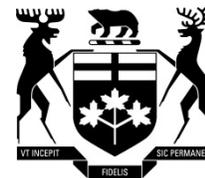


Safety, Licensing Appeals and
Standards Tribunals Ontario
Licence Appeal Tribunal

Tribunaux de la sécurité, des appels en
matière de permis et des normes Ontario
Tribunal d'appel en matière de permis



**Automobile Accident Benefits
Service**

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Tribunal File Number: **16-002730/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:

D.B.

Applicant

And

CUMIS General Insurance

Respondent

PRELIMINARY ISSUE DECISION

Adjudicator: Sandeep Johal

APPEARANCES:

Counsel for the Applicant: Karl Arvai

Counsel for the Respondent: Peter Durant

Heard in-writing on: February 10, 2017

INTRODUCTION:

1. The applicant was injured in an automobile accident on January 7, 2014 and sought benefits pursuant to the *Statutory Accident Benefits Schedule – Effective September 1, 2010* (the "*Schedule*").
2. On September 19, 2016 the applicant submitted an application for dispute resolution services to the Licence Appeal Tribunal - Automobile Accident Benefits Service (AABS) (the "Tribunal").
3. The Tribunal held a case conference on December 1, 2016 and a resumption of the case conference on December 19, 2016.

The December 19, 2016 Case Conference

4. The applicant was incarcerated and counsel for the applicant advised the Tribunal that they were unable to obtain instructions; therefore settlement discussions were not possible. A preliminary issue was raised by the respondent.
5. The Tribunal scheduled a preliminary issue hearing for February 10, 2017.

PRELIMINARY ISSUE TO BE DECIDED

As stated in the December 19, 2016 Case Conference Order

6. Does the Tribunal have jurisdiction to determine the applicant's claim for an attendant care benefit, where invoices have neither been submitted to the respondent for payment, nor denied by the respondent?

Issue Restated

7. Notwithstanding that the case conference order dated December 19, 2016 framed the issue as a failure to submit invoices, in this matter, the applicant's spouse is his caregiver or attendant care provider. According to the *Schedule*, when the attendant care provider is not providing the caregiving services in the normal course of their employment, that applicant must demonstrate that the caregiver has suffered an economic loss as a result of providing care. The question I have to answer is not whether invoices were submitted to the respondent but rather whether proof of economic loss was submitted to the respondent. The respondent takes the position that it was not. The respondent further asserts that, in the absence of any documentation, it has been unable to properly adjust the file.
8. The respondent asks me to find that the application is premature as it has not yet denied the claimed benefit.

RESULT

9. Based on the totality of the evidence before me, I find that the application to the Tribunal is premature since, in the absence of proof of economic loss from the applicant, the respondent has not provided a formal denial of the attendant care benefit.

ANALYSIS

10. In order to be entitled to the attendant care services claimed in the Assessment of Attendant Care Needs Form (Form 1), the applicant must show that his spouse has suffered an economic loss in accordance with section 3(7)(e)(iii)(B) of the *Schedule*. The term “economic loss” is not defined but the courts have found that loss of income by having to give up work or having incurred extraordinary expenses in providing care, constitute economic loss. The respondent has asked the applicant for proof of such losses. It takes the position that, prior to the application to the Tribunal, none has been forthcoming. I agree.
11. There is no dispute between the parties that, in his submissions with respect to this preliminary issue hearing, the applicant submitted documents in support of his position that his spouse had suffered economic loss. He takes the position that, since he has now provided such documents, he has satisfied the respondent’s concerns and the matter should proceed to a hearing. The respondent submits that providing documents in the course of a proceeding before the Tribunal is not an appropriate way to apply for a benefit. By doing so, the applicant has denied the respondent the right to properly adjust the file and issue a decision, including a decision that may be favourable to the applicant. I accept the respondent’s position.
12. The applicant has submitted documents on February 2, 2017 in response to this preliminary issue hearing purporting to show proof of economic loss. He relies on Rule 9.2(a) of the *Licence Appeal Tribunal Rules of Practice and Procedure* (the “*Rules*”). Rule 9.2(a) of the *Rules* allows 10 days prior to a hearing for a person to disclose to the other party the existence of every document and anything else the party intends to present as evidence at the hearing. The applicant submits that by complying with the *Rule* he has satisfied his obligations to disclose the requisite proof and the Tribunal should adjudicate on the matter.
13. The respondent wrote to the applicant on April 26, 2016 requesting proof of pre-accident and post-accident pay stubs to show proof of economic loss. The applicant did not provide any documentation to the respondent within 10 days of a request for information in accordance with section 33(1) of the *Schedule*. The respondent wrote again to the applicant on June 3, 2016 seeking additional information and again, none was forthcoming by the applicant.

14. If I am to accept the applicant's interpretation of Rule 9.2(a), insurers would be denied their ability to exercise the basic function of adjusting a claim. To accept that applicant's interpretation, is to permit a proceeding before the Tribunal to become the forum in which insurers first get the chance to review the file and issue a decision. Rule 9.2 (a) deals with procedure before the Tribunal once a valid application is filed. To be valid, the application must fall within the provisions of s. 280 (1) of the *Insurance Act*, RSO 1990, c I.8. (the "Act"): there must be a dispute between the parties. Until there is a denial, there is no dispute.
15. The issue for me to decide is not on the substantive elements of whether the applicant is entitled to an attendant care benefit. The question I have to answer is whether there is a right to apply to the Tribunal in the absence of a denial of a benefit or a dispute over the amount of a benefit. I am satisfied that there has been no denial. I am also satisfied that there is no dispute over the quantum of the benefit as the necessary documents have not been provided to the respondent in order for them to approve, deny, or quantify the attendant care benefit being claimed. The pre-conditions for an appeal to this Tribunal set out in the Act have not been satisfied.
16. The preliminary issue question before me was whether proof of economic loss was provided to the respondent. I find that it was not and I am therefore not required to make a ruling on the validity of the economic loss submitted. That would be for the respondent to do as part of their review and adjustment of the file.

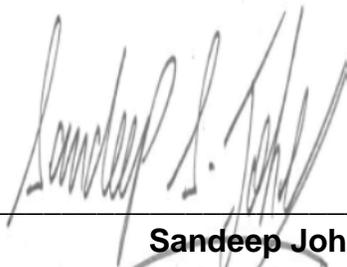
CONCLUSION

17. I find that, for the purposes of this preliminary issue hearing, the application is premature. There is no denial of the attendant care benefit upon which the applicant can bring an application for dispute resolution to the Tribunal.

ORDER

18. The application before the Tribunal with respect to the applicant's claim for attendant care benefits is dismissed.

Released: May 11, 2017



Sandeep Johal
Adjudicator