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## **Automobile Injury Compensation Appeal Commission**

**IN THE MATTER OF an Appeal by [the Appellant]  
AICAC File No.: AC-14-033**

**PANEL:** Mr. Mel Myers, Q.C., Chairperson  
Mr. Neil Cohen  
Mr. Neil Margolis

**APPEARANCES:** The Appellant, [text deleted], was represented by Mr. Ken Kaltornyk of the Claimant Adviser Office; Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Andrew Robertson.

**HEARING DATE:** May 20, 2014

**ISSUE(S):** Whether the Appellant will be allowed an extension of time to file her appeal.

**RELEVANT SECTIONS:** Section 174(1) 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 involved in a motor vehicle accident and suffered personal injuries. An initial therapy report dated September 22, 2010 documents a clinical diagnosis of a Whiplash Associated Disorder (WAD) 2. A primary Health Care Report completed by the Appellant's physician, based on an examination of September 24, 2010 documented a clinical diagnosis of soft tissue injuries.

The Appellant was in receipt of physiotherapy treatments and acupuncture treatments. MPIC subsequently referred the Appellant for a six week rehabilitation program at [Rehabilitation (Rehab) Clinic] beginning February 7, 2011. MPIC referred the Appellant for a third party medical examination with [Independent Doctor]. In [Independent Doctor's] report of September 16, 2011, he stated that an objective loss of physical function had not been established and as such, there was no evidence of a limitation or indication imposing a restriction of work. [Independent Doctor] recommended that the Appellant return to the workplace immediately.

On November 29, 2011 MPIC referred the Appellant to [Independent Psychologist], for an independent psychological assessment. She stated that there did not appear to be any psychological symptoms present in respect of the Appellant which would limit her ability to return to her pre-employment.

MPIC arranged for video surveillance of the Appellant on January 23, 24 and 25 and February 1, 2012. The Appellant was observed working out at the gym, driving, walking, standing, shopping, lifting, reaching, bending, pushing, pulling and climbing stairs. On July 13, 2012 MPIC referred all the relevant medical reports, including the video surveillance reports to [Independent Doctor] for his review. [Independent Doctor] stated:

“The degree of inconsistency between your self-reporting levels of function to MPI when compared to your observed function outside a clinical setting is substantial...

The diagnosis of a chronic pain disorder is medically improbable.”

**Case Manager’s Decision – October 11, 2012:**

On October 11, 2012, MPIC’s senior case manager wrote to the Appellant and advised that further to their telephone conversation the letter confirmed the termination of the Appellant’s benefits under the Personal Injury Protection Plan (“PIPP”) as a result of providing MPIC and her caregivers false and inaccurate information. The case manager further stated:

1. After the Appellant’s accident, she claimed she was unable to return to her pre-accident job as a [text deleted] and had been in receipt of PIPP benefits including Income Replacement Indemnity (“IRI”).
2. Throughout her injury claim the Appellant provided MPIC and her caregivers with information concerning her accident injuries and this information was relied on in the management and determination of her PIPP benefits.

The case manager further stated:

“Despite your ongoing assertions that she (sic) have not regained your pre-accident level of function, an investigation has revealed that you have misrepresented the extent of your injuries and functional abilities and knowingly provided MPI with false and inaccurate information contrary to Section 160(a) of the Manitoba Public Insurance Corporation Act (the *Act*)...

In particular, from February 18, 2011 to June 29, 2012, your functional abilities and behavior outside a clinical setting proved to be quite different than the self reporting levels of function you expressed to MPI, your caregivers and the independent examiners.”

The case manager provided a series of examples in support of the above allegations. The case manager further stated:

“The IRI benefits that you received from February 1, 2012 to October 4, 2012 totals \$31,541.67. Section 189(1) of the *Act* (see attached) states that when a person is paid an amount for which they are not entitled the corporation is to be reimbursed for the excess payments. You are therefore required to reimburse the IRI benefits paid to you from February 1, 2012 to October 4, 2012. The MPI Special Accounts Department will be in contact with you to arrange reimbursement of the \$31,541.67 debt.”

