

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: 19-006114/AABS

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

Between:

C [REDACTED] G [REDACTED]

Applicant

and

Security National Insurance Company

Respondent

CASE CONFERENCE REPORT

ADJUDICATOR: Brad J. Wallace

APPEARANCES:

For the Applicant: Carmelinda Giancola, Applicant
Intiaz Hosein, Counsel

For the Respondent: Denise Hughes, Claims Representative
A. Pazhani, Counsel

Held by Teleconference: November 15, 2019

OVERVIEW

- [1] The applicant was involved in an automobile accident on **March 4, 2016**, and sought benefits pursuant to the Statutory Accident Benefits Schedule - Effective September 1, 2010 (the "Schedule"). The applicant was denied certain benefits by the respondent and submitted an application to the Licence Appeal Tribunal - Automobile Accident Benefits Service ("Tribunal").
- [2] The parties participated in a case conference but were unable to resolve the issues in dispute. This matter will proceed to a hearing.

ISSUES IN DISPUTE

Preliminary Issue

- [3] The parties agreed that the preliminary issues to be decided at the hearing are as follows:
- a. Is the applicant precluded from proceeding on these issues for failing to attend an insurer examination pursuant to section 44 of the Schedule?
- [4] **The preliminary issue shall be heard prior to the substantive issues. Depending on the result, the case manager may, within 30 days of the release of the decision on the preliminary issue, schedule a resumption of the case conference.**

Substantive Issues

- [5] The issues in dispute were identified and agreed to as follows:
- i. Are the applicant's **injuries predominantly minor injuries** as defined in the s. 3 of the *Schedule*, subject to treatment within the \$3,500.00 limit in the Minor Injury Guideline?
 - ii. Is the applicant entitled to **payments for the cost of examinations** in the amount of \$2,220.00 for an Occupational Therapy Assessment, recommended by Okell Rehabilitation in a treatment plan dated August 28, 2018 and denied by the respondent on October 12, 2018?
 - iii. Is the applicant entitled to a **medical benefit** in the amount of \$4,289.70 for occupational therapy services recommended by Okell Rehabilitation in a treatment plan (OCF-18) submitted on March 20, 2019, and denied on April 10, 2019?
 - iv. Is the applicant entitled to **interest** on any overdue payment of benefits?

CASE MANAGEMENT

- [6] The parties consented to all procedural matters, except for the producibility of the Adjuster Log Notes entered after the date on which the application was filed.
- [7] Applicant's counsel argues that there is nothing in the Schedule limiting disclosure of such records to the date of the application. Likewise, the insurer has an obligation of good faith dealings with his client, including a duty of transparency. Counsel highlights the fact that he is not seeking the production of any privileged information contained in the Adjusters Log Notes, only notes with respect to claims that are not subject to privilege and that do not relate to the reserves set at any time.
- [8] Respondent's counsel says that Log Notes taken after this application was filed cannot be relevant because the only entries that will not be privileged or on the subject of reserves will relate to claims other than those in dispute here.
- [9] With respect, I disagree and prefer the position advanced by the applicant on this issue. The Log Notes from after the application was filed are notionally relevant to the case and, with the protection of litigation privilege, no prejudice will accrue to the respondent as a result of their disclosure.

PRELIMINARY ISSUE HEARING

- [10] **On consent, a hearing, in person, is scheduled for January 16, 2020 starting at 9:30 AM at Toronto.**

EXCHANGE OF DOCUMENTS BETWEEN THE PARTIES (PRODUCTIONS)

- [11] On consent, the parties agreed that:
- (i) **the respondent** sought orders for specific productions from the applicant.
 - (ii) **the respondent** shall provide the applicant with the following by **December 16, 2019**.
 - (a) The complete Accident Benefits file from the date of loss to present redacted for reserves and privilege together with reasons for each redaction;
 - (b) Adjuster's Log Notes subject to redaction for reserves and privilege from the date of loss to present;
 - (c) A copy of all documents evidencing that the insurer arranged for all Insurer Examinations for each assessment the applicant allegedly failed to attend;

- (d) A copy of all documents in the insurer's possession confirming that it referred all information to its IE assessors on which the insurer intends to rely at the hearing; and
- (e) A copy of all OCF-21 forms with respect to this claim for accident benefits in this case.

DOCUMENTS FOR THE HEARING

- [12] The parties must exchange and file with the Tribunal indexed copies of evidence that they plan to use at the hearing: **by January 6, 2020.**

The evidence shall be limited to documents previously exchanged between the parties by **December 16, 2019.**

- (i) No additional or new evidence may be submitted for use at the hearing beyond the date in this paragraph.
- (ii) The documents shall be limited to those relevant to the issues in dispute and that the parties will refer to in the hearing.
- (iii) Documents must be indexed, bookmarked/tabbed and page numbered.
- (iv) The parties are encouraged, but not required, to produce a joint document brief and/or an agreed statement of facts.
- (v) The documents filed by the parties with their application, response or for the case conference will not be part of the evidence at the hearing. Documents that the parties wish to rely on must be resubmitted to be used for the hearing.
- (vi) For an oral hearing, the parties shall bring a hard copy of the documents to the hearing for the aid of the hearing adjudicator.
- (vii) The hearing adjudicator will have the discretion to vary the above.

PRELIMINARY ISSUE HEARING DETAILS

- [13] **On or before December 16, 2019, the parties shall exchange finalized witness lists complete with contact information for each witness.**
- [14] The time allotted for each witness is subject to the discretion of the hearing adjudicator.
- (i) Opening submissions: Each party shall be provided 15 minutes.
 - (ii) Closing submissions: Each party shall be provided a half hour.

- [15] **The respondent** has permission to bring a court reporter to the hearing.
- [16] Neither party anticipated that anyone would require accommodation under the Human Rights Code to participate in the hearing process.

OTHER PROCEDURAL MATTERS

- [17] If the parties resolve the issue(s) in dispute, **the applicant** shall immediately advise the Tribunal in writing.

Released: December 13, 2019



Brad J. Wallace
Adjudicator

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ORDER

Order made by: Brad J. Wallace, Adjudicator

Date of Order: November 15, 2019

Further to the case conference heard on November 15, 2019, I order that:

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EXCHANGE OF DOCUMENTS BETWEEN THE PARTIES (PRODUCTIONS)

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- [8] If the parties resolve the issue(s) in dispute, **the applicant** shall immediately advise the Tribunal in writing.

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**Brad J. Wallace
Adjudicator**