

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-11-082**

PANEL: Ms Laura Diamond, Chairperson

APPEARANCES: The Appellant, [text deleted], was represented by Mr. Anselm Clarke
Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Andrew Robertson.

HEARING DATE: September 19, 2011

ISSUE(S): Whether an extension of time should be granted to the Appellant 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 PERSONAL HEALTH INFORMATION OF INDIVIDUALS BY REMOVING PERSONAL IDENTIFIERS AND OTHER IDENTIFYING INFORMATION.

Reasons For Decision

The Appellant was injured in a motor vehicle accident on June 23, 2007. She was in receipt of Personal Injury Protection Plan ("PIPP") benefits including physiotherapy, athletic therapy, chiropractic and medical care.

On July 25, 2010, the Appellant's case manager issued a decision indicating that ongoing athletic therapy treatment was not medically required in the Appellant's case.

On December 7, 2010, an Internal Review Officer for MPIC wrote to the Appellant upholding the case manager's decision.

The Appellant filed a Notice of Appeal on June 20, 2011.

She now seeks an extension of time in order to file a Notice of Appeal on the decision of the Internal Review Officer dated December 7, 2010.

In a letter sent to the Commission on June 28, 2011, the Appellant explained the reasons for the delay in the filing of her Notice of Appeal. She explained that according to her understanding of the Internal Review Decision, further medical evidence was required. She therefore contacted a specialist, [Appellant's Doctor #1] and scheduled an appointment regarding her knee injury. However, she was later contacted by [Appellant's Doctor #1's] clinic and informed that because he also worked with MPIC as a consultant, this would result in a conflict of interest. She was given another appointment to see [Appellant's Doctor #2] at the same clinic. The appointment was set for June 20, 2011. The Appellant's letter explained that the reason for her delay was to get further medically required information.

A hearing was held on September 19, 2011 regarding the Appellant's application for an extension of time in order to file a Notice of Appeal from the decision of the Internal Review Officer.

Evidence and Submission for the Appellant:

At the hearing, the Appellant described her injuries and the treatment she had sought for them.

The Appellant then testified that once she received the internal Review Decision and saw that her claims for athletic therapy had been denied, she tried to understand what the Internal Review Officer meant when he said the treatment was not medically required. She did not understand this because her general practitioner had said that the treatment *was* medically required. She testified that she enquired of MPIC as to what medically required means and was told that the opinion of a doctor, chiropractor or physiotherapist would be examples of evidence to fulfill this requirement.

The Appellant stated that she saw no reason to appeal until she obtained this further information regarding medical requirements.

The Appellant then testified that in February, 2011 she spoke with a friend who had a knee injury and recommended that she see [Appellant's Doctor #1] at the [text deleted] Clinic. She went to see her family doctor who, on March 25, 2011, gave her a referral to see [Appellant's Doctor #1]. She scheduled an appointment to see [Appellant's Doctor #1] in the end of May or beginning of June. She then received a phone call from [Appellant's Doctor #1's] office saying that she could not keep this appointment because it created a conflict of interest with his work for MPIC. She was given an appointment with [Appellant's Doctor #2] for an assessment in May, 2011.

The Appellant testified that about two weeks later, towards the end of May, she phoned [Appellant's Doctor #2's] receptionist to ask about the report and was told that it was ready and would be sent to MPIC.

Sometime in June, the Appellant followed up with MPIC, by telephoning to find out whether they had received [Appellant's Doctor #2's] assessment. She testified that she was told that she no longer had a personal claim manager, so her call was forwarded to her Internal Review Officer. She spoke with the Internal Review Officer who indicated that he would get back to her to let her know with whom she should speak.

The next contact she had was when she received a call from the Claimant Adviser Office to make an appointment to go over her case. She attended at the Claimant Adviser Office and subsequently filed an appeal around June 12, 2011.

The Appellant testified that she never waived her right to appeal and that she had always been pro-active in trying to get the medical information required to satisfy the test for her appeal.

