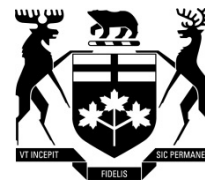


Safety, Licensing Appeals and
Standards Tribunals Ontario
Licence Appeal Tribunal

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



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Tribunal File Number: 16-000653/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:

M. G.

Applicant

and

The Personal Insurance Company

Respondent

DECISION

ADJUDICATOR: Chris Sewrattan

APPEARANCES:

Counsel for the Applicant: David Levy

Counsel for the Insurance Company: Jennifer Griffiths

HEARD: Written Hearing: October 27, 2016

Overview

[1] The applicant was injured in a motor vehicle accident on August 14, 2013. She sought benefits under the *Statutory Accident Benefits Schedule – Effective after September 1, 2010* (the “*Schedule*”). The applicant was denied payment for a rehabilitation benefit from The Personal Insurance (“Personal”). The rehabilitation benefit concerns the applicant’s travel to Iran. The applicant appeals to the Licence Appeal Tribunal for the payment of the rehabilitation benefit.

Issue:

[2] I must determine the following issues:

1. Is the applicant entitled to a \$6,698.64 rehabilitation benefit for travel for herself and her attendant care provider to Iran, which is recommended by Rehabilitation Management Inc. in a Treatment Plan dated May 31, 2016?
2. Is the applicant entitled to interest on any outstanding payment?
3. Is a Rule 19.1 costs order appropriate in this case?

Result:

[3] The applicant is not entitled to a \$6,698.64 rehabilitation benefit for travel because it is not necessary within the meaning of section 16 of the *Schedule*. In addition, it is not the type of travel expense for which payment is permitted under section 16.

[4] With regard to the payment for the travel of the applicant’s attendant care provider, the applicant must formally dispute the payment of her June 2016 attendant care benefit if she wishes to contest it at the Licence Appeal Tribunal.

[5] The applicant is not entitled to interest or costs.

Facts:

[6] The applicant was struck by a motor vehicle on August 14, 2013 when she was crossing the street. She suffered serious and permanent physical injuries. The applicant has been deemed catastrophically impaired as a result of the accident. With regard to psychological injuries, the applicant was diagnosed by Dr. Abbas Azadian with the following:

- Post-traumatic stress disorder;
- Major depressive disorder; and
- Somatic symptoms disorder

- [7] Personal has been paying for the applicant to receive a non-professional attendant care service.
- [8] On May 31, 2016, OT Rehabilitation Inc. submitted a Treatment Plan for payment for a trip to Iran. The cost of the Treatment Plan was composed of expenses for air travel, taxi service, and supporting documentation. The applicant's attendant care provider needed to attend as well, where he would continue to provide attendant care service. His travel expenses were built into the Treatment Plan. The purpose of the trip was to allow the applicant to see her family, namely her daughter, father, and mother. The applicant had planned to take this trip prior to the motor vehicle accident.
- [9] At the time the Treatment Plan was submitted, May 2016, the applicant was experiencing physical/functional, cognitive, and emotional/behavioural difficulties which restricted her activities of daily living. She was experiencing ongoing episodes of irritability and anger and periods of sadness. The applicant often did not want to leave her home. According to the occupational therapist who proposed the Treatment Plan, the trip to Iran would "maintain/enhance her psychosocial well-being and socialize to avoid chronic/long term isolation/dysfunction. It would be therapeutic for her to reconnect with her family...".
- [10] Personal partially approved the Treatment Plan. As will be explained more fully in Part 2 of the Analysis section, below, Personal paid for the attendant care service provider's travel expenses. This was paid as part of the applicant's attendant care benefit for June 2016. It was not paid as a rehabilitation benefit. The rehabilitation benefit proposed was deemed not reasonable and necessary, and payment was not provided for the applicant's travel expenses.

Analysis:

1. Is the Applicant entitled to a \$6,698.64 rehabilitation benefit for travel for herself and her attendant care provider to Iran?

