

**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**

**Citation: Jean-Marc Rocheleau by his Guardian, Katherine Rocheleau vs. Unifund
Assurance Company, 2019 ONLAT 18-001957/AABS**

Date: April 18, 2019

File Number: 18-001957/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:

J.M.R. by his Guardian, K.R.

Applicant

and

Unifund Assurance Company

Respondent

DECISION

PANEL: Amanda Fricot, Adjudicator

APPEARANCES:

For the Applicant: Jasmine Daya, Counsel

For the Respondent: Sharla B. Bandoquillo, Counsel

HEARD: In Writing on: November 5, 2018

OVERVIEW

- [1] The applicant was catastrophically injured in a motor vehicle accident on August 19, 2017 (“the accident”). He remained in a coma from the date of the accident until the date of his death on September 11, 2018.
- [2] The applicant sought accident benefits pursuant to the *Statutory Accident Benefit Schedule – Effective September 1, 2010*, O. Reg. 34/10 (the “*Schedule*”) and the respondent paid various benefits. This application was made to the Licence Appeal Tribunal – Automobile Accident Benefit Services (the “Tribunal”) when the applicant’s claim for payment of the legal fees incurred in obtaining a guardianship order was denied by the respondent.
- [3] On behalf of the applicant it is submitted that the legal fees incurred in obtaining the guardianship order is a rehabilitative benefit under sections 16(1) and 16(3)(l) of the *Schedule*. The respondent submits that they are not goods and services payable under section 16 of the *Schedule*. The respondent further submits that in the event that the Tribunal finds this expense to be a rehabilitative benefit, it relies on section 38(2) of the *Schedule* and denies liability based on the applicant’s failure to submit a treatment and assessment plan (“treatment plan”) in advance of incurring the expense.

ISSUES IN DISPUTE

- [4] The following issues are in dispute before the Tribunal:
 - (i) Is the applicant entitled to payment in the amount of \$9,210.00 for the legal fees incurred in obtaining a guardianship order, submitted on October 16, 2017, and denied on February 14, 2018?
 - (ii) Is the applicant entitled to interest on any overdue payment of benefits?
 - (iii) Is the applicant entitled to costs?
 - (iv) Is the applicant entitled to an award under Ontario Regulation 664 because the respondent unreasonably withheld or delayed the payment of benefits?

RESULT

- [5] For the reasons that follow, I find that:
 - (i) the applicant is not entitled to payment in the amount of \$9,210.00 for the legal fees incurred in obtaining a guardianship order; and
 - (ii) the applicant is not entitled to interest, costs or an award under *Ontario Regulation 664*.

ANALYSIS

- [6] The applicant relies on the 2005 Ontario Court decision in *Stukic*¹. In that case the Court concluded that the legal cost of obtaining a guardianship order for a person catastrophically impaired in a motor vehicle accident was payable as a rehabilitation benefit under section 15 of a prior version of section 16 of the current *Schedule* (“the old *Schedule*”)².
- [7] I find that the respondent is not obligated to pay the legal fees incurred in obtaining the guardianship order, irrespective of whether that expense is a rehabilitation expense under section 16(1) and 16(3)(l) of the *Schedule* for the following reasons.
- [8] The respondent relies on Section 38(2) of the *Schedule* which requires that a treatment plan that satisfies the requirements of section 38(3) of the *Schedule* be submitted before an expense is incurred. Section 38(3) sets out a number of essential requirements of a treatment plan, one of which is a statement by a health practitioner approving the treatment plan and stating that he or she is of the opinion that the goods or services described in the treatment plan and the proposed costs are reasonable and necessary for the insured person’s treatment or rehabilitation.
- [9] The applicant did not submit a treatment plan in advance of incurring the legal costs associated with obtaining the guardianship order, nor is there any evidence of any exceptional circumstances that prevented the filing of a treatment plan in advance of those costs being incurred.
- [10] Section 38(2) of the *Schedule* lists exceptions to when a treatment plan is required in advance of an expense being incurred. The only exception relied upon by the applicant is section 39 of the *Schedule*. Pursuant to sections 38(2) and 39 of the *Schedule*, if the insurer gives the insured person notice stating that the insurer will pay an expense without a treatment plan, a treatment plan is not required.
- [11] Applicant’s counsel wrote to the respondent on September 13, 2017³, and requested confirmation that the legal fees associated with obtaining a guardianship order would be covered under the applicant’s accident benefit claim. On September 21, 2017, prior to receiving a response from the respondent, a Notice of Application for a guardianship order was filed⁴. By

¹ Applicant’s Written Submissions, Tab 16, *Stukic (Litigation Guardian of) v. Personal Insurance Co. of Canada*, 2005 CarswellOnt 3476; [2005] O.J. No. 3325 (Ontario Superior Court of Justice).

