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Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-06-66**

PANEL: Ms Yvonne Tavares

APPEARANCES: The Appellant, [text deleted], was represented by Ms Nicole Napoleone of the Claimant Adviser Office; Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Terry Kumka.

HEARING DATE: May 18, 2011

ISSUE(S): Extension of time to file Application for Review

RELEVANT SECTIONS: Section 172 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 is appealing the Internal Review Decision dated April 3, 2006 with regards to whether she has provided a reasonable excuse for failing to file her Application for Review within the 60-day period set out in Section 172(1) of the MPIC Act. The Internal Review Decision dated April 3, 2006 rejected the Appellant's Application for Review for failure to comply with Section 172(1) of the MPIC Act. The Appellant's Application for Review was filed after the 60-day period set out in Section 172(1) had expired.

Section 172 of the MPIC Act provides as follows:

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.

Response within 30 days

[172\(3\)](#) The corporation shall respond to the claimant within 30 days after receiving an application for review.

(a) in the opinion of the corporation, a substantive or procedural error was made in respect of the decision; or

(b) the decision contains an error in writing or calculation, or any other clerical error.

The Appellant, [text deleted], was involved in a motor vehicle accident on November 17, 2001, when her vehicle was rear-ended. On August 3, 2004, MPIC's case manager issued a decision letter respecting recovery of the child care weekly indemnity benefits that had been paid to the Appellant for the period of November 17, 2001 to July 5, 2002. The Appellant filed an Application for Review of that decision.

The Application for Review was dated February 20, 2006 and stamped received by MPIC on March 16, 2006. The Internal Review Officer considered whether the Appellant had a reasonable excuse for failing to apply for a review of the case manager's decision within the time period provided in the MPIC Act. The letter from the Appellant, seeking the Application for Review, advised that when she got the letter of appeal package in the mail, she did send it back to MPIC but they did not receive it. The Internal Review Officer did not accept the Appellant's

explanation that she had filed an Application for Review before the one received on March 16, 2006, given that the Appellant only mentioned sending in an Application for Review after receiving a Certificate of Entitlement from MPIC. She therefore found that there was no reasonable excuse for the Application for Review having been filed so excessively late and she rejected the Appellant's Application for Review on that basis.

At the appeal hearing, the Claimant Adviser submitted that the Appellant was suffering from whiplash and depression following the motor vehicle accident. She maintains that the Appellant had the intention of filing her Application for Review as soon as she received the case manager's decision. The Claimant Adviser contends that there are several notes and correspondence on the file which confirm that the Appellant had indicated that she was not satisfied with the decision of August 4, 2004 from the outset. However, the Appellant misplaced the Application for Review and called the case manager to request another copy. The Claimant Adviser argues that the Commission should accept the Appellant's evidence with regards to the fact that she sent in an Application for Review by ordinary mail. She maintains that it was only after the Appellant was advised that MPIC did not receive this letter that, the Appellant began to send all correspondence to MPIC by registered mail.

The Claimant Adviser submits that the Commission has the discretion to extend the time limit for the filing of the Application for Review. She argues that the Commission should exercise its discretion and extend the time limit for the Appellant to file the Application for Review. The Claimant Adviser submits that there has been no prejudice to MPIC due to the delay in the filing of the Application for Review. As a result, the Claimant Adviser requests that the Commission grant an extension of time for the Appellant to file her Application for Review in order that the substantive issues on the appeal can be heard by the Commission.

Counsel for MPIC submits that the onus is on the Appellant to establish a reasonable excuse for her failure to file the Application for Review within the statutory time limit. Counsel for MPIC submits that the Appellant has not provided any reasonable excuse for her delay in filing the Application for Review of the case manager's decision. He maintains that there is no evidence on the file that an Application for Review was completed and mailed by the Appellant. He submits that if the Commission comes to that conclusion, there can be no reasonable excuse for her late filing.

Counsel for MPIC claims that the Appellant's depression was not a factor in the late filing of the Application for Review. The depression and her counselling took place in April 2002. Counsel for MPIC submits that there is no evidence before the Commission that the Appellant's ability to handle matters was impaired by her depression. Counsel for MPIC argues that the Appellant only dealt with the matter when she received a Certificate of Entitlement and it became evident that this was a significant and serious matter. Counsel for MPIC claims that it was only when the Appellant realized that she was going to have to repay the monies to MPIC that she dealt with the issue before MPIC. As a result, counsel for MPIC maintains that the Appellant's appeal should be dismissed on the basis of the late filing of the Application for Review.

The Commission, having considered the totality of the evidence before it, finds that the Appellant has not provided a reasonable excuse for her failure to file the Application for Review within the time period set out in Section 172(1) of the MPIC Act. The Commission does not accept the Appellant's testimony that she mailed the Application for Review to MPIC in or around October 2004. The Appellant did not file any other evidence in support of her testimony. Further she maintained that she never followed up with MPIC on the status of her Application for Review, as she just assumed that they were handling it. The Commission finds that the

Appellant's testimony in this regard was not credible and there is simply no other evidence to confirm that an Application for Review was mailed at that time. Having determined that the Appellant did not file an Application for Review in or around October of 2004, the Commission finds that the Appellant has not provided any reasonable excuse for failing to apply for a review of the case manager's decision within the statutory time period and for the lengthy delay in doing so. Accordingly, the Appellant's appeal is dismissed and the decision of MPIC's Internal Review Officer dated April 3, 2006 is confirmed.

Dated at Winnipeg this 2nd day of June, 2011.

YVONNE TAVARES