

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-20-031**

PANEL: Laura Diamond, Chairperson

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

HEARING DATE: July 29, 2020

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

RELEVANT SECTIONS: Section 174 of The Manitoba Public Insurance Corporation Act ('MPIC Act')

Reasons For Decision

Background

The Appellant was injured in a motor vehicle accident (MVA) on December 1, 2016. She sustained injuries which included compression fractures, scrapes and bruises. As a result of her injuries, MPIC provided her with Personal Care Assistance (PCA) benefits to assist with her personal care needs and with various activities of daily living.

Periodic assessments of the Appellant's continuing PCA needs were conducted by MPIC. Following an assessment completed on April 20, 2017, the Appellant's case manager issued a decision ending her entitlement to PCA benefits, effective May 4, 2017. The Appellant did not agree with this decision and filed an Application for Review of Injury Claim Decision on June 19, 2018.

An Internal Review Officer (IRO) considered this application in an Internal Review Decision (IRD) dated October 19, 2018. The IRO first considered whether to extend the 60 day time limit set out in section 172(1) of the MPIC Act for the filing of Applications for Review of case manager decisions and concluded that since the Appellant had provided MPIC with new information and not received a response, she had a reasonable excuse for her late filing. The extension of time for filing the Application for Review was allowed by the IRO.

However, the IRD of October 19, 2018 also concluded that the case manager's decision of May 4, 2017 should be upheld. It is from this decision of the IRO that the Appellant has now appealed to the Commission.

The Appellant filed her Notice of Appeal (NOA) with the Commission on February 16, 2020. Section 174 of the MPIC Act provides for a period of 90 days from the receipt of an IRD for the filing of an appeal with the Commission. In the Appellant's case, the 90-day period for the filing of an appeal expired in January 2019, and her appeal was filed approximately 13 months late. MPIC did not accept the reasons provided by the Appellant for the late filing of the appeal as reasonable, and objected to the appeal proceeding before the Commission.

A hearing was subsequently convened in order to determine whether the Appellant had a reasonable excuse for her failure to appeal the IRD dated October 19, 2018 to the Commission within the 90 day time limit set out in Section 174(1) of the MPIC Act.

Documentary Evidence

In addition to the case management decision and IRD referred to above, the Appellant filed two letters and some photographs in support of her NOA.

The NOA indicated that the Appellant had “continued to give the same information repeatedly with no results for almost 2 years.”

A supporting letter from the Appellant dated February 16, 2020 advised that she had reached out to MPIC many times, both before and after October 19, 2018, leaving numerous voice messages, which were never returned. She set out the reasons she disagreed with MPIC’s assessment of her personal care needs and referenced her pain and other issues with her injuries, for which she was under a doctor’ care. She explained that she had moved into a larger home, providing photographs in support, and this added to her need for more care. Her family situation and needs were also described. She indicated that MPIC had recently told her to appeal and call the Commission and so she was once again trying to fight to get her personal health care and child care back.

A supporting letter from the Appellant’s partner dated February 16, 2020 was also included with the NOA. His letter described his own back pain and exhaustion after working at his job, as well as the extra work required to be done by him around their home and with child care, due to his wife’s inability, owing to her MVA injuries, to do as much as she used to be able to do.

MPIC provided 4 file notes entitled Report of Investigation/Discussion dated March 7, 2019, April 30, 2019, October 24, 2019 and January 15, 2020. These documents were prepared by case managers following telephone conversation held with the Appellant regarding various aspects of her benefit claims management.

The note of March 7, 2019 concluded with the note:

Clmt inquired about PCA and said that she could still really use it. I reviewed the file and explained that the decision had already been reviewed with IRO and the next step would be to appeal with AICAC.

Clmt said that she had done this and was wondering where they are at in their appeal process. I let her know that AICAC is a separate entity and she would need to contact them to follow up.

Clmt understood.

