

## **Automobile Injury Compensation Appeal Commission**

**IN THE MATTER OF an Appeal by [the Appellant]  
AICAC File No.: AC-20-092**

**PANEL:** Pamela Reilly, Chairperson

**APPEARANCES:** The Appellant, [text deleted], appeared on his own behalf;  
Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Daniel Reimer.

**HEARING DATE:** December 8, 2020

**ISSUE(S):** Whether the Commission will allow the Appellant an extension of time to file his Notice of Appeal.

**RELEVANT SECTIONS:** Section 174(1) of The Manitoba Public Insurance Corporation Act ('MPIC Act').

### **Reasons for Decision**

#### **Background:**

The Appellant has a history of motor vehicle collision claims with MPIC variously dated, October 18, 2004, December 4, 2007 and December 15, 2011. The Appellant suffered injuries from his most recent motor vehicle accident on July 11, 2017 ("the July MVA").

Because of the July MVA injuries, MPIC funded the Appellant's 42 chiropractic treatments until March 2018, as well as athletic therapy treatments, which ended December 7, 2017. On May 8, 2019, the Appellant requested funding for physiotherapy treatments. On May

31, 2019, the Benefits Administration Unit (“BAU”) of MPIC issued a decision that denied funding of physiotherapy treatment for the Appellant.

The Appellant filed an Application for Review dated July 30, 2019 and requested a hearing, which the Internal Review Officer (“IRO”) scheduled for October 22, 2019. The Appellant did not attend that hearing and an Internal Review Decision (“IRD”) was issued dated November 1, 2019. The IRD stated that the Appellant had left a message on October 22, 2019 explaining that he could not attend the meeting because his daughter, who was also his driver, had a baby that day. The Appellant did not call to reschedule despite numerous calls by the IRO to reschedule another meeting with the Appellant, prior to issuing the IRD. The November 1, 2019 IRD upheld the BAU decision and concluded with a capitalized notice stating that the appellant must file any notice of appeal within 90 days of receiving the IRD.

On March 20, 2020, the Appellant telephoned the Commission and advised that he wished to file a Notice of Appeal (“NOA”). That day, Commission staff mailed a NOA, mediation information sheet, brochure of information about the Commission, and brochure of information about the Claimant Adviser Office, to the Appellant’s address.

On March 30, 2020, the Appellant telephoned the Commission again asking for the NOA. Commission staff advised they had previously mailed a NOA to him, but would mail another NOA. A second mailing went out April 1, 2020. On April 5, 2020, the Appellant advised that he had not received the NOA. After a number of Commission staff efforts to

provide him with a NOA, the Appellant acknowledged receipt on May 27, 2020. The NOA included a cover letter dated May 13, 2020, which advised the Appellant to ensure that he provide reasons for late filing, if he was in fact filing beyond the 90-day filing deadline.

The Commission received the Appellant's NOA on June 5, 2020. The NOA included a separate handwritten letter in which the Appellant explained that he had missed his October 22, 2019 meeting with the IRO because his mother's burial occurred that day. However, it did not explain why he had filed his NOA past the 90-day time limit set out in the November 1, 2019 IRD.

**Issue:**

The issue before the Commission is whether the Appellant has a reasonable explanation for failing to appeal the IRD dated November 1, 2019 at the Commission within the 90-day time limit set out in Section 174(1) of the MPIC Act.

**Decision:**

The Commission finds that the Appellant has not provided a reasonable explanation for failing to meet the 90-day time limit for filing his appeal. Therefore, in exercising its discretion under the MPIC Act, the Commission declines to grant the Appellant an extension of time to file.

**Evidence and Submission by the Appellant:**

The Appellant represented himself at the hearing. The Appellant stated that he understood the requirement for sworn testimony, and chose to give his oath on the bible.

The Appellant came to [country #1] many years ago from the [country #2], and advised that [text deleted] was not his first language. The Appellant confirmed that he understood the Commission's questions, understood the explanation of the hearing process, and that he could hear both MPIC's representative and the Chair. He explained that his daughter had dropped him off but could not remain with him at the hearing because she had to work.

The Commission explained that the hearing was the Appellant's opportunity to explain why he had filed his NOA more than 90 days after receiving his November 1, 2019 Internal Review Decision ("IRD"). The Appellant did not have the tabbed binder prepared by the Commission, which included a copy of the IRD. The hearing was adjourned, momentarily, to make a copy of the IRD for the Appellant's reference.

The Appellant was soft spoken and difficult to hear. His testimony often strayed off the topic of the late filing. He confirmed his mailing address and date of birth. He said that he obtained a [text deleted] degree from the [country #2] and worked in the [text deleted]. The Commission asked the Appellant if he was taking any medication that affected his memory or concentration. He replied that he took heart medication and medication for

his legs, but that these did not affect his memory or concentration. He repeated that he was [text deleted] years old and said, "My mind is sharp."

