

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-18-034; AC-18-035**

PANEL: **Nikki Kagan, Chairperson
Jacqueline Freedman
Dr. Lorna Turnbull**

APPEARANCES: **The Appellant, [text deleted], represented herself but did not appear;
Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Jack Burke-Gaffney.**

HEARING DATE: **December 16, 2021**

ISSUE(S): **Whether the Appellant has failed to diligently pursue her appeal.**

RELEVANT SECTIONS: **Sections 182.1 and 184.1 of The Manitoba Public Insurance Corporation Act ('MPIC Act').**

Reasons For Decision

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.

Background

The Appellant was injured in a motor vehicle accident (MVA) on July 10, 2017. The Appellant sought benefits for personal care assistance (PCA) and funding for a firm mattress. In a case management decision dated September 26, 2017, the Appellant was advised that she did not qualify for PCA benefits. Following an investigation, an Internal Review Decision (IRD) dated

January 24, 2018 determined that Health Care Services reviews supported the Appellant's entitlement to PCA benefits immediately following the accident until September 13, 2017, but the Appellant did not qualify for PCA benefits after September 13, 2017.

The Appellant was not satisfied with this decision and filed a Notice of Appeal (NOA) with the Commission on February 21, 2018. The NOA indicated that the Appellant was self-represented.

In a case management decision dated November 22, 2017, the Appellant was advised that it would be medically reasonable for her to purchase a 4-inch mattress topper at a cost of \$136.83. The Appellant was dissatisfied with this decision and sought the rental of a hospital bed. Following an investigation, an Internal Review Decision dated January 24, 2018 determined that the rental of a hospital bed was not medically required. The Appellant filed a Notice of Appeal with the Commission on February 21, 2018. The NOA indicated that the Appellant was self-represented.

The file was returned from mediation on January 29, 2019. The Commission staff compiled the relevant documents into an indexed file (index). On April 4, 2019, copies of the index were provided to the Appellant and to MPIC by Xpresspost.

On July 18, 2019, the Commission contacted the Appellant to explain the role of the Commission and its processes and to confirm that the Appellant received the index. The Appellant advised that she did not receive the index. The Appellant provided a new address in [text deleted] to the Commission.

On July 19, 2019, the Commission forwarded the index to the Appellant by Xpresspost to the address in [text deleted].

On October 16, 2019, the Commission contacted the Appellant to confirm that she received the index. The Appellant confirmed that she did receive it but she was in the process of hiring a lawyer relating to another “fight with MPIC” and could not do anything with her appeals at the Commission until the other matter was resolved.

On October 22, 2019, the Commission sent an email to the Appellant requesting that she provide detailed reasons as to why she required further time to review the index. On October 22, 2019, the Appellant responded to the Commission by email advising that she had to “take care of other legal matters first”.

On October 30, 2019, the Commission forwarded an email to the Appellant explaining that in the event an Appellant does not take active steps to pursue their appeal, the Commission does have the power to consider whether to dismiss the appeal. The Commission further explained that if the Appellant provides a reasonable explanation as to why she could not pursue her appeal, other than that she is too busy to proceed, the Commission will review it. The Commission then asked for a further explanation as to why the Appellant could not pursue her appeal and how her other legal matter has impacted her ability to pursue her appeal at the Commission. No further explanation was provided.

On March 5, 2020, the Commission contacted the Appellant by telephone regarding scheduling a case conference. The Appellant advised that she was unable to schedule anything as “she was

currently in the process of taking MPI to court.” She said that she would appear in court by the end of the year.

On March 6, 2020, counsel for MPIC requested that a hearing be set to determine whether the Appellant had failed to diligently pursue her appeal (Failure to Pursue hearing).

On May 13, 2020, the Commission sent the Appellant a letter to the address in [text deleted] by regular mail and via email enclosing a Notice of Withdrawal. On June 11, 2021, the mailed correspondence was returned to the Commission marked Moved/Unknown/Return to Sender.

On June 18, 2021, the Commission contacted MPIC to determine if they had different addresses on file for the Appellant. Further addresses ([text deleted] and [text deleted]) were provided including notice that the Appellant had advised her case manager that she may send correspondence to her friend’s address.

