

Good afternoon all,

**RE: Tribunal File No: 18-002610/AABS  
Kassiani Karagiannakis vs. The Personal Insurance Company**

Please see the attached AABS Motion Decision related to your Automobile Accident Benefits Service dispute.

Should you have any questions please contact the Tribunal at **LATregistrar@Ontario.ca**.

*Sent on behalf of Teresa Augusto, Case Management Officer.*

Thank you,

**Sabina Kourktchan**  
**Case Management Officer**  
**Automobile Accident Benefits Service**  
**Licence Appeal Tribunal**  
**Safety, Licensing Appeals and Standards Tribunals Ontario**  
77 Wellesley St. W. Box 250  
Toronto, ON, M7A1N3  
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**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: 18-002610/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:

**Kassiani Karagiannakis**

**Applicant**

and

**The Personal Insurance Company**

**Respondent**

**MOTION DECISION**

**Order made by: Terry Hunter, Vice Chair**

**Date of Order: October 16, 2018**

## OVERVIEW

- [1] The applicant was injured in an automobile accident on **Wednesday, March 23, 2016**, and sought benefits pursuant to the Statutory Accident Benefits Schedule - Effective September 1, 2010 (the "Schedule").
- [2] The applicant was denied certain benefits and submitted an application to the Licence Appeal Tribunal - Automobile Accident Benefits Service ("Tribunal").
- [3] A case conference took place on **Thursday, July 19, 2018**, and an order was issued dated **August 8, 2018**.

## MOTION

- [4] On **August 16, 2018**, the applicant filed a Notice of Motion requesting that the Tribunal:
  - i. Order that OCF-18 dated July 14, 2018 for physiotherapy treatment in the amount of \$1700.00 be added as an issue to be determined at the hearing.
- [5] The respondent did not consent to the motion.

## RESULT

- [6] The applicant's motion is granted.

## BACKGROUND

- [7] The applicant was involved in a car accident on March 23, 2016.
- [8] An insurer examination was conducted January 9, 2017 by a physiatrist.
- [9] The respondent's physiatrist's report dated January 20, 2017 concluded the applicant's injuries fell within the Minor Injury Guideline (MIG).
- [10] On July 14, 2018 the applicant submitted the treatment plan in question to the respondent.
- [11] July 19, 2018 the case conference was held and on consent a two day in-person hearing on the issue of the MIG and five treatment and assessment plans was set. The assessment and treatment plan of July 14, 2018 was not included in the issues in dispute for the hearing.
- [12] On July 27, 2018 the respondent advised upon review of the applicant's supporting medical reports they were unable to approve the treatment plan.

- [13] August 8, 2018 the respondent sent the applicant a Notice of Examination requesting her attendance at a psychiatry insurer examination to determine if the July 14, 2018 treatment plan was reasonable and necessary.
- [14] August 9, 2018 counsel for the applicant advised the respondent the applicant would not attend the examination but would consent to a paper review examination.
- [15] August 17, 2018 the applicant served the respondent with this notice of motion to add the treatment plan to the hearing.

### **POSITION OF THE PARTIES**

- [16] The applicant submits adding the OCF-18 would promote the efficient, proportional and timely resolution of this dispute. This treatment plan is similar to the other five identified in the Case Conference Order and would not require a substantial amount of documentation, additional witnesses to testify or additional hearing days.
- [17] The respondent takes the position the OCF-18 dated July 14, 2018 cannot be added as an issue to the hearing until the applicant attends the requested insurer examination.

### **REASONS**


- [18] I agree with the applicant that adding the treatment plan promotes the efficient disposition of the issues in this application. The treatment plan is similar to those set for hearing.
- [19] That however does not resolve the issue. I am left with the issue whether the applicant is precluded from adding the treatment plan as an issue pending her attendance at an in-person section 44 insurance examination. Section 44 allows an insurer to request the applicant attend an assessment but not more often than is reasonably necessary. The respondent raised the failure to attend in response to the applicant's motion to add the \$1700.00 dollar treatment plan. It did not bring its own motion.
- [20] In assessing whether it is reasonably necessary I make the following observations:
  - i. The disputed treatment plan is very similar to those slated to proceed to hearing. This is not a situation where the medical information in existence is related to benefits of different category or medical condition.

- ii. The respondent's submission is the insurer's psychiatry exam was in January of 2017 approximately 20 months ago. Therefore it is not unreasonable to request a second examination in response to her application. In paragraph 35 of the Respondent's Motion submissions they state: "the applicant has provided limited medical documents in support of her claim." The difficulty I have with this submission is the respondent did not seek to update the medical information in its possession prior to the benefit in question being submitted and a hearing scheduled. I find on the facts before me the request for the examination is made in contemplation of the scheduled hearing not to evaluate a minor treatment plan.
- iii. In paragraph 6 of the Respondent's Motion Submissions, reference is made to a July 27, 2018 detailed response to the medical reports from the applicant's doctors, Dr. Bazos and Dr. Grossman. The reports were reviewed confirming the applicant's injuries and compared to the criteria in the Minor Injury Guideline. The respondent found the injuries to be minor and fell within the guideline. The respondent did not require an insurer's exam to arrive at its conclusion. The respondent by the date of its July 27, 2018 response felt it had sufficient information to make in its words a "detailed response" to the applicant's medical report
- iv. The request for the examination came only after a hearing date was set.

[21] My view of the evidence set out above leads me to conclude the examination is not reasonably necessary.

[22] Both parties provided very helpful written submission and relied on authorities in support of their position on the interplay between sections 38, 44 and 55 of the *Statutory Accident Benefits Schedule*. The case law is helpful but ultimately each decision turns on the facts of the individual case. I have relied on the particular facts in this application in deciding the motion before me.

**Released: October 23, 2018**

  
 Terry Hunter, Vice Chair