

**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: J. T. vs. TD General Insurance Company, 2020 ONLAT 19-003389/AABS

**Released Date: 07/23/2020
File Number: 19-003389/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. T.

Applicant

and

TD General Insurance Company

Respondent

DECISION

ADJUDICATOR: Derek Grant

APPEARANCES:

For the Applicant: Angela James, Counsel

For the Respondent: Paul Irish, Counsel

HEARD: By way of written submissions

OVERVIEW

- [1] The applicant, J.T., was involved in an automobile accident on July 27, 2013, and sought benefits pursuant to the Statutory Accident Benefits Schedule - Effective September 1, 2010 (the "Schedule"). J.T. was denied certain benefits by the respondent, TD General Insurance Company ("TD") and submitted an application to the Licence Application Tribunal - Automobile Accident Benefits Service ("Tribunal").

ISSUES

- [2] The Tribunal Order lists the issues in dispute as follows:
- a. Is the applicant entitled to a medical and rehabilitation benefit in the amount of \$888.50 for physiotherapy treatment recommended by Austin Gaber, in a treatment plan (OCF-18) submitted on January 21, 2019 and denied on January 25, 2019?
 - b. Is the applicant entitled to interest on any overdue payment of benefits?
- [3] TD approved the sole treatment plan in dispute on April 3, 2020.
- [4] In his submissions, J.T. submits the following additional issues are in dispute:
- c. Whether the Applicant is entitled to costs?
 - d. Whether the Applicant is entitled to an award for an unreasonably withheld benefit pursuant to *Regulation 664*?
- [5] The parties' submissions therefore focus on the issues of costs and an award. As such, my decision will be based on the evidence of the additional issues.

FINDING

- [6] J.T. is not entitled to an award, costs or interest.

BACKGROUND

- [7] On January 21, 2019, J.T. submitted a treatment plan requesting physiotherapy treatment at a cost of \$885.50.¹ TD denied this treatment plan by way of correspondence, dated January 25, 2019, indicating that J.T. had not provided any compelling medical information to support the need for ongoing physical

¹ Respondent Document Brief - Tab 2 - OCF-18, dated January 21, 2019 for \$885.50

treatment for the subject accident. TD requested that J.T. submit updated medical information for its review and consideration. Lastly, TD advised the treatment plan in question would not be subject to an insurer's examination.²

[8] The following timeline sets out the correspondence between the parties, leading up to J.T.'s claim for costs and an award:

- a. January 21, 2019 – J.T. submitted a treatment plan;
- b. January 25, 2019 – TD denied the treatment plan by way of an Explanation of Benefits (“EOB”);
- c. March 26, 2019 – J.T. files his Tribunal application;
- d. March 28, 2019 – TD requested further updated medical information regarding the denied treatment plan submitted January 21, 2019;
- e. March 29, 2019 – TD acknowledges receipt of the Tribunal application and requested updated medical information;
- f. April 17, 2019 to May 21, 2019 – J.T. provides TD with updated clinical notes and records;
- g. October 22, 2019 – Case conference held;
- h. January 29, 2020 – Written hearing scheduled for April 27, 2020;
- i. February 14, 2020 – Affidavit evidence of J.T. filed;
- j. March 3, 2020 – Written hearing document production deadline;
- k. March 5 & 12, 2020 – J.T. submits updated clinical notes and records; and
- l. April 2, 2020 – TD approves the disputed treatment plan.

AWARD

[9] Section 10 of Regulation 664 permits the Tribunal to award a lump sum of up to 50% of the amount to which the insured person was entitled at the time of the award together with interest on all amounts then owing (including unpaid interest) if it finds that that an insurer has “unreasonably” withheld or delayed payments.

² *Ibid* - **Tab 3** – Correspondence from the Insurer, dated January 25, 2019

J.T. bears the onus of establishing, on a balance of probabilities that TD acted unreasonably in withholding or delaying the payment of a disputed benefit.

[10] J.T.'s position is that TD's March 2019 requests for further medical information was not made until approximately two months after the denial of the treatment plan, and after it received notice that a response to the Tribunal application was due. J.T. submits that TD has not reimbursed J.T. for the documents it requested.

[11] Section 33 (1) of the *Schedule* states in part:

An applicant shall within ten business days after receiving a request from the insurer, provide the insurer with the following:

1. Any information reasonably required to assist the insurer in determining the applicant's entitlement to a benefit.

[12] Section 33 (6) of the *Schedule* states that the respondent is not liable to pay a benefit in respect of any period during which the insured person fails to comply with subsection 33 (1).

[13] TD submits that the onus is on J.T. to establish that the treatment he seeks is reasonable and necessary, which includes providing TD with the necessary medical documents to support the claim for treatment. There is no evidence of an agreement between J.T. and TD that TD would reimburse J.T. for documents produced. In addition, s. 33 does not require an insurer to compensate an insured for producing information reasonably required to assist the insurer in determining entitlement to a benefit.

[14] Although there were medical records provided to TD between April 17, 2019 and May 21, 2019, these records were available prior to this period, and were not produced in advance of TD's denial, and were produced after the filing of the Tribunal application. Based on the evidence, it is not until March 5 & 12, 2020 that J.T. provided TD with updated medical evidence that TD determined was sufficient to approve the disputed treatment plan.

[15] Considering the evidence, I find that TD did not act unreasonably, frivolously, vexatiously or in bad faith in this proceeding. Once TD had received medical evidence which it found supported J.T.'s need for treatment, it approved the treatment within a reasonable time. I do not find that TD's actions regarding the treatment plan meets the standard of an award.

COSTS

- [16] J.T. submissions regarding costs relates to reimbursement for documents produced and the cost of this proceeding. I have already addressed the issue of reimbursement for documents.
- [17] J.T.'s position is that he incurred unnecessary costs because TD did not approve the treatment plan when it was initially submitted. J.T. submits that TD failed to carry out a good faith inquiry into the reasonableness and necessity of the disputed treatment plan. J.T. further submits that TD "made the proceeding necessary by its continued failure/refusal to adjust the applicant's claim in good faith".
- [18] I disagree with J.T.'s claim that TD's actions warrant a decision of costs in favour of J.T. I find that J.T.'s production of medical evidence that was available prior to TD's denial of the treatment plan weakens his claim for costs based on TD's actions. On the evidence, TD approved the treatment plan when it received medical evidence that assisted TD in determining J.T.'s entitlement to the benefit. There is no evidence that TD delayed approving the treatment plan for any reason other than it did not receive the necessary information to assist it sooner.
- [19] I do not find TD's actions demonstrate a lack of good faith, or any other grounds that would warrant a claim for costs. Consequently, J.T.'s claim for costs for document production and this proceeding is denied.

CONCLUSION

- [20] J.T. is not entitled to an award, costs, therefore there is no interest payable.
- [21] J.T.'s application is dismissed.

Released: July 23, 2020



**Derek Grant
Adjudicator**