

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-20-116**

PANEL: **Laura Diamond, Chairperson
Dr. Sharon Macdonald
Paul Taillefer**

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

HEARING DATE: **June 23, 2021**

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').**

**AICAC NOTE: THIS DECISION HAS BEEN EDITED TO PROTECT THE
APPELLANT'S PRIVACY AND TO KEEP PERSONAL INFORMATION
CONFIDENTIAL. REFERENCES TO THE APPELLANT'S PERSONAL HEALTH
INFORMATION AND OTHER PERSONAL, IDENTIFYING INFORMATION HAVE
BEEN REMOVED.**

Reasons For Decision

The Appellant was injured in a motor vehicle accident (MVA) on December 15, 2013 and received MPIC benefits for chiropractic care, until this benefit was terminated by MPIC, pursuant to a letter from her case manager dated February 9, 2016.

The Appellant filed an Application for Review from the case manager's decision on April 7, 2016.

An Internal Review Officer (IRO) for MPIC upheld the case manager's decision in an Internal Review Decision (IRD) dated May 11, 2016.

The IRD included a notice that if the Appellant was unsatisfied with that decision, she had ninety (90) days within which to appeal in writing to the Commission.

On April 30, 2020, a few years after the expiry of the 90 day appeal period, the Appellant filed a Notice of Appeal (NOA) with the Commission, and requested an extension of the time for filing her appeal beyond the 90 days. MPIC opposed this request and the Commission held a hearing to determine whether to exercise its discretion pursuant to section 174(1) of the MPIC Act to allow the Appellant further time to appeal the IRD to the Commission.

Disposition

Upon a consideration of the evidence, including the testimony of the Appellant and the submissions of the parties, the panel declined to exercise its discretion to extend the time allowed to the Appellant for filing her appeal.

Background

At the request of the Commission, the Appellant provided an email dated August 31, 2020, setting out a written explanation with her reasons for the late filing of her appeal.

This email advised that when she received the IRD she telephoned the IRO to inquire whether she had done a careful review of the medical information before denying the Application for

Review. The IRO assured her that she had done a careful review of the medical information and the Appellant believed her.

The email also indicated that she had received a copy of her medical files at that time, but had not had the time or energy to review them. When she did review them, she realized that the IRD had failed to include an opinion from MPIC's Health Care Services consultant which supported her claim. She also discovered that MPIC had incorrectly claimed that the Health Care Services chiropractic consultant had reviewed her chiropractor's chart notes and reports, when the consultant had not actually received those chart notes until after he had provided his opinion.

This discovery was not made by her until after the time limit for filing an appeal had passed and she felt that she had lost her chance to bring these matters forward.

The Appellant noted that at that time she was an international student, alone in [text deleted], without any familial support. She was struggling to navigate the MPIC process, attend rehabilitation appointments and hang on to her PHD. This was an overwhelming experience. After some time, a pattern to MPIC's dealings emerged for her and she realized that they selectively reviewed reports in a way that supported the denial of benefits. She also gathered further medical evidence to support her claim for additional chiropractic sessions and asked for the opportunity to bring forward all this information in an appeal.

Counsel for MPIC was given the opportunity to respond to the Appellant's email and provided comments on October 20, 2020. He advised that MPIC objected to the late filing on the basis of the length of time which passed between the 90 day appeal period and the filing of the NOA. He also took the position that the Appellant's reasons for the late filing were not a reasonable

excuse, given that the Appellant was able to file both an Application for Review and another NOA in a similar time frame. Assuming that the IRO had done a thorough review is not a reasonable excuse for failing to file an appeal from a decision she disagreed with.

The Hearing

A hearing was held by the Commission to determine whether the Commission should extend the time within which the Appellant may file her NOA from the IRD. As a result of Pandemic considerations, the parties agreed to conduct the hearing by video-conference for all parties.

The hearing was scheduled for June 9, 2021 at 9:30 a.m. That morning, the Appellant contacted Commission staff to advise that, due to a requirement at work, she was unable to participate in the hearing. She requested an adjournment of the hearing. Counsel for MPIC agreed to her request and the matter was rescheduled for June 23, 2021 at 9:30 a.m. Both parties attended by video-conference. The Appellant testified and was cross-examined by counsel for MPIC and both parties made submissions to the panel.

Evidence of the Appellant

The Appellant testified that when she first received the IRD, she flipped through it and noticed references to independent physiatrists who had assessed her for MPIC. She explained that she had suffered trauma as a result of her interactions with these doctors, who had misrepresented her injury, so she immediately closed the decision. But since she had met the IRO before and found her to have a professional manner, she called her right away, to talk with her. The IRO reassured her that MPIC considered her chiropractor to be reputable but that she had done a careful job in reviewing the decision, so the Appellant felt better and put the IRD down.

