

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-08-91**

PANEL: Ms Laura Diamond

APPEARANCES: The Appellant, [text deleted], did not appear;
Manitoba Public Insurance Corporation ('MPIC') was
represented by Ms Leanne Zabudsky.

HEARING DATE: November 26, 2009

ISSUE(S): Whether the Appellant is entitled to an extension of time to
file the application for review

RELEVANT SECTIONS: Sections 172, 184.1(1) and (2) 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

A Notice of Appeal was filed by the Appellant on September 29, 2008, in respect of an Internal Review Decision dated September 5, 2008. This decision related to whether the Appellant had a reasonable excuse for the late filing of an Application for Review and whether the Corporation should extend the time limit allowed for receipt of this Application.

The Appellant was involved in a motor vehicle accident on May 31, 2007. A failure to provide medical information authorizations resulted in first a suspension, and then a termination of her Personal Injury Protection Plan ("PIPP") benefits for non-compliance. A decision letter from her case manager dated March 20, 2008 was sent to the Appellant by Priority Post. It contained the

standard paragraph advising the Appellant of her right to a Review and the time lines for submitting same.

An Application for Review dated July 31, 2008 was received by MPI on August 11, 2008. The Internal Review Officer wrote to the Appellant on August 13, 2008 advising her that her Application was late, that the Corporation could extend the time limit for receipt of this application if there was a reasonable excuse, and requesting that she provide her reasons in writing.

No response was received and the Internal Review Decision was issued on September 5, 2008, rejecting her Application for Review.

A hearing was scheduled by the Commission for October 13, 2009 to deal with the Appellant's appeal, as the Commission had lost contact with the Appellant. The Appellant failed to appear.

The Commissioner's secretary advised the Commission that:

1. a Notice of Hearing (a copy of which is attached hereto and marked as Exhibit "A") was sent to the Appellant on August 12 2009. The Notice of Appeal was sent:
 - (a) by regular mail and forwarded through Canada Post to the address set out by the Appellant in her Notice of Appeal.
 - (b) by Canada Post Xpresspost and forwarded to the address set out by the Appellant in her Notice of Appeal.

2. The letter sent by regular mail was not returned and assumed to be delivered.

3. The letter sent by Canada Post Xpresspost was delivered on August 15, 2009. Canada Post provided the Commission with a scanned delivery date and signature of the letter (a copy of which is attached as Exhibit "B").

When the Appellant failed to appear at the hearing scheduled for October 13, 2009, the Appellant's appeal was set down for hearing on November 26, 2009 at 9:30 a.m. The Notice of Hearing advised that the Commission may also consider possible Abandonment of the Appeal.

The Commissioner's secretary advised the Commission that:

1. On October 13, 2009, the Commission sent out a Notice of Hearing to the Appellant by regular mail (a copy of which is attached hereto and marked as Exhibit "C"), dated October 13, 2009 which was forwarded by Canada Post to the address set out by the Appellant in her Notice of Appeal.
2. A Notice of Hearing (a copy of which is attached hereto and marked as Exhibit "D"), in respect of the appeal, dated October 13, 2009 was also forwarded by Canada Post Xpresspost to the Appellant's address.
3. The letter contained in Exhibit C was not returned and assumed to be delivered.
4. On November 13, 2009, Canada Post returned to the Commission the above mentioned letter (Exhibit D) sent by Xpresspost, which had not been claimed by the Appellant.

The Commission was advised by the appeals officer who had conduct of this appeal that:

1. On October 20, 2009, the Appellant phoned the appeals officer and provided explanations for the late filing of her Application and Review. The appeals officer verbally confirmed contact information for the Appellant and reminded the Appellant of her upcoming hearing date on November 26, 2009 at 9:30 a.m. and the issue before the Commission.

2. On October 28, 2009, the Appellant phoned the appeals officer and confirmed the hearing date, time and location and advised that she would be attending the hearing of her matter.
3. No request to hold the hearing via teleconference or for an adjournment was received by the Commission from the Appellant.

The hearing commenced on November 26, 2009 at 9:30 a.m. Ms Leanne Zabudsky, MPIC's legal counsel, attended the hearing. The Appellant did not. The Commission requested Ms Zabudsky to make a submission in respect of the issue of abandonment of the appeal and as well to make a submission in respect of the merits of the appeal.