The case manager's letter dated October 11, 2012 contained the following statement:

**“IMPORTANT**

**If you are not satisfied with this decision, you may request a review under Section 172(1) of the Manitoba Public Insurance Corporation Act. Application forms for review can be obtained from any Manitoba Public Insurance office or you can contact me directly. The Review Office must receive your written application within sixty (60) days from the date you receive this letter.”**

The Appellant filed an Application for Review of the case manager's decision of October 11, 2012 which was within the 60 day time limit as set out in the MPIC Act.

**Internal Review Officer's Decision – April 2, 2013:**

On April 2, 2013 MPIC's Internal Review Officer issued a decision indicating:

**“ISSUE**

There are two issues on this review.

1. Were the Personal Injury Protection Plan (“PIPP”) benefits correctly terminated pursuant to Section 160(a) of *The Manitoba Public Insurance Corporation Act* (“the Act”)?
2. Are you responsible for reimbursing Manitoba Public Insurance (“MPI”) for money to which you were not entitled - \$31,541.67, pursuant to Section 189(1) of *The Manitoba Public Insurance Corporation Act*?

...

**REASONS FOR DECISION**

Section 160(a) of *The Manitoba Public Insurance Corporation Act* states that the Corporation may refuse to pay compensation to a person or may reduce the amount of indemnity or suspend or terminate the indemnity, where the person knowingly provides false or inaccurate information to the Corporation.

Section 149 of the *Act* states that a person who applied to the Corporation for compensation shall notify the Corporation without delay with any change in his or her situation that affects or might affect his or her right to an indemnity or amount of the indemnity.

Section 189(1) of the *Act* states that a person who receives an amount under this part as an indemnity or reimbursement of an expense to which the person is not entitled, or which exceeds the amount to which he or she is entitled, shall reimburse the Corporation for the amount to which he or she is not entitled.

I have reviewed the investigation including all surveillance video of your activity which show you functioning at a much higher level than what you informed your case manager you were capable of. I agree that a medical explanation that might account for your marked discrepancy between your reported level of function that you were observed performing does not exist. You provided information to MPI and your health care professionals as it related to your level of function that was not an accurate reflection of what you were capable of performing at the times you were assessed.

After reviewing the information on file, I can see nothing that would persuade me to alter the case manager's decision. In my view, the application of Sections 160(a) and 189(1) of the *Act* is justified in the termination of your benefits and the recovery of benefits to which you are not entitled. It is clear from the investigation that you did not have a physical impairment of function arising from the incident in question.

I am therefore, confirming the case manager's decision and dismissing the Application for Review."

The Internal Review Officer further stated:

**“APPEAL RIGHTS**

If you are unsatisfied with this decision, you have ninety (90) days within which to appeal in writing to the Automobile Injury Compensation Appeal Commission, which can be reached at:

301-428 Portage Avenue  
Winnipeg, MB R3C 0E2

Telephone Number: 204-945-4155  
Fax Number: 204-948-2402  
Toll Free: 1-800-282-8069

Please note that the Commission operates independently from the Manitoba Public Insurance Corporation and its decisions are binding on MPIC subject to the appeal provisions of Section 187 of *The Manitoba Public Insurance Corporation Act*. (underlining added)

**CLAIMANT ADVISER OFFICE**

If you need assistance in appealing this decision to the Commission, you can contact:

Claimant Adviser Office  
200 – 330 Portage Avenue  
Winnipeg, MB R3C 0C4

Telephone Number: 204-945-7413 or 204-945-7442  
Fax Number: 204-948-3157  
Toll Free: 1-800-282-8069, Ext. 7413

The Claimant Adviser Office operates independently of both MPIC and the Commission and is available to you at no charge.” (underlining added)

**Appeal:**

The relevant provisions in respect of this appeal is Section 174(1) of the MPIC Act which states:

**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.

The Appellant’s Notice of Appeal was received by the Commission on February 11, 2014. In this Notice of Appeal the Appellant stated she wished to appeal the decision of the Internal Review Officer for the following reasons:

“The decision was unfair. I am still not able to do my job and I am working at a job for a lot less money.”

The Notice of Appeal also indicated that the Appellant was now represented by the Claimant Adviser Office. On February 17, 2014 the Appellant wrote to [text deleted], Director of the Claimant Adviser Office and stated:

“As per our discussion this letter states the reasons why I did not appeal my Autopac claim decision prior to the deadline.

