

## **Automobile Injury Compensation Appeal Commission**

**IN THE MATTER OF an Appeal by [APPELLANT]  
AICAC File Nos.: AC-19-168**

**PANEL:** Pamela Reilly, Chairperson

**APPEARANCES:** The Appellant, [Text Deleted], did not appear. Manitoba Public Insurance Corporation (“MPIC”) was represented by Mr. Andrew Robertson (“Counsel”).

**HEARING DATE:** April 5, 2023.

**ISSUE:** Whether the Appellant failed to pursue her appeal diligently.

**RELEVANT SECTIONS:** Sections 182.1 and 184.1 of The Manitoba Public Insurance Corporation Act (the “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**

**Background:**

On November 16, 2013, the Appellant was a passenger involved in a vehicle rollover accident (“the MVA”). She reported injuries that involved an L1 fracture, fractured jaw, broken teeth, cut lip that required stitches, and contusions to her left knee.

Based upon MPIC's Health Care Services ("HCS") Medical report, the Appellant's case manager issued a decision dated April 5, 2018 ("the CMD") that denied the Appellant further Personal Injury Protection Plan ("PIPP") benefits for her 2018 back pain complaints. The HCS report concluded the complaints were not MVA-related (causation). Based upon MPIC's HCS Dental report, the Appellant's case manager issued a second CMD dated October 23, 2018 that denied the Appellant certain dental expenses, which it considered elective treatment for her teeth, and therefore not medically required.

The Appellant requested an internal review of both CMDs. The Internal Review Office issued a decision dated October 4, 2019 ("the IRD") that upheld both CMDs and dismissed the Appellant's requests for review. The Appellant filed a Notice of Appeal to the Commission, dated October 21, 2019, which appealed both issues in the IRD.

In December 2019, the Appellant advised the Commission that she wished to retain a representative from the Claimant Advisor Office ("CAO") to pursue both the dental expenses and the issues. In September 2020, the Automobile Injury Mediation ("AIM") office advised the Commission that the parties had completed mediation and AIM returned the file to the Commission for further action.

In November 2020, the Commission prepared the Indexed File of documents for the hearing, and utilized Canada Post to deliver this to the Appellant. The Commission requested that the Appellant confirm whether she agreed with the wording of the issues, and whether she intended to submit further documents or medical reports. Between

January 2021 and April 2021, the Appellant variously confirmed receipt of the Indexed File and advised of her intent to obtain further medical reports. On April 6, 2021, the Commission requested, by email, that the Appellant update the Commission about the status of her medical reports. The Appellant did not respond.

On April 13, 2021, the Commission mailed a letter to the Appellant requesting an update by May 13, 2021. The Appellant did not respond. On May 18, 2021, the Commission mailed a letter to the Appellant again requesting an update, and advised the Appellant that failure to respond within one month would result in the Commission scheduling a Case Conference Hearing (“CCH”) to clarify her position.

On June 22, 2021, the Commission mailed a letter to the Appellant and MPIC informing them that due to the Appellant’s failure to respond, the Commission had placed the file for scheduling a CCH. On September 9, 2021, the Commission emailed the Appellant offering a choice of dates for the Case Conference. On September 15, 2021, the Commission sent an identical follow-up email requesting a response by September 17, 2021.

Despite receiving no response from the Appellant, on September 20, 2021, the Commission mailed a letter to the Appellant offering further dates for the CCH, with a deadline to respond by October 8, 2021, failing which, the Commission would set a CCH. The Appellant did not respond.

The Commission notified the Appellant by email dated October 25, 2021 that the Commission had scheduled her CCH for January 25, 2022 and attached the Notice of Case Conference Hearing (“NOCCH”) as well as the Commission Guidelines for Hearing. The Commission also utilized Xpresspost to send the NOCCH and Guidelines on October 25, 2021 and received Canada Post’s confirmation of delivery.

On January 20, 2022, the Commission sent an email reminder to the Appellant about her January 25, 2022 CCH. The Appellant did not participate in the CCH nor contact the Commission to advise of her inability to attend. On January 27<sup>th</sup> and 28<sup>th</sup>, the Commission confirmed with MPIC that it had the Appellant’s current address.

On February 2, 2022, the Commission sent a letter by both email and regular mail that detailed the history of the Appellant’s lack of responses. The letter quoted s.182.1 (1) of the MPIC Act and warned the Appellant that her failure to pursue her appeal would result in the Commission dismissing her appeal. The letter advised that the Commission would place her file for scheduling a failure to pursue (“FTP”) hearing if she did not contact the Commission within the next three months.

The letter also enclosed a Notice of Withdrawal (“NOW”) Form and explained that if the Appellant no longer wished to pursue her appeal, she may sign and return the NOW to avoid an FTP hearing. The Commission requested the Appellant respond within three weeks regarding the NOW. The Appellant did not respond.

On March 2, 2022, the Commission utilized regular mail to notify the Appellant that it had not received the NOW. The letter advised that should the Appellant fail to take steps to pursue her appeal in the next three months, the Commission would schedule a FTP hearing. The letter again warned that the Commission would consider dismissing her appeal at such a hearing. The Appellant did not respond.

