

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-10-111**

PANEL: Ms Yvonne Tavares

APPEARANCES: The Appellant, [text deleted], was represented by Mr. Anselm Clarke of the Claimant Adviser Office; Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Matthew Maslanka.

HEARING DATE: January 17, 2011

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

RELEVANT SECTIONS: Section 174 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, [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 August 14, 2008.

Section 174 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.

Requirements for appeal

[174\(2\)](#) An appeal of a review decision must be made in writing and must include the claimant's mailing address.

The Appellant's Notice of Appeal from the Internal Review Decision of August 14, 2008 was received by this Commission on August 11, 2010. As the Notice of Appeal was filed beyond the 90-day time limit set out in Section 174 of the MPIC Act, an explanation was sought from the Appellant outlining her reasons for the late filing of the appeal. On October 6, 2010, the Claimant Adviser Office, on behalf of the Appellant, forwarded a letter to the Commission outlining the Appellant's reasons for her failure to file the Notice of Appeal within the statutory time frame. In this correspondence, the Claimant Adviser, on behalf of the Appellant, explained that the Appellant believed that she didn't have to file a separate appeal on the issue arising out of the August 14, 2008 Internal Review Decision, as she already had another appeal open with the Claimant Adviser Office.

A hearing was subsequently convened in order to determine whether the Appellant had a reasonable excuse for her failure to appeal the Internal Review Decision of August 14, 2008 to the Commission, within the 90-day time limit set out in Section 174 of the MPIC Act.

At the hearing, the Claimant Adviser, on behalf of the Appellant, argued that the Commission should extend the time for the Appellant to file her Notice of Appeal from the Internal Review Decision of August 14, 2008. The Claimant Adviser submitted that:

1. There was an arguable issue to be determined on the appeal with respect to the Appellant's entitlement to a permanent impairment award. Immediately prior to the date of the Internal Review Decision, the Appellant had undergone surgery and therefore there

was further medical information to be considered with respect to the Appellant's entitlement to a permanent impairment benefit.

2. The Appellant was under the impression that once she had filed an appeal, all appeals relating to the same accident would be dealt with together. As she already had an appeal pending, and she was represented by the Claimant Adviser, she was waiting to be contacted by the Claimant Adviser Office to deal with both of her appeals. The Appellant assumed that the Claimant Adviser Office was aware of the August 14, 2008 Internal Review decision, even though she had never forwarded a copy to them.
3. The Appellant felt that she simply had to wait her turn with the Claimant Adviser Office and then all appeals would proceed together, since they were all part of the same claim file with MPIC.
4. There is no prejudice to MPIC if the appeal proceeds as the delay does not affect the amount of the permanent impairment benefit payable to the Appellant.

Accordingly, the Claimant Adviser requested that the Appellant be allowed an extension of time in order to file the Notice of Appeal from the Internal Review Decision dated August 14, 2008.

At the hearing, counsel for MPIC submitted that additional time should not be allowed to the Appellant for the filing of her Notice of Appeal. Counsel for MPIC argues that:

1. The Appellant had prior experience filing an appeal and was therefore aware of the procedure required to file an appeal with the Commission.
2. The appeal was almost two years late, which was not an insignificant delay in filing the Notice of Appeal.
3. The Internal Review Decision of August 14, 2008, at page 4, clearly set out the appeal provisions and provided the 90-day notice within which to appeal to the Commission.

4. The Appellant received the decision in August 2008, but did nothing further to pursue her appeal. The Appellant assumed that the Claimant Adviser Office would be aware of the new decision, but did nothing to confirm that assumption. Rather she proceeded on the mistaken and unreasonable assumption that the Claimant Adviser Office was aware of the August 14, 2008 Internal Review Decision.

Accordingly, counsel for MPIC submits that an extension of time should not be allowed for the Appellant to file the Notice of Appeal from the Internal Review Decision of August 14, 2008.

Pursuant to Section 174 of the MPIC Act, the Commission may, in its discretion, allow an Appellant who has failed to meet the 90-day statutory time limit to appeal a review decision to the Commission, an extension of time to do so. The Appellant must satisfy the Commission that there is a reasonable excuse for failing to appeal within the time limit set out in the MPIC Act and a good reason for extending that time.

Upon a consideration of the totality of the evidence before it, 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 Decision dated August 14, 2008 to the Commission within the 90-day time limit set out in Section 174 of the MPIC Act. The Commission finds that a reasonable individual would not have assumed for almost two years, that an appeal was proceeding with the Claimant Adviser Office, without making some inquiries regarding that process. Accordingly, the Appellant's stated reasons for the delay simply do not provide a reasonable excuse for failing to meet the statutory time limit.

Accordingly, by the authority of Section 174 of the MPIC Act, the Commission will not extend the time limit within which the Appellant may appeal the Internal Review Decision dated August 14, 2008 to the Commission.

Dated at Winnipeg this 4th day of February, 2011.

YVONNE TAVARES