



## Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by [the Appellant]  
AICAC File No.: AC-20-196

**PANEL:** Pamela Reilly, Chairperson

**APPEARANCES:** The Appellant, [text deleted], appeared on her own behalf;  
Manitoba Public Insurance Corporation (“MPIC”) was represented by Jack Burke-Gaffney. MPIC lawyer Hayley Main was also present.

**HEARING DATE:** September 21, 2021

**ISSUE(S):** To determine whether the Commission will allow [the Appellant] additional time to file her Notice of Appeal.

**RELEVANT SECTIONS:** Section 174(1) 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

#### Background:

The Appellant suffered injuries during a motor vehicle accident which occurred on November 22, 2018, and resulted in MPIC paying Personal Injury Protection Plan (“PIPP”) benefits. Pursuant to MPIC’s letter dated February 3, 2020 the Appellant’s Income Replacement Indemnity (“IRI”) benefits were discontinued. This letter included a notice outlining the rights of review, including a 60-day time limit in which to file an Application for Review. The Appellant filed her Application for Review within 60 days.

The Application for Review resulted in an Internal Review Decision dated July 16, 2020 (the "IRD"), which upheld the decision to discontinue IRI benefits. The IRD concluded with a notification of "APPEAL RIGHTS". These rights stated that the Appellant had 90 days within which to appeal in writing to the Automobile Injury Compensation Appeal Commission ("the Commission") and then provided a mailing address, telephone numbers (including toll free), fax number and website information for the Commission. On December 10, 2020, the Commission received the Appellant's Notice of Appeal, which was signed and dated November 25, 2020. Also included were handwritten notes dated November 23, 2020 (collectively, the "NOA"). The NOA was received outside of the 90-day, statutory time limit. MPIC did not consent to an extension of the 90-day time limit and a hearing was set to hear evidence as to the Appellant's reasons for the delay.

**Issue:**

Should the Commission exercise its discretion pursuant to section 174(1) of the MPIC Act and allow the Appellant additional time to file her NOA?

**Decision:**

The Commission declines to exercise its discretion that would allow the Appellant additional time to file her NOA of IRD 053883-A.

**Appellant Evidence (oral and documentary) and Submission**

The Appellant's NOA handwritten notes dated November 23, 2020 state, in part, as follows:

...This is affecting my mental health and I am having a hard time dealing with this situation. I don't know where to turn to, I was told by ombudsman that I have to contact you.

In response to the Commission's written requests (dated January 12, 2021 and February 25, 2021) to provide a written explanation for filing her NOA beyond the 90-day time limit, the Appellant wrote, in part, as follows:

I am writing in regards to your letter for an explanation why I was late on the 90-day time limit to file the Notice of Appeal.

It has almost been two and a half years since the accident and it has lead to me having anxiety and depression. I cannot cope with this any more. I cannot focus on the paper work that has to be done dealing with the M.P.I. I am on medication and am having a hard time remembering or even getting down to doing the paperwork. My leg is really disabling me and I have not gotten no [sic] help to do the work I have to do. The Covid19 has made it hard to even go into Public [sic] as I cannot wear a mask which interferes with my breathing and anxiety. I get tightness in my chest and almost pass out. ...

The Appellant attended her hearing via teleconference. In her oral testimony, she reiterated that during the COVID19 pandemic she was exchanging letters with MPI, and said that she had “bad anxiety” from the MVA. She said she “couldn’t get going and everything slipped”. She said, “I realized that my timeline was done and I was told to send it and maybe ... [unfinished comment].” She explained that she had contacted the ombudsman who apparently told her to phone MPIC ‘fair practices’.

The Appellant repeated that she has “bad anxiety” because of the MVA. She said she takes pills (although she did not say for what). She said she writes everything out because it is easier to explain, and she keeps copies of everything. The Commission referred the Appellant to the July 16, 2020 IRD, and asked why she did not file her NOA within 90 days. The Appellant stated variously that she “was in bad shape and had anxiety so bad”, and “it was COVID and [she] couldn’t go nowhere”. She said the reason she “got behind” was because she “was not in good shape mentally after the accident” and she “forgot lots of things.”

During cross-examination, the Appellant confirmed that her call to the ombudsman was after the 90-day time limit had expired. She had been looking at her papers and explained, “I look, and its 90 days and it’s over.” She phoned the ombudsman who apparently referred her to MPIC’s fair practices process, which the Appellant said she then “looked up on the internet.” After learning of the fair practices process, the Appellant said that she could not remember when she took action to file her NOA. The Appellant said that she checks the mail (meaning Canada Post mail), but could not recall when she received the July 16, 2020 IRD.