On August 10, 2021, further correspondence was sent to the Appellant by email and by regular mail to the [text deleted] and [text deleted] addresses provided by MPIC advising that MPIC had requested a Failure to Pursue hearing. No response was received from the Appellant.

On August 13, 2021, the Commission sent further correspondence to the Appellant by regular mail to the [text deleted] and [text deleted] addresses advising that an Index for the Failure to Pursue hearing would be sent via Xpresspost or alternatively, she may contact the Commission to receive a PDF copy via email.

On August 16, 2021, the Commission sent the Failure to Pursue index to the Appellant by Xpresspost to the address in [text deleted].

The correspondence dated August 10, 2021 sent to the address in [text deleted] was returned to the Commission and the correspondence dated August 13, 2021 sent to the address in [text deleted] was also returned to the Commission. The Xpresspost package was also returned to the Commission marked “unclaimed”. The correspondences dated August 10, 2021 and August 13, 2021 sent to the [text deleted] address were not returned.

On September 20 2021, the Commission attempted to correspond with the Appellant by email to schedule a Failure to Pursue hearing date. The Commission requested a reply by September 24, 2021, or it may proceed to set a date without further notice to her. No response was received.

A hearing date was set for December 16, 2021.

On October 4, 2021, the Notice of Hearing was forwarded to the Appellant by Xpresspost and regular mail to the [text deleted] and [text deleted] addresses provided by MPIC. The Notice of Hearing was also sent via email to the Appellant.

On October 13, 2021, the Notice of Hearing sent to the address in [text deleted] was returned and the reason indicated was “moved”.

On November 2, 2021, the Notice of Hearing was resent to the Appellant by regular mail to the [text deleted] and [text deleted] addresses on file.

On November 8, 2021, the Commission sent further correspondence to the Appellant by Xpresspost to the two addresses on file.

On November 19, 2021, the correspondence forwarded to the Appellant by regular mail on November 2, 2021 at the address in [text deleted] was returned and the reason indicated was “moved”.

On November 25, 2021, the Commission forwarded an email to the Appellant attaching the precedent decisions provided by counsel for MPIC.

On November 25, 2021, the Commission received an email from the Appellant as follows:

From: [The Appellant] <[text deleted]>
Sent: November-25-21 4:18 PM
To: [text deleted]
Subject: Re: Failure to Pursue Hearing

Hello,
What are the hearings regarding? Currently at a stand still with MPI until further notice. Is this my appeals?
Thank you
With respect,
[The Appellant]

The Commission replied as follows:

From: [text deleted]
Sent: November-26-21 8:56 AM
To: [The Appellant]
Subject: RE: Failure to Pursue Hearing

Hi [the Appellant],

Yes, this is regarding your appeals at the Commission – file numbers AC-18-034-LH & AC-18-035-LH. The following letters have been sent to you advising you of the Failure to Pursue hearing. I have attached a copy for your reference.

Please confirm if you will be attending the hearing via video or teleconference and I can have the Commission's secretary send you the link information. I also have your copy of the Failure to Pursue Index that was sent via Xpresspost to [address in [text deleted]] and was returned to our office marked "Unclaimed". Please let me know if you would like to receive the Failure to Pursue Index and provide me with a current mailing address or advise if you would like to pick it up at our office. I have attached a copy of the Table of Contents for the Index which you can review.

Please call me if you have any questions.

Thank you.

The Hearing

The hearing convened on December 16, 2021, at 9:30 a.m. Due to pandemic concerns, the hearing was held by teleconference, as indicated in the Notice of Hearing.

Counsel for MPIC appeared via teleconference.

The Appellant did not attend.

The Commission provided a grace period of 15 minutes and reconvened the hearing at 9:45 a.m.

The Appellant failed to appear.

The Commission continued without the Appellant and the Commission heard submissions from counsel at MPIC.

Issue

The issue before the Commission is whether the Appellant failed to diligently pursue her appeals and if so, whether the Commission will dismiss the appeals.

Determination

After considering the documents on the Appellant's index and the submission of counsel for MPIC, the Commission has determined that the Appellant has failed to diligently pursue her appeals and that the appeals should be dismissed.

Submission for MPIC

Counsel for MPIC provided and referred to several past decisions of the Commission on the issue of Failure to Pursue, including *AC-17-033*, *AC-13-143*, *AC-14-179*, *AC-14-046*, *AC-14-115*, *AC-14-031*.

