

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-09-26**

PANEL: Ms. Laura Diamond

APPEARANCES: The Appellant, [text deleted], appeared on his own behalf; Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Dean Scaletta.

HEARING DATE: May 6, 2009

ISSUE(S): Whether an extension of time should be granted to the Appellant to file his 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 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 was injured in a motor vehicle accident on July 30, 2003. On February 24, 2005, the Appellant's case manager wrote to him indicating that there was no Permanent Impairment Entitlement as a result of his motor vehicle accident. On August 15, 2007, the Appellant requested an Internal Review of this decision.

On October 24, 2007 an Internal Review Officer for MPIC considered whether an extension of the time limit set out under Section 172(2) of the Act for filing an Application for Review should be granted, as the Appellant had missed the deadline for filing this application.

The Internal Review Officer did not accept the Appellant's explanation as a reasonable excuse for the lateness of his Application for Review and did not grant an extension for the filing of the application.

As well, the Internal Review Officer went on to consider, should she be wrong on that point, whether the Appellant suffered any permanent impairment as a result of the motor vehicle accident of July 30, 2003. She concluded that there was no objective medical evidence of a permanent impairment as a result of the motor vehicle accident and confirmed the case manager's decision that the Appellant was not entitled to any Permanent Impairment payments as a result of the motor vehicle accident of July 30, 2003.

It is from this decision of the Internal Review Officer dated October 24, 2007 that the Appellant has now appealed.

The Internal Review Decision set out, on page 3 of the decision, that if the Appellant was unsatisfied with the decision, he would have 90 days within which to appeal to the Automobile Injury Compensation Appeal Commission.

The Appellant filed a Notice of Appeal from the decision of the Internal Review Officer with the Commission on February 10, 2009.

The Appellant's Notice of Appeal was filed beyond the 90 day time limit set out in Section 174 of the Act. The Appellant is requesting an extension of time in order to file a Notice of Appeal from the decision of the Internal Review Officer.

The Appellant's Notice of Appeal set out reasons why he was seeking an extension of the 90 day time limit. He stated:

“Any delay in sending this appeal was due to my mother not feeling well mainly because of the stress this whole thing has done to her.

To set a time element as to when to appeal etc. is ridiculous (sic) as it is MPI stating I am going to walk unassisted again. I have been waiting for years!!”

The Appellant also gave evidence at the hearing. He explained that he suffers from Cerebral Palsy, and is now disabled and required to use a walker, which he did not have to do before the motor vehicle accident. He indicated that as a result, he was under a lot of stress.

He also indicated that, since he was [text deleted], he has had to deal with government departments and always seems to be in a constant fight with government people. The motor vehicle accident occurred in July of 2003 and he is still “sitting on a walker”. It was his belief that MPIC had prejudged him because he has a disability and also had a car accident. He indicated that he was very frustrated with all of the paperwork for MPIC. The Appellant also indicated that he felt he had not been dealt fairly by MPIC and that he was entitled to a Permanent Impairment Benefit. He wanted to be compensated for his motor vehicle accident and also for the neglect and inappropriate actions of MPIC. He has lived with Cerebral Palsy for [text deleted] years and now he is once again dealing with another department of the government.

It was for all these reasons that the Appellant submitted he had failed to meet the 90 day time limit for filing his appeal. He submitted that the Commission should therefore extend the 90 day deadline for the filing of his Notice of Appeal.

Counsel for MPIC provided a letter dated March 9, 2009, setting out some relevant factors for consideration in regard to the extension of the 90 day time limit. At the hearing, he referred to this letter and also summarized MPIC's reasons for concluding that an extension of time was not warranted for the filing of the Notice of Appeal in this case.

Counsel for MPIC noted that the case manager's decision which preceded the Review and Appeal process was dated February 24, 2005, more than four years ago. The written request for the Internal Review was not received until August 21, 2007, which was more than two years beyond the 60 day limit in the case manager's decision.

Counsel for MPIC also submitted that the investigation leading up to the case manager decision under review was reasonably thorough and that no new medical information supporting a claim for Permanent Impairment Benefits had been provided. This was a very narrow issue of Permanent Impairment Benefits, which is a defined program under the Personal Injury Protection Plan. The Internal Review Officer had identified, from the medical evidence, that the Appellant suffered muscular strain without a structural cause, evidence of a fracture or dislocation or other structural change to the bony structure of the back. Absent such evidence, it did not seem likely that the Appellant would be able to establish, in the absence of something more specific, an entitlement to Permanent Impairment Benefits. This however does not prevent the Appellant from bringing that information forward to the case manager in the future, should he obtain it.

Discussion:

Section 174(1) 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

Pursuant to Section 174 of the MPIC Act, the Commission has the discretionary power to extend the time for appealing an Internal Review Decision. In exercising its discretion, the Commission may consider various relevant factors such as:

1. the actual length of the delay compared to the 90 day time period set out in Section 174 of the MPIC Act;
2. the reasons for the delay;
3. whether there has been any prejudice resulting from the delay;
4. whether there was any waiver respecting the delay; and
5. any other factors which argued to the justice of the proceedings.

The Commission has reviewed the evidence and submissions before it, and upon a consideration of the relevant factors surrounding the delay, the Commission finds that the Appellant has failed to establish, on a balance of probabilities, a reasonable and credible excuse for failing to appeal the Internal Review Decision to the Commission within the 90 day time limit set out in Section 174 of the MPIC Act and on the final page of the Internal Review Decision dated October 24, 2007. While the Commission understands that the Appellant experienced a good deal of stress and frustration at MPIC's requirement that he deal with the relevant paperwork in order to advance and support his claim for benefits as a result of the motor vehicle accident, the

Commission does not find that his feelings of frustration and stress alone, in the absence of other evidence, establishes a reasonable excuse for failing to appeal the Internal Review Decision within the time limits.

As a result, and for these reasons, the Commission will not extend the time limit in which the Appellant may appeal the Internal Review Decision dated October 24, 2007.

Dated at Winnipeg this 21st day of May, 2009.

LAURA DIAMOND