In response to further questions from MPIC Counsel, the Appellant did not dispute that she received the IRD sometime in mid to late July 2020. She agreed that she is comfortable reading and writing English. She said that she is a good speller and, because of her anxiety, she will write things down. The Appellant reluctantly acknowledged that she had previously met the deadline for filing her Application for Review of MPIC's February 3, 2020 decision.

When referred to the "APPEAL RIGHTS" section of her July 2020 IRD, and asked if she understood that she had 90 days to appeal, the Appellant responded, as follows:

...When I'm looking at papers and stuff and when I got on medication, everything was just mixed up. I couldn't deal with it because of my anxiety...I would have read over the letters, not really knowing. If I did phone the MPI office...I don't know how I missed it. I missed it somehow. I don't know...

...I don't know what happened. I was not in very good shape when I got this stuff. I just don't know. My mind was not functioning properly.

MPIC Counsel referred to Tabs 11 and 12 of the Indexed File. These were supplemental documents that were mailed to the Appellant by cover letter dated August 18, 2021. They comprised a total of 2 ½ pages of typed notes from telephone conversations between MPIC and the Appellant titled "Report of Investigation/Discussion" (the "Reports"). The Report dated February 24, 2020 became Tab 11 and the Report dated November 17, 2020 became Tab 12.

The Appellant acknowledged that she had the August 18, 2021 cover letter, but could not locate the enclosed Reports. The Commission commented that since the Appellant had the cover letter, she also likely received the enclosures. The Appellant did not dispute this but she could not locate the Reports. The hearing was adjourned for 15 minutes to allow the Commission Secretary time to email the Reports to the Appellant.

Despite being emailed, the Appellant had not received the Reports by the time the hearing reconvened and MPIC Counsel elected to forego specific questions about the content of those Reports. MPIC Counsel asked the Appellant generally to confirm that she was not alleging that her late filing was based upon conversations with MPIC. The

Appellant responded saying, “I don’t know. All I’m saying is that when I got that letter, and why I did not get the 90 days is because so much was going on. I was almost having a nervous breakdown. Everything slipped through my fingers...” During the course of her comments the Appellant also spontaneously stated, “I know I have to keep up with stuff – [pause] – but, I don’t know...”

In response to further questions, the Appellant agreed that she did not seek assistance from her husband or anyone else, saying that “when you get mail, you read it yourself.” She agreed that she was never hospitalized for mental health issues and throughout this time period she was able to take care of other necessities. She submitted that she should be given a second chance.

**MPIC Submission:**

MPIC Counsel quoted section 174 of the MPIC Act which sets out the 90 day appeal limitation. He reminded the Commission that the onus is on the Appellant to make her case for an extension beyond 90 days. Counsel submitted that in this case, it appeared the Appellant filed her NOA 57 days late.

MPIC Counsel submitted that there was no allegation and no evidence that the IRD arrived considerably later than its July 16, 2020 date. MPIC Counsel described the Appellant as intelligent and articulate, as evidenced by her submitted written material. He submitted that she either knew or ought to have known about the 90-day appeal limit. She either missed the deadline or failed to make enquiries about the deadline. He submitted that prior Commission decisions have stated that an Appellant is obligated to become familiar with the process and take the appropriate steps.

MPIC Counsel reviewed the factors the Commission considers when deciding whether to exercise discretion and extend the 90-day time limit. These factors are, as follows:

1. The length of delay beyond the 90-day statutory time limit;
2. The reasons for the delay;
3. Whether the delay has caused prejudice;
4. Whether MPIC has waived the delay;
5. Any other factors relevant to a fair outcome of the issue.

MPIC Counsel focused on the two factors of length of delay and reason for delay. He referred to a prior decision in which the Commission denied an extension where the Appellant missed the deadline by 44 days; a shorter time period than in this case. He submitted that the Notice of Appeal form is simple to complete, and the appeal process is not complicated.

