

**LICENCE APPEAL
TRIBUNAL**

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

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

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



**Date: October 31, 2019
File Number: 18-007679/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:

Saman Kareem

Applicant

and

Aviva Insurance Canada

Respondent

DECISION

PANEL: **Kate Grieves, Adjudicator**

APPEARANCES:

For the Applicant: Yanira Monterroza, Paralegal

For the Respondent: Patrick Baker, Counsel

HEARD IN PERSON: **March 11, 2019**

OVERVIEW

[1] The applicant was involved in an accident on July 14, 2017. He claimed certain benefits from the respondent under the *Statutory Accident Benefits Schedule – Effective September 2010* (“*Schedule*”). The respondent paid non-earner benefits to the applicant from August 12, 2017 to March 24, 2018. The applicant filed an application with the Licence Appeal Tribunal (“Tribunal”) to dispute the denial.

ISSUES

- [2] The parties agreed that the issues to be determined by the Tribunal are:
- i. Is the applicant entitled to receive a weekly non-earner benefit in the amount of \$185.00 per week from March 16, 2018 to date and ongoing?
 - ii. Is the applicant entitled to an award under *Regulation 664* on the basis that the respondent unreasonably withheld or delayed payments to the applicant?
 - iii. Is the applicant entitled to interest on any overdue payment of benefits?

RESULT

- [3] The applicant is not entitled to weekly non-earner benefits from March 16, 2018 to date and ongoing.
- [4] Interest is not payable as there are no overdue payments. The applicant is not entitled to an award pursuant to *Regulation 664* because no benefits were unreasonably withheld.

THE LAW

- [5] Section 12(1)(1) of the *Schedule* sets out the test for non-earner benefits. The applicant must establish that he suffered a complete inability to carry on a normal life as a result of the accident.
- [6] Section 3(7)(a) defines a “complete inability to carry on a normal life” as follows:
- a person suffers a complete inability to carry on a normal life as a result of an accident if, as a result of the accident, the person sustains an impairment that continuously prevents the person from engaging in substantially all of the activities in which the person ordinarily engaged before the accident.

[7] The parties both submit that the principles set out in the Court of Appeal decision in *Heath v Economical Mutual Insurance Company*¹ apply in assessing the applicant's entitlement. According to the court:

- i. The analysis requires a comparison of the claimant's activities and life circumstances before the accident to his activities and life circumstances after the accident. This requires more than taking a "snapshot" of the claimant's life immediately preceding the accident. Assessing the claimant's activities and circumstances prior to the accident should be assessed over a reasonable period prior to the accident, the duration of which depends on the facts of the case.
- ii. In order to determine whether the claimant's ability to engage in "substantially all" of his or her activities has been affected to the required degree, all of the pre-accident activities in which the claimant ordinarily engaged should be considered. However, in deciding whether the necessary threshold has been satisfied, greater weight may be assigned to those activities which the claimant identifies as being important.
- iii. The phrase "continuously prevents" means that the applicant must prove "disability or incapacity of the requisite nature, extent or degree which is and remains uninterrupted".
- iv. The phrase "engaging in" requires more than "isolated attempts", or "going through the motions". If the degree to which a claimant can perform an activity is sufficiently restricted, it cannot be said that they are truly "engaging in" the activity.
- v. In cases where pain is a primary factor that prevents the claimant from engaging in their activities, the question is not whether the claimant can physically do the activities, but whether the degree of pain experienced is such that the individual is practically prevented from engaging in those activities.

ANALYSIS

[8] That applicant was involved in motor vehicle accident on July 14, 2017. While slowing for traffic on the highway, the applicant's vehicle was rear-ended, pushing his car into the car in front. The applicant suffered a partial tear to his left shoulder, and was later diagnosed with psychological injuries including an adjustment disorder with anxiety and depressed mood, PTSD, and chronic pain.

¹ 2009 ONCA 391.

He received chiropractic adjustments, massage therapy and he participated in an exercise program and psychotherapy. He was prescribed medications and had cortisone injections in his shoulder.

- [9] At the time of the accident the applicant was unemployed. The applicant testified that he graduated from paramedic school in 2015. For the next two years the applicant was completing volunteer hours, studying and exercising in order to succeed in the recruitment process. Becoming a paramedic was his dream.
- [10] Disability certificates completed by the applicant's treatment providers supported a complete inability to carry on a normal life.² The respondent paid non-earner benefits to the applicant until March 16, 2018 when they were stopped based on the conclusions of the insurer's examinations.³
- [11] Although the applicant has experienced limitations as a result of his injuries, I find that the applicant has not suffered a complete inability to carry on a normal life. The applicant has not been continuously prevented from engaging in substantially all of his pre-accident activities. The applicant submitted several medical reports which conclude that he suffers a complete inability to carry on a normal life. However, I find these reports of little assistance in comparing the pre-accident vs post-accident activities.⁴ Their conclusions that the applicant is unable to complete his household chores is inconsistent with the applicant's own evidence that he is able to complete most of those activities.⁵
- [12] The applicant completed a questionnaire dated September 25, 2017 to assist in identifying the applicant's ordinary activities and life circumstances before the accident, and the degree to which he is able to complete them post-accident.⁶ The applicant identified three activities:
- a. Doing heavy lifting 3 days a week as paramedic fitness – cannot continue.
 - b. Attending volunteer medic work – cannot continue.
 - c. Attending paramedic scenario groups – can continue partially.
- [13] The applicant also completed an OCF 12 – Activities of Normal Life form dated November 8, 2018.⁷ The applicant reported independence with his personal care,

² Exhibits 12 and 13.

