

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [The Appellant]
AICAC File No.: AC-12-073**

PANEL: Ms Laura Diamond, Chairperson
Mr. Neil Cohen
Ms Beth Rutherford

APPEARANCES: The Appellant [text deleted] was not present at the appeal hearing;
Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Andrew Robertson.

HEARING DATE: March 7, 2013

ISSUE(S): Whether the Appellant's injuries were caused by the motor vehicle accident of August 13, 2011.

RELEVANT SECTIONS: Section 184.1 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. ALL REFERENCES TO THE APPELLANT'S PERSONAL HEALTH INFORMATION AND OTHER PERSONAL, IDENTIFYING INFORMATION HAVE BEEN REMOVED.

Reasons For Decision

A Notice of Appeal was filed by the Appellant on May 2, 2012 in respect of an Internal Review decision dated March 6, 2012, relating to Personal Injury Protection Plan ("PIPP") benefits. The Appellant was denied coverage for her injury claims, on the basis of insufficient evidence to show that her injuries were caused by a the motor vehicle accident.

The Notice of Appeal contained an address for the Appellant on [text deleted] in Winnipeg.

Staff at the Commission tried to contact the Appellant in July of 2012 in order to send her a copy of her indexed file. The Appellant indicated she would attend at the Commission and pick up the indexed file, but she did not attend.

In September of 2012, a letter sent to the Appellant regarding contact information to arrange delivery of her indexed file was returned to the Commission marked “moved/unknown”.

The Commission staff attempted to find current contact information for the Appellant by researching with such contacts as Social Assistance, Canada 411 and the Appellant’s caregivers, throughout October, November and December of 2012, and was advised that the appellant had moved to an address at [text deleted].

The Commission’s secretary was instructed by the Commission to set this appeal down for a hearing and, as a result, a hearing was set for March 7, 2013 at 9:30 a.m. The Commission’s secretary further advised the Commission that:

- 1) A Notice of Hearing (a copy of which is attached hereto and marked as Exhibit “A”) in respect of this appeal, dated January 15, 2013 was forwarded by Canada Post Xpresspost and regular mail to the address on [text deleted], listed on the Appellant’s Notice of Appeal, as well as to the address on [text deleted] which the Commission had obtained through its research.
- 2) A scanned delivery date and signature, dated January 18, 2013 was provided by Canada Post to the Commission on January 20, 2013. A copy of this scanned delivery date and signature of the recipient from Canada Post is attached hereto and marked as Exhibit “B”.

The appeal hearing commenced on March 7, 2013 at 9:40 a.m. MPIC's legal counsel was present at the commencement of the hearing, but the Appellant did not attend at that time.

At the commencement of the hearing, MPIC's legal counsel submitted that the Appellant had been properly served with a Notice of Hearing pursuant to Section 184.1(1)(b) and Section 184.1(2) of the MPIC Act which provides as follows:

184.1(1) Under sections 182 and 184, a notice of a hearing, a copy of a decision or a copy of the reasons for a decision must be given to an appellant

(b) by sending the notice, decision or reasons by regular lettermail to the address provided by him or her under subsection 174(2), or if he or she has provided another address in writing to the commission, to that other address.

When mailed notice received

184.1(2) A notice, a copy of a decision or a copy of reasons sent by regular lettermail under clause (1)(b) is deemed to be received on the fifth day after the day of mailing, unless the person to whom it is sent establishes that, acting in good faith, he or she did not receive it, or did not receive it until a later date, because of absence, accident, illness or other cause beyond that person's control.

Counsel further submitted that the Commission was entitled to dismiss the Appellant's appeal on the grounds that the Appellant had abandoned her appeal and had not established, on a balance of probabilities, that she should be entitled to PIPP benefits under the Act.

Counsel referred the Commission to its previous decisions in [text deleted] AC-06-71 and [text deleted] AC-04-71. In those decisions, the Commission adopted the criteria set out by the Manitoba Court of Appeal in *Fegol v. Asper*. 2004 MBCA 115 in determining whether an appeal before the Court had been abandoned.