The main reason is my time has been consumed with health issues. My Husband has a heart defect since 2004. He was rushed to the hospital in April 2013 as well as in November 2013. Upon release he was restricted to bed rest for weeks. I as well have been busy with doctors and specialists with my own health issues. In spring of 2013 I underwent a scope due to stomach problems. I underwent injection in February 2013 with my follow up in March 2013. This resulted in me having to go for a scope in May of 2013. All of these events took priority over my appeal deadline in April 2013. I am currently going through more tests to determine my diagnosis. In addition, the painkillers I am to deal with the chronic back pain are harsh on my stomach as well as other side effects.

I did not sign off on the letter sent by Autopac to “pay back” the severance that I was given to cover the loss of being able to do my job. Instead I contacted a lawyer. After meeting with the lawyer I was advised my best option would be to declare bankruptcy. I had

started this process when I learnt about the free government service available through a friend. I immediately contacted the Claimant Adviser Office of the Government of Manitoba.

It is unfortunate that I did not know that this service was available to me prior to the deadline. It should be explained that it is not a paid service by Autopac.”

The Commission received a copy of this letter on March 10, 2014.

On March 10, 2014 the Commission’s Appeals Officer wrote to [text deleted], Director of Legal Services for MPIC, and stated:

“I enclose a copy of a Notice of Appeal received from the Claimant Adviser Office on behalf of [the Appellant]. [The Appellant] is requesting that the Commission allow additional time for filing a Notice of Appeal with the Commission in connection with MPIC’s Internal Review Office decision dated April 2, 2013.

The Commission is considering [the Appellant’s] request and would appreciate receiving any written comments that you may have to offer. Please provide your objections or comments with respect to the Commission allowing the additional time by Friday April 4, 2014.

[Text deleted], counsel for MPIC, forwarded an email to the Appeals Officer on March 21, 2014 and stated:

“[Director of Legal Services for MPIC] asked me to respond to your letter of March 10, 2014, requesting our comments on the request for an extension of time to file the above-noted appeal.

Reviewing the reasons provided by the appellant, she talks of health problems as a reason for her non-filing, but I note that these are most clustered around spring 2013, when her deadline for filing a Notice of Appeal would have been up to July of that year. She also indicated that she had retained a lawyer, meaning she did have access to professional advice.

That being the case, we do not agree with an extension of time being granted in this case.”

A copy of [MPIC’s Legal Counsel’s] letter was provided to the Claimant Adviser Office.

On March 24, 2014 the Commission reviewed the request for an extension of time and reviewed the Appellant's reasons for late filing of the Notice of Appeal and MPIC's objection to the extension of time to file. The Commission determined that a hearing should be held in order to determine whether the Commission should grant an extension of time for the Appellant to file her Notice of Appeal of the decision from MPIC's Internal Review Officer pursuant to Section 174(1) of the MPIC Act.

**Appeal Hearing:**

The hearing before the Commission took place on May 20, 2014. The Appellant attended the hearing together with [text deleted] from the Claimant Adviser Office. [Text deleted] represented MPIC.

The Appellant testified that:

1. She was aware that the deadline for filing the appeal was July 2, 2013.
2. She confirmed the contents of her letter of February 17, 2014 to [Director] of the Claimant Adviser Office wherein she set out the reasons for failing to file a timely notice of Appeal as follows:
  - a) Her husband had a heart defect since 2004 and was rushed to the hospital in April 2013 and in November 2013. On release from the hospital he was restricted to bed rest for weeks.
  - b) In April 2013, her daughter who was pregnant was suffering from high blood pressure.
  - c) She was having back problems and underwent injections in February and March 2013 and as a result she was required to go for a scope in May 2013.



- d) She was consumed by these health problems relating to her husband, her daughter and herself and that these events took priority over her appeal deadline.
- e) As a result she missed the deadline for filing a Notice of Appeal on July 2, 2013.

In her cross-examination, the Appellant testified:

1. Her husband's attendance at the hospital in April 2013 was at the beginning of the appeal period which commenced on April 2, 2013 and expired on July 2, 2013.
2. Her undergoing a scope due to stomach problems occurred in the spring of 2013 and her back injections occurred in February and March 2013, all of which occurred prior to the commencement of the appeal period on April 2, 2013.
3. Her daughter's pregnancy problem related to high blood pressure occurred in the month of April, prior to the expiry of the deadline of July 2, 2013.