Based upon these decisions, he submitted that the Commission should consider the following:

- 1) Did the appellant receive proper notice of the hearing?
- 2) If so, did the appellant fail to pursue and/or diligently pursue their appeal?
- 3) If so, did the appellant provide an adequate explanation for their failure?
- 4) Despite the above, is there some reason why the appeal should or should not be dismissed, in whole or in part?

Counsel submitted that the Commission sent the notice of the hearing to multiple addresses for the Appellant, and this complied with the requirements under section 184.1(1)(b) of the MPIC Act. The Commission also communicated with the Appellant by email. The Appellant responded to the email which implies that she has in fact received the email. Further, counsel submitted that if the email address was incorrect, the Commission would have received a notice of undeliverable message of the email.

Counsel submitted that the Appellant did in fact receive proper notice of the hearing.

Counsel submitted that a simple pursuit of an appeal is not sufficient and that a pursuit must be diligent. According to the Commission in *AC-14-179*, it requires the careful and persistent application or effort and the evidence does not support a careful and persistent application or effort on the part of the Appellant. Counsel submitted that in spite of numerous requests from the Commission, no fulsome explanation was provided regarding her other legal issues or why her other legal issues were a bar to her proceeding with the appeals at the Commission.

Counsel submitted that the purpose of s. 182.1 of the Act is to encourage the timely advancement of appeals and to remove from the docket those appeals that are otherwise doomed to languish, making room for other appeals involving appellants who are genuinely interested in their outcomes.

Counsel submitted that the Commission should find that the Appellant did not diligently pursue her appeal, has no explanation for her failure to do so, was aware or ought to be aware of the hearing and failed to attend, therefore the Commission should dismiss the appeal.

Discussion

The MPIC Act Sections 182.1 and 184.1 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.

How notices and orders may be given to appellant

184.1(1) Under sections 182 and 184, a notice of a hearing, a copy of a decision or a copy of the reasons for a decision must be given to an appellant

(b) by sending the notice, decision or reasons by regular letter mail to the address provided by him or her under subsection 174(2), or if he or she has provided another address in writing to the commission, to that other address.

The Appellant was provided with a notice of this hearing via Xpresspost and regular mail to two separate mailing addresses and via email. The package sent to the address in [text deleted] was returned to sender. The package sent to the [text deleted] address provided by the Appellant was not returned.

Further, the Appellant communicated with the Commission by email on November 25, 2021, acknowledging the hearing. The Commission responded to the Appellant on November 26, 2021.

The Appellant and the Commission have used the same email address throughout.

The Commission agrees with counsel for MPIC that the Appellant was properly notified of this hearing and failed to attend or submit any evidence or arguments to support why she was unable to pursue her appeals at this time.

The onus is on the Appellant to show that she has diligently pursued her appeal and that the appeal should not be dismissed.

The Appellant was provided with an opportunity to be heard by the Commission but failed to attend the hearing or provide a fulsome written submission regarding the question of whether she failed to diligently pursue her appeal.

A review of the history and documentation in the appeal file shows that the Appellant, after filing her NOA and participating in mediation, has done nothing to advance or pursue her appeals.

She failed to respond to the numerous letters or email messages from Commission staff other than advising that she had other matters with MPIC that needed to be taken care of first. She failed to provide any further details.

In our view, that is not an adequate explanation for her failure to pursue her appeal. Nor does this provide a reason as to why the appeal should not be dismissed.

We agree with counsel for MPIC that prior decisions of the Commission have established that there is an onus on the Appellant under s. 182.1 of the MPIC Act to diligently pursue her appeals by careful and persistent application or effort. We also agree that the actions of the Appellant described above show that she has clearly failed to pursue her appeals in a careful, persistent or diligent manner.

Conclusion

Therefore, upon a consideration of the totality of the evidence and submissions, and upon consideration of the relevant legislation, the Commission finds that the Appellant has failed to diligently pursue her appeals.

Disposition

Based on the foregoing, the Appellant's appeals are dismissed.

Dated at Winnipeg this 17th day of February, 2022.

NIKKI KAGAN

JACQUELINE FREEDMAN

DR. LORNA TURNBULL