The Commission asked the Appellant to explain what had happened after he filed his July 30, 2019 Application for Review of the BAU decision, which denied him funding for physiotherapy. The Appellant reviewed the history of his prior motor vehicle accidents and a prior hearing before the Commission. The Commission reminded the Appellant to speak more specifically about the issue before the Commission.

The Commission asked the Appellant to review the copy of the IRD just provided to him. He said that he received the November 1, 2019 IRD "a few days" or "a week later" (meaning a few days or a week after November 1, 2019). He said that he read the IRD. The Commission asked the Appellant a number of times what he did after he received the IRD. The Appellant again reverted to speaking of his prior history with MPIC and prior dealings with various lawyers, case managers, and Commissioners. The Commission explained to the Appellant that this was a new hearing about the specific issue of his late filing. The Commission asked the Appellant to explain why he was late in filing his NOA. He replied at one point that his mother had died on October 22, 2019. The Commission noted that this was the reason the Appellant had provided in his letter attached to the NOA and received at the Commission on June 5, 2020.

In cross-examination by MPIC, the Appellant re-affirmed that he received the IRD a week after the date of November 1, 2019. He admitted that he had read the IRD and that he

had a copy at his house. The Appellant admitted that he had filed previous applications for review and appeals on time. In particular, the Appellant admitted that he filed a prior appeal within 4 days of receipt of a decision because he knew that he should file an appeal “as soon as possible.” In response to MPIC’s counsel’s comment that page five of the November 1, 2019 IRD contained the same notice about his 90-day “Right of Appeal”, the Appellant said, “It was new to me.” Counsel pointed out that the Appellant had just stated that he knew the filing deadline was important, to which the Appellant replied, “But I just received this 2 week [sic] later.”

MPIC counsel reaffirmed the Appellant’s prior testimony that he had received the IRD about a week after November 1, 2019 but he filed his NOA in June 2020. MPIC counsel then asked ‘why it took so long’. The Appellant replied, “I was all alone.” When asked whether this prevented him from filing his NOA, the Appellant said he went back to his old chiropractor because MPIC had approved payment of one more treatment.

After the cross-examination by MPIC counsel, the Commission asked the Appellant to clarify his reasons for not attending the October 22, 2019 meeting. The Commission explained that the IRD stated that he had missed the appointment because his daughter had a baby, but his handwritten letter said that his family buried his mother on October 22<sup>nd</sup>. The Appellant confirmed this was the reason. In response to the Commission’s questions, the Appellant confirmed his mother’s name, place of birth, date of birth, place of residence, and place of funeral service and burial. The Commission pointed out to the Appellant that two published obituaries (one of which came from the funeral home that he

named) contained personal information including his and his wife's name. The obituary stated that his mother died on September 15, 2019 and her burial occurred on September 24, 2019 (a month before the October 22<sup>nd</sup> meeting). The Appellant insisted that his mother's death and the birth of his grandchild occurred on the same day – October 22, 2019.

The Commission pointed out that the Appellant's material provided information to explain why he missed the October 22<sup>nd</sup> meeting, but not why he was late filing his NOA. The Commission again asked the Appellant to explain why it took him so long between November 1, 2020 and June 5, 2020 to file his NOA. The Appellant reverted to explaining the history of his prior accidents and various hearings. He did not address the question.

The Commission offered the Appellant the opportunity to summarize his evidence and provide the Commission with any further information on the issue of why he waited until June 5, 2020 to file his NOA. He spoke of a number of matters. These included trying to book another appointment with the IRO, his daughter's new baby, his bursitis, his doctor who has been treating him for 9 years, and that he has no money. He spoke of his wife's arrival from the [country #2], and repeated the history of his dealings with MPIC related to his accidents prior to the July MVA. In response to the Commission's question, 'was there anything stopping you from filing your NOA before June 5, 2020?' the Appellant again talked of prior hearings before the Commission and his dealings with Commission staff. He did not specifically answer the question.

### **Submission of MPIC**

MPIC counsel confirmed that MPIC is opposed to the Commission granting an extension of time to the Appellant. He referred to the statutory time limit set out in section 174(1) of the Act, which requires the Appellant to file a NOA within 90 days after receiving his IRD.

MPIC counsel set out the factors that the Commission considers when deciding whether to grant an extension. These factors are the length of the delay, the reasons for the delay, whether MPIC suffered prejudice because of the delay, any waivers granted, and any other relevant factors. (MPIC counsel referred to AICAC decision AC-16-046, which sets out the factors.)