MPIC Counsel submitted that the Appellant's reasons for her delay in filing are not sufficient. Her explanations are that she forgot, or she overlooked the portion of her IRD that set out her Appeal Rights. Further, while the Appellant stated that she suffered anxiety and stress, there was no medical evidence provided to establish that she suffered a medical condition which would prevent her from filing on time. He submitted that the Commission has concluded in other decisions that an Appellant's frustration over the process, or their decision to wait for further documentation before appealing, are not sufficient reasons. MPIC Counsel submitted that the Commission should deny the Appellant's request to extend time.

**Discussion:**

The issue is whether the Commission should exercise its discretion and allow the Appellant to file her Notice of Appeal (NOA) outside of the statutory time limit. The MPIC Act section that allows an appeal states, 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 does not dispute that she received the July 16, 2020 IRD sometime in mid-July. The Appellant checks her mail and there was no evidence that the Appellant's mail service was unreliable or unduly delayed. The Commission finds that the Appellant likely received the IRD no later than seven days past July 16<sup>th</sup>; that is, July 23, 2020. Therefore, in calculating the statutory 90-day time limit, the Commission finds that the Appellant should have filed her NOA by October 21, 2020. The Commission received the NOA on December 10, 2020 and therefore finds that the filing is 50 days late.

MPIC Counsel correctly set out the factors the Commission considers in cases of late filing. There is no evidence of actual prejudice. MPIC has not waived its right to rely on the statutory time limit. As is most often the case, the focus is on the factors of 1) length of delay and, 2) reason for delay. The Commission acknowledges that there have been cases where the delay has been both shorter and considerably longer than the 50-day late filing found in this case. The important factor in this case is the reason for delay. The Commission considered the Appellant's evidence of her reasons for the delay. The Appellant testified that when she received the IRD, "there was so much going on" and she "could not handle everything". She did not dispute that the IRD set out the "Appeal Rights". She testified that maybe she missed that part of the letter, or that she "would have read over the letter, not really knowing..." She testified that "when I'm looking at papers and stuff and when I got on medication, everything was just mixed up. I couldn't deal with it because of my anxiety."

The Appellant did not identify what medication she was taking, nor when and why it was prescribed. The Appellant did not testify that the medication was the reason she did not notice the 90-day time limit. The Appellant agreed that she had never received hospital treatment for mental health issues and she was able to manage her necessities of living. She continued to work, albeit with difficulty. She admitted that she knows, "I have to keep up with stuff."

The Commission noted that the Appellant filed her Application for Review on time. The Commission finds that she is aware of MPIC's process and that there are time limits for requesting reviews of decisions. The MPIC Report of Investigation (which the Appellant did not object to being included in the Indexed File) shows that MPIC had previously advised her not to wait for further documents before filing for internal review, as this could prejudice her case by putting her outside of that time limit.

The Commission acknowledges that the Appellant experienced stress with the process. However, the appeal process is straightforward and uses a relatively simple form. The IRD clearly sets out the Appellant's "Appeal Rights", which states the 90-day time limit in the first line immediately under the capitalized heading. The information goes on to

outline the various methods of contacting the Commission, as well as information about free and independent assistance.

The Commission finds that the Appellant is a competent and articulate individual who is comfortable with, and in fact prefers, putting things in writing. She has access to a telephone and the internet, and has used both with competence and success. The Commission finds that there is no evidence to show, on a balance of probabilities, that the Appellant suffered an impairment that prevented her from receiving, reading, understanding and acting upon the IRD within the 90-day time limit imposed by the Act.

The process must be fair to all parties. While the Commission sympathizes that these matters can be stressful, this does not negate the obligation on appellants to adhere to the law – i.e., the statutory time limit to file an appeal within 90 days. 90 days allows a realistic amount of time for an Appellant to cope with or overcome other life stressors and deal with their appeal. In order to overcome that express statutory rule, the Appellant bears the onus of providing the Commission with reasonable and compelling evidence that explains why the time limit was missed. Without this, the Commission will not exercise its discretion to extend time.

**Disposition:**

The Commission finds that the Appellant has not met her burden of providing a reasonable explanation for failing to file within the 90-day time limit. The Commission therefore declines to allow further time pursuant to section 174(1) of the Act, for the Appellant to file her appeal of IRD 053883-A.

On a final note, page six of the Appellant's July 16, 2020 IRD points out that she may be entitled to expenses in accordance with section 134 of the Act. We encourage the Appellant to follow up with MPIC on that matter, as well as her prior enquiries about permanent impairment benefits.

Dated at Winnipeg this 12<sup>th</sup> day of October, 2021.



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**PAMELA REILLY**