

**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: **Ibrahim A Yussuf vs. Pembridge Insurance Company, 2019 ONLAT 18-006724/AABS**

**Date: July 17, 2019  
File Number: 18-006724/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:

**IY**

**Appellant**

and

**Pembridge Insurance Company**

**Respondent**

**DECISION**

**PANEL: Christopher A. Ferguson, Adjudicator**

**APPEARANCES:**

For the Appellant: Julia Logoutova, Paralegal

For the Respondent: Maia Abbas, Counsel

**HEARD: In Writing on: March 25, 2019**

## REASONS FOR DECISION

### OVERVIEW

- [1] The applicant, IY, was involved in a motor vehicle accident on June 10, 2017. He sought benefits pursuant to the *Statutory Accident Benefits Schedule – Effective September 1, 2010*<sup>1</sup> (“the ‘Schedule’”). He applied for dispute resolution services to the Licence Appeal Tribunal – Automobile Accident Benefits Service (“the Tribunal”) when the respondent, “Pembridge”, denied his claim.
- [2] IY seeks medical benefits and costs of examinations. Pembridge asserts that IY’s injuries are minor, and that his entitlement to medical benefits is capped at \$3,500.00 by the Minor Injury Guideline. IY also seeks reimbursement of expenses incurred in preparing a statutory declaration in this matter.
- [3] Pembridge has raised a preliminary issue that could affect its liability to pay the benefits claimed by IY. Pembridge asserts that IY failed to provide it with information requested under s.33(1)1 of the Schedule. As a result, Pembridge argues, it is not liable to pay claimed benefits to IY.
- [4] On November 9, 2018, the Tribunal ordered this preliminary issue hearing and further ordered that if IY succeