

**LICENCE APPEAL
TRIBUNAL**

**TRIBUNAL D'APPEL EN MATIÈRE
DE PERMIS**



**Safety, Licensing Appeals and
Standards Tribunals Ontario**

**Tribunaux de la sécurité, des appels en
matière de permis et des normes Ontario**

Tribunal File Number: **19-000956/AABS**

In the matter of an Application pursuant to subsection 280(2) of the *Insurance Act*, RSO 1990, c I.8, in relation to statutory accident benefits

Between:

Angela Mosquera

Applicant

and

Aviva General Insurance Company

Respondent

MOTION ORDER

Order made by: Ian Maedel, Adjudicator

Date of Order: February 13, 2020

Appearances:

For the Applicant: Angela Mosquera, Applicant

Nathan Tischler, Counsel

Imtiaz Hosein, Counsel (Observing)

For the Respondent: Christine Mansbrige, Litigation Specialist

Jessica Bacopulos, Counsel

Brittanny Tinslay, Counsel (Observing)

Motion Hearing conducted via teleconference **February 13, 2020**

OVERVIEW:

- [1] The applicant was injured in an automobile accident on October 18, 2015 and sought benefits pursuant to the Statutory Accident Benefits Schedule - Effective September 1, 2010 ("Schedule").
- [2] The applicant filed an application before the Licence Appeal Tribunal – Automobile Accident Benefits Service ("Tribunal") on January 28, 2019.
- [3] A case conference was held on June 24, 2019 before Adjudicator Hines. The matter was set for an in-person hearing on February 25-28, March 2-4, 2020.
- [4] The issues in dispute are an income replacement benefit, seven medical treatment plans, the cost of three examinations, interest, and an award.
- [5] In a Motion Order dated November 27, 2019, attendant care benefits were added as an issue in dispute.

MOTION:

- [6] The applicant filed a Notice of Motion dated January 24, 2020 and sought the following relief:
 - i. An order for complete productions as listed in the Order dated September 9, 2019;
 - a) The complete copy of the accident benefits file subject to privilege and reserves;
 - b) The adjuster's log notes up to the date of the Tribunal Application, subject to privilege and reserves;
 - c) An updated payment summary of all amounts paid to or on behalf of the applicant, listing the dates, amount, type of expenses or no-fault benefits paid to or on behalf of the applicant;
 - d) Copies of all surveillance and any investigation involving the applicant if it intends to rely upon this evidence at the hearing;
 - e) The respondent must request and provide the applicant with the complete files of H&A Forensic Accounting Inc., Cira Medical Services, Dr. Jose Guerra, Dr. Dubravka Dodig, and Dr. Terra Seon;
 - f) Invoices for s. 44 assessments with regard to issues in dispute;

- ii. Costs in the amount of \$1,000.00 to be paid forthwith.
- [7] The respondent submits this motion should be dismissed, as there is already an order in place for these productions. The respondent has provided many of the productions sought and continues to make efforts to obtain all of the documents listed on the Order. The respondent submits this motion should be dismissed and costs payable.
- [8] The applicant filed a Notice of Motion dated January 30, 2020 and sought the following relief:
- i. An order adding Natalia Puchala to the applicant's list of witnesses.
- [9] The respondent is opposed to the addition of this witness. The respondent submits this witness was not added to the applicant's list of witnesses in a timely manner and the respondent was denied the opportunity to file an addendum report in reply. The respondent is seeking a dismissal of this Notice of Motion.
- [10] The applicant filed a Notice of Motion dated February 7, 2020 and sought the following relief:
- i. An order for the production of the complete files of all assessors retained by Aviva General Insurance Company that assessed the applicant for catastrophic impairment determination. Specifically, the complete files of:
 - a. Dr. Nagib Yahmad, Neurologist;
 - b. Dr. Sherese Ali, Psychiatrist
 - c. Mr. Joseph Morgan, Occupational Therapist;
 - d. Dr. Greg Jaroszynksi, Orthopaedic Surgeon.

RELIEF:

- [11] The applicant's motion for further productions is granted in part.
- [12] The respondent shall provide the complete accident benefits file, inclusive of correspondence and communications with CIRA Medical Services, redacted for privilege. Any redactions shall include a description of the redacted materials and the privilege claimed.
- [13] The adjusters log notes up to the date of the Tribunal application have already been provided. When I consider the submissions and evidence before me, I am not persuaded that additional commentary or explanation is required for the redacted portions of the adjuster's log notes.
- [14] An updated payment summary has already been provided by the respondent.

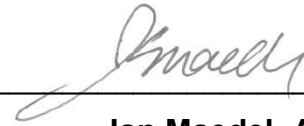
- [15] The respondent is not relying on any surveillance. As a result, there shall be no order for production of the surveillance file.
- [16] The respondent shall make further requests to obtain the complete files of Dr. Guerra, Dr. Dodig, Dr. Seon, and any correspondence between the assessment professionals, insurer agents, or directly with the insurer. This correspondence shall be redacted for privilege and any redactions shall include a description of the redactions and privilege claimed.
- [17] The applicant's motion for additional s.44 invoices with regard to the issues in dispute is denied. Given the submissions and evidence before me, I am not satisfied these productions are relevant to the issues in dispute.
- [18] The applicant's motion to add Ms. Nathalia Puchala as a witness is granted. Any prejudice wrought by the addition of this witness may be overcome by permitting the respondent to add additional documents to their brief of documents. The respondent may add these additional documents and file/exchange its brief of documents by **February 19, 2020**.
- [19] The respondent's motion for the complete files of the assessors retained by Aviva is granted. I am persuaded these files may be relevant to the issues in dispute, including the award claimed. The respondent shall make best efforts to provide the complete files of:
- a. Dr. Nagib Yahmad, Neurologist;
 - b. Dr. Sherese Ali, Psychiatrist
 - c. Mr. Joseph Morgan, Occupational Therapist;
 - d. Dr. Greg Jaroszynski, Orthopaedic Surgeon.
- [20] The applicant's motion for costs is denied. Costs are discretionary remedy awarded when a party in a proceeding has acted unreasonably, frivolously, vexatiously, or in bad faith pursuant to Rule 19.1. This is a high bar and I am not satisfied it has been met in this case.
- [21] However, it is my belief that many of the issues outlined in these three Notices of Motion should have been addressed through communication between the parties. The Tribunal encourages the parties to keep the lines of communication open. A Notice of Motion should be a last resort, filed only when the parties are unable to come to a consensus on productions or other urgent procedural issues. Preparing for and conducting a Motion Hearing is time consuming and inevitably leads to increased costs for the parties.
- [22] The in-person hearing remains scheduled for **February 25-28, March 2-4, 2020 in Toronto, Ontario, commencing at 9:30 am on each date.**

[23] Except for the provisions contained in this order, all previous orders made by the Tribunal remain in full force and effect;

OTHER PROCEDURAL MATTERS:

[24] If the parties resolve the issues in dispute prior to the hearing, the applicant shall immediately advise the Tribunal in writing.

Released: February 13, 2020

A handwritten signature in cursive script, appearing to read "I. Maedel", is written above a horizontal line.

Ian Maedel, Adjudicator