MPIC's legal counsel directed the Appellant's attention to the Internal Review Officer's decision of April 2, 2013 which set out:

1. At page 7 under "Appeal Rights" that if the Appellant is unsatisfied with the Internal Review Officer's decision the Appellant had 90 days in which to file an appeal in writing with the Automobile Injury Compensation Appeal Commission (the Commission).
2. The address and telephone number of the Commission.

In response to MPIC's legal counsel, the Appellant acknowledged that upon receipt of the Internal Review Officer's decision she did not contact the Commission during the 90 day period for filing a Notice of Appeal in order to obtain advice and receive a copy of the Notice of Appeal from the Commission.

MPIC's legal counsel also referred the Appellant to her letter to [Director of Claimant Adviser Office] of February 17, 2014 wherein she indicated that:

1. She did not become aware of the existence of the Claimant Adviser Office until sometime after she consulted a lawyer in November of 2013 and as a result immediately thereafter contacted the Claimant Adviser Office.
2. "It is unfortunate that I did not know that this service was available to me prior to the deadline. It should be explained that it is not a paid service by Autopac."

MPIC's legal counsel referred to the Appellant to the Internal Review Officer's decision of April 2013 which stated:

1. If the Appellant needed assistance in appealing the decision to the Commission she could contact the Claimant Adviser Office.
2. The address and telephone number of the Claimant Adviser Office.
3. "The Claimant Adviser Office operates independently of both MPIC and the Commission and is available to you at no charge." (underlining added)

The Appellant testified that she did not contact the Claimant Adviser Office upon receipt of the Internal Review Officer's decision of April 2013 until November 2013 (a period of seven months).

The Appellant testified that the reason she failed to contact the Claimant Adviser Office in a timely fashion was:

1. She received a letter from MPIC in October 2013 seeking reimbursement but took no action challenging the demand for reimbursement because she believed that it was a

“done deal” because she understood that she could not at that time challenge MPIC’s request for reimbursement.

2. She subsequently sought advice of legal counsel in November 2013 who advised her to forward documents to MPIC and file for bankruptcy.
3. After commencing bankruptcy proceedings she learned that there was a government service available to assist with the payment of these fees.
4. As a result, she wrote to the Claimant Adviser Office on February 17, 2014 setting out her reasons why she did not appeal the Internal Review Officer’s decision of April 2, 2013.

**Submissions:**

**Claimant Adviser Representative:**

The Claimant Adviser reviewed the Appellant’s testimony and the relevant documentation and submitted that the Commission should accept the Appellant’s testimony that as a result of the health issues to her husband, her daughter and herself, she was unable to file a timely Notice of Appeal. The Claimant Adviser stressed the serious health problems suffered by the Appellant’s husband, her daughter and herself which distracted her and caused the failure to file a timely Notice of Appeal.

Subsequent to the appeal hearing, the Claimant Adviser wrote to the Commission on May 21, 2014 and stated that MPIC had not been prejudiced by the delay of the Appellant in filing a timely Notice of Appeal and that there was merit to having the Appellant’s case heard by the Commission.

In respect of the issue of prejudice to MPIC the Claimant Adviser stated:

1. "On the issue of prejudice to MPI:
  - a. There was no active case management during the period from July 2013 to February 2014.
  - b. [The Appellant] had mitigated her financial losses by arranging a return to part-time work on November 13, 2012 and a return to full-time work as of May 22, 2013.
  - c. During the period from February 1, 2012 to present, [the Appellant] has been actively pursuing medical treatment for her MVA-related injuries and she testified that the injection treatments by [Appellant's Doctor] were instrumental in allowing her to return to work.
  - d. Therefore, there is no prejudice to MPI in allowing an extension of the 90-day deadline."