1. There must have been a continuous intention to prosecute the appeal from the time when the documents in question should have been properly filed;

2. there must be a reasonable explanation for the failure to file the documents; and
3. there must be arguable grounds of appeal.

Counsel for MPIC addressed these three criteria. He noted that the Commission had not had any contact with the Appellant since July 19, 2012. Mail sent by the Commission to the Appellant had been returned marked “moved/unknown” or otherwise had not been responded to. The Commission’s attempts to find a phone number for the Appellant have been entirely unsuccessful.

There was no indication on the file that the Appellant had taken any steps to advance her appeal since her last contact with the Commission in July 2012. It was therefore MPIC’s submission that the claimant’s failure to take any steps to advance her appeal in the past seven months shows a lack of continuous intention to prosecute the appeal.

Nor was counsel for MPIC aware of any documents filed or explanations made to provide a reasonable explanation for the Appellant’s failure to file further documentation or evidence in support of her appeal.

Counsel for MPIC also noted that the Appellant had not established arguable grounds for the appeal. The issue on appeal was whether or not the Appellant’s reported injuries were caused by a motor vehicle accident on or about August 13, 2011. The evidence concerning those injuries primarily consists of the Hospital Emergency Treatment Records which shows that the Appellant attended that hospital on August 14, 2011 at approximately 9:40 p.m. She was reported as having multiple abrasions on her elbow, head, back and left flank area. However, these injuries

and bruises were noted to have been “old and scabbed over” despite the examination occurring the day after the Appellant claims the motor vehicle accident occurred.

The Appellant’s file also contained an Initial Chiropractic Report completed on October 4, 2011. This report had a diagnosis of cervical and sacroiliac sprain with cervicogenic headaches, but did not address the issue of what injury or incident might have led to those symptoms, or the causation thereof. Similarly, a Personal Care Assessment dated September 13, 2011 did not address these issues.

Accordingly, counsel submitted that there was no evidence supporting the Appellant’s claim that her injuries were the result of the motor vehicle accident of August 13, 2011 and it was MPIC’s position that there were no arguable grounds of appeal and that the appeal should be dismissed.

Discussion:

The Commission finds that the Appellant received the Notice of Hearing, as evidenced by her signature on the Xpresspost Delivery Receipt. As a result, the Commission finds that the Appellant has been properly served with the Notice of Hearing pursuant to Section 184.1 of the MPIC Act.

The Commission also finds that the legal principles set out by the Manitoba Court of Appeal in *Fegol v. Asper* (supra), relating to the issue of abandonment, are relevant in this appeal to the issue of whether or not abandonment has occurred.

Following the filing of her Notice of Appeal, the Appellant filed limited evidence or documentation in support of the appeal. She failed to attend at the date scheduled for the appeal hearing, and did not contact the Commission to provide any reasons for these failures.

The Commission therefore concludes that the Appellant's conduct clearly indicated that she had no continuous intention of processing her appeal and has not provided any reasonable explanation to the Commission for this failure.

In respect of the merits of the appeal, the Commission finds that the Appellant has not established any arguable grounds to proceed with the appeal, given her failure to establish a causal relationship between the symptoms reported and the motor vehicle accident, and the lack of any evidence regarding this relationship on the Appellant's indexed file, or at the hearing.

The Commission therefore determines that the Appellant has failed to establish, on a balance of probabilities, that MPIC incorrectly assessed her entitlement to benefits.

In summary, the Commission concludes that the Appellant has abandoned her appeal for the following reasons:

1. There was not a continuous intention by the Appellant to prosecute the appeal from the time she filed her Notice of Appeal.
2. The Appellant did not provide a reasonable explanation for failing to process her appeal.
3. There were no arguable grounds for her appeal

The Commission, for these reasons, confirms the Internal Review Officer's decision dated March 6, 2012 and dismisses the Appellant's appeal.

Dated at Winnipeg this 19th day of March, 2013.

LAURA DIAMOND

NEIL COHEN

BETH RUTHERFORD