

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-12-040**

PANEL: Ms Yvonne Tavares, Chairperson
Mr. Paul Johnston
Mr. Les Marks

APPEARANCES: The Appellant, [text deleted], was represented by [text deleted];
[Text deleted] was in attendance as an Interpreter;
Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Morley Hoffman.

HEARING DATE: May 23, 2012

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 October 31, 2011.

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 October 31, 2011 was received by this Commission on March 8, 2012. 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 March 12, 2012, [text deleted], the Appellant's representative, forwarded a letter to the Commission advising that the Appellant had missed the time limit due to the reasons set out in the Notice of Appeal. In a further letter dated March 23, 2012, [Appellant's representative] explained that the Appellant was late in filing his Notice of Appeal because he had travelled to [text deleted] in December to perform last rites for his son. This was in accordance with his religious and cultural beliefs and obligations.

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 October 31, 2011 to the Commission, within the 90-day time limit set out in Section 174 of the MPIC Act.

At the hearing, the Appellant's representative, on behalf of the Appellant, submitted that the Commission should extend the time for the Appellant to file his Notice of Appeal from the Internal Review Decision of October 31, 2011. The Appellant's representative argued that:

1. The Appellant apologized for his failure to file the Notice of Appeal in the time limit set out in the MPIC Act. The Appellant was distracted and preoccupied preparing for his upcoming trip to [text deleted].

2. The Appellant travelled to [text deleted] every year in order to take part in prayers for his deceased son. This is a religious ceremony and a ritual which the Appellant takes part in annually.
3. There is an arguable issue to be determined on the appeal, since the Appellant is still undergoing treatments which he argues are related to the motor vehicle accident. He argues that the Appellant should have the opportunity to have his case heard and determined by the Commission.

Accordingly, the Appellant's representative requested that the Appellant be allowed an extension of time in order to file the Notice of Appeal from the Internal Review Decision dated October 31, 2011.

At the hearing, counsel for MPIC advised that although MPIC had some reservations about why the Appellant's representative could not have been given instructions to proceed with the appeal by telephone, MPIC did not take an adverse position with respect to granting the Appellant an extension of time to file his Notice of Appeal.

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 limits 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 provided a reasonable excuse for his failure to appeal the Internal Review Decision dated October 31, 2011 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, that he was distracted and preoccupied by his upcoming trip to [text deleted], provide a reasonable excuse for failing to meet the statutory time limit. Further, the Commission finds that:

1. the Appellant had indicated his intention to appeal the Internal Review Decision within the 90-day time limit; and
2. the delay in filing the Notice of Appeal was not excessive and the Appellant proceeded to file the Notice of Appeal in a timely fashion upon his return to [text deleted] from [text deleted].

Accordingly, by the authority of Section 174 of the MPIC Act, the Commission will extend the time limit within which the Appellant may appeal the Internal Review Decision dated October 31, 2011 to the Commission.

Dated at Winnipeg this 11th day of June, 2012.

YVONNE TAVARES

PAUL JOHNSTON

LES MARKS