

**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**



Citation: Verschuren vs. The Personal Insurance Company, 2021 ONLAT 20-003677/AABS

File Number: 20-003677/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:

Jesse Verschuren

Applicant

and

The Personal Insurance Company

Respondent

DECISION

ADJUDICATOR:

Jesse A. Boyce, Vice-Chair

APPEARANCES:

For the Applicant:

Doug Wright, Counsel

For the Respondent:

Nathalie V. Rosenthal, Counsel
Nathan M. Fabiano, Counsel

HEARD:

By way of written submissions

OVERVIEW

- [1] The applicant was injured in a motorcycle accident that occurred on August 17, 2016, and sought benefits from the respondent, The Personal, pursuant to the Statutory Accident Benefits Schedule - Effective September 1, 2010¹ ("*Schedule*"). On June 23, 2017, The Personal accepted that the applicant was catastrophically impaired as a result of the brain injury he sustained. There is no dispute that The Personal has funded a significant amount of medical, rehabilitation and attendant care benefits since the accident.
- [2] Notably, the applicant continues to reside with his mother, who provides him with attendant care. One sequelae of the applicant's impairment is a change in his personality that is accompanied by bouts of anger and violent reactions. This has led the applicant's treatment team to explore alternative housing arrangements based on safety concerns, both for the applicant and his mother.
- [3] A treatment plan for a home modification assessment, dated January 23, 2020 and in the amount of \$9,217.40, was submitted by the applicant's case manager on behalf of Adapt-Able Design. On February 11, 2020, The Personal responded to the claim, partially approving the treatment plan in the amount of \$2,200, resulting in an unapproved balance of \$7,017.40. The applicant applied to the Tribunal for resolution of the dispute, taking the position that the treatment plan is not an "assessment", that the majority of the costs of the plan are for other services and that The Personal has discretion to pay above the assessment cap.

ISSUES IN DISPUTE

- [4] The parties agree that the issues in dispute are as follows:
- a. Is the applicant entitled to a rehabilitation benefit in the amount of \$7,017.40 for home modification/device recommended by Courtney Porter/Adapt-Able Design in a treatment plan (OCF-18) submitted on January 23, 2020?
 - b. Is the applicant entitled to interest on any overdue payment of benefits?

RESULT

- [5] The applicant is not entitled to payment for the unapproved portion of the treatment plan in the amount of \$7,017.40.

ANALYSIS

Section 25(5)(a)

¹ O. Reg. 34/10, as amended.

- [6] Section 25(5)(a) of the *Schedule* is clear in its language. Despite any other provision in the *Schedule*, an insurer shall not pay more than a total of \$2,000 plus applicable HST in respect of fees and expenses for conducting any one assessment or examination and for preparing reports in connection with it, whether it is conducted at the instance of the insured or the insurer. The Tribunal has previously considered whether home modification assessments/reports are subject to the \$2,000 cap under s. 25(5)(a).
- [7] In *R.G. v. State Farm Insurance*² a treatment plan was submitted in which Adapt-Able Design made recommendations for home modifications that would be necessary to accommodate the applicant. Its recommendations were based on the medical information provided to it, a meeting with the applicant, a home site visit, a consultation with treating rehabilitation professionals, and an investigation of zoning restrictions for the property. The Tribunal found that the assessment, by its very nature, involved an appraisal of the applicant's health status and, on that basis, concluded that the treatment plan was subject to the \$2,000 cap on assessments and examinations pursuant to s. 25(5)(a). The decision was upheld on reconsideration.³
- [8] Similarly, in *Z.P. v. Certas Direct Insurance Company*⁴, the applicant submitted a treatment plan requesting a housing assessment in the amount of \$9,025.30. Like in *R.G.*, the services were again to be provided by Adapt-Able Design. The services included document review, a determination of housing features, site evaluation analysis, and recommended modifications and architectural design. The treatment plan was partially approved to a maximum \$2,000 for the assessment. The Tribunal found that as the facts of the case were on all fours with the facts in *R.G.*, and the treatment plan, like in *R.G.*, related to an assessment and appraisal of the applicant's health issues, that the insurer had paid the maximum allowable under the *Schedule*, and nothing was owing.
- [9] I agree with The Personal that the facts of this case are identical to the facts of *R.G.* and *Z.P.* While these cases are not binding on me, I find them very persuasive, agree with their analysis and see no reason to depart from their findings. Here, the treatment plan in dispute was not incurred by the applicant. As in *R.G.* and *Z.P.*, the treatment plan was submitted by Adapt-Able Design. In the additional comments section of the treatment plan, it mentions home modifications that would be necessary to accommodate the applicant. It further indicates that the first component would consist of document review and interviews. The treatment plan states that the recommendations would be based on the medication information provided, a meeting with the applicant, a home site

² 2019 CanLII 18340 (ON LAT).

³ 2019 CanLII 72227 (ON LAT Reconsideration, June 25, 2019).

⁴ 2020 CanLII 58836 (ON LAT).

visit, a consultation with his treating rehabilitation professionals, and an investigation of zoning restrictions for the property.

- [10] On these facts, I find the treatment plan is subject to s. 25(5)(a), which places a \$2,000 cap on the fees and expenses charged for conducting any one assessment or examination and for preparing reports in connection with it. There are no built-in exceptions with respect to the type of assessment covered by the cap and no evidence of legislative intent to omit coverage for housing assessments. Further, where Adapt-Able's assessment is based on the medical information provided to it, a meeting with the applicant, a home site visit, consultation with his treating rehabilitation professionals and an investigation of zoning restrictions for the property, I find it necessarily involves an assessment of the applicant's impairments and functional limitations to fall within s. 25(5)(a).
- [11] For completion, I disagree with the applicant's position that the treatment plan in dispute is not an "assessment", so the cap should not apply. I find the evidence indicates that the treatment plan provides for an assessment of his impairments and functional limitations at his residence. Further, I disagree with the applicant's position that since the majority of the costs of the treatment plan are for other services, those items should therefore be funded. On review, I find the majority of the items in the treatment plan pertain to reviewing, assessing and reporting/recommending, with only \$2,500 total allocated to architectural design and disbursements. Finally, I find *S.M. v. Unica Insurance*⁵ is not binding on me and, in any event, is distinguishable, as the issue there concerned a housing market analysis and the assessment in this case considers the impairments and functional needs of the applicant in his own home, a finding echoed in *Z.P.*
- [12] While I am sympathetic to the applicant's position that there is no other source of funding for this assessment, I agree with The Personal, and the reasoning provided in *R.G.* and *Z.P.*, that an insurer is not obligated to pay more for an assessment than the *Schedule* provides, which is \$2,000. Accordingly, I find The Personal has approved the maximum amount for the treatment plan in dispute and no further amounts or interest are payable.

ORDER

- [13] The applicant is not entitled to payment for the unapproved portion of the treatment plan in the amount of \$7,017.40 or interest.

Released: January 14, 2021



Jesse A. Boyce, Vice Chair

⁵ 2020 CanLII 12718 (ON LAT); 2020 CanLII 61460 (ON LAT Reconsideration, June 25, 2020).