

Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-10-51

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 Ms Alison Caldwell.

HEARING DATE: December 15, 2010

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 December 2, 2009.

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 December 2, 2009 was received by this Commission on April 12, 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 his reasons for the late filing of the appeal. On August 20, 2010, the Claimant Adviser Office, on behalf of the Appellant, forwarded a letter to the Commission outlining the Appellant's reasons for his failure to file the Notice of Appeal within the statutory time frame. In this correspondence, the Appellant explained that he was late filing his appeal because "*Due to the injuries, I am unable to write, my memory has been affected. I don't eat or sleep properly. I am taking strong medications which also affect my memory and my ability to keep things straight.*"

A hearing was subsequently convened in order to determine whether the Appellant had a reasonable excuse for his failure to appeal the Internal Review Decision dated December 2, 2009 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 his Notice of Appeal from the Internal Review Decision of December 2, 2009. The Claimant Adviser argued that:

1. There was an arguable issue to be determined on the appeal, since the Appellant was not actually assessed by the occupational therapist when the last Personal Care Assistance Assessment Tool was completed.

2. The Appellant's ill health led to him being easily confused and having difficulty dealing with multiple issues. The Appellant's poor health was responsible for the Appellant missing the deadline for the timely filing of the Notice of Appeal.
3. The Appellant and the occupational therapist had a misunderstanding which resulted in the score of 0 on the Appellant's last Personal Care Assistance Assessment Tool and therefore his appeal should be allowed to proceed.

Further, the Claimant Adviser argued that the 44-day delay in filing the Notice of Appeal was not excessive and that there had been no prejudice to MPIC by the delay. 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 December 2, 2009.

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

1. The Appellant was well aware of the 90-day time limit, having been so informed by the Internal Review Decision and by two separate letters from the case manager dated February 4, 2010 and February 8, 2010 reiterating the deadline for filing the Notice of Appeal to the Commission;
2. The appeal was over 40-days late, which was not an insignificant delay in filing the Notice of Appeal.
3. The Appellant continued to show an ability to collect invoices for personal care assistance and submit them to MPIC throughout the appeal period. Counsel for MPIC argues that the Notice of Appeal is basic and could easily have been filled out, even by the Appellant considering that he was able to continue submitting invoices throughout the appeal period.

4. Counsel for MPIC also notes that the Appellant was continuing to deal with his case manager with regards to other ongoing claims issues throughout the appeal period.
5. Counsel for MPIC submits that there is no medical evidence supporting that the Appellant was unable to file his Notice of Appeal.
6. Counsel for MPIC argues that there is no arguable issue to be determined on the appeal since the occupational therapist was of the opinion that the Appellant was not precluded from doing household tasks.

Accordingly, counsel for MPIC submits that an extension of time should not be allowed for the Appellant to file a Notice of Appeal from the Internal Review Decision of December 2, 2009.

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 his failure to appeal the Internal Review Decision dated December 2, 2009 to the Commission, within the 90-day time limit set out in Section 174 of the MPIC Act. The Commission finds that the Appellant's stated reasons for the delay simply do not provide a reasonable excuse for failing to meet the statutory time limit. The Commission finds that there is a lack of medical evidence to establish a reasonable basis upon which to find that the Appellant had any cognitive difficulties which affected his ability to handle his affairs on his own behalf.

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 December 2, 2009 to the Commission.

Dated at Winnipeg this 11th day of January, 2011.

YVONNE TAVARES