On June 14, 2022, the Commission mailed a letter to the Appellant stating that the Commission would contact the parties with a FTP hearing date. On June 21, 2022, the Commission received Canada Post confirmation that it had delivered the FTP Indexed File of documents to the Appellant. On August 2, 2022, the Appellant left a voicemail message with the Commission enquiring about the FTP hearing.

On August 11, 2022, the Commission returned the call and advised the Appellant she would receive written notice about the FTP hearing date. On January 10, 2023, the Appellant spoke with the Commission to advise she had a new phone number. The Commission explained it had a backlog of hearings and the Appellant would receive written notice of her FTP hearing date.

On February 17, 2023, the Commission mailed and delivered to the Appellant the FTP Notice of Hearing (“NOH”) scheduled for April 5, 2023, which again included the Commission’s Guidelines for Hearing. The courier confirmed delivery and Canada Post did not return the mailed copy as undelivered. The Appellant did not contact the Commission or respond to the NOH.

**Issue:**

The Commission must decide whether the Appellant failed to pursue her appeal diligently, and if so, whether the Commission will dismiss the appeal.

**Decision:**

The Commission finds that the Appellant failed to pursue her appeal diligently and therefore dismisses the Appellant's appeal.

**The Hearing**

Because of safety considerations arising from the pandemic, and with written notice to the parties, the Commission conducted a teleconference appeal hearing.

In preparation for the hearing, the Commission compiled an Indexed File, which contains all documents relevant to the FTP hearing. The documents constitute evidence and either party may rely upon them at the hearing. The Commission numbers these documents for ease of reference by the parties and the Panel. Attached to these reasons and marked as Schedule "A" is a copy of the Indexed File Table of Contents.

**Appellant submissions:**

The Appellant did not appear at the scheduled time for the hearing. The Appellant did not file any written submission. In accordance with Commission policy, the Commission waited 15 minutes for the Appellant to attend the hearing. The Appellant did not appear and therefore the hearing proceeded without her.

**MPIC submissions:**

MPIC Counsel submitted some factors that the Commission may consider on the failure to pursue issue, as follows:

- 1) Did the Appellant fail to pursue and/or diligently pursue their appeal?
- 2) Did the Appellant provide adequate reasons for failing to pursue?
- 3) In the interests of justice, is there any other reason to consider?

Counsel reviewed the FTP Indexed File documents that outlined the Commission's history in attempting to contact the Appellant by letter, courier, and email. He submitted that Canada Post documents showed that the Appellant received all of the correspondence, including notice of a prior scheduled CCH, which she failed to attend.

Counsel submitted that s.182.1 (2) mandates that the Commission must give an appellant an opportunity to make written submissions or otherwise be heard on this issue. In this case, despite proper notice of the FTP hearing, the Appellant chose not to attend. He submitted that this is a case of complete non-responsiveness. Further, the Appellant has provided no explanation for her failure to respond or pursue.

Counsel submitted that the Commission provided proper notice of the hearing to the Appellant, in compliance with MPIC's legislation that governs how the Commission may give notices. He submitted that the Appellant has not responded, or followed up on her appeal, in any substantive way, for over 27 months. Counsel submitted that the Commission should dismiss the appeal for failure to pursue diligently.

## **Legislation:**

The applicable sections of the MPIC Act and Regulations are 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, 182.1 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

(a) personally; or

(b) by sending the notice, decision or reasons by regular lettermail 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.

### **When mailed notice received**

**184.1(2)** A notice, a copy of a decision or a copy of reasons sent by regular lettermail under clause (1)(b) is deemed to be received on the fifth day after the day of mailing, unless the person to whom it is sent establishes that, acting in good faith, he or she did not receive it, or did not receive it until a later date, because of absence, accident, illness or other cause beyond that person's control.

## **Issue:**

The Commission must decide whether the Appellant failed to pursue her appeal diligently, and if so, whether the Commission will dismiss the appeal.

## **Discussion:**

Section 182.1(1) of the MPIC Act grants the Commission authority to dismiss an appeal at any time, if the Commission determines an appellant has failed to pursue the appeal diligently. This section does not require the Commission to consider the merits of the



appeal. The Commission agrees that the word “diligently” requires some evidence of careful, steady and persistent effort. The onus is on the Appellant to show she has not breached s.182.1 (1).

The Commission finds that the evidence is undisputed and un-contradicted. Since filing her NOA in October 2019 and completing mediation in September 2020, the Appellant contacted the Commission briefly in April 2021. After receiving the FTP Index, the Appellant provided an updated telephone number, but did not indicate that she wished to pursue her appeal or explain why she had failed to pursue her appeal. Consequently, the appeal has not progressed for over two years.

The documents from Canada Post confirm delivery of all mailed correspondence. In fact, the Appellant acknowledged receipt of the FTP Indexed File. The Commission finds that the Appellant received all of the correspondence from the Commission, including the warning letters. The Commission finds that the Appellant received the FTP Indexed File and the NOH that informed the Appellant of this hearing date, which she failed to attend.

**Disposition:**

The Commission finds that the Appellant has provided no explanation for her failure to respond to all Commission correspondence, or her failure to attend this hearing. The Commission finds, on a balance of probabilities that the Appellant has failed to pursue her appeal diligently. Consequently, the Commission dismisses the appeal.

Dated at the City of Winnipeg, in the Province of Manitoba, this 11<sup>th</sup> day of April, 2023.

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**PAMELA REILLY**