

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-15-206**

PANEL: Ms. Karin Linnebach, Deputy Chief Commissioner

APPEARANCES: The Appellant, [text deleted], is deceased; Representatives from the Appellant’s Estate did not attend; Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Matthew Maslanka.

HEARING DATE: October 25, 2019

ISSUE(S): Whether the Appellant has failed to diligently pursue her appeal.

RELEVANT SECTIONS: Section 182.1(1) of *The Manitoba Public Insurance Corporation Act (the MPIC Act)*.

Reasons For Decision

Background and Chronology of Events

The Appellant, [text deleted], reported to MPIC that she was injured in a motor vehicle accident (MVA) on August 11, 2014 and requested Personal Injury Protection Plan (PIPP) benefits. An MPIC case management decision of December 11, 2014 denied the Appellant’s request for PIPP benefits. The Appellant filed an Application for Review of the case manager’s decision. On July 23, 2015, an Internal Review Officer for MPIC upheld the case manager’s decision, concluding that there is insufficient evidence to support that an accident occurred and therefore that the Appellant sustained any bodily injury.

On October 25, 2015, the Appellant filed a Notice of Appeal with the Commission in regard to this Internal Review Decision. She indicated that she would be representing herself at the hearing of her appeal. This issue on appeal was whether the Appellant was injured in an MVA, and entitled to PIPP benefits as a result of her MVA injuries.

On January 31, 2017, [text deleted], the Appellant's common-law spouse, contacted the Commission to advise that the Appellant passed away in October 2016. On February 3, 2017, [Appellant's common-law spouse] advised the Commission that at the time of the Appellant's passing, he and the Appellant were living separately. At that time, he was unaware if the Appellant had a will and was unsure whether he wished to apply to be the Administrator of the Appellant's estate.

On February 9, 2017, [Appellant's common-law spouse] advised the Commission that the Appellant had two adult children, but that he would complete the paperwork to become the Administrator of the Appellant's estate.

On March 20, 2017, [Appellant's common-law spouse] advised the Commission that he was in the process of applying to become the Administrator of the Appellant's estate, but that the process was lengthy.

On September 13, 2017, [Appellant's common-law spouse] advised the Commission that neither he nor the Appellant's children had yet applied to be Administrator of the Appellant's estate. He advised that the process was lengthy and that he did not believe there would be any benefit that would result from that process.

The Commission held a case conference on May 14, 2019 to discuss the status of the appeal. [Appellant's common-law spouse] appeared for the Appellant and Mr. Maslanka appeared for MPIC. At the case conference, [Appellant's common-law spouse] explained that he and the Appellant had been in a common-law relationship for several years, but had been living separate and apart for months. He confirmed that the Appellant had two adult children. Discussion was had regarding what steps [Appellant's common-law spouse] would need to take to be approved as a representative of the Appellant's estate at the hearing. The Appellant's Indexed File, the issues on appeal, the appeal hearing, and remedy were also discussed. A letter dated May 15, 2019 summarizing the case conference was sent to the Appellant's estate, [Appellant's common-law spouse] and Mr. Maslanka. [Appellant's common-law spouse] was asked to review the letter with the Appellant's adult children and advise whether he wished to proceed as representative for the Appellant's estate.

On May 29, 2019, [Appellant's common-law spouse] advised the Commission by telephone that he did not wish to pursue the Appellant's appeal. He also advised that he had reviewed this matter with the Appellant's adult children and that they also did not wish to pursue the appeal.

On June 19, 2019, [Appellant's common-law spouse] completed a form stating the following:

I confirm that I lived in a common-law relationship with [the Appellant] for several years and that I lived separate and apart from [the Appellant] at the time of her passing, although it had only been for a manner of months and was definitely less than three years. I confirm that [the Appellant] had two adult children, [child #1] and [child #2].

I have reviewed this matter and I do not wish to pursue this appeal. As well, I have reviewed this matter with the deceased's adult children and that they also do not wish to pursue this appeal.

On June 24, 2019, MPIC provided the Commission with a copy of the Funeral Director's – Statement of Death dated October 28, 2016, confirming that the Appellant passed away on October 25, 2016.

The Commission fixed a hearing date for October 25, 2019 at 9:30 a.m. and issued a Notice of Hearing dated September 19, 2019, indicating that the Commission would consider whether the Appellant had failed to diligently pursue her appeal and therefore whether the appeal should be dismissed. A copy of the Notice of Hearing was sent to the Appellant's last address as advised by the Appellant as well as the address listed on the Appellant's Notice of Appeal.

On Saturday September 28, 2019, the Commission placed the following Notice of Public Hearing in the [Newspaper #1]:

TAKE NOTICE

IN THE MATTER OF AN APPEAL FILED UNDER THE MPIC ACT BY [THE APPELLANT] (Deceased), the Automobile Injury Compensation Commission has set a hearing for Friday, the 25th day of October, 2019 at 9:30 a.m., at 301-428 Portage Avenue, Winnipeg, MB R3C 0E2.