Submission for MPIC:

Counsel for MPIC submitted that the Appellant had abandoned her appeal. She noted that the Commission has considered the issue of Abandonment of an appeal in the cases of [text deleted] ([2008] M.A.I.C.A.C.D. No. 27) and [text deleted] (AC 04-71). In those decisions, the Commission adopted the criteria set out by the Manitoba Court of Appeal in *Fegol v. Asper*, 2004 MBCA 115 in determining whether an Appeal before that Court had been abandoned. The criteria to be considered are:

- 1) There must have been a continuous intention to prosecute the appeal from the time when the documents in question should have been properly filed;
- 2) there must be a reasonable explanation for the failure to file the documents;
and
- 3) there must be arguable grounds of appeal.

Counsel reviewed these criteria:

- 1) Was there a continuous intention to prosecute the appeal?

The Appellant filed her Notice of Appeal of the Internal Review decision on October 3, 2008. The Commission advised MPI by letter dated July 16, 2009 that they were having difficulty contacting the Appellant and were setting the matter down for a hearing. A Hearing was scheduled for Tuesday October 13, 2009 at 9:30 a.m. The Appellant did not attend that Hearing. Attempt was made to reach her by telephone with no success. This Abandonment hearing was subsequently scheduled.

Counsel submitted that the Appellant has failed to demonstrate any intention to prosecute her appeal as she has taken no steps to move the matter forward, has been non-responsive to the Commission's contact and failed to attend the previously scheduled Hearing.

2) Was there a reasonable explanation for the failure, in this case, to prosecute the Appeal?

To MPI's knowledge, the Appellant had not provided any explanation for failing to pursue her Appeal or, her failure to attend the Hearing. Where no explanation has been provided, it is submitted there cannot be a determination of reasonableness and the Appellant cannot meet this requirement.

3) Was there arguable grounds for the Appeal?

The issue in the Appeal is whether the Appellant had a reasonable excuse for the late filing of her Application for Review. As set out in the evidence above, the Appellant failed to provide any reason for the late filing of that Application. With no excuse whatsoever before her, the Internal Review Officer refused to grant an extension of time pursuant to the Act. It is submitted, the Appellant has no arguable grounds of Appeal.

The Appeal should therefore be dismissed.

Discussion:

The relevant Sections of the MPIC Act provide:

How notices and orders may be given to appellant

[184.1\(1\)](#) Under sections 182 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.

The report from the secretary to the Commissioner indicates that the Notices of Hearing for both scheduled hearings were sent by regular mail to the Appellant's address and not returned to the Commission. Further, the report from the Commission's appeals officer indicates that the Appellant was aware of the hearing date set for November 26, 2009 but did not attend the hearing.

Based upon these reports, the Commission finds that, pursuant to Section 184.1(1) and (2) of the MPIC Act, the Appellant is deemed to have received notice of the Commission's hearing scheduled for November 26, 2009.

The Commission has reviewed the decision of the Manitoba Court of Appeal in *Fegol vs. Asper* (supra), which the Commission considered in the [text deleted] decision noted above.

The Commission finds that the legal precedents set out by the Manitoba Court of Appeal in *Fegol vs. Asper* (supra), relating to the issue of whether or not abandonment has occurred are relevant in this appeal.

The Commission finds that the Appellant, having filed a Notice of Appeal on September 29, 2008 did not make appropriate arrangements to proceed with her appeal.

The Commission determines that the Commission's officers took all reasonable steps, by telephone and letter, to set the date for the Appeal Hearing and advise the Appellant. The Notice of Appeal dated October 13, 2009 advised the Appellant that if she did nothing, the Commission may proceed in rendering a decision in her absence. No further steps were taken by the Appellant in regard to the hearing or the appeal.

The Commission therefore concludes that the Appellant's conduct clearly indicated that she had no continuous intention of processing her appeal.

In respect of the merits of the appeal, the Commission finds that the Appellant has not established reasonable grounds to proceed with the appeal. She has failed to submit any evidence or reasons for the Commission to consider in regard to the late filing of her Application for Review. She has taken no further steps to move the appeal forward or to submit evidence in support of the appeal.

The Commission therefore determines that the Appellant has failed to establish, on a balance of probabilities, that there was a continuous intention by her to prosecute her appeal from the time she filed the Notice of Appeal. We also find that the Appellant has failed to establish that she had a reasonable excuse for the late filing of her Application for Review.

The Commission, for these reasons, confirms the Internal Review Officer's decision dated September 5, 2008 and dismisses the Appellant's appeal.

Dated at Winnipeg this 17th day of December, 2009.

LAURA DIAMOND