

**Automobile Injury Compensation Appeal Commission**

**IN THE MATTER OF an Appeal by [The Appellant]  
AICAC File No.: AC-12-096**

**PANEL:** Ms Yvonne Tavares, Chairperson  
Ms Jacqueline Freedman  
Mr. Guy Joubert

**APPEARANCES:** The Appellant, [text deleted], was not present at the appeal hearing;  
Manitoba Public Insurance Corporation ('MPIC') was represented by Ms Dianne Pemkowski.

**HEARING DATE:** March 11, 2013

**ISSUE(S):** Whether the Appellant's Permanent Impairment benefits were correctly assessed.

**RELEVANT SECTIONS:** Sections 127 and 129 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**

A Notice of Appeal was filed by [the Appellant] on June 29, 2012 respecting the Internal Review Decision dated April 4, 2012, with regards to whether the facial impairment awards which she sustained in the motor vehicle accident of March 17, 2011 were correctly assessed and calculated. The appeal hearing was held on March 11, 2013 commencing at 9:30 a.m. The Appellant did not attend the hearing or provide any written submissions to the Commission in support of her appeal.

The Notice of Appeal contained the Appellant's address as [text deleted]. In her written submission, counsel for MPIC 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 the facial impairment awards which she sustained in the motor vehicle accident of March 17, 2011 were incorrectly assessed and calculated.

**Decision:**

The Commission finds that the Appellant received the Notice of Hearing in accordance with Section 184.1(1)(b) and Section 184.1(2) of the MPIC Act. The Notice of Hearing was sent on February 6, 2013 by regular lettermail to the address provided by the Appellant on the Notice of Appeal. 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.

Upon 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 submission of counsel for MPIC, the Commission finds that the Appellant has abandoned her appeal of the Internal Review Decision dated April 4, 2012.

The criteria to be considered in order to determine whether an appeal has been abandoned are:

1. There must have been a continuous intention to prosecute the appeal;
2. There must be a reasonable explanation for any delay in prosecuting the appeal; and
3. There must be arguable grounds of appeal.

Upon reviewing the foregoing factors, the Commission finds that:

1. The Appellant has not diligently proceeded with the prosecution of her appeal. There is no indication on the Commission's appeal file that the Appellant has taken any steps to advance this appeal. The Commission therefore accepts MPIC's submission that the Appellant's failure to take any steps to advance her appeal in over eight months since she filed her Notice of Appeal shows a lack of a continuous intention to prosecute the appeal.
2. The Appellant has not provided any explanation for failing to pursue her appeal and therefore has not met the requirements to provide a reasonable explanation for her failure to pursue her appeal.
3. The Appellant has not provided any evidence in order to support her appeal. The onus is on the Appellant to establish that the facial permanent impairment awards assessed by MPIC were incorrect. However, the only medical evidence provided since the Notice of Appeal shows corrective surgery to the impaired area. The medical documentation

before the Commission suggests that the Appellant was awarded the appropriate facial impairment awards resulting from the injuries sustained in the motor vehicle accident of March 17, 2011. The Appellant did not provide any additional oral or documentary evidence in support of her appeal. As a result, upon a consideration of the totality of the evidence before it, the Commission finds that the Appellant has not established, on a balance of probabilities, that the facial permanent impairment awards were incorrectly assessed and calculated by MPIC.

As a result, the Appellant's appeal is dismissed and the Internal Review Decision dated April 4, 2012 is confirmed.

Dated at Winnipeg this 25<sup>th</sup> day of March, 2013.

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**YVONNE TAVARES**

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**JACQUELINE FREEDMAN**

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**GUY JOUBERT**