On the issue of the merits of the Appellant's appeal, the Claimant Adviser stated:

1. "On the issue of the merits of the case:
  - a. Videotape surveillance was in place from at least March 11, 2011 to July 13, 2012, a period of at least 16 months.
  - b. In her decision dated October 12, 2012, the Case Manager cited 5 discrepancies between the videotape surveillance and the Appellant's self-reported level of function during 2011, but apparently none of these discrepancies was deemed serious enough to warrant suspension of termination of benefits, as such action was not taken.
  - c. Despite the cited discrepancies, no Functional Capacity Evaluation was ordered to objectively determine [the Appellant's] functional capacity.
  - d. The Case Manager cited 4 more discrepancies during 2012 and there does not appear to be any substantive difference between those instances and the ones in 2011.
  - e. It took another 3 months after July 13, 2012 to reach a decision.
  - f. The termination of PIPP benefits was made retroactive to February 1, 2012, with no explanation as to why that date was chosen rather than some other date.
  - g. Therefore, arguments can be made for:
    - i) That the decision to terminate benefits should be rescinded entirely; or
    - ii) That a suspension of benefits should be substituted for the termination of benefits; and/or
    - iii) That a reduction of the overpayment should be ordered in view of the excessively long period of time it took MPI to arrive at a decision.
  - h. Therefore, we would argue that the Appellant's appeal has merit and ought to be heard."

The Claimant Adviser submitted that there is no prejudice to MPI in allowing an extension of the 90-day deadline.

**MPIC's Legal Counsel:**

MPIC's legal counsel challenged the Appellant's submission that due to her health problems she was overwhelmed and incapable of filing a timely Notice of Appeal. In his submission MPIC's legal counsel stated that:

1. The Appellant underwent a scope for her stomach problems in the spring of 2013, and back injections in February and March 2013, all of which occurred prior to the commencement of the appeal period.
2. Her husband's attendance at the hospital in April 2013 was at the beginning of the appeal period, which commenced on April 2, 2013 and expired on July 2, 2013. As a result, there was ample opportunity for the Appellant during the months of May and June to have filed a timely Notice of Appeal.
3. Her daughter's high blood pressure problems occurred in April 2013 and could not have prevented the Appellant from filing a timely Notice of Appeal in May or June.

MPIC's legal counsel therefore submitted that the Appellant has failed to establish on a balance of probabilities that there were health reasons relating to her husband, her daughter and herself which prevented her from filing a timely Notice of Appeal.

MPIC's legal counsel further submitted that the Appellant's testimony that she was unaware that there was a 90 day period for filing a Notice of Appeal was contradicted by the content of the Internal Review Officer's decision of April 2, 2013 which clearly stated that:

1. Under the heading "Appeal Rights", if the Appellant was unsatisfied with the Internal Review Officer's decision she had 90 days in which to file an appeal in writing with AICAC and that the decision letter set out the address and telephone number of the Commission.

MPIC's legal counsel further submitted:

1. The Appellant acknowledged that she did not contact the Commission in the 90 day period, nor did she obtain advice or request a copy of the Notice of Appeal from the Commission.
2. The Notice of Appeal document was a simple document which only required the Appellant to fill in her name, address, telephone number and then provide the reasons for filing the appeal and she failed to do so.

MPIC's legal counsel challenged the Appellant's statement in her letter to Mr. Sample of February 17, 2014 wherein she asserted that she did not know the existence of the Claimant Adviser Office which could provide her with advice without a fee prior to the expiry of the deadline for appealing. MPIC's legal counsel submitted that the Appellant's statement in this respect was contradicted by the contents of the Internal Review Officer's decision of April 2, 2013 which clearly stated that:

1. If the Appellant needed assistance in filing a decision to the Commission she could contact the Claimant Adviser Office at the address and telephone number provided in the Internal Review decision.
2. The Claimant Adviser Office operates independently of both MPIC and the Commission and was available to her at no charge.

MPIC's legal counsel further submitted that even though the Appellant was advised by a lawyer in November 2013 to forward documents to the Commission, the Appellant did not file her appeal with the Commission until February 11, 2014, a period of four months after meeting with the lawyer.

Subsequent to the appeal hearing, MPIC's legal counsel wrote to the Commission on June 4, 2014 in response to the Claimant Adviser's letter to the Commission of May 21, 2014 and stated:

“On the issue of prejudice to MPI, I would argue that MPI did suffer prejudice due to the Appellant's late filing in that MPI has sought repayment of benefits paid to the claimant as a result of her false statements. The Appellant's late filing of her notice of Appeal has therefore delayed MPI's ability to recover these monies and caused MPI prejudice as a result.

