

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-14-106, AC-15-043**

PANEL: Nikki Kagan, Chairperson

APPEARANCES: The Appellant, [text deleted], did not attend; Manitoba Public Insurance Corporation ('MPIC') was represented by Ashley Korsunsky who did not attend, but provided a written submission.

HEARING DATE: February 7, 2020

ISSUE(S): Whether the Appellant has failed to diligently pursue his appeals.

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

Reasons For Decision

Background:

The Appellant was injured in a motor vehicle accident (MVA) on February 13, 2011. He suffered soft tissue injuries to his neck and back. He experienced headaches and right medial knee pain. He received chiropractic treatment for his injuries. His case was classified as Track II, Phase 3 providing a maximum of 64 chiropractic treatments which the Appellant received. On August 7, 2013, MPIC advised the Appellant that he was not entitled to any further chiropractic treatment.

The Appellant filed an Application for Review on October 17, 2014. This was one year beyond the 60-day time limit within which the Application for Review was to be filed.

There were two issues for review:

1. Has a reasonable excuse been provided for the late filing of the Application for Review, which in turn would allow the Internal Review Office to proceed with the review of the decision dated August 7, 2013 and;
2. Does the medical evidence support further chiropractic care as a medical requirement.

The Internal Review Officer determined that the Appellant provided nothing that could be considered a reasonable excuse for failing to apply for review of the decision within the time period prescribed by the legislation. The Internal Review Officer further stated:

... Accordingly, there are sufficient grounds for the Application for Review to be rejected.

Our custom is to review the claims decision on its merits when this sort of situation arises.

The Internal Review Officer considered the merits of the case. The Internal Review Officer stated in the decision dated December 8, 2014:

I must agree with the BAU's decision which is supported by MPI's chiropractic consultant to in (sic) conclude that MPI does not have an obligation to fund further chiropractic treatment related to the accident of February 13, 2011. As such, there is no basis for interfering with the decision.

It is from this decision of the Internal Review Officer that the Appellant filed a Notice of Appeal with the Commission on February 18, 2015.

Procedural matters:

The Claimant Adviser Office (CAO) was assisting the Appellant with his appeals from July 18, 2014 until June 21, 2017 and attended the first two case conferences on the Appellant's behalf.

The Appellant also attended the case conference on June 21, 2017 and advised that he would no longer be requiring the assistance of the CAO and he would be representing himself. The Commission scheduled a further case conference on August 18, 2017 and the Appellant attended by teleconference.

The Appellant requested further medical information. The Commission wrote to [text deleted], chiropractor, and [text deleted], physiotherapist, requesting further reports for the Appellant's appeals. The reports were received and forwarded to the Appellant and MPIC.

The Appellant then requested a further medical report from [text deleted], athletic therapist. The Commission wrote to [athletic therapist] requesting this report. The report was received and forwarded to the Appellant and MPIC.

MPIC's Health Care Services reviewed the new medical reports.

MPIC provided the Health Care Services report to the Commission on April 25, 2019. A copy of the Health Care Services report was forwarded to the Appellant on April 26, 2019 along with a letter asking the Appellant to contact the Commission to discuss his appeals.

As the Appellant failed to contact the Commission, the Appeals Officer contacted the Appellant by telephone on May 28, 2019. The Appellant advised the Commission that he "wasn't doing anything with his appeals". The Appeals Officer explained that if the Appellant does not wish to pursue his appeals, the Commission would send him a Notice of Withdrawal to sign and return. The Appellant indicated that he did not want to sign anything and the call was ended.

The Commission sent the Appellant a letter on May 30, 2019 enclosing a Notice of Withdrawal for him to sign and return to the Commission by June 21, 2019. The Commission received no response to this letter.

The Commission sent a further letter to the Appellant on June 26, 2019 as a reminder and enclosing an additional copy of the Notice of Withdrawal for him to sign and return to the Commission by July 12, 2019. The Commission received no response to this letter.