A file note dated April 30, 2019 recorded a conversation with the Appellant, including the note that:

Advised clmt that we made the decision back in 2017 that there is no further PCA and the IRO upheld our decision when she appealed. Advised clmt that she had the option to appeal that decision as explained in the letter that she had 90 days to do so which has passed.

Clmt did not seem like she knew she had the option to appeal.

Advised that I can resend the letter to her if she would like and she can then try appealing but she is past the deadline so she will have to speak with AICAC to see if they will accept her appeal.

Clmt understood. Resent her a copy of the IRO DL

A file note dated October 24, 2019 recorded a call from the Appellant regarding prescription receipts but did not mention her appeal.

A final note dated January 15, 2020 indicated that the Appellant had called MPIC indicating she was trying to appeal the decision on PCA:

She advised that she has done everything asked of her, and doesn't understand why we wouldn't fund for PCA.

I advised if she doesn't agree with the decision made with IRO, the next step is AICAC and provided her with a phone number.

Evidence of the Appellant

The Appellant testified at the hearing regarding the request for an extension of time. She indicated that she had tried to make phone calls but got nowhere. When she did finally reach

MPIC, they gave her the runaround and wouldn't give her any information about anything. She said that she kept in contact and tried to get the appropriate information but she could not get it from anybody. Finally, she got the information about where to send things and that is why she is before the Commission now.

She stated that she has been in a lot of pain but that she is dealing with it. She finds it hard with her partner working and her daughter not living with her anymore. Her new house has a lot of stairs and she has provided pictures to show that. She gets help when she can, when someone is home, but she has to try to manage things on her own, even with her limitations. Sometimes she is in a lot of pain and is in bed for a few days, not able to do anything for her children. She acknowledged that her appeal was late, but stated that it was because she was trying to get the information and was given the runaround.

On cross-examination, the Appellant acknowledged that she had a Grade 12 education and had received training as a certified educational assistant. She had worked in the school system. She was used to working in classrooms as an educational assistant, doing a lot of reading and writing. She had some familiarity with using a computer, the Internet and email.

When asked about the file notes following telephone conversations she had with her case manager, the Appellant said that she did not recall being advised that the IRD had upheld the PCA decision and that she had the option to appeal it, as explained in the IRD letter. Nor did she recall seeing that information at the bottom of the IRD letter. She acknowledged that she had received the IRD letter but that her mother usually helps her to do things like completing a NOA. She thought that she might have sent her appeal to the wrong address, sending it to the Claimant Adviser Office (CAO) by mistake, instead of to the Commission. Although the telephone

number for the Commission is set out on page 15 of the IRD, she doesn't think that she ever called that number. She thought that she did call the CAO office and left messages, but nobody called her back and when she did get through they wouldn't give her any information about anything. She indicated that the CAO never explained to her that they were not the Commission and that she could not appeal to them, although they did identify themselves as the CAO.

The Appellant did not recall speaking with MPIC or her case manager and being advised that she would have to follow up with the Commission regarding her appeal. She did not recall her case manager advising her that the Commission is a separate entity from MPIC, although she did acknowledge that it was possible that the case manager did tell her that she needed to follow up with the Commission about the appeal. She said that she might have mentioned that she did not understand but that it was hard to remember. As she had no notes from this conversation, it was fair to say that she might not accurately remember the details.

The Appellant did not specifically recall when she contacted CAO for assistance or whether she ever contacted the Commission to follow up after her conversations with the case manager. She finally received some papers and asked her mother for help with them.

The Appellant acknowledged that she was capable of and did complete several expense forms in 2019 and had very little difficulty receiving reimbursement from MPIC for things like travel and parking expenses for medical appointments. She described how she would go on Google maps to calculate the distance to use for submitting her mileage claims. She was able to upload photographs of her home to her computer and print them out, writing descriptions below the photos.

The Appellant acknowledged that though she did sometimes travel to the downtown [city] area to attend medical appointments, she never stopped at the Commission's office, the office of the CAO or an MPIC service centre to ask for assistance or inquire about her appeal.