On the issue of whether there is merit to the appeal, I would note that the Claimant Adviser's submissions in his letter do not, in terms of merit, address the core issue on this appeal, namely whether the Appellant willfully provided false or inaccurate information to the Corporation contrary to Section 160(a) of *The Manitoba Public Insurance Corporation Act*. I would also note that whether the appeal has merit is only one of the factors to be taken into account by the Commission in considering a request for an extension.”

**Discussion:**

The Commission rejects the submission of the Appellant and finds that the Appellant has failed to establish, on a balance of probabilities that she has provided a reasonable excuse for failing to file her Notice of Appeal until 11 months after the 90 day filing deadline expired, pursuant to Section 174(1) of the MPIC Act.

The Appellant's position that she was so consumed by the health issues of her daughter, her husband and herself which resulted in her failing to file the Notice of Appeal in a timely fashion is contradicted by her testimony wherein she stated:

1. Her husband's attendance at the hospital in April 2013 was at the beginning of the appeal period which commenced on April 2, 2013 and expired on July 2, 2013.
2. Her undergoing a scope due to stomach problems occurred in the spring of 2013 and her back injections occurred in February and March 2013, all of which occurred prior to the commencement of the appeal period on April 2, 2013.

3. Her daughter's pregnancy problem related to high blood pressure occurred in the month of April, prior to the expiry of the deadline of July 2, 2013.

The Appellant's testimony clearly indicates that the health issues in respect of her daughter, her husband and herself did not prevent her from filing a timely Notice of Appeal prior to the expiry deadline of July 2, 2013.

The Commission finds that as the Appellant has not produced a credible explanation in failing to disregard the Internal Review Officer's decision, at page 7 under "Appeal Rights", which stated that if the Appellant was unsatisfied with the Internal Review Officer's decision, she had 90 days within which to appeal in writing to the Commission.

The Commission further finds that it can give no weight to the Appellant's statement in her letter to the Claimant Adviser of February 17, 2014, wherein she indicated that:

1. She did not become aware of the existence of the Claimant Adviser Office until sometime after she consulted a lawyer in November of 2013 and as a result immediately thereafter contacted the Claimant Adviser Office.
2. "It is unfortunate that I did not know that this service was available to me prior to the deadline. It should be explained that it is not a paid service by Autopac."

The Commission finds that these statements are contradicted by the Internal Review Officer's decision of April 13, 2013 which clearly stated:

1. If the Appellant needed assistance in appealing the decision to the Commission she could contact the Claimant Adviser Office.



2. The address and telephone number of the Claimant Adviser Office.
3. “The Claimant Adviser Office operates independently of both MPIC and the Commission and is available to you at no charge.” (underlining added)

The Commission agrees with MPIC’s submission that MPIC was prejudiced by the Appellant’s late filing of this appeal and that it has delayed MPIC’s ability to recover these monies in a timely fashion.

In respect of the issue of merit raised by the Claimant Adviser, the Commission finds there was no merit to the Appellant’s appeal on the following grounds:

1. The Appellant exaggerated the impact of health issues for her husband, her daughter and herself, which prevented her from filing a timely notice of appeal.
2. The Appellant’s testimony, which said that she was unaware there was a 90 day time limit for filing her Notice of Appeal, contradicted the contents of the Internal Review Officer’s decision which she received that clearly sets out that the Appellant had 90 days in which to file an appeal.
3. In the Appellant’s letter to [Director of Claimant Adviser Office] on February 17, 2014 she asserted she did not know the existence of the Claimant Adviser Office and that they could provide her with advice without fee which contradicted the Internal Review Officer’s decision of April 2, 2013 which she received that clearly indicated that the Claimant Adviser Office was available to advise her in respect of her appeal without fee.

**Decision:**

In conclusion, the Commission finds that:

1. The health issues raised by the Appellant did not prevent her from filing a timely Notice of Appeal.
2. The Appellant did not provide a credible explanation for disregarding the contents of the Internal Review Officer's decision of April 2, 2013 to seek advice from the Commission or assistance, without fee, and from the Claimant Adviser Office in processing her appeal.

For these reasons the Commission finds that the Appellant has failed to establish on a balance of probabilities that she provided a reasonable explanation to permit the Commission to exercise its discretion to extend the 90 day period for having her appeal heard on the merits.

Dated at Winnipeg this 23<sup>rd</sup> day of June, 2014.

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**MEL MYERS, Q.C.**

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**NEIL COHEN**

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**NEIL MARGOLIS**