² O. Reg. 403/96, as cited in *Stukic, supra*, at paragraph 9.

³ Applicant’s Written Submissions, Tab 6, Letter dated September 13, 2017 from to Solicitor Daya to the Respondent.

⁴ Applicant’s Written Submissions, Tab 6, October 2, 2017 Judgment of the Honourable Justice Conway, Ontario Superior Court of Justice, at page 2.

Judgement dated October 2, 2017⁵, the applicant's spouse was appointed guardian of the property and of the person of the applicant.

- [12] On September 27, 2017⁶, the respondent requested that applicant's counsel advise of the section of the *Schedule* she felt would respond to this expense. In a letter dated October 23, 2017⁷ applicant's counsel outlined the basis on which she sought payment of the legal fees incurred in obtaining the guardianship order. Although she referred to the section number in the old *Schedule*, the letter was clear that a rehabilitation benefit was being claimed, as the text of the statutory provision relied upon was set out in the letter and the case referenced referred only to rehabilitation benefits.
- [13] On February 14, 2017⁸ the respondent denied the applicant's claim based on section 38(2) of the *Schedule*, after stating:
- "It is not apparent that a guardianship would reduce or eliminate the effects of disability resulting from the accident. The guardianship was not required for the claims for Accident Benefit."
- [14] It is clear from the evidence that the respondent at no time agreed that a treatment plan was not required, nor did the respondent give the applicant notice under Section 39 of the *Schedule* that a treatment plan was not required. I therefore find that this exception does not apply.
- [15] I find that as a result of the applicant's failure to submit a treatment plan in advance of incurring the legal fees to obtain the guardianship order, as required by Section 38(2) of the *Schedule*, the respondent is not liable to pay those costs.
- [16] The respondent also argues that section 15 of the old *Schedule*, which was interpreted and applied in *Stukic*, is critically different from section 16 of the current *Schedule*. The respondent submits that section 16(1) of the current *Schedule* is narrower and limits entitlement to the activities and measures described in subsection 16(3). The respondent also relies upon the recent amendment to section 16(3)(l) of the current *Schedule*, which now requires that the insurer agree that goods and services, other than those specifically listed in s. 16(3) of the current *Schedule*, are essential for the rehabilitation of the insured person. I find that in this case it is unnecessary for me to determine whether the payment of legal fees incurred in obtaining the guardianship order is a rehabilitative benefit under sections 16(1) and 16(3)(l) of the *Schedule*. Even if it were determined to be a rehabilitative benefit to which the applicant is entitled,

⁵ Applicant's Written Submissions, *supra*, footnote 4.

⁶ Respondent's Book of Documents, Tab 3, Email dated September 27, 2017 from Sue Giffen to Solicitor Daya.

⁷ Applicant's Written Submissions, Tab 7, Letter dated October 16, 2017 from Solicitor Daya to Sue Giffen.

⁸ Applicant's Written Submissions, Tab 12, Explanation of Benefits.

because a treatment plan was not submitted in advance of the expense being incurred, I find, for the reasons set out above, that pursuant to section 38(2) of the *Schedule* the respondent is not obligated to pay for that expense.

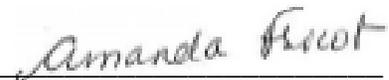
Is the applicant entitled to interest, costs and/or an award under *Ontario Regulation 664*?

- [17] As the applicant is not entitled to the benefits sought, there is no entitlement to interest.
- [18] In the Applicant's Written Submissions an award of costs is sought. Rule 19.1 of the Tribunal's *Rules of Practice and Procedure*⁹ provides that a party may request costs where a party believes that the other party has acted unreasonably, frivolously or vexatiously, or in bad faith. There is no evidence of any such conduct by the respondent in this proceeding. Accordingly the request for costs is dismissed.
- [19] In the Applicant's Written Submissions a "special award" is also sought. This was interpreted to refer an award under *Ontario Regulation 664*. As the applicant is not entitled to the benefits sought, the request for this award is dismissed.

ORDER

- [20] For the reasons outlined above, I find that;
- (i) the applicant is not entitled to payments in the amount of \$9,210.00 for the legal fees incurred in obtaining a guardianship order; and
 - (ii) the applicant is not entitled to interest, costs or an award under *Ontario Regulation 664*.

Released: April 16, 2019



**Amanda Fricot
Adjudicator**

⁹ Safety, Licensing Appeals & Standards Tribunals Ontario, *Common Rules of Practice & Procedure*, October 2, 2017.