

**Automobile Injury Compensation Appeal Commission**

**IN THE MATTER OF an Appeal by [the Appellant]  
AICAC File No.: AC-11-046**

**PANEL:** Ms Yvonne Tavares, Chairperson  
Ms Leona Barrett  
Ms Sandra Oakley

**APPEARANCES:** The Appellant, [text deleted], appeared on his own behalf;  
Manitoba Public Insurance Corporation ('MPIC') was  
represented by Ms Cynthia Lau.

**HEARING DATE:** August 8, 2012

**ISSUE(S):** 1. Whether the Appellant has a reasonable excuse for the  
late filing of his Application for Review.  
2. Whether the Appellant was properly classified as a non-  
earner.

**RELEVANT SECTIONS:** Sections 85(1) and 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, [text deleted], was involved in a motor vehicle accident on December 29, 2009. As a result of that accident, the Appellant complained of neck pain, left shoulder pain, left-sided rib pain, daily headaches and jaw pain. Due to the bodily injuries which the Appellant sustained in the motor vehicle accident, he became entitled to Personal Injury Protection Plan ("PIPP") benefits in accordance with Part 2 of the MPIC Act. The Appellant is appealing the Internal Review Decision dated December 28, 2010, with respect to the following issues:

1. whether the Appellant had a reasonable excuse for the late filing of his Application for Review; and
2. whether the Appellant was properly classified as a non-earner, for the purpose of receiving income replacement indemnity (“IRI”) benefits.

**1. Extension of Time to File Application for Review:**

The case manager’s decision was dated August 24, 2010. The Appellant’s Application for Review with respect to that decision was dated November 4, 2010 and filed with MPIC on November 15, 2010. The Internal Review Officer, in her decision dated December 28, 2010, rejected the Appellant’s Application for Review for failure to comply with Section 172 of the MPIC Act.

At the hearing of the appeal, the Appellant advised that he was trying to assemble further information regarding his expenses for his farming operation prior to filing his Application for Review. He advised that he was only able to get certain receipts at the beginning of November 2010 and then he filed his Application for Review shortly thereafter. He did not feel that it was a significant delay and thought that MPIC would still consider his Application for Review.

Subsections 172(1) and (2) 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.

The Commission, having considered the totality of the evidence before it, finds that the Appellant has provided a reasonable excuse for his failure to file his Application for Review of the case manager's decision dated August 24, 2010 within the time period set out in Section 172(1) of the MPIC Act. The Commission accepts the Appellant's explanation that he was attempting to gather further information for use on the review, prior to filing the Application. The case manager's decision had specifically noted that "*Should you have any further information that would establish your self-employment, please provide this to us for our consideration.*" The Appellant was under the impression that he had to provide that information together with his Application for Review for consideration by the Internal Review Officer. In these circumstances, we find that the Appellant has provided a reasonable excuse for failing to apply for a review of the case manager's decision within the statutory time period. Accordingly, the time for filing the Application for Review is extended.

## **2. Classification as a Non-Earner:**

The case manager's decision dated August 24, 2010 found that there was insufficient documentation supporting the Appellant's self-employment as a [text deleted] farmer. Accordingly, the case manager determined that the Appellant had not met the definition of holding employment at the time of the motor vehicle accident of December 29, 2009. He was therefore classified as a non-earner and not entitled to IRI benefits during the first 180 days following the motor vehicle accident.

On review, the Internal Review Officer dismissed the Appellant's Application for Review and confirmed the case manager's decision. The Internal Review Officer found that "*(O)wning [text deleted] does not establish that you were a bona fide [text deleted] farmer engaged in an active business venture. Based on the totality of information on your file, your classification as a non-*

*earner on the date of the accident is accurate and I am, therefore, upholding the case manager's decision of August 24, 2010."*

At the appeal hearing, the Appellant submitted that he was self-employed as a [text deleted] farmer, even though he only had 10 [text deleted] at the time. He had only begun [text deleted] farming in 2007 and was trying to grow his [text deleted] herd. The Appellant also advised that as a result of the injuries sustained in the motor vehicle accident he was unable to take care of his [text deleted] and had to find another farmer to keep his [text deleted] over the winter.

Upon hearing the testimony of the Appellant, and after a careful review of all of the medical, paramedical, and other reports and documentary evidence filed in connection with this appeal, and after hearing the submissions of the Appellant and of counsel for MPIC, the Commission finds that the Appellant has failed to establish that he was prevented from performing his [text deleted] farming operations due to injuries sustained in the motor vehicle accident of December 29, 2009. As a result, the Commission finds that the Appellant is not entitled to IRI benefits.

The Commission finds that the relevant medical reports on the Appellant's file do not substantiate his inability to complete his farming activities. The relevant medical reports indicate that the Appellant was at work or capable of work during the relevant time. Further, the medical report dated May 20, 2010 from the Appellant's family physician indicates that on January 4, 2010 the Appellant's range of motion and strength in his left shoulder were normal. As a result we find that there was no functional impairment preventing the Appellant from working as a [text deleted] farmer following the motor vehicle accident of December 29, 2009.

Additionally, we note the receipt dated April 30, 2010 regarding wintering the Appellant's [text deleted] from October 2009 to April 2010. It is evident that the Appellant's [text deleted] were being looked after from October 2009, which pre-dated the December 29, 2009 motor vehicle accident. As a result, we are unable to find that the Appellant was indeed carrying out [text deleted] farming duties following the motor vehicle accident.

Accordingly, the Commission finds that the Appellant has not established an entitlement to IRI benefits as we find that the Appellant was not prevented from holding employment as a [text deleted] farmer due to injuries resulting from the motor vehicle accident of December 29, 2009. As a result, the Appellant's appeal is dismissed and the Internal Review December dated December 28, 2010 is confirmed.

Dated at Winnipeg this 17<sup>th</sup> day of August, 2012.

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**YVONNE TAVARES**

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**LEONA BARRETT**

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**SANDRA OAKLEY**