

**Automobile Injury Compensation Appeal Commission**

**IN THE MATTER OF an Appeal by [the Appellant]  
AICAC File No.: AC-19-075**

**PANEL:** Ms Nikki Kagan, Chairperson  
Mr. Trevor Anderson  
Dr. Chandulal Shah

**APPEARANCES:** The Appellant, [text deleted], was represented by  
Mr. Cassius Matombe;  
Manitoba Public Insurance Corporation ('MPIC') was  
represented by Ms Jaime Rosin.

**HEARING DATE:** November 8, 2019

**ISSUE(S):** Whether the Commission will grant the Appellant an  
extension of time to file her Notice of Appeal.

**RELEVANT SECTIONS:** Section 174(1) of The Manitoba Public Insurance  
Corporation Act ('MPIC Act').

**Reasons For Decision**

**Background:**

The Appellant was injured in a motor vehicle accident ("MVA") on February 14, 2017. The Appellant is seeking funding for physiotherapy treatment for neck pain resulting from the MVA.

On March 28, 2018, the case manager issued a decision letter advising the Appellant that there was no entitlement for funding for physiotherapy treatment and expenses relating to her neck pain and osteoarthritis.

The claims manager's letter provided:

- Our Health Care Services (HCS) Team provided an opinion that you probably sustained cervical spine injury from the motor vehicle accident (MVA) of February 14, 2017. However, since there is no medical evidence of an ongoing neck pain presentation until ten months after the MVA, this would suggest that the neck injury from the MVA has resolved and that your current symptom of neck injury is not MVA related.
- Further to this, HCS also indicates that your osteoarthritis is not MVA related but is degenerative [in] nature and was present on the day of the collision. The MRI dated January 23, 2018 also confirms that the changes in your neck are degenerative.

There was a provision at the end of this letter advising the Appellant of the review process and the deadline for applying for review if she was not satisfied with the decision.

On May 27, 2018, the Appellant filed an Application for Review of the case manager's decision.

On August 24, 2018 an Internal Review Decision was issued upholding the case manager's decision and dismissing the Appellant's Application for Review.

The Appellant filed a Notice of Appeal with the Commission from the Internal Review Decision on May 23, 2019 which was approximately 60 days after the 90-day appeal period expired.

The Appellant sought an extension of time to file the appeal.

On behalf of the Appellant, the Claimant Adviser Office provided a letter to the Commission setting out the following reasons for seeking an extension of the 90-day time limit:

At the time the Internal Review Decision was mailed to her, the claimant was frustrated with the process as she found it extremely overwhelming and lengthy. In order to present the best case to the Commission, the claimant waited to be examined by a Neurologist and collect their medical opinion regarding her condition.

The Claimant also thought that appealing the Internal Review Decision would be at a financial cost that her family could not afford at the time she received the Internal Review Decision.

This letter was forwarded to MPIC for comments.

On June 20, 2019, MPIC advised that:

... this Notice of Appeal is 6 months late. We are not satisfied the explanation offered is reasonable and hence we oppose the request for additional time.

A hearing date was set with the Commission to determine whether an extension of the time limit under section 174(1) of the MPIC Act for the filing of an appeal should be granted.

**Decision:**

For the reasons set out below the Commission will not exercise its discretion to grant an extension of time for the Appellant to file a Notice of Appeal.

**Evidence and Submission of the Appellant:**

The Appellant testified at the hearing into her appeal.

The Appellant acknowledged that she received the Internal Review Decision dated August 24, 2018. She stated that she nervously opened the letter and upon reading the decision, she felt rejected and devastated and as a result, she never finished reading the letter to the end.

The Appellant submitted that she had a reasonable excuse for the delay in filing the appeal as she did not read the entirety of the Internal Review Decision letter and was unaware of the appeal

deadline. She was also unaware of the availability of the Claimant Adviser Office providing representation at no cost.

In answer to the question from the panel as to whether the Appellant went back to read the letter at a later date once she had a chance to calm down, the Appellant did state that she read the letter many times. She stated that she thought that she could not afford the cost of the appeal.

The Appellant stated that in the months following receipt of the Internal Review Decision, she was suffering from chest pain and she was undergoing medical tests relating to the chest pain. She submitted that she had to make the chest pain a priority.

The Appellant submitted that because she was under stress due to the chest pain that she was experiencing, it was reasonable for her to focus on her heart condition. The Appellant argued that the delay of six months was not a lengthy delay, and further MPIC was not negatively impacted by the delay.

The Appellant acknowledged that in the months following receipt of the Internal Review Decision, she did contact MPIC numerous times seeking relief but they “gave her the cold shoulder every time”.

The Appellant stated that it was not until she went to see [text deleted], a pain specialist, at the end of May 2019 that she became aware that she could appeal at no cost. The Appellant testified that [pain specialist] provided her with the contact information for the Claimant Adviser Office and she made an appointment with the Claimant Adviser Office shortly thereafter.