- [11] The applicant is not entitled payment for a rehabilitation benefit for travel for herself and her attendant care provider to Iran. There are two reasons for this.
- [12] First, the travel is not a necessary expense. A rehabilitation benefit is payable only if it is reasonable and necessary for the purpose of reducing or eliminating the effects of any disability resulting from the impairment or to facilitate the person's reintegration into his or her family, the rest of society and the labour market (s. 16(1) of the *Schedule*). While travel to Iran may have been a reasonable method of achieving this end for the applicant, it was not necessary. The Treatment Plan prepared by OT Rehabilitation Inc. suggests that the applicant takes a trip to Iran to see her family on a semi-regular basis. She planned to take a trip to Iran prior to the motor vehicle accident. Since she

suffered terrible injuries as a result of the motor vehicle accident and was largely alone during her rehabilitation, a trip to Iran would assist her in improving her condition. This is a reasonable expectation. However, I am not persuaded that it was necessary for the reduction of the effects of the applicant's injury or facilitation of her reintegration into society. That is what the law requires for payment for a rehabilitation benefit.

- [13] Second, payment is not permitted even if the travel was a necessary expense. Travel for a rehabilitation benefit is limited to "transportation for the insured person to and from counselling and training sessions, including transportation for an aide or attendant" (s. 16(3)(k) of the *Schedule*). The applicant's travel to Iran has neither a counselling nor training purpose. I do not accept that incidental psychological benefit incurred by the applicant in visiting her family in Iran – a trip she planned to take prior to the accident – counts as a "counselling" session. The Legislature's decision to explicitly state what kind of travel is payable in s. 16(3)(k) implies that travel that does not fall within the subsection is not payable. This is reinforced by s. 16(4)(f) of the *Schedule*, which denies payment for unauthorized transportation expenses. Since the applicant's travel to Iran is not captured under s. 16(3)(k) and is not authorized, it is not payable.

2. Payment for the attendant care service provider's travel

- [14] The applicant disputes the manner in which Personal paid for the attendant care service provider's travel. Although Personal denied payment for the rehabilitation benefit, it paid for the attendant care service provider's travel as a part of the attendant care benefit. In doing so, Personal deducted this amount (\$2,580.24) from the applicant's attendant care benefit for the month of June 2016. This caused a shortfall in payment for the attendant care benefit for that month. The applicant seeks payment of \$2,580.24 for his attendant care benefit for June 2016.
- [15] In response, Personal raises a procedural issue. Personal points out that the only issue before me in the written hearing is the rehabilitation benefit. The applicant has not properly disputed the payment for the June 2016 attendant care benefit.
- [16] I accept Personal's submission. I cannot make a decision in relation to the attendant care benefit. It is not properly before me. The applicant retains the right to dispute the attendant care benefit's payment in June 2016 at a future date, subject to the limitation period. I will not deal with the issue in this hearing.

3. Interest

- [17] Given my decision, no interest is owing in relation to the rehabilitation benefit for travel.

4. Costs

- [18] The applicant seeks costs under Rule 19.1. The reason is not explicitly articulated. The applicant did not make any allegation in her written submissions of Personal engaging in conduct that is unreasonable, frivolous, vexatious, or in bad faith in the Tribunal's proceeding. This is the only type of conduct for which costs can issue. Since there is no evidence of such conduct in the Tribunal's proceeding, the costs claim is dismissed.
- [19] Personal requests "an opportunity to address costs associated with this proceeding if it is successful in defending the issues in dispute." This is prohibited by Rule 19.2, which allows a party to request costs before a decision is released. There is no power to request costs after the decision is released. As a result, Personal does not have an opportunity to request costs after the decision is released. In addition, I note that costs under Rule 19.1 addresses a party's conduct during the Tribunal's proceeding. Has the party acted unreasonably, frivolously, vexatiously, or in bad faith? This is distinct from whether the party requesting costs is successful in the decision. The applicant's conduct in the proceeding was either in bad faith, unreasonable, frivolous, or vexatious, or it was not. Costs will not be ordered necessarily because of a party's success in a hearing.
- [20] The motion to requests costs is dismissed.

Conclusion:

- [21] The applicant is not entitled to a \$6,698.64 rehabilitation benefit for travel because it is not necessary or payable within the meaning of section 16 of the *Schedule*. She is not entitled to interest or costs.

Released: July 24, 2017



Chris Sewrattan, Adjudicator