The Commission sent a final letter to the Appellant on July 17, 2019 and enclosed an additional copy of the Notice of Withdrawal for him to sign and return to the Commission by August 7, 2019. The Commission received no response to this letter.

As the Commission received no response from the Appellant on the letters that were sent to him on May 30, 2019, June 26, 2019 and July 17, 2019, the Commission proceeded to set a hearing date to determine whether the Appellant had failed to diligently pursue his appeals.

A Notice of Hearing was sent to the parties on November 22, 2019.

A hearing was convened on February 7, 2020. Counsel for MPIC did not attend but provided a written submission. The Appellant did not attend.

Issue:

The issue which requires determination is whether the Commission should dismiss all or part of the Appellant's appeals on the grounds that the Appellant has failed to diligently pursue his appeals.

Decision:

Following a review of the documentary evidence and the fact that the Appellant did not attend the hearing, the Commission concludes that the Appellant has failed to pursue his appeals.

Submission for MPIC:

It is MPIC's position that the Appellant's appeals should be dismissed.

MPIC applied a two-step test.

Firstly, the Commission is to consider whether the Appellant failed to pursue his appeals and secondly, after finding the Appellant failed to pursue his appeals, the Commission is to consider whether the Appellant provided adequate reasons for the absences and omissions. In other words, the Commission is to consider whether the Appellant had a reasonable excuse for failing to pursue his appeals.

The Appellant advised the Commission in May 2019 that he "wasn't doing anything" with his appeals. In fact he had not done anything further with his appeals. MPIC submitted that the Appellant's statement to the Appeals Officer that he was not doing anything with his appeals, his subsequent inactivity on his appeals and non-responsiveness to the Commission's multiple letters are clear indications that the Appellant is no longer pursuing his appeals. In applying the first step of the above-noted test to the facts at hand, MPIC submits that the Appellant has failed to pursue his appeals.

With respect to the second step of the test, the Appellant has failed to provide any explanation to excuse his failure to respond to the Commission. Without a valid explanation for the delay, it is clear that the Appellant has failed to diligently pursue his appeal.

MPIC submits that the appeals should be dismissed pursuant to section 182.1(1) of the Act.

Relevant Legislation:

Section 182.1 of the MPIC Act 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.

Discussion:

The Appellant participated in his appeals from July 2014 until April 2019.

In May 2019, he indicated that he “wasn’t doing anything” with his appeals.

Correspondence was forwarded to the Appellant on May 30, 2019 by regular mail, and this correspondence was not returned. Correspondence was forwarded to the Appellant on June 26,

2019 by regular mail, and this correspondence was not returned. Correspondence was forwarded to the Appellant on July 17, 2019 by regular mail, and this correspondence was not returned. As these letters were not returned, one can assume that the Appellant received these letters.

On September 24, 2019, the Commission forwarded a supplemental index to the Appellant by Xpresspost. This was picked up and signed for by “[text deleted]” on September 26, 2019.

A Notice of Hearing was forwarded to the Appellant on November 22, 2019 by Xpresspost and regular mail. The Xpresspost was returned unclaimed. The regular mail is assumed to have been delivered, as it was not returned.

On January 17, 2020, the Commission forwarded the written submission of MPIC to the Appellant via Xpresspost and regular mail. The Xpresspost was accepted and signed by “[text deleted]” on January 21, 2020. The regular mail is assumed to have been delivered, as it was not returned.

The Appellant failed to provide a reasonable excuse in writing. He failed to attend the hearing. In fact, he did nothing with his appeals. He failed to provide a reasonable excuse for failing to pursue his appeals.

The Commission finds that both the first and second parts of the test set out in MPIC’s submission have been met.

Disposition:

Accordingly, the Commission finds that the Appellant has failed to diligently pursue his appeal therefore his appeals shall be dismissed.

Dated at Winnipeg this 24th day of February, 2020.

NIKKI KAGAN