

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-19-047**

PANEL: Ms Nikki Kagan, Chairperson
Mr. Trevor Anderson
Ms Janet Frohlich

APPEARANCES: The Appellant, [text deleted], was self-represented;
Manitoba Public Insurance Corporation ('MPIC') was
represented by Mr. Andrew Robertson.

HEARING DATE: December 4, 2019

ISSUE(S): To determine whether the Commission will grant the
Appellant an extension of time to file her Notice of Appeal.

RELEVANT SECTIONS: 174(1) of The Manitoba Public Insurance Corporation Act
(‘MPIC Act’).

Reasons For Decision

Background:

The Appellant was injured in a motor vehicle accident (“MVA”) on June 7, 2004. The Appellant is seeking Personal Care Assistance (“PCA”) benefits due to the injuries she suffered in the MVA.

On October 3, 2017, the case manager issued a decision advising the Appellant that she was not entitled to any further PCA benefits.

The case manager’s decision letter provided:

An assessment of your needs was completed on September 28, 217 (sic). The assessment is used to evaluate your personal care needs and the level of care that

you require on a daily basis. The score is applied based on your personal care requirements.

In order to qualify for reimbursement of PCA expenses, a minimum score of “9” is required. Your assessment score was “6.0” resulting in no further entitlement to PCA. As such, you do not qualify for reimbursement of PCA expenses as of October 6, 2017.

There was a paragraph at the end of the letter advising the Appellant of the review process and the deadline for applying for review if she was not satisfied with the decision.

On October 18, 2017, the Appellant filed an Application for Review of the case manager’s decision within the prescribed time frame.

On October 27, 2017, an Internal Review Decision (IRD) was issued upholding the case manager’s decision and dismissing the Appellant’s Application for Review. The IRD set out information regarding the appeal process and the availability of Claimant Adviser Office (CAO).

The Appellant filed a Notice of Appeal from the IRD on April 8, 2019, approximately 15 months after the appeal period expired. On May 22, 2019, the Appellant forwarded an email to the Commission providing, in part, the following reasons for seeking an extension of the 90-day time limit:

When I received the decision letter in October, my Mom had become sick and went into the hospital. Three weeks later she passed away, and my focus was not on MPI, their decision or my ability to dress myself. I had put aside the letter to deal with it after the funeral and cleaning out my Mom's apartment. Then came Christmas and all the hustle & bustle, the preparation of my Mom's estate and necessary procedures following her passing. Needless to say, time goes on regardless. By the time I revisited the letter, my 90 days plus was up.

We all have excuses and reasons we don't do things in a timely manner and here is mine.

The email was forwarded to MPIC for their consideration.

On June 13, 2019, MPIC advised:

Further to your letter of May 23, 2019, MPI does not feel that additional time should be extended for this late (16 months) appeal.

A hearing date was set for the Commission to determine whether an extension of the time limit under section 174(1) of the MPIC Act for the filing of an appeal should be granted.

Decision:

For the reasons set out below, the Commission will not exercise its discretion to grant an extension of time for the Appellant to file a Notice of Appeal.

Evidence and Submission of the Appellant:

The Appellant testified at the hearing into her appeal.

The Appellant stated that her mother went into the hospital on October 17, 2018 and passed away on November 9, 2018. The Appellant advised that she was her mother's primary caregiver and her mother was her priority. She stated that it was not until some time passed and she cleared out her mother's apartment and resolved her mother's estate issues that she came back to her desk and realized that she had gone over the allotted time for filing the appeal. The Appellant testified that she felt that she had a good reason for the delay, so she filed her appeal in any event.

Counsel for MPIC asked the Appellant to address the fact that the IRD letter was dated October 27, 2017 and the Appellant's mother passed away on November 9, 2018, more than one year later and not three weeks later as stated in the Appellant's May 22, 2019 email to the

Commission. The Appellant stated that she had been dealing with the frustration of this case for the last 14 years and her case managers were constantly changing and she was given different answers every time. The Appellant stated that she was told she could appeal after the time limit.

The Appellant further stated that she was before the Commission approximately six or seven years ago with legal representation and her lawyer advised her that her case would never be closed.