On cross-examination, the Appellant admitted that she read the Internal Review Decision letter when she received it and must have read the sections which set out the 90 days within which she had to appeal. However, she maintained that she saw no sense in appealing until she had further medical information and this was what her mind was focused on. She said that she didn't think that anyone was going to offer her any advice until she got the required medical information and that at the time, she did not have the clarity to realize that someone could help her in this regard.

Counsel for the Appellant submitted that the case did not involve a lengthy delay and that the Notice of Appeal was filed approximately three months after it should have been filed in March of 2011.

The Appellant's testimony had described the efforts she made to obtain what she viewed as the medical information necessary for filing an appeal. She contacted MPIC in January to find out who she could go to for the required medical opinion, received a recommendation from a friend in February, and by March had received a referral to see [Appellant's Doctor #1] and booked an appointment with him. However, when this appointment was cancelled, she rebooked and saw [Appellant's Doctor #2] in May. Two weeks later she followed up with the clinic to find out when the report would be ready and then contacted MPIC to make sure they received the report. That was when she was told she did not have a case manager, and so she went on to speak with the Internal Review Officer, who put her in touch with the Claimant Adviser Office for assistance. Counsel submitted that these activities illustrated the reason for the Appellant's delay and an explanation of what she had been doing during that period.

Counsel also submitted that in this short time period of about three months, MPIC had not been prejudiced. The Corporation had not been prevented from case managing her claim and in fact she did not even have a case manager assigned to her file during that time. Counsel submitted that the Appellant's continued contact with MPIC and her attempts to provide them with medical information showed that she had not waived her rights to appeal.

Finally, in regard to the justice of the proceedings, counsel submitted that the Appellant has presented an arguable issue for further athletic therapy, particularly once the report of [Appellant's Doctor #2] has been considered. The Appellant continued to ask for direction even without a case manager and had experienced difficulty but provided arguable reasons for missing the time limits. Accordingly, he submitted that she should be allowed an extension of the time required for filing a notice of Appeal pursuant to Section 174(1).

Submission for MPIC:

Counsel for MPIC focused on whether the Appellant had provided a reasonable explanation for her delay. He submitted that she had not provided such an explanation. The Internal Review Decision of December 2010 clearly set out the Appellant's right to appeal and the requirement that she do so within 90 days. The letter provided a telephone number which the Appellant could have called in order to clarify whether she did in fact need to obtain medical information prior to filing for a review. Information regarding the Claimant Adviser Office was also provided, and in fact, when the Appellant did finally contact the Internal Review Officer, he immediately passed her on to the Claimant Adviser Office for assistance.

The Appellant became focused on submitting new information to the exclusion of reviewing the procedural steps that were clearly set out in the Internal Review Decision letter. The Appellant failed to follow reasonable steps in filing her appeal, even given multiple opportunities and advice about who she could contact for assistance.

Counsel submitted that the Appellant realized that she did not agree with the Internal Review Decision as soon as she received it and that she should have attended to the filing of the Notice of Appeal within the time limits provided under the Act.

Discussion:

The MPIC Act provides:

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.

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;
5. Any other factors which are related to the justice of the proceedings.

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 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. Although she failed to file the necessary documentation to institute her appeal until 3 months after the statutory deadline had passed, in the months following receipt of the decision, the Appellant attempted to determine and provide the evidence necessary to support her appeal. She inquired of MPIC and focused upon obtaining information or evidence from a specialized medical practitioner. Although she failed to understand the importance of the time limits set out in the Internal Review Decision or to obtain clarification or assistance in that regard, the Commission finds that the Appellant's efforts at obtaining the medical evidence she felt she required and the relatively short delay involved in obtaining the specialist's report and filing her Notice of Appeal provide a reasonable excuse for the appellant's failure to meet the time limits set out in the Act.

As a result, the Commission will extend the time limit within which the Appellant may appeal the Internal Review Decision dated December 7, 2010 to the Commission. The issue under appeal shall concern whether the Appellant is entitled to further athletic therapy treatment.

Dated at Winnipeg this 18th day of October, 2011.

LAURA DIAMOND