The Appellant submitted that for reasons stated above, she has provided a reasonable excuse for failing to file the Notice of Appeal within the 90-day time limit, and the deadline to file her appeal ought to be extended.

**Submission of MPIC:**

MPIC submitted that in considering whether to exercise discretion under section 174(1) of the MPIC Act, the Commission may consider various relevant factors such as:

1. The length of the delay: MPIC submitted that a six month delay is an unreasonable delay. MPIC submitted that there are cases wherein the Commission denied applications for extension of time to file appeals that were filed only three months late.
2. Prejudice resulting from the delay: MPIC acknowledged that there was no specific prejudice resulting from the delay, but there is prejudice inherent in any delay.
3. Reason for the delay: MPIC argued that the Appellant has not provided an acceptable reason for the delay. The Appellant acknowledged that she received and read the Internal Review Decision letter. The letter had clear language with respect to timelines for appeal and availability of the Claimant Adviser Office providing representation at no charge.

Counsel for MPIC submitted that in the letter dated June 11, 2019 from the Claimant Adviser Office to the Commission, the Appellant did not raise her health concerns as a reason for the delay. Counsel submitted that it was concerning that the Appellant was now alleging that she missed the deadline because she was distracted by her health concerns.

Counsel for MPIC submitted that although the Appellant stated that she was frustrated and overwhelmed, there is no evidence that the Appellant has any incapacity to understand or suffers from cognitive difficulties.

There is evidence that the Appellant contacted MPIC several times in the months following the Internal Review Decision letter. Yet, there is no evidence that the Appellant made any inquiries or efforts regarding an appeal.

In the letter dated June 25, 2019, the Claimant Adviser Office stated that “in order to present the best case to the Commission, the claimant waited to be examined by a Neurologist and collect their medical opinion regarding her condition.”

MPIC argued that this was not a reasonable excuse and noted that the in Appellant’s Application for Review of the case manager’s decision she stated that she would provide further medical information at a later date, yet she still filed the Application for Review by the deadline.

MPIC argued that this demonstrates that the Appellant was aware that medical information can be provided subsequent to the filing of the appeal.

Counsel from MPIC submitted that the Appellant’s timeliness and filing of her past Application for Review indicated that she was capable of recognizing and adhering to the time limits set out in the legislation.

In support of her position, counsel for MPIC provided several decisions with respect to extension of time to appeal, as follows:

1. The Commission’s decision AC-16-046, AC-16-047, AC-16-048, AC-16-049, AC-16-050, AC-16-051 stated that frustration with the process was not considered to be a reasonable excuse for missing the filing deadline.

2. The Commission's decision AC-05-125 provides that the delay in accumulating the medical evidence is not a reasonable excuse for not filing the appeal within the timeline.

### **Discussion:**

Section 174(1) 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.

Pursuant to Section 174(1) of the MPIC Act, the Commission has the discretionary power to extend the time for appealing an IRD. In exercising its discretion, the Commission has considered various relevant factors, such as:

1. The actual length of the delay compared to the 90-day time period as 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 argue to the justice of the proceeding.

The fact that the Appellant did not read the decision to the end, as she alleges, is not a reasonable excuse for the delay. In the 90-days following the Internal Review Decision, it seems unlikely that the Appellant did not read the decision to the end and make herself aware of the appeal process and the availability of the Claimant Adviser Office.

It may be possible that the Appellant was overwhelmed and frustrated by the process and felt rejected the first time she read the letter, however, the Appellant did state that afterwards that she read the letter many times.

The Appellant was competently able to file an earlier appeal of the case manager's decision within the time line and she also included a notation that further medical information would follow.

The Appellant must had been aware of the appeal process as she addressed the fact that she was concerned about the cost of the appeal. It seems that she was aware of the appeal process, but determined it was a process that she could not afford.

The Appellant's evidence that she was concentrating on her heart condition is not a reasonable excuse. Following the receipt of the Internal Review Decision letter, the Appellant contacted MPIC several times, she continued to attend doctors' appointments, massage and physiotherapy appointments for her neck pain. Her heart condition may have been a priority, but she was not solely focused on her heart condition.

The Commission questions why the Appellant's health concerns were not raised in the letter from the Claimant Adviser Office dated June 11, 2019.

The Commission finds that the Appellant was advised of the 90-day time limit in the Internal Review Decision letter dated August 24, 2018 and the availability of services from the Claimant Adviser Office.



**Disposition:**

Upon consideration of the totality of the evidence both oral and documentary, and upon a consideration of the valid relevant factors surrounding the delay, the Commission finds that the Appellant has not provided reasonable excuse for her failure to appeal the Internal Review Decision to the Commission within the 90-day time limit set in section 174(1) of the MPIC Act.

Accordingly, the Commission will not extend the time limit within which the Appellant may appeal Internal Review Decision 050159-A dated August 24, 2018 to the Commission.

Dated at Winnipeg this 29<sup>th</sup> day of November, 2019.

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**NIKKI KAGAN**

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**TREVOR ANDERSON**

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**DR. CHANDULAL SHAH**