DATED at Winnipeg, Manitoba, this 19th day of September, 2019.

Inquiries can be made to the Automobile Injury Compensation Appeal Commission:

301-428 Portage Avenue
Winnipeg, MB R3C 0E2
Phone: (204) 945-4155
Toll Free: 1-855-548-7443
Fax: (204) 948-2402
Email: autoinjury@gov.mb.ca

On October 2, 2019, the Commission placed a Notice of the Hearing containing the same information in the [Newspaper #2].

The Commission staff has advised that no contact or inquiries were made to the Commission in response to these notices.

A hearing was convened on October 25, 2019 at 9:30 a.m. Counsel for MPIC appeared. The Commission waited 15 minutes for a representative of the Appellant's estate to appear. As no representative appeared, the hearing proceeded in the absence of a representative of the Appellant's estate.

Issue

The issue which requires determination is whether the Appellant and/or her estate have failed to diligently pursue the appeal, and, if so, whether the Commission should dismiss the appeal.

Decision

For the reasons set out below, the Commission finds that the Appellant and/or her estate have failed to diligently pursue the appeal, and that the appeal should be dismissed.

Submission for MPIC

Counsel for MPIC submitted that the issue before the Commission is not the merits of the Appellant's appeal, but rather the Appellant or her estate have failed to diligently pursue the appeal pursuant to subsection 182.1(1) of the *MPIC Act*.

Counsel relied on the Commission's decision in AC-04-175, which found that the Appellant or his estate failed to diligently pursue his appeal and dismissed the appeal. In that case, the Appellant passed before his appeal was heard and there was no evidence that anyone sought Letters of Administration to represent the estate.

Counsel submitted that it is now three years since the Appellant's passing and no steps have been taken to further the Appellant's appeal. There is no evidence that the Appellant had a will and

there is no evidence that anyone has taken steps to become the Administrator of the Appellant's estate.

The Appellant's common-law spouse, [text deleted], advised the Commission of the Appellant's passing. He also advised that the Appellant had two adult children. [Appellant's common-law spouse] initially stated he wished to pursue the Appellant's appeal as representative of her estate and a case conference was scheduled to outline the steps required for [Appellant's common-law spouse] to be able to represent the Appellant's estate at a hearing before the Commission. [Appellant's common-law spouse] ultimately decided that he did not want to pursue the Appellant's appeal and indicated that he reviewed the matter with the deceased's adult children, who also did not wish to pursue the appeal.

While counsel for MPIC acknowledged that the Appellant's son, [child #2], is listed as the next of kin on the Funeral Director's Statement of Death, counsel submitted that the Commission should rely on the signed statement of [Appellant's common-law spouse] that [child #2] was not interested in pursuing the appeal.

Counsel submitted that notices regarding the hearing were published in both the [Newspaper #1] and the [Newspaper #2], yet there is no evidence of a response from [child #2] or anyone else and no-one has appeared at this hearing. Had there been an interested party who wished to pursue the Appellant's appeal, they would have made themselves known by now. Counsel submitted the Appellant's appeal should be dismissed as a result of the failure to diligently pursue the appeal.

Discussion

Section 182.1 of the *MPIC Act* provides that the Commission may dismiss an appeal in certain circumstances. It provides as follows:

Dismissal for failure to pursue appeal

182.1(1) Despite subsection 182(1), the commission may dismiss all or part of an appeal at any time if the commission is of the opinion that the appellant has failed to diligently pursue the appeal.

Opportunity to be heard

182.1(2) Before making a decision under subsection (1), the commission must give the appellant the opportunity to make written submissions or otherwise be heard in respect of the dismissal.

Informing parties of decision

182.1(3) The commission must give the appellant and the corporation a copy of the decision made under subsection (1), with written reasons.

As noted in AC-04-175, section 182.1 of the *MPIC Act* does not require a consideration of the merits of the appeal, but requires only that the Commission be of the opinion that the Appellant has failed to diligently pursue the appeal.

The Appellant is deceased and there is no evidence of a will or named executor. There is no evidence that anyone has sought Letters of Administration to represent the estate. Rather, the Appellant's common-law spouse advised the Commission verbally and then signed a statement indicating that he did not want to pursue the Appellant's appeal and that the Appellant's adult children did not wish to pursue the appeal.

A Notice of Hearing was sent to the Appellant at her last address that she provided to the Commission. A Notice of Hearing was also sent to the address the Appellant listed on her Notice of Appeal. The Commission then placed notices regarding the Appellant's appeal in both the [Newspaper #1] and the [Newspaper #2]. No responses or inquiries were received. No one appeared at the hearing seeking to represent the Appellant's estate. Accordingly, I find that the Appellant and/or her estate have failed to diligently pursue the appeal. Pursuant to section 182.1 of the *MPIC Act*, the appeal is dismissed.

Dated at Winnipeg this 5th day of December, 2019.

KARIN LINNEBACH