

Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-06-164

PANEL: Ms Laura Diamond, Chairperson

APPEARANCES: The Appellant, [text deleted], was represented by Mr. Bob Sample of the Claimant Adviser Office; Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Morley Hoffman.

HEARING DATE: March 21, 2007

ISSUE(S): Extension of time to file a 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 is requesting an extension of time in order to file a Notice of Appeal from a decision of the Internal Review Officer dated February 1, 2006. The Notice of Appeal is dated March 13, 2006, but was not filed with the Commission until October 11, 2006.

Section 174 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.

The Appellant was involved in a motor vehicle accident on November 23, 1997. As a result of these injuries, the Appellant became entitled to Personal Injury Protection Plan benefits in accordance with Part 2 of the MPIC Act. She received Income Replacement Indemnity ('IRI') benefits as well as paramedical treatment expenses.

An Internal Review decision of MPIC dated October 28, 2002 concluded that the medical evidence failed to establish that the Appellant was not able to continue her employment on account of injuries (physical or psychological) suffered as a result of her motor vehicle accident. She appealed that Internal Review decision to the Commission which found, in Reasons for Decision dated February 21, 2005, that the Appellant was entitled to IRI benefits as the effects of post-traumatic stress disorder and depression causally related to the motor vehicle accident rendered her unemployable as of July 2001.

Following the Commission's decision, the Appellant continued treatment with her own psychologist, [text deleted], and arrangements were made for her to undergo an independent assessment with [text deleted], who provided a report. The Appellant was then placed under surveillance by MPIC, and a surveillance report, complete with videotapes was submitted to [independent psychiatrist], who produced a further report.

As a result of the surveillance evidence and [independent psychiatrist's] reports, the Appellant's benefits were terminated. The Appellant sought Internal Review of this decision, and an Internal Review Officer issued a decision dated February 1, 2006 upholding the case manager's determination dismissing the Appellant's Application for Review.

The Appellant subsequently filed a Notice of Appeal from the Internal Review decision of February 1, 2006, with this Commission, on October 11, 2006. On October 30, 2006, the Appellant forwarded a letter to the Commission outlining various reasons for her failure to file her Notice of Appeal within the statutory time frame. She explained that she had telephoned the Commission office on March 9, 2006 requesting a Notice of Appeal form, and had believed that because this call was within the 90-day time limit she did not have to worry about the time limit.

She also stated that once she had received the Notice of Appeal forms, her psychological difficulties caused her to delay completing the forms. She noted that her doctor and her psychologist, who had been treating her for these issues advised her to “*close the door*” for a while to let these feelings of depression and frustration subside and revisit them” when she felt stronger.

In a letter dated November 9, 2006, MPIC objected to the extension for time for the Appellant to file her Notice of Appeal.

The Appellant also filed a letter from her psychologist, [Appellant’s psychologist], dated February 14, 2007. In this letter [Appellant’s psychologist] states:

I understand that [the Appellant] is in the process of appealing MPI’s decisions, and that she has missed the deadline due to miscommunication and misunderstanding. I have been working with [the Appellant] over the years, and it is apparent that dealing with issues related to her accident and MPI claim have been very painful. At various times, when [the Appellant] has been overwhelmed by Depression and Anxiety, I have suggested that she concentrate more on enhancing her mood than on working at her appeal. Of course, I was unaware that there was a deadline for written appeal that needed to be met. In any case, the thought of working at the appeal was so overwhelming to [the Appellant], that it was not really feasible.

At the hearing, the Appellant admitted that no one at the Commission had ever told her that her

phone call to the Commission on March 9, 2006 was sufficient to satisfy the time limits under the MPIC Act. Rather, she testified that, in retrospect, she had been told that, because her phone call fell well within the 90-day time limit, once she received the form, she should have sufficient time to complete it and file it with the Commission.

She testified that during the period following receipt of the Internal Review decision, she had been having a difficult time with post-traumatic stress and depression. She was anxious and upset, and found dealing with her MPIC claim very difficult. She talked to her psychologist about it and was advised that it would be best to close the door on these issues and revisit them on days when she felt stronger.

When the forms first arrived, she filled out the basic information, but found herself unable to address the merits of the appeal at the time.

Counsel for MPIC submitted that the Appellant's explanation for her failure to file within the 90-day time limit was not satisfactory. He noted that the Appellant had already participated in an appeal at the Commission for a very similar issue involving the same motor vehicle accident, and so was somewhat familiar with the process, although he recognized she had been represented by counsel at that time.

Counsel for MPIC also noted that the Notice of Appeal form does not ask the Appellant to revisit the trauma of the motor vehicle accident in any detail; all it does is ask the Appellant to state why the Internal Review decision is wrong. The Appellant did not seek any guidance or assistance, or even show the form to her psychologist, [text deleted]. He also questioned how often she had seen [Appellant's psychologist] during the relevant time period, as her testimony

indicated that, in her best recollection, she had perhaps seen [Appellant's psychologist] every six (6) to eight (8) weeks. He submitted that the Appellant's evidence raised issues of credibility, particularly in regard to her conversation with the Commission on March 9, 2006, and that issues of credibility had been raised in [independent psychiatrist's] reports.

He submitted that the Appellant had not provided a satisfactory explanation for a significant delay of five and one-half (5 ½) months and that her request or an extension of time should be dismissed.

Discussion

Pursuant to Section 174 of the MPIC Act, the Commission has the discretionary power to extend the time for appealing a review decision. In exercising its discretion, the Commission may consider various relevant 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 was any waiver respecting the delay; and
5. any other factors which argue to the justice of the proceeding.

Upon a consideration of the totality of the evidence before it, both oral and documentary, and upon a consideration of the relevant factors surrounding the delay, the Commission finds that the Appellant has, on a balance of probabilities, provided a reasonable excuse for her failure to appeal the Internal Review decision to the Commission within the 90-day time limit set out in Section 174 of the MPIC Act. The Appellant has established, both through her evidence, and the

supporting letter from [Appellant's psychologist], that the depression and anxiety with which she was dealing, as a result of the motor vehicle accident, prevented her from dealing with issues related to the accident and her appeal in a timely manner. Upon the advice of her psychologist, she delayed completing her written appeal until she was better able to deal with the issues involved.

The Commission therefore finds that the Appellant has established a reasonable excuse for the delay.

Accordingly, the Commission will extend the time limit within which the Appellant may appeal the Internal Review decision dated February 1, 2006 to October 11, 2006.

Dated at Winnipeg this 11th day of April, 2007.

LAURA DIAMOND