In answer to questions from counsel for MPIC, the Appellant confirmed that she did receive and read the case manager's decision letter of October 3, 2017 and she did file a request for review within the allotted timeline.

The Appellant further confirmed that she reviewed the IRD dated October 27, 2017 in full and she reviewed the section setting out the rights of appeal and the availability of the CAO. The Appellant testified that she did contact the CAO at one point in time and their instructions were basically to do exactly what she was already doing.

The Appellant then stated that she had surgery in August 22, 2016 on her shoulder and as such, she had an open claim for Income Replacement Indemnity (IRI) benefits and thought that all her appeals were under one claim and she did not have to file her appeal until the IRI issue was completed.

Submission of MPIC:

MPIC submitted that there are numerous principles for the Commission to consider in exercising its discretion to extend the time for filing an appeal. In this case, the two main considerations are the length of the delay and the reason for the delay.

In considering the length of the delay, MPIC submitted that 15 months is a significant delay.

MPIC acknowledged that there was no prejudice as a result of the delay.

In addressing the reasons for the delay, MPIC argued that the Appellant has not provided an acceptable reason for the delay. MPIC submitted that contrary to the Appellant's email of May 22, 2019, the Appellant's mother became ill and passed away one year following the date of receipt of the IRD letter and not three weeks following as stated by the Appellant in her email of May 22, 2019.

MPIC submitted that the fact the Appellant was confused was not a reasonable excuse as the Appellant acknowledged that she had read the IRD letter in full and the letter clearly sets out the appeal deadlines and the availability of the CAO at no charge.

Counsel of MPIC submitted that the Appellant demonstrated sufficient understanding of the system, as she was able to file her Application for Review of the case manager's decision within the prescribed timelines. MPIC submitted that if the Appellant was in fact confused, there were resources available for her to assist her in the process at no charge. MPIC submitted that there was no evidence that the Appellant met with the CAO or contacted the Commission after she received the IRD of October 17, 2017.

Discussion:

Section 174(1) of the MPIC Act provides as follows:

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 fact that the Appellant's mother became ill and passed away one year after the IRD is not a reasonable excuse for failing to file the appeal within the required timeline. The panel finds it concerning that in the email to the Commission on May 22, 2019, the Appellant stated that she received the IRD in October and her mother become sick, went into the hospital and passed away three weeks later. In fact, the Appellant's mother went into the hospital and passed away one year later. The Appellant did not provide a persuasive explanation for the discrepancy in the dates that were provided in her email of May 22, 2019 and the date that her mother actually passed away.

The submission of the Appellant that she was frustrated with the process and confused and her case managers kept changing may be true, but this is not a reasonable explanation for missing the deadline. The Appellant has the onus of proof and as such has an obligation to become informed of the process and advance her case in accordance with the rules. The Appellant did not present evidence that she took reasonable steps to clarify her confusion. The Appellant could have availed herself of the services of the CAO and she did not do so. There is no evidence that the Appellant contacted the Commission or her previous legal counsel for clarification.

The Appellant stated that she read the IRD letter including the paragraph regarding her right to appeal. The Appellant was competently able to file a review of the case manager's decision in a timely matter. If the Appellant were confused, she had ample opportunity to clarify her confusion

long before the 15 months passed. The Appellant's evidence that she thought all her appeals were heard together was not reasonable. The Appellant did not present evidence that she was in fact misled in this manner.

The Commission accepts the submission from counsel for MPIC that the Appellant has not provided a reasonable excuse for failing to appeal the IRD within the time limit.

Disposition:

Upon considering the totality of evidence both oral and documentary and upon a consideration of the valid relevant factors surrounding the delay, the Commission finds that the Appellant has not provided reasonable excuse for failure to appeal the Internal Review Decision to the Commission within the 90-day time limit set in section 174(1) of the MPIC Act.

Accordingly, the Commission will not extend the time limit within which the Appellant may appeal Internal Review Decision 048551-B dated October 27, 2017 to the Commission.

Dated at Winnipeg this 17th day of December, 2019

NIKKI KAGAN

TREVOR ANDERSON

JANET FROHLICH