

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-15-094**

PANEL: Mr. Mel Myers, Q.C., Chairperson
Mr. Tom Freeman
Dr. Sharon Macdonald

APPEARANCES: The Appellant, [text deleted], appeared on her own behalf by teleconference;
Manitoba Public Insurance Corporation ('MPIC') was represented by Ms Danielle Robinson.

HEARING DATE: July 28, 2015

ISSUE(S): Extension of time for filing the Notice of 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 APPELLANT'S PRIVACY AND TO KEEP PERSONAL INFORMATION CONFIDENTIAL. REFERENCES TO THE APPELLANT'S PERSONAL HEALTH INFORMATION AND OTHER PERSONAL IDENTIFYING INFORMATION HAVE BEEN REMOVED.

Reasons For Decision

[Text deleted], hereinafter referred to as the Appellant, was involved in a motor vehicle accident on January 14, 2012. As a result of the accident the Appellant suffered from headaches, neck and back pain.

The Appellant made an Application for Compensation and requested reimbursement of expenses for the purpose of receiving care as a result of the accident.

The case manager rejected these expenses and the Appellant made an Application for Review by the Internal Review Officer. On July 9, 2014, the Internal Review Officer issued a decision to the Appellant rejecting her claim for reimbursement of expenses. The Internal Review Officer's decision was forwarded to [the Appellant], [text deleted]. The Internal Review Officer's decision also included the following statement:

“Right of Appeal

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 Commission can be reached at: (Underlining Added)

301 – 428 Portage Avenue
Winnipeg, MB R3C 0E2

Telephone Number: (204) 945-4155
Fax Number: (204) 948-2402

Toll Free: 1-855-548-7443”

The 90 day period in which the Appellant could file an appeal with the Commission was 90 days from the date of receipt by the Appellant or her solicitor from the Internal Review Officer's decision of July 9, 2014. The date the Internal Review Officer decision was received by the Appellant was July 13, 2014. As a result the 90 day period in which the Appellant could file the appeal to the Commission would expiry (sic) on October 11, 2014. The Appellant filed the Notice of Appeal to the Commission on May 8, 2015, a period of seven months (209 days) after the expiry date of October 11, 2014.

Appeal:

The relevant provisions of the MPIC Act in respect of this appeal are:

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.

In the Notice of Appeal the Appellant indicated the reasons for the Notice of Appeal were set out in a letter dated May 4, 2015 from [Appellant's representative]. In [Appellant's representative's] letter he states:

“We are seeking an appeal of the Decision on [the Appellant's] entitlement to a reimbursement of Travel Expenses. We understand that we are beyond the appeal date as set out in your letter of July 9, 2014, but ask that under Section 174(1) of the MPIC Act, we be given an extension of time to submit this appeal as our client has since undergone moving to a different residence and faced some difficulty in gathering her relevant documentation.” (Underlining added)

On May 22, 2015, the Commission's Appeal Officer forwarded both the Notice of Appeal together with [Appellant's representative's] letter to the Director of Legal Services of MPIC. In this letter the Appeals Officer stated:

“I enclose a copy of a Notice of Appeal received from [Appellant's representative] 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 July 9, 2014.

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 June 12, 2015.”

MPIC's Director of Legal Services wrote to the Appeals Officer on June 1, 2015, indicating that he objected to the extension of time and stated:

“... At best the reason for the extension for time seems to be “our client has since undergone moving to a different residence and faced some difficulty in gathering her relevant documentation”.

I note that [the Appellant's] claim file has reference to numerous contact she had with MPI between the date of the decision and this notice of appeal.

The above explanation is not sufficient to justify why [the Appellant] is over 200 days late in filing her appeal.”

Appeal Hearing:

The Appellant’s appeal was heard by the Commission on July 28, 2015. The Appellant attended by teleconference and MPIC was represented by [text deleted].

In her testimony the Appellant stated that at the time she received the Internal Review Officer’s decision of July 9, 2014 she was living in [text deleted]. The Appellant acknowledged that she was aware of the notice set out in the Internal Review Officer’s decision which indicated she had 90 days within which to appeal in writing to the Automobile Injury Compensation Appeal Commission and therefore she was aware that the expiry date for filing the Notice of Appeal would have been on or about October 9, 2014.

The Appellant testified at the appeal hearing that as a result of her mother becoming sick she moved from [text deleted] to [text deleted] on or about January 31, 2015 and remained there for the purpose of looking after her mother. She further testified the reason she had not filed the appeal within the 90 day period was because she had undergone moving to a different residence and faced some difficulty in gathering her relevant documentation for her appeal.

The Commission pointed out to the Appellant that:

1. The 90 day period in which the Appellant was entitled to file an appeal took place when she was still residing in [text deleted], and it was approximately another 108 days before she moved to [text deleted].
2. Her explanation that she was undergoing a move to a different residence and faced some difficulty in gathering her relevant documentation for her appeal was inconsistent with the evidence before the Commission.

The Appellant chose not to make a submission and MPIC's legal counsel indicated they would not be making a submission. The parties were advised that the hearing was adjourned and in due course the Commission would issue its decision.

Discussion

The onus is upon the Appellant to establish on a balance of probabilities a reasonable explanation as to why the Commission should exercise its discretion under Section 174(1) of the MPIC Act to grant the Appellant an extension of time in order for her to file her Notice of Appeal.

The Commission is aware:

1. The Appellant was having a difficult time as a result of the motor vehicle accident, with the injuries she sustained in that accident.
2. The numerous times she attended medical doctors for treating symptoms which were not related to the motor vehicle accident.
3. Her requirement to move to [text deleted] to look after her sick parents.

It is clear to the Commission that the problems that the Appellant experienced as outlined herein are not relevant to the issue as to whether she provided a reasonable explanation to permit the Commission to grant an extension of time.

The Commission notes that the primary reason given by the Appellant for filing an untimely Notice of Appeal was because she had been required to change her residence and this resulted in difficulty in gathering relevant documentation to file an appeal. The Commission finds that the Appellant's change in residence resulting in the difficulty to gather relevant documentation for

filing the appeal had no bearing on the Appellant's ability to file a timely Notice of Appeal because the change in residence took place approximately 108 days after the expiry of the October 9, 2014 deadline to file an appeal.

The Commission therefore finds that the Appellant has failed to establish on a balance of probabilities that she has provided a reasonable explanation as to why the Commission should exercise its discretion under Section 174(1) of the MPIC Act to grant the Appellant an extension of time in order to file her Notice of Appeal. For these reasons the Commission dismisses the Appellant's appeal and confirms the decision of the Internal Review Officer dated July 9, 2014.

Dated at Winnipeg this 20th day of August, 2015.

MEL MYERS, Q.C.

TOM FREEMAN

DR. SHARON MACDONALD