Submission for the Appellant

The Appellant submitted that a lot has been going on in her life in the period following the MVA. She moved into a new home at a time when she had nobody to help her and was struggling with moving around and having to do things by herself. Her partner had to work. She was trying to deal with making phone calls and trying to get people to take her to her appointments. With all of these things going on, she stated that she now has PTSD and depression. She was also trying to deal with her two small children who have disabilities. So, she was not able to appeal right away.

She cannot do the stuff she used to do before, such as cleaning and cooking. She is very limited and she gets very sore. It is hard for her to do all this other stuff as well and she needs more assistance.

Submission for MPIC

Counsel for MPIC submitted that the Commission should not exercise its discretion to grant the Appellant an extension of time in this case. In support of her position, she referred to previous decisions of the Commission in AC-19-075, AC-19-047, AC-18-057, AC-16-046, and AC-10-51.

These cases set out factors which the Commission will consider in exercising its discretion under the MPIC Act, such as:

- 1) The actual length of the delay compared to the 90-day time period set out in section 174 of the MPIC Act;
- 2) The reasons for the delay;
- 3) Whether there has been any prejudice resulting from the delay;
- 4) Whether there has been any waiver respecting the delay;
- 5) Any other factors which argue to the justice of the proceedings.

Counsel indicated that the most relevant factors in this case are the length of the delay and the reasons for it.

The IRD was issued on October 19, 2018, and the Appellant confirmed that there was a good possibility that she received it shortly thereafter. The 90-day period for appealing therefore expired on January 19, 2019, but the Appellant did not file her NOA until February 16, 2020, some 13 months after the expiry of the 90-day period and just under 4.5 times the length of the statutory appeal period. This, it was submitted, is a significant delay.

Counsel noted that the Commission has denied applications for extension in cases involving shorter delays than the case at hand, such as the 44 days in AC-10-51, and the eight months in AC-18-057, which the Commission had described as not an insignificant delay when denying an extension.

Although there is no indication of a specific prejudice alleged in this case, counsel noted that there is inherent prejudice with any such lengthy delay.

But the most important factor, counsel acknowledged, is the reason for the delay. In this case, it was submitted that the Appellant had failed to provide a reasonable excuse for missing the deadline. In her written reasons, the Appellant advised the Commission that she really did not understand the process for appealing and that proper information was not given to her. So

essentially, her main reason was her failure to understand the appeal process. This, it was submitted, is not a reasonable excuse.

When one looks at the IRD, one can see that it provides clear direction on where to appeal in writing to the Commission. The fact that the Commission is a separate entity is set out, with full contact information provided. The IRD also provides information regarding the CAO, with full contact information for them.

The Appellant indicated in her testimony that she skimmed this letter and then sent in some letters, although her evidence was inconsistent in regard to where they were sent, at first indicating it was to MPIC, and then to CAO. There is no evidence as to when she exactly sent these letters in, as MPIC had nothing on file until the NOA was filed. Had the Appellant only read the IRD carefully, she would have seen the address for the Commission. Further, even if she sent documents to the CAO, she still had an obligation to follow up on her appeal.

The Appellant's evidence regarding contact with the Commission was also inconsistent. At one point, she said she didn't speak to them until January 2020, but then she said she called them earlier and had not received any calls back. It does not ring true, counsel submitted, that the Commission did not return the Appellant's calls, as in her experience, the Commission goes above and beyond to help Appellants with their appeals. Rather, counsel surmised that the Appellant is confused about where she ultimately sent things and when.

The Commission's decision in AC-19-047 indicated that the onus is on the Appellant to take reasonable steps to clarify her confusion.

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.

