

**Automobile Injury Compensation Appeal Commission**

**IN THE MATTER OF an Appeal by [The Appellant]  
AICAC File No.: AC-11-016**

**PANEL:** Ms Yvonne Tavares, Chairperson

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

**HEARING DATE:** April 30, 2013

**ISSUE(S):** Entitlement to reimbursement of further chiropractic treatments.

**RELEVANT SECTIONS:** Section 136(1)(a) of The Manitoba Public Insurance Corporation Act ('MPIC Act') and Section 5(a) of Manitoba Regulation 40/94.

**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, [text deleted], is appealing the Internal Review decision dated November 3, 2010, with regards to her entitlement to reimbursement of further chiropractic treatments beyond Track 1 chiropractic care. The appeal hearing was held on April 30, 2013, commencing at 10:30 a.m. The Appellant did not attend the hearing or provide any written submissions to the Commission in support of her appeal. At the outset of the hearing, it was determined that the Appellant had received notice of the hearing by virtue of her signature claiming the Xpresspost letter (containing the Notice of Hearing from the Commission) from Canada Post. As a result, the Commission proceeded with the hearing of the appeal.

Upon a careful review of all of the medical, paramedical and other reports and documentary evidence filed in connection with this appeal, and after hearing the submission of counsel for MPIC, the Commission finds that the Appellant has abandoned her appeal of the Internal Review decision dated November 3, 2010.

The criteria to be considered in order to determine whether an appeal has been abandoned are:

1. there must have been a continuous intention to prosecute the appeal;
2. there must be a reasonable explanation for any delay in prosecuting the appeal;
3. there must be arguable grounds for appeal.

Upon reviewing the foregoing factors, the Commission finds that:

1. The Appellant has not diligently proceeded with the prosecution of her appeal. The Appellant filed her Notice of Appeal on February 16, 2011, together with a letter from her treating chiropractor dated February 16, 2011. Subsequently, the Appellant filed a further report from her treating chiropractor dated August 24, 2011 and a report from her family physician dated October 31, 2011. Since that time, the Appellant has taken no further steps to move this matter forward. It is the Appellant's responsibility to pursue her appeal in a reasonably diligent manner. The Commission finds that she has not done so. The evidence, as well as the Appellant's failure to attend the appeal hearing, establishes that the Appellant has not displayed a continuous intention to pursue and prosecute her appeal.
2. The Appellant has not provided any explanation for the delay in pursuing her appeal. In fact, on February 25, 2013, the Appellant left a voice mail message with the Commission indicating that she had decided that she was not going to proceed with her appeal. However, the Appellant has failed to provide a Notice of Withdrawal to the Commission.

The Commission finds that her inaction and expressed interest to discontinue her appeal contradict an intention to pursue her appeal.

3. The issue in this appeal is whether the Appellant is entitled to reimbursement of further chiropractic treatments beyond Track 1 chiropractic care. The Commission finds that the Appellant has not provided sufficient evidence to establish that she required treatment at a higher level than Track 1, Primary Care Treatment. The onus is upon the Appellant to establish that she is entitled to treatment at a higher level than Track 1. The Commission finds that the Appellant has not provided sufficient evidence regarding the requirement for Track 2 chiropractic care. As a result, upon a consideration of the totality of the evidence before it, the Commission finds that the Appellant has not established, on a balance of probabilities, that she is entitled to treatment at a higher level than Track 1, Primary Care Treatment.

As a result, the Appellant's appeal is dismissed and the Internal Review decision dated November 3, 2010 is confirmed.

Dated at Winnipeg this 13<sup>th</sup> day of May, 2013.

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**YVONNE TAVARES**