

**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: **R.G. vs. State Farm Insurance, 2019 ONLAT 17-006934/AABS**

**Date: January 20, 2019
File Number: 17-006934/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:

R.G.

Appellant(s)

and

State Farm Insurance

Respondent

DECISION [AND ORDER]

PANEL:

Paul Gosio, Adjudicator

APPEARANCES:

For the Applicant:

R.G.
Ryan Steiner

For the Respondent:

State Farm Insurance
Michael Taylor

HEARD:

In Writing on: July 8, 2018

OVERVIEW

- [1] The parties have asked the Licence Appeal Tribunal - Automobile Accident Benefits Service to decide whether home accessibility and alternative housing assessments are subject to the \$2,000.00 cap placed on assessments and examinations under section 25(5)(a) of the *Schedule*¹.
- [2] The applicant was involved in a motor vehicle accident on January 17, 2009. She experienced numerous functional limitations as a result of her injuries and she was deemed to be catastrophically impaired by the respondent in February 2012.
- [3] The applicants treating occupational therapist submitted a Treatment Plan in the amount of \$8,381.20 for the completion of an analysis and report identifying: the home modifications that would be necessary to accommodate the applicant's injuries, the cost of the home modifications and an opinion as to whether those home modifications could be made by renovating the applicant's existing home.
- [4] On or about March 4, 2016, the respondent informed the applicant that the home accessibility Treatment Plan was partially approved up to the \$2,000.00 limit placed on assessments and examinations under section 25(5)(a) of the 2010 Schedule as well as Superintendent's Guideline 08/10.
- [5] The applicant had a home accessibility assessment and report completed by Adapt-Able. The report concluded that the required home modifications would not be possible through renovating the applicant's existing residence. As a result, a further Treatment Plan was submitted by the applicant's treating occupational therapist in the amount of \$5,002.50 for the completion of an alternate housing assessment and report.
- [6] On or about September 23, 2017, the respondent notified the applicant that the alternate housing Treatment Plan was denied in full as it was a duplication of the home accessibility Treatment Plan previously submitted and already partially approved up to the maximum allowed.
- [7] The applicant disagrees with the respondent's position and argues that the home accessibility and alternative housing assessments submitted are not subject to the \$2,000.00 cap placed on assessments and examinations pursuant to Section 25(5)(a) of the 2010 Schedule.

ISSUE

- [8] Are the home accessibility and alternative housing assessments subject to the \$2,000.00 cap placed on assessments and examinations under section 25(5)(a) of the 2010 *Schedule*².

¹ Ontario Regulation 34/10 – Statutory Accident Benefit Schedule Effective September 1, 2010.

² Ontario Regulation 34/10 – Statutory Accident Benefit Schedule Effective September 1, 2010.

RESULT

- [9] The home accessibility and alternative housing assessments sought by the applicant are subject to the \$2,000.00 cap placed on assessments and examinations pursuant to Section 25(5)(a) of the 2010 Schedule.

ANALYSIS

- [10] The parties are in agreement that the applicant applied for a home modification benefit pursuant to section 15 of the *Statutory Accident Benefits Schedule – Effective November 1, 1996*. The parties are also in agreement that section 25 of the *Statutory Accident Benefits Schedule – Effective September 1, 2010* governs the costs of the examinations sought by the applicant. Section 25 of the 2010 Schedule must be read in conjunction with Superintendent’s Guideline 08/10 (“SG08/10”).
- [11] Section 25 of the 2010 Schedule states:
- (5) Despite any other provision of this Regulation an insurer shall not pay,
- (a) more than a total of \$2,000 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 person or the insurer
- [12] SG08/10 provides guidance with respect to the \$2,000.00 cap placed on assessments and examinations under section 25(5)(a) of the 2010 Schedule. SG08/10 defines the terms “assessment” and “examination” as follows:
- “Assessment” and “examination” have the same meaning under the SABS. An assessment or examination is a clinical evaluation or appraisal of a claimant’s health status.
- [13] SG08/10 makes further note that fees and expenses for conducting any one assessment includes all costs fees etc. incurred by or on behalf of the health care provider who conducted the assessment or examination.
- [14] The applicant submits that SG08/10 clarifies that when section 25(5)(a) of the 2010 Schedule refers to “any assessment or examination”, it means a medical assessment or evaluation performed by a health care practitioner in a medical context. Furthermore, to fall under section 25(5)(a) of the 2010 Schedule, the assessment or examination must be a “clinical evaluation or appraisal of a claimant’s health status”.
- [15] The applicant submits that no one from Adapt Able is a health practitioner, that there is no assessment of the applicant’s health status in a clinical setting by anyone from Adapt-Able and that Adapt-Able does not assess the applicant’s health status or medically evaluate her in any manner. As such, the applicant submits that each treatment plan in dispute is not subject to the \$2,000.00 cap placed on assessments and examinations under section 25(5)(a) of the 2010 Schedule.