Similarly in this case, the Appellant did not take reasonable steps to clarify her confusion. It is not clear from the evidence who she called and left messages with or whether she really made any attempts to properly contact the Commission or even CAO. She did not follow up with the Commission and didn't have contact with a CAO representative. When she brought the matter of an appeal up with her case manager, the case manager explained the process, how to appeal and the amount of time for doing so, even re-sending the IRD to her. Still, the Appellant did not follow up with the Commission.

While the Appellant testified that she was very busy moving house in 2019, which took priority over her appeal, this ultimately does not lead to a reasonable excuse. Her evidence was that she went to a medical clinic for doctor appointments, not far from downtown, on four to six occasions in 2019. She could have stopped in at the offices of the Commission, CAO, or an MPIC service centre. It would not have taken long to check on her appeal, had she made her appeal a priority.

Further, the Appellant's conduct around the time of filing her NOA suggests that she did have the ability capacity to file it in a timely manner. She completed the NOA, and provided a statement, as well as a statement from her partner. She then put together a two-page photo collage explaining the layout of her new home. She has a grade 12 education and a certificate as

an educational assistance. She does some online banking and knows how to use the Internet and email. She was able to submit travel reimbursement forms for medical expenses and had no problems being reimbursed for these, even properly calculating mileage for the travel forms. It is not that much more complex of a task to complete NOA forms. If the Appellant could do all this then she could have filed her appeal within the 90-day limitation. Counsel submitted that all this demonstrated an ability on the part of the Appellant to properly submit a timely appeal, had she fully and thoroughly read the decision letter which contained the relevant information on how to submit it.

Therefore, overall, counsel submitted that the Appellant has not submitted a reasonable excuse for the late filing of her appeal and that the Commission should not extend the time limitations for filing.

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.

In this case, the Appellant's appeal was not received by the Commission within 90 days after she received the IRD. Accordingly, she has asked the Commission to exercise its discretion to allow an extension of time to file the NOA which was received by the Commission on February 16, 2020.

The Commission has reviewed the documentary evidence on file, the evidence of the Appellant, and the submissions of the Appellant and counsel for MPIC. Upon a consideration of the totality of the evidence, both oral and documentary, and upon a consideration of the relevant factors surrounding the delay as set out above, the Commission finds that the Appellant has not provided a reasonable excuse for her failure to appeal the IRD to the Commission within the 90-day time limit set out in section 174 (1) of the MPIC Act.

The Appellant submitted that she was overwhelmed by all of the things that were going on in her life, including her pain and disability, her move and other family matters. She required assistance from her family and was frustrated and confused by MPIC's denials of her claim for PCA. She remained convinced of her need for this assistance and explained that she was determined to pursue her appeal in this regard at the Commission. However, a lengthy period of more than a year went by between the 90-day period for filing an appeal and the receipt by the Commission of the Appellant's NOA.

The Appellant did not submit medical or other evidence to establish that she suffered from a condition which would prevent her from attending to her appeal. The evidence showed that she eventually was able to competently file her NOA. She continued to efficiently file travel expense claims for reimbursement from MPIC. The evidence also showed that she had the education and ability, including familiarity with computers, email and the internet, to attend to important matters such as these.

As noted by counsel for MPIC, the Commission's process for filing an appeal is not complex. The options for her appeal and the resources offered to assist her with that were set out in clear language in the IRD.

The explanation of the Appellant that she was confused and unable to follow through with her appeal without further assistance is not a reasonable explanation for missing the appeal deadline. The Appellant has the onus of proof and did not present clear evidence of reasonable steps taken to clarify such confusion. She did not make arrangements with the CAO to represent her. Her assertions that she made several telephone calls to both the Commission and the CAO, leaving messages without receiving any communication from them in return, were vague, inconsistent with the general practice of these organizations and not substantiated by clear or convincing evidence.

The Commission finds that the Appellant failed to establish that these factors cited by her prevented her from filing her appeal in a timely manner. The Commission accepts the submission of 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 050193-A&B dated October 19, 2018 to the Commission.

Dated at Winnipeg this 21st day of September, 2020.

LAURA DIAMOND