unable to discover any further information regarding this particular item, either through his examination of the appropriate records, or inquiries of the outlet's postal manager.

Counsel for MPIC submitted that although the Appellant had indicated to MPIC employees that he planned to move, he failed to respond to a letter from his case manager requesting a new address. That letter, dated May 14, 2003, from case manager [text deleted], stated:

We also understand that you have stated that you will be moving to a new address in the near future. In our meeting of May 5, 2003, you were not able to provide us with this address. Under Section 149 of the Manitoba Public Insurance Corporation Act (copy attached), you are required to notify Manitoba Public Insurance of any information that would affect your entitlements. In order to further manager your claim, we require this updated address information.

Counsel also submitted that the totality of evidence indicated that the case manager's letter went to the [Text deleted] Postal Outlet. When an individual goes into that outlet to retrieve a piece of mail there are stringent requirements to provide identification. The individual must take the positive steps of producing the Delivery Notification card as well as appropriate identification, preferably photo ID. Canada Post requires that this be noted by the clerk in an electronic system and that the date and place of retrieval be stamped upon the Advice of Receipt card.

Counsel also submitted that MPIC's argument might have been more difficult to make if the signature on the Advice of Receipt card bore no resemblance at all to the Appellant's signature. However, the signature does bear a strong resemblance to the Appellant's signature. Anyone attempting to misappropriate his mail would have had to obtain the Delivery Notification card, study and learn to sign the Appellant's signature and then produce appropriate identification at the postal outlet. This scenario, he submitted, is simply not probable.

Counsel for MPIC also pointed to the Appellant's documented conversation with the Internal Review Officer where he indicated that he had received the letter, became angry and ripped it up. The Appellant then gave contradictory evidence at the hearing indicating that these comments to the Internal Review Officer had been "sarcastic". However, counsel for MPIC submitted that the possibility that the Appellant did read and rip up the letter is consistent with the contents of the letter. Since the case manager's letter indicated that MPIC had investigated the Appellant and concluded that he was acting fraudulently, the Appellant concluded that he had been "found out" and that there was no point in pursuing the matter further. He also may have wished to avoid the case manager's stated intention to arrange for reimbursement of his debt to MPIC.

This accounts, counsel submitted, for the Appellant's failure to make any attempt to address the situation for eighteen (18) months. The Appellant had described his desperate financial situation, and the difficulties this presented for his family. Even if he had not received the case manager's letter, he was not in receipt of Income Replacement Indemnity ('IRI') benefits from MPIC, and one would have expected that, given the financial difficulties he described, he would have been in contact with MPIC during this eighteen (18) month period to attempt to ascertain why, and to correct the situation.

Counsel for MPIC submitted that this was a significant matter, and that if allowed to pursue his appeal, the Appellant could be asking for IRI benefits for a period of approximately four (4) years. MPIC would have missed significant case management opportunities during the Appellant's eighteen (18) month delay in seeking review, particularly in a case where the corporation had been conducting surveillance and investigation at the time of the case manager's decision.

Hearing of May 14, 2008

At the appeal hearing of May 14, 2008, the Appellant was asked how the October 2, 2003 Application for Review coincided with his earlier position that he had never received his case manager's decision and that someone else had taken delivery of it. The Appellant explained that he had in fact never received the case manager's decision which was in dispute. He submitted that the Application for Review dated October 2, 2003, had probably been filed in regard to a later motor vehicle accident in June of 2004, and that he had just been confused about the dates, when he completed it, probably in October of 2004.

The Appellant noted that errors happen and that he had been under a great deal of stress. MPIC was aware of this, he submitted, and the panel should therefore allow him an extension of time for filing his Application for Review.

Counsel for MPIC called three (3) witnesses at the reconvened hearing on May 14, 2008.

[Text deleted], a purchasing agent for MPIC who had responsibility for ordering printed materials for the Corporation, reviewed the form utilized to complete the Appellant's Application for Review dated October 2, 2003. It was his evidence that there had been a change in forms used for Applications for Review. This particular form came into existence in August 2004. This particular form did not exist on October 2, 2003. He confirmed that the logos had changed and it was not difficult to tell the difference between the two forms used during the different time periods. Purchasing orders were reviewed to support his evidence.

The panel also heard evidence from [text deleted], a case manager for MPIC. He testified that he had reviewed the Appellant's case files and was not able to find a copy of an Application for Review dated October 2, 2003 on those files.

The panel heard further evidence from [Canada Post Manager], who also testified at the hearing on February 13, 2007. [Canada Post Manager] gave evidence regarding Canada Post's Change of Address stickers, and how they are placed on envelopes, and can be removed and possibly placed on other documents.

He reviewed the envelope submitted by the Appellant's counsel and indicated that the Change of Address for the Appellant had expired on December 31, 2003, and so could not be found on an envelope such as that produced by the Appellant, which bore a date stamp of May 2004.

Counsel for MPIC submitted that the Appellant's submission, which had been an incredible story at the hearing of February 13, 2007, now lacked any credibility whatsoever. It was his submission that the Appellant attended at the first hearing before the Commission, listened to the evidence and concluded that he needed to produce further documentation to prove his case. He then produced fraudulent documentation. He provided an envelope with a Change of Address form which expired in December of 2003 on an envelope with a date stamp of May 2004. He also provided an Application for Review dated October 2, 2003 on a form which did not exist in that format until 2004.

Accordingly, although the Appellant's credibility was an issue after the hearing held on February 13, 2007, these documents have further impeached the Appellant's credibility to an even greater extent. His request to have the time limits for filing an Application for Review be extended should not be granted.

Discussion

Application for review of claim by corporation

172(1) A claimant may, within 60 days after receiving notice of a decision under this Part, apply in writing to the corporation for a review of the decision.

Corporation may extend time

172(2) The corporation may extend the time set out in subsection (1) if it is satisfied that the claimant has a reasonable excuse for failing to apply for a review of the decision within that time.

The onus is upon the Appellant to establish, on a balance of probabilities, a reasonable excuse for failing to apply for a review within the time prescribed.

The primary excuse put forward by the Appellant for failing to make a timely Application for Review is his contention that he did not receive the case manager's letter dated August 6, 2003. As a result, he failed to take action to challenge MPIC's decision, in spite of the fact that he received no IRI or other MPIC benefits for a period of eighteen (18) months. The matter was complicated, he submitted, by his difficult personal financial situation and by futile efforts to contact MPIC representatives.

I have carefully reviewed the oral evidence, the evidence on the file and, in particular, the Appellant's testimony at the hearing. I do not find his evidence or his explanation for his failure to make a timely Application for Review to be credible. I find that the weight of the evidence does not, on a balance of probabilities, support the Appellant's claim that he did not receive the case manager's decision of April 6, 2003, nor do I believe that the Appellant filed an Application for Review on October 2, 2003, or that he completed that document after his 2004 motor vehicle accident, but was confused about the dates.

On the contrary, I am persuaded by the evidence and argument submitted by counsel for MPIC, reviewed above, that the explanations put forward by the Appellant lack credibility and that the Appellant has failed to establish a reasonable excuse for failing to apply for a review within the time prescribed.

Accordingly, the Commission finds that the Appellant has failed to meet the onus upon him to establish, on a balance of probabilities, that he had a reasonable excuse for failing to file an

Application for Review within the time limits prescribed by the statute. The Appellant's appeal is therefore dismissed, and the decision of the Internal Review Officer dated May 20, 2005 is hereby confirmed.

Dated at Winnipeg this 9th day of July, 2008.

LAURA DIAMOND