

**Automobile Injury Compensation Appeal Commission**

**IN THE MATTER OF an Appeal by [the Appellant]  
AICAC File No.: AC-15-101**

**PANEL:** Ms Jacqueline Freedman, Chairperson

**APPEARANCES:** The Appellant, [text deleted], was not present at the hearing; Counsel for Manitoba Public Insurance Corporation (“MPIC”), Mr. Michael Triggs, was not present at the hearing, but filed a written submission.

**HEARING DATE:** January 13, 2016

**ISSUE(S):** Whether an extension of time should be granted to the Appellant to file his 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 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, [text deleted], was injured in a motor vehicle accident on October 21, 2012. He sought personal care assistance (“PCA”) benefits under the Personal Injury Protection Plan (“PIPP”) and was denied those benefits by case manager’s decision dated December 19, 2012. An Internal Review Decision dated January 29, 2013 confirmed the case manager’s decision that the Appellant was not entitled to PCA benefits.

The Appellant seeks to file an appeal of the Internal Review Decision to the Commission. He did not do so within 90 days after receiving notice of the Decision. The issue which requires determination is whether the Commission will grant an extension of time to the Appellant in order to allow him to file a Notice of Appeal with the Commission.

**Preliminary and Procedural Matters:**

When the Appellant filed his Notice of Appeal with the Commission on May 26, 2015, he included therein his address and home telephone number. The Commission, in seeking to obtain from the Appellant the reason for the delay in filing his Notice of Appeal, sent a letter to him on July 24, 2015, to which no response was received. The Commission further attempted to contact the Appellant on October 15, 2015, at the telephone number he provided; however, the telephone number was no longer in service. On November 5, 2015, the Commission sent a letter to the Appellant and MPIC indicating that a hearing would be held and asking the Appellant once again to provide the reason for his delay in filing his Notice of Appeal. A Notice of Hearing was sent to the Appellant on November 26, 2015, as set out below. On December 2, 2015 the Appellant contacted the Commission and indicated to the Secretary to the Chief Commissioner that he wanted to cancel “the whole thing”. The Secretary to the Chief Commissioner asked the Appellant if that meant he wanted to withdraw his appeal and he indicated that he did. The Commission sent to the Appellant a Notice of Withdrawal form in the mail; however, he did not sign and return same to the Commission.

This hearing was scheduled to be heard on the 13<sup>th</sup> of January, 2016 at 9:30 a.m. Notice of the hearing was sent to the Appellant on November 26, 2015, by regular mail and Xpresspost, to the

address provided by the Appellant in his Notice of Appeal. The Notice of Hearing sent by Xpresspost was returned to the Commission unclaimed on December 30, 2015. The Notice of Hearing sent by regular mail was not returned to the Commission. Section 184.1 of the MPIC Act provides how notices may be given to the Appellant. It provides as follows:

**How notices and orders may be given to appellant**

**184.1(1)** Under sections 182 and 184, a notice of a hearing, a copy of a decision or a copy of the reasons for a decision must be given to an appellant

(a) personally; or

(b) by sending the notice, decision or reasons by regular lettermail to the address provided by him or her under subsection 174(2), or if he or she has provided another address in writing to the commission, to that other address.

**When mailed notice received**

**184.1(2)** A notice, a copy of a decision or a copy of reasons sent by regular lettermail under clause (1)(b) is deemed to be received on the fifth day after the day of mailing, unless the person to whom it is sent establishes that, acting in good faith, he or she did not receive it, or did not receive it until a later date, because of absence, accident, illness or other cause beyond that person's control.

Accordingly, pursuant to subsection 184.1(2) of the MPIC Act, the Appellant is deemed to have received the Notice of Hearing that was sent to him by regular mail to the address provided by him in his Notice of Appeal, on December 1, 2015.

On January 13, 2016, the hearing of the Appellant's application for an extension of time was convened at 9:30 a.m. The Appellant did not appear at the hearing. The panel allowed the Appellant a fifteen minute grace period. Counsel for MPIC had previously indicated to the Commission that he would not appear in person at the hearing, but rather would rely on his written submission previously provided to the Commission.

The Commission's Notice of Hearing provided the time and the date of the hearing are firm and that postponements will only be granted under extraordinary circumstances. The Notice also provided that should either party fail to attend the hearing, the Commission may proceed with the hearing and render its decision.

Accordingly, the hearing proceeded at 9:45 a.m. and the panel considered the written submission from counsel for MPIC. Thereafter, the panel reached a decision regarding the Appellant's application for an extension of time to file his appeal.

**Submission from the Appellant:**

As noted above, the Appellant did not attend the hearing. He did not provide any reasons for the late filing of his Notice of Appeal. In his Notice of Appeal, he indicated that his reason for appealing the Internal Review Decision was that he was "not happy about it".

**Submission from MPIC:**

Counsel for MPIC made the following written submission in support of MPIC's position that the Appellant should not be granted an extension of time to file his Notice of Appeal:

"The Internal Review decision which is the subject matter of the appeal was issued on January 29, 2013. [The Appellant] filed his Notice of Appeal in excess of 2 years beyond the 90 days *The Manitoba Public Insurance Corporation Act* sets for filing an appeal. It has been further 150 days since he filed his Notice of Appeal and [the Appellant] has not contacted the Commission. He has not responded to the Commission's request for an explanation as to why he is late in filing his appeal and he has not provided the Commission with current contact information.

The Commission has taken reasonable steps to move this matter along and [the Appellant] has done nothing to pursue his appeal. ..."

**Reasons for Decision:**

Subsection 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.

In this case, the Appellant's Notice of Appeal was not received by the Commission within 90 days after he received the Internal Review Decision dated January 29, 2013. Accordingly, he has asked the Commission to exercise its discretion to allow an extension of time to file the Notice of Appeal, which was received by the Commission on May 25, 2015, more than 2 years after the 90 day deadline.

The discretionary power granted to the Commission under subsection 174(1) of the MPIC Act to extend the time for appealing a review decision is fairly broad, being "within such further time as the commission may allow". 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;
2. the reasons for the delay;
3. whether there has been any prejudice resulting from the delay;
4. whether there has been any waiver respecting the delay; and
5. any other factors which argued to the justice of the proceedings.

Generally, the Commission will exercise its discretionary power to extend the time limit to file a Notice of Appeal where it is satisfied that: (i) the Appellant has provided a reasonable excuse for

failing to file within the time limits; and (ii) there is a good reason to exercise its discretion to extend that time limit.

Upon a consideration of the totality of the evidence before it, and upon a consideration of the submissions of the parties as well as the relevant factors surrounding the delay, the Commission finds that the Appellant has not provided a reasonable excuse for his failure to appeal the Internal Review Decision to the Commission within the 90 day time limit set out in subsection 174(1) of the MPIC Act. Simply stating “I am not happy about it” is not a reasonable excuse. The Appellant did not provide the Commission with any explanation for his delay in filing his Notice of Appeal with the Commission.

The Commission notes that the actual length of the delay, over 2 years, is lengthy when compared to the 90 day time period. Furthermore, the Appellant has indicated to the Commission that he wants to cancel “the whole thing” and in considering the justice of the proceedings, this would argue against the Commission exercising its discretion to extend the time for the Appellant to file his Notice of Appeal.

**Disposition:**

Based on the foregoing, the Commission will not, under subsection 174(1) of the MPIC Act, extend the time limit within which the Appellant may appeal the Internal Review decision dated January 29, 2013 to the Commission.

Dated at Winnipeg this 20<sup>th</sup> day of January, 2016.

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**JACQUELINE FREEDMAN**