When she learned that there was a Health Care Services opinion from [text deleted] and a psychological report which supported her chiropractic claim but had not been noted by the IRO in her chiropractic review, she was not aware that there was any way to request an extension for filing of an appeal.

Some time later, when the Appellant was meeting with the same IRO regarding a wrist injury, she learned that it was possible to file a late appeal with the Commission and request an extension of time for filing. She said that sometimes information comes to a claimant in a very disconnected way, especially when a claimant is not dealing with a single assigned case manager from the beginning. She explained that vacation leave taken by her case manager at the beginning complicated this process, and that she had not received a brochure which would orient her as a new claimant and explain for her that there is a possibility to file documents late in some circumstances.

The Appellant also explained that as an international student alone in the city, she had a lot going on at the time. She tried to follow through with an appeal, but struggled to do so. Then, during the pandemic, she found herself with more time to explore the Commission's website and work on her other appeals. That is when she saw reference to and reports regarding 90 day extension hearings on the Commission's website, and decided that she would try to file this appeal, even if it was late.

On cross-examination, the Appellant explained that sometimes she waited until the semester was over to file different applications in the MPIC claims process, because this would have been difficult to do while she was trying to deal with teaching and suffering from her neck spasms.

She could not say for certain when and whether she had read the section of the IRD that reviewed appeal rights, only recalling that she had discussed appeal rights with the case manager when dealing with an issue of athletic therapy. She indicated that she did not even read the IRD in full until sometime in 2017, when she realized that [text deleted]'s opinion had been omitted. She wasn't sure when in 2017 this was, perhaps in March or April, and she was somewhat evasive when asked when she first reviewed the section in the IRD about appeal rights.

She said that she did learn about the 90 days requirement when she was discussing her wrist surgery claim, but by then it was too late for the chiropractic appeal and she accepted that she had missed the deadline, since at that time she did not realize that it was possible to ask for an extension of time. She said she dealt with the Claimant Adviser Office (CAO) regarding her wrist surgery, and that they placed a strong emphasis on the 90 day time limit. She said that she did not learn of the possibility for an extension until April of 2020.

When asked whether part of the reason for her failure to file on time was that she was feeling overwhelmed, the Appellant said that a number of things went wrong and that she had limited resources. But she explained that she filed other appeals on time, once the CAO had explained the importance of the 90 day deadline to her.

Submission for the Appellant

The Appellant submitted that this problem began when her case manager took vacation at the beginning of her claim. She had been told that she had to wait for her case manager to return, but an orientation at that time would have been very useful to her.

She explained that if she had known about the malleability of the 90 day period, she would not have waited so long to seek an extension. She had taken the 90 days as a solid figure and taken responsibility for the idea that there was nothing further she could do. When she learned that extensions could be granted in unusual circumstances, she felt that her circumstances were indeed unusual and so, in April, during a break between semesters when she had a moment, she filed her appeal.

In contrast, in 2016, she was trying to finish her PHD and meet with the committee. She had to teach, and test kids in her study. This was difficult as her hand was very sore, leading to surgery in June of 2016. She was upset about her case manager's decision with regard to her wrist surgery, and suffering from post concussion symptoms and dizziness. She was struggling to manage her rehabilitation. There was a Canada Post strike and she had to move, further complicating things. When she finally settled in, she was able to file the appeal for her wrist surgery, but the 90 days were not on her radar until she talked with the IRO and the CAO.

Submission for MPIC

Counsel for MPIC referred to Reasons for Decision in a previous cases before the Commission (decision for AC-10-149 and decision for AC-16-046, AC-16-047, AC-16-048, AC-16-49, AC-16-050, AC-16-051) to establish the principles to be applied in cases involving a request for extension of the 90 day appeal deadline. He submitted that the most relevant factors are the length of the delay and the reasons given.

In this case, the length of the delay was 1363 days, which amounts to a very substantial delay, particularly when compared to the statutory limit of 90 days. While there is no evidence that

MPIC was specifically prejudiced by this delay, he maintained that there is inherent prejudice in every delay.

But the most important issue, he noted, is the question of the reasons for the delay. The Appellant had provided her potential explanation in her written reasons and oral submission. These circumstances included her surgery, program at school, and lack of knowledge about the Commission, because she did not read the full IRD and so did not discover information until after the 90 days had passed. Then, she did not realize that the 90 days could possibly be extended.