- [16] The respondent submits that a housing assessment is, by its very nature, an appraisal of the applicant's health status and that the author of both treatment plans in dispute is an occupational therapist. As such, the respondent submits that each treatment plan in dispute is subject to the \$2,000.00 cap placed on assessments and examinations under 25(5)(a) of the 2010 Schedule.
- [17] I find that section 25(5)(a) of the 2010 Schedule is clear in its language. It places a \$2,000.00 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. If there was a legislative intention to omit coverage of housing assessments from this cap, it could have been done in the same way that vocational assessments were omitted under section 24(5) of the *Statutory Accident Benefits Schedule – Effective November 1, 1996*.
- [18] I also find that the assessments in dispute in this case fall within the definition of an “assessment” and “examination” under SG08/10. The Treatment Plan's in question were submitted by the applicant's occupational therapist. The Treatment Plans recommended the services of Adapt-Able. Adapt-Able made recommendations with respect to the home modifications that would be necessary to accommodate the applicant. Adapt-Able's recommendations were based on: the medical information provided to it, a meeting with the applicant, a home site visit, consultation with treating rehabilitation professionals and an investigation of zoning restrictions for the property. I find that this, by its very nature, involves an appraisal of the applicant's health status.
- [19] I am not persuaded by the applicant's submission that SG08/10 clarifies that when section 25(5)(a) of the 2010 Schedule refers to “any assessment or examination”, it means a medical assessment or evaluation performed by a health care practitioner in a medical context. This position is not supported by a plain reading of section 25(5)(a) of the 2010 Schedule or SG08/10.
- [20] The applicant also directs my attention to section 15(5)(i) of the 1996 Schedule which allows an insured person to access rehabilitation funding for home modifications or the purchase of a new home if required, in order to reduce or eliminate the effects of the disability. The applicant submits that she cannot make a proper determination in terms of the potential requirements for home modifications without having a professional assessment. The applicant further submits that if the maximum payable for such a professional housing assessment is \$2,000.00 as set out in section 25 of the 2010 Schedule, then it would render section 15(5)(i) of the 1996 Schedule meaningless.
- [21] The respondent submits that there is no inherent conflict between sections 15 of the 1996 Schedule and 25 of the 2010 Schedule. The respondent submits that section 25 of the 2010 Schedule is clear in that it applies to any and all assessments for the purposes of sections 14 and 15 of the 1996 Schedule. The respondent points out that no exceptions, with respect to the type of assessment, were built into section 25 of the 2010 Schedule as had been done in previous versions of the Schedule.

- [22] I am not persuaded by the applicant's submission that section 15(5)(i) of the 1996 Schedule would become meaningless if professional housing assessments were subject to the \$2,000.00 cap as set out in section 25(5)(a) of the 2010 Schedule. Professional assessments will often be necessary in order to access rehabilitation funding for home modifications or the purchase of a new home. In this case however, section 25(5)(a) of 2010 Schedule mandates that maximum payable by the insurer for each assessments \$2,000.00.

CONCLUSION

- [23] For the reason outlined above, I find that the home accessibility and alternative housing assessments sought by the applicant are each subject to the \$2,000.00 cap placed on assessments and examinations pursuant to Section 25(5)(a) of the 2010 Schedule.
- [24] If the parties want the Tribunal to make a determination as to whether the applicant is entitled to the alternate housing assessment and an award under Ontario Regulation 664, R.R.O. 1990, then they shall submit their written submissions and evidence as follows:

Applicant's initial submissions and evidence are due on	February 14, 2019.
Respondent's submissions and evidence are due on	February 28, 2019.
Applicant's reply submissions (if any) are due on	March 7, 2019.

Released: January 30, 2019

Paul Gosio
Adjudicator