

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-04-112**

PANEL: Ms Yvonne Tavares, Chairperson
Ms Laura Diamond
Ms Jean Moor

APPEARANCES: The Appellant, [text deleted] was not present at the appeal hearing;
Manitoba Public Insurance Corporation ('MPIC') was represented by Ms Danielle Robinson.

HEARING DATE: May 12, 2011

ISSUE(S): Extension of time to file Application for Review

RELEVANT SECTIONS: Section 172 of The Manitoba Public Insurance Corporation Act ('MPIC Act').

AICAC NOTE: THIS DECISION HAS BEEN EDITED TO PROTECT THE PERSONAL HEALTH INFORMATION OF INDIVIDUALS BY REMOVING PERSONAL IDENTIFIERS AND OTHER IDENTIFYING INFORMATION.

Reasons For Decision

Request for Adjournment

The Appellant, [text deleted] filed a Notice of Appeal with the Commission on June 30, 2004. By April 2010, the matter had not progressed and the Commission scheduled a case conference for April 26, 2010 for the purpose of setting a hearing date. This case conference was adjourned at the Appellant's request so that he could retain counsel. The case conference was re-scheduled for May 25, 2010. At the Appellant's request, the case conference set for May 25, 2010 was adjourned and re-scheduled to July 27, 2010. The Appellant did not attend this case conference. The Commission determined that the Appellant failed to receive the Notice of Hearing for the

July 27th case conference and scheduled a hearing date for March 21, 2011. On February 20, 2011, the Appellant requested an adjournment of the March 21st hearing date, due to health and family matters. The Commission granted his request. A hearing was then scheduled for Thursday, May 12, 2011 for the appeal hearing.

By e-mail dated May 2, 2011, the Appellant requested an adjournment of the May 12th hearing. The purpose of this adjournment was to retain counsel. The Commission considered the request. By letter dated May 3, 2011, the Commission denied the Appellant's request for an adjournment of the May 12th hearing. The Commission noted that the matter had been previously adjourned and that [the Appellant] had been provided with sufficient opportunity to secure representation for the appeal hearing. [The Appellant] continued to request an adjournment of the May 12th hearing through a series of subsequent e-mails to the Commission. He was advised by e-mail on May 9th and by letter dated May 10th, that he or his representative could request an adjournment at the outset of the appeal hearing on May 12, 2011.

The appeal hearing took place at the Commission offices on May 12th, 2011 as scheduled. [The Appellant] did not attend the hearing. The hearing was convened and the panel received submissions from counsel for MPIC with respect to the issues under appeal.

Issues Under Appeal

[The Appellant] is appealing the April 19, 2004 Internal Review decision to this Commission. The Internal Review decision of April 19, 2004 rejected the Appellant's Application for Review for failure to comply with ss. 172(1) of the MPIC Act and confirmed the case manager's decision that [the Appellant's] entitlement to income replacement indemnity ("IRI") benefits ceased as of August 24, 2003.

Section 172 of the MPIC act provides as follows:

Application for review of claim by corporation

[172\(1\)](#) A claimant may, within 60 days after receiving notice of a decision under this Part, apply in writing to the corporation for a review of the decision.

Corporation may extend time

[172\(2\)](#) The corporation may extend the time set out in subsection (1) if it is satisfied that the claimant has a reasonable excuse for failing to apply for a review of the decision within that time.

Response within 30 days

[172\(3\)](#) The corporation shall respond to the claimant within 30 days after receiving an application for review.

The Appellant, [text deleted], was involved in a motor vehicle accident on December 8, 2000. At that time, he was boarding a city transit bus, when the driver closed the doors to the bus and pulled away, resulting in [the Appellant] falling against the side railing of the stairwell. As a result of this accident, the Appellant developed lower back problems and was unable to return to his employment. He therefore became entitled to receive IRI benefits from MPIC.

On August 26th, 2003, MPIC's case manager issued a decision letter advising that there was no further entitlement to IRI benefits beyond August 24th, 2003. The Appellant filed an Application for Review of that decision. The Application for Review was dated February 2004 and stamped received by MPIC on February 12, 2004, beyond the 60-day time period set out in ss. 172(1) of the MPIC Act. The Internal Review decision dated April 19, 2004 rejected the Appellant's Application for Review for failure to comply with ss. 172(1) of the MPIC Act. The Internal Review Officer considered whether the Appellant had a reasonable excuse for failing to apply for a review of the case manager's decision within the time period provided in the MPIC Act. The Internal Review Officer wrote to the Appellant on February 20th, 2004, inviting him to provide his excuse for failing to comply with the filing deadline. The Appellant did not respond or

provide any explanation to the Internal Review Officer and accordingly, the Internal Review Officer rejected his Application for Review. He found that the Appellant had not provided any explanation that would qualify as an excuse for not pursuing and filing for a review of the case manager's decision within the statutory 60-day time period. Accordingly, he rejected the Appellant's Application for Review on that basis.

At the appeal hearing, counsel for MPIC submitted that the onus is on the Appellant to establish a reasonable excuse for his failure to file the Application for Review within the statutory time limit. Counsel for MPIC submitted that the Appellant had not provided a reasonable excuse for his delay in filing the Application for Review of the case manager's decision of August 26, 2003. In fact, counsel for MPIC submits that the Appellant has not provided any excuse for the late filing of the Application for Review and therefore there is no evidence before the Commission to establish a reasonable excuse for the Appellant's delay. As a result, counsel for MPIC maintains that the Appellant's appeal should be dismissed on the basis of the late filing of the Application for Review.

The Commission, having considered the totality of the evidence before it, finds that the Appellant has not provided a reasonable excuse for the failure to file the Application for Review within the time period set out in ss. 172(1) of the MPIC Act. Due to the Appellant's failure to respond to the Internal Review Officer and to attend the appeal hearing, there was simply no evidence before the Commission to explain the Appellant's delay in filing his Application for Review. In the circumstances, the Commission finds that the Appellant has not provided any reason for filing his Application for Review beyond the 60 days set out in ss. 172(1) of the MPIC Act. Having determined that the Appellant's Application for Review was properly rejected by the Internal Review Officer, the Commission is not required to determine the second issue under

appeal, namely whether the Appellant is entitled to IRI benefits beyond August 24, 2003. Accordingly, the Appellant's appeal is dismissed and the decision of MPIC's Internal Review Officer dated April 19, 2004 is confirmed.

Dated at Winnipeg this 2nd day of June, 2011.

YVONNE TAVARES

LAURA DIAMOND

JEAN MOOR