These reasons, he submitted, do not provide a reasonable excuse for the inordinate lateness in the filing of the appeal.

It can not be considered a reasonable excuse, he argued, that she had failed to read the IRD and become aware of the availability of an appeal and the timelines for same. These rights and timelines are clearly set out at page 6 of the IRD itself and it was incumbent upon the Appellant to review the IRD and be aware of the existence of this option.

Then, despite, the Appellant's allegations concerning the deficiency of the IRD, she did not file a NOA at the time she discovered them. She became aware of these concerns in 2017, but despite this she did not file her NOA until April 2020. If the Appellant believed that her concerns were not addressed in the IRD it would be reasonable for her to file an appeal when this came to her attention. She did not do so. While this hearing must focus upon the reasons for the Appellant's delay rather than the actual IRD itself, it is worth noting that in drafting their decisions the IRO's job is to pick the information which they believe is relevant to the questions at hand (in this case

chiropractic care). If the Appellant believed the IRD was incorrect, the remedy was to file a NOA with the Commission. That is the proper forum, and any discussion of other attempts to have the decision reconsidered is not relevant.

Counsel submitted that it is also not reasonable for an appellant who disagrees with an IRD to fail to seek out the resources that might have been able to give her the ability to extend the time limits, such as an earlier review of the Commission's website, or a discussion with the Commission staff or CAO.

The Appellant's suggestion that factors such as her surgery, classes, and other issues, with the overwhelming strain these put on her, may have contributed to her failure to appeal, fails to account for the other appeal which the Appellant filed with the Commission in March 2017. There is no reasonable explanation why she could not have also done so in relation to the chiropractic care IRD. Even if the Appellant was not able to file this appeal in 2016, she surely could have done so in 2017, which would have significantly reduced the lateness of the filing.

Counsel referred to the Reasons for decision in the case of AC-16-046, AC-16-047, AC-16-048, AC-16-49, AC-16-050, AC-16-051 where that appellant argued that they were overwhelmed by health issues and distrust of the system. The Commission found that the appellant there had prioritized matters other than her appeal and that this was not a reasonable excuse. Here, the Appellant has suggested that there were a number of other matters that she was dealing with, but has not submitted an explanation as to why these prevented her filing of an appeal. Counsel suggested that this Appellant had also simply chosen to prioritize other matters, particularly since all that is needed to initiate an appeal is the filing of a simple form. This is not an onerous

requirement, and the Appellant could have accessed help from the Commission, or CAO if she needed it.

Yet the Appellant did not do so, having submitted that she was too upset to even read the IRD, which, he submitted, is not a reasonable excuse for the late 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 considering whether to exercise its discretion under section 174(1) of the MPIC Act, the Commission may consider various factors, 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.

The panel has reviewed the timelines involved, including the date of the MVA in December 2013 and of the IRD of May 11, 2016.

In the almost 4 years that passed before she filed her NOA, the Appellant became aware of the Commission and its role and of her objections to the IRD. She knew about these factors well before 2020, and as early as 2017. She submitted that the demands of her PHD program and wrist surgery prevented her timely filing of an appeal.

While the panel recognizes that the Appellant felt overwhelmed at that time, we must also acknowledge that although the PHD demanded a large effort on her part, she would also have opportunities to be involved in other activities, including the business of day-to-day living.

The reasons provided by the Appellant are not sufficient to explain the unusually long delay in the period between receiving the IRD and filing her appeal. The NOA form is not a lengthy or complex document to complete. The Appellant has shown herself, through her submissions to MPIC and the Commission, to be competent and able to handle more complex matters than those involved with the filing of the NOA form.

The Appellant's submission that she did not fully read the IRD is not a reasonable excuse for her failure to act. When in receipt of important documents that may have bearing upon one's claims, benefits and treatment, the responsible thing to do is to read the entire document.

The panel does not see any compelling reasons for the Appellant not to have at least taken the first step of completing and filing an NOA in 2017, when she became aware of her objections to the IRD.

For these reasons, the panel agrees with counsel for MPIC that the Appellant has failed to provide a reasonable excuse for her failure to appeal the IRD within the 90 day limit set out in section 174 of the MPIC Act.

Accordingly, the Commission will not extend the time limit within which the Appellant may appeal the Internal Review Decision of May 11, 2016 to the Commission. The Appellant's appeal is dismissed.

Dated at Winnipeg this 4th day of August, 2021.

LAURA DIAMOND

SHARON MACDONALD

PAUL TAILLEFER