

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [The Appellant]
AICAC File No.: AC-06-103**

PANEL: Ms Laura Diamond

APPEARANCES: The Appellant [text deleted] appeared on his own behalf; Manitoba Public Insurance Corporation ('MPIC') was represented by Ms Danielle Robinson.

HEARING DATE: July 23, 2009

ISSUE(S): 1. Whether the Appellant had a reasonable excuse for the late filing of his Application for Review; and
2. If so, whether the Appellant is entitled to Permanent Impairment Benefits.

RELEVANT SECTIONS: Section 172(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

The Appellant was involved in a motor vehicle accident on January 28, 1998. His case manager wrote to him on January 5, 2004 to indicate that there had not been a probable cause and effect relationship established between injuries he sustained in the motor vehicle accident and the back pain symptoms he later experienced. As such, he was not entitled to a permanent impairment award for back pain.

An Application for Review was forwarded to the Appellant on February 18, 2004. However, no completed formal Application for Review was received from the Appellant by MPIC until October 18, 2005.

An Internal Review Decision of May 23, 2006 considered the reasons outlined by the Appellant for his failure to provide an Application for Review within the prescribed 60 day time period for filing such applications under Section 172(1) of the MPIC Act. The Internal Review Officer found that the reasons outlined by the Appellant were not corroborated by any supporting documents or reports. He found that the Appellant had not provided a reasonable excuse for failing to pursue and file 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.

As well, the Internal Review Officer found that the Appellant had failed to establish, on a balance of probabilities, that there was a causal relationship between his subsequent low back problems and the accident of January 28, 1998, and that the Appellant had not established an entitlement to Permanent Impairment benefits in accordance with the provisions of the Personal Injury Protection Plan.

It is from this decision of the Internal Review Officer that the Appellant has now appealed.

Evidence and Submission for the Appellant:

At the hearing into his appeal, the Appellant described his attempts to find counsel or an advisor to represent him in his appeal. He noted that he at one point hired a company called [text deleted], leaving it in their hands to process. However, [text deleted] was slow at processing and in the end, the Appellant was left with no representation.

He also explained that he had moved to Ontario and that he had difficulty finding lawyers there to take his case, while lawyers in Manitoba who he had phoned did not want to act against MPIC.

He testified that he found this emotionally frustrating. He was having difficulty walking, could not work and was preoccupied with trying to feed his family, so he found the difficulty in arranging legal representation particularly frustrating. He submitted that the Commission should exercise its discretion to allow for the late filing of his Application for Review.

The Appellant also reviewed the medical evidence on his file regarding the assessment of permanent impairment. He submitted that [MPIC's Doctor], of MPIC's Health Care Services team, had never talked to him or examined him. He submitted that the emergency room reports on file were not correct and that medical reports from his caregiver established that he had suffered an injury as a result of the motor vehicle accident.

Submission for MPIC:

Counsel for MPIC noted that the Appellant had moved to Ontario in 2003, well before he even received the case manager's decision of January 2004, which shed doubt on the submission that he could not find legal representation because he had moved.

She noted that the Appellant was not contending that he had not received the case manager's letter or a blank Application for Review form. This is a one sheet form that needs to be filled out by hand and is not a complicated form which necessarily requires legal representation to complete.

Counsel also noted that although the Appellant had indicated he had hired [text deleted] and relied on that company to file his Application for Review, the materials on the indexed file make it clear that [text deleted] first involvement in the case appears in a letter dated April 27, 2005, still over one year following the case manager's decision letter. Thus, relying on [text deleted] as a reason that the "ball was dropped" in filing the Appellant's appeal does not explain why MPIC did not hear from [text deleted] until April 27, 2005.

She noted that the Appellant had delayed over a year in filing the document and that although he may have been under some stress, many claimants who are quite severely injured are still able to file applications for review, which are not complicated documents, within the time limits. Accordingly, she submitted that no extension of time ought to be allowed for the filing of the Application for Review in this case. 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.

Counsel also reviewed the medical information on the indexed file and the Appellant's testimony. She submitted that the Appellant had failed to establish, on a balance of probabilities, that his pain resulted from the motor vehicle accident and maintained that he should not be entitled to a Permanent Impairment benefit.

Discussion:

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.

The Commission, having considered the testimony of the Appellant and his reason for failing to file the Application for Review within the time period set out in Section 172(1) of the MPIC Act, as well as the submissions of the Appellant and Counsel for MPIC, finds that the Appellant has not provided a reasonable excuse for the failure to file the Application for Review within the time limits set out in Section 172(1) of the MPIC Act.

The Commission finds that the Appellant's difficulty in securing appropriate legal representation and his difficulties with [text deleted] in 2005 do not provide a reasonable excuse for his failure to file an Application for Review in the 60 day period following the case manager's decision letter of January 2004. The relevant time frames do not coincide. As well, as noted by Counsel for MPIC, the Application for Review is not a sophisticated form for anyone to fill out. The form merely requires a claimant to fill out their name, address, claim number, date and sign it. The Appellant's later problems with legal representation do not explain his failure to complete this document within the required time frame. The Appellant had not advanced a reasonable excuse for failure to comply with the time limits set out in the MPIC Act.

Accordingly, the Appellant's appeal is dismissed and the decision of the Internal Review Officer dated May 23, 2006 is confirmed.

Dated at Winnipeg this 17th day of August, 2009.

LAURA DIAMOND