³ Exhibit 25.

⁴ Exhibits 7, 14, 15.

⁵ Exhibit 1.

⁶ Exhibit 2.

⁷ Exhibit 1.

functional abilities, and meals. He reported requiring assistance with grocery shopping, making the bed, garbage removal and gardening. The applicant was able to complete other cleaning activities, such as sweeping, dusting, and vacuuming. He was unable to cut grass, shovel snow or move furniture. With respect to cognitive activities, the applicant reported that he was unable to balance a bank book, and required assistance with other tasks such as keeping appointments, planning and organizing, and remembering. The applicant was unable to relate to others without irritability or temper or participate in social activities. Of the 45 tasks listed on the OCF 12, the applicant indicated that he was able to complete 40 of them.

- [14] The applicant also included an “addendum” to the OCF 12, dated February 21, 2019. It indicates that the applicant is able to do many activities, but with some restrictions. He is unable to raise his left arm above shoulder level, so he completes some activities either with one hand, slowly, or with assistance. The applicant reports that his mood has impacted his relationship with his family members, and contributed to social isolation. He is unable to balance a bank book because he feels anxiety when dealing with family finances. His memory and ability to concentrate have been affected and requires assistance from his wife for keeping appointments, planning, organizing and remembering errands. The “addendum” confirms that the applicant is able to complete 15 of the 19 categories of tasks.
- [15] The applicant’s family physician concluded that the applicant was unable to perform his paramedic duties and was not fit to complete the paramedic fitness test because he was unable to lift more than 5kg in his left hand, and he was unable to perform activities above his shoulder.⁸ The family physician also notes that the applicant could not practice his hobbies and sports. However, the applicant led no evidence regarding what hobbies or sports he performed prior to the accident, or those he could no longer complete.
- [16] The respondent assessments also conclude that the applicant has not suffered a complete inability to carry on a normal life.⁹ The occupational therapist, Mr. Harish Sharma interviewed the applicant about his activities and reported that from a functional perspective, the applicant was a very active person prior to the accident. He was independent with his personal care and housekeeping tasks. He enjoyed playing and spending time with his children, and socialized with family and friends. The applicant reported that despite the ongoing pain with his left shoulder he is independent with his personal care and performs his

⁸ Exhibits 5 and 6.

⁹ Exhibit 25.

housekeeping tasks. He is unable to shovel snow. He spends time with his children and wife but is unable to play with his children to the same extent. He continues to enjoy reading and spending time on his laptop. He doesn't socialize to the same extent. He has not resumed volunteer paramedic work. He prefers not to drive, but is able to. Despite the pain and limitations of his left shoulder, the applicant has not suffered a complete inability to engage in substantially all of his pre-accident activities.

- [17] The applicant submits that his injuries have prevented him from continuing with his goal of becoming a paramedic, and that in accordance with *Heath*, the inability to perform activities related to becoming a paramedic should be given greater weight because of the importance to him. Even so, I find that the applicant has not met his burden of proof. The applicant submits that paramedic related activities were his main preoccupation prior to the accident. He testified that he had completed 900 hours of in-vehicle ambulance volunteer hours, obtained additional certifications, and volunteered for St. John's Ambulance and Global Medics. Unfortunately, the applicant did not provide any documentary evidence to substantiate these claims. Completing the in-vehicle ambulance hours was not an activity of normal life at the time of the accident. The hours were completed as part of his college program, and were all accumulated prior to his graduation in 2015. The applicant filed copies of certificates that he obtained, but they do not indicate the dates the courses were completed, nor any course requirements.¹⁰
- [18] The applicant has failed to establish what his pre-accident paramedic activities were. He provided a general description, without documentary evidence in support. He called no witnesses to substantiate his testimony. The applicant's own evidence supports that the applicant is able to complete most of the other activities that he did identify— he is independent with all of his personal care, he continues to drive, prepare meals and he can complete most household chores. Pursuant to *Heath*, important activities are to be afforded more weight, but not to the exclusion of all other activities of normal life.

CONCLUSION

- [19] Having considered the evidence before me, I find that the applicant has not suffered a complete inability to carry on a normal life as a result of the accident. The applicant's injuries have not resulted in impairments that continuously prevent him from engaging in substantially all of the activities in which he ordinarily engaged before the accident.

¹⁰ Exhibits 23 and 24.

INTEREST

[20] No interest is payable because there are no overdue payments.

AWARD PURSUANT TO REGULATION 664

[21] The applicant is not entitled to an award pursuant to Regulation 664 because no benefits were unreasonably withheld.

COSTS

[22] The applicant requested costs in the amount of \$1,500.00. The Licence Appeal Tribunal Common Rules of Practice and Procedure (the "Rules") include a provision in Rule 19.1 for parties to request costs of the proceeding, if they believe that the other party has acted unreasonably, frivolously, vexatiously, or in bad faith. Rule 19.4 further sets out the requirements for that request, which must include the reasons for the request and the particulars of the alleged conduct.

[23] The applicant has failed to meet the threshold and requirements for costs set out in Rule 19. I do not find that the respondent engaged in conduct that is unreasonable, frivolous, vexatious, or in bad faith.

Date of Issue: October 31, 2019



**Kate Grieves
Adjudicator**