

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-10-167**

PANEL: Ms Laura Diamond

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. Matthew Maslanka and Shannon Paterson.

HEARING DATE: April 20, 2011

ISSUE(S): To determine whether the Commission should extend the time for filing the 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 was injured in a motorcycle accident on June 21, 2007 and reported an injury to his right hip, lumbar strain and ankle sprain. As a result, the Appellant requested to be reimbursed for chiropractic treatments between November 8, 2007 and January 5, 2009.

In a decision letter dated February 22, 2010, the Appellant's case manager wrote to him to advise that he would not receive payment for his 14 chiropractic treatments during that period.

The Appellant filed an Application for Review from the decision of his case manager and a hearing was held on April 14, 2010.

On July 19, 2010 the Internal Review Officer issued a decision confirming the case manager's decision that the information on file did not support a causal relationship between the Appellant's back symptoms and his motorcycle accident of June 21, 2007. The Internal Review Officer found that the Appellant was correctly denied reimbursement for the chiropractic treatments.

It is from this decision of the Internal Review Officer that the Appellant has now appealed.

The Appellant filed a Notice of Appeal with the Commission dated November 29, 2010, received on December 2, 2010.

The Appellant also filed with the Commission a letter dated December 2, 2010 explaining that the reason for the late filing of his Notice of Appeal form was due to other outstanding appeals which he had been pursuing with MPIC. He indicated he filled out four Applications for Review of Injury Claim Decisions hoping someone would address them, while speaking with case managers and their supervisors, but he believed the issue of chiropractic care was not addressed.

Evidence and Submission for the Appellant:

The Appellant testified at the hearing regarding the extension of the time period for filing a Notice of Appeal. He explained that he was self-employed, and had been doing [text deleted] for approximately 20 years.

He also explained that due to the discomfort he was feeling from the motor vehicle accident he takes medications, such as sleeping pills, as he finds it difficult to sleep more than three or four hours a night.

He also explained that he had been in several other motor vehicle accidents prior to the June 2007 motor vehicle accident, some dating back to 1998.

The Appellant testified that he found the Personal Injury Protection Plan program very confusing and did not totally understand all the scenarios required for going through the process.

He had been dealing with different case managers and had even hired [text deleted], a lawyer, to assist him with one of his appeals dealing with the purchase of equipment.

After the 1998 motor vehicle accident, he was in receipt of chiropractic treatments funded by MPIC.

The Appellant read for the panel and explained the letter he had filed with the Commission on December 2, 2010. He indicated that he had gone to see his case manager, [text deleted] and explained that he was coming down to discuss four issues. However, at that time she had only addressed the chiropractic issue and he was surprised that none of the other issues he talked about were addressed.

He then met with the Internal Review Officer, [text deleted], who then denied chiropractic treatments in her decision letter. He said that he had asked to talk to her boss and asked for phone numbers for other individuals to help him. However, her decision was made during his peak season at work, as summertime was very busy in his business. He described working 12 to 14 hours a day during that period with his mail piling up, since he didn't have time to go through all of it. He had to attend to his business in this way as it was a very competitive business.

This did not leave him much time in the summer to properly deal with the issues involved in his appeal regarding chiropractic benefits.

Counsel for the Appellant submitted that the Appellant had missed the 90 day time limit for filing a Notice of Appeal by less than 6 weeks. She noted that the Appellant testified that he had been very confused by the number of appeals he had and had found it too complicated to handle his bodily injury claim by himself.

After one of his previous motor vehicle accidents, in 1998, MPIC had hired a lawyer to assist the Appellant with certain aspects of that claim file and, in fact, chiropractic funding had been approved in another, subsequent motor vehicle accident.

Counsel noted that the Appellant was a self-employed businessman [text deleted] and that his business peaks during the summer months. The majority of his annual income is earned during those summer months and everything else is put on hold until the next season, when he gets a break.

Counsel noted that Section 174(1) of the Act provided the Commission with the discretionary power to extend the time limits for filing appeals. In exercising this discretion, the Commission considers relevant factors such as the reason for delay in filing the appeal. Counsel noted that the Appellant had never attended at the Commission before on a previous claim and does not understand the system or the PIPP program. He was working 12 to 15 hours a day during the summer which did not leave him much time to deal with his appeal.

Counsel also submitted that there was minimal prejudice to MPIC from this delay. The Appellant had undergone 14 chiropractic treatments during a particular time period and these treatments had even been reinstated following a subsequent motor vehicle accident.

Counsel also submitted that the issue under appeal has merit and that the chiropractor, [Appellant's chiropractor], would be consulted as to the merits of the appeal and underlying causation issue.

Submission for MPIC:

Counsel for MPIC noted that following the motor vehicle accident of June 2007, the Appellant had been in receipt of other PIPP benefits. However, it was only from the case manager's decision letter regarding chiropractic benefits, dated February 22, 2010, that the Appellant was now seeking an Internal Review or appeal decision. He noted that an examination of the chiropractic reports showed a lack of reference to the 2007 motor vehicle accident and that a review by Health Services Consultants had determined that this need for chiropractic treatment was due to other, pre-existing conditions.

Counsel noted that the Appellant's Notice of Appeal was not filed until December 2, 2010. He submitted that the Appellant had not provided a reasonable excuse for the late filing.

Counsel submitted that being busy between July 19th and December 2nd is not an excuse for delay in filing a Notice of Appeal. Everyone is busy at some point or other, he submitted, and this does not set aside the statutorily imposed obligation to file appeals on time. On cross-examination, the Appellant had acknowledged that the right to appeal and the time limits were clearly set out in the Internal Review Decision.

In considering whether or not the Appellant's appeal had a reasonable prospect of success, counsel noted that, according to the Internal Review Officer, reports were requested and received from [Appellant's Doctor], and [Appellant's Chiropractor]. As [Internal Review Officer] stated in the Internal Review Decision, these reports and these physicians did not link the Appellant's symptoms to the motor vehicle accident in question. The Internal Review Officer then sought a further report from [Appellant's Chiropractor] asking if the treatments were connected to the 2007 motor vehicle accident, but the response received, dated April 23, 2010, did not mention the 2007 motor vehicle accident at all.

Counsel submitted that it was not likely that this evidence regarding causation would change. Accordingly, counsel submitted that the Appellant had not provided a reasonable excuse for the delay in filing his Notice of Appeal and that the 90 day time limit should not be extended.

Discussion:

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.

Pursuant to Section 174, 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 to do so. The Appellant must satisfy the Commission that there is a reasonable excuse for failing to appeal within the time limits set out in the MPIC Act and a good reason for extending that time.

Upon a consideration 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 July 19, 2010 to the Commission, within the 90 day time limit set out in Section 174 of the MPIC Act. The Commission does not find that the Appellant's claim that he was too busy at work to open his mail and file an appeal provides a reasonable excuse for the failure to file a Notice of Appeal within the proper time limits. Nor was the Commission convinced that the Appellant, who has some experience in dealing with MPIC personal injury claims, was too confused to attend to the filing of an appeal document within the timelines clearly set out on the final page of the Internal Review Decision.

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 July 19, 2010 to the Commission.

Dated at Winnipeg this 10th day of May, 2011.

LAURA DIAMOND