MPIC counsel submitted that the most relevant factors in this case were the length of delay and the reason for delay. He pointed out that page 5 of the IRD clearly sets out the right of appeal and contact information. Counsel pointed out that the Appellant testified that he knew he must file his appeal 'as soon as possible.' Counsel submitted that if the Commission accepted that the Appellant received the IRD on or about November 7, 2019 then 90 days after that puts the filing deadline in early February, 2020 (Note: February 5, 2020). However, the Appellant filed his NOA approximately 200 days beyond the filing deadline. (Note: There are 121 days between February 5, 2020 and June 5, 2020).

MPIC counsel submitted that AICAC decision AC-10-51 denied granting an extension to an appellant who missed the deadline by only 44 days. He pointed out that in AC-10-51



the critical factor was the lack of reasonable excuse for the late filing, which is the case with this Appellant.

MPIC counsel pointed out that the letter from the Commission to the Appellant told him to provide reasons for the late filing. However, the only reasons the Appellant provided were to explain why he did not attend his October 22, 2019 Internal Review meeting. MPIC counsel also pointed out that this is not the Appellant's first appeal. The Appellant is aware of the deadline requirement and has filed on time in the past.

Finally, MPIC counsel referred to AICAC decision AC-19-047 and submitted that the panel in that case found that the death of the Appellant's mother was not a reasonable excuse for late filing. MPIC counsel requested that the Commission exercise its discretion by refusing to grant the extension

**Discussion:**

The onus is on the Appellant to provide a reasonable explanation as to why he missed the filing deadline.

Section 174(1) of the MPIC Act is applicable and states 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.

This section provides the Commission with discretion to allow an extension of the 90-day filing deadline for appealing a review decision. The Commission has considered the factors stated by MPIC counsel and as set out in previous AICAC decisions on this issue. The Commission finds that there has been no actual prejudice to MPIC because of the delay nor has there been any express or implied waiver of the 90-day time limit. The relevant factors here are the length of the delay and the Appellant's reason for the delay.

Based upon the Appellant's testimony, the Commission finds that as of November 7, 2019, the Appellant received, read and had notice of the IRD. The second paragraph on page 5 of the IRD states as follows:

**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 can be reached at:

301 – 428 Portage Avenue  
Winnipeg, MB R3C 0E2

Telephone Number: 204-945-4155  
Fax Number: 204-948-2402  
Toll Free: 1-800-282-8069

Calculating 90-days past November 7, 2019 puts the deadline for filing the NOA at February 5, 2020. The Appellant filed his NOA 121 days later (4 months) on June 5, 2020. Four months is a significant delay, which requires a cogent and reasonable explanation.

MPIC Counsel referred to Commission decision AC-19-047. In that case, one of the Appellant's reasons for late filing was that she was dealing with her mother's death and estate. The Commission found that the Appellant's mother had passed away some 13 months after the date of IRD, despite the Appellant initially advising the Commission that her mother died 3 weeks after receipt of the IRD. The Commission found that the Appellant had not provided a persuasive explanation for the discrepancy in the dates. The Commission found the Appellant capable of understanding the process and that she had failed to take reasonable steps to clarify any confusion that may have led to her delay. The Commission looked at the totality of the Appellant's various explanations and concluded that the Appellant had not provided a reasonable explanation for her late filing. Depending on the facts, there may be circumstances in which the death of a family member provides a reasonable explanation to grant an extension. However, such was not the case in AC-19-047, and it is not the case here.

Despite offering the Appellant numerous and varied opportunities to explain the delay, he did not provide a clear explanation. The discrepancy regarding the burial date of the Appellant's mother is puzzling and perhaps the Appellant's memory was not reliable on that point. Nonetheless, the Commission finds on a balance of probabilities that the Appellant understood the proceedings and the requirement to explain the delay after he received the IRD, but failed to provide a cogent and reasonable explanation.

**Disposition:**

The Commission finds, on a balance of probabilities, that the Appellant received the IRD on November 7, 2019. The IRD provided the Appellant with clear information about the 90-day time limit for filing his NOA. The Appellant had in fact met this deadline for prior appeals. The Appellant's testimony was that he understood that he should file an appeal as soon as possible. The Appellant did not provide a cogent and reasonable explanation as to why it was not possible for him to file within the deadline, or why he delayed the filing to June 5, 2020, which was well beyond the 90-day time limit.

Accordingly, the Commission will not extend the time limit within which the Appellant may appeal Internal Review Decision 052677-A dated November 1, 2019 to the Commission.

Dated at Winnipeg this 16<sup>th</sup> day of December, 2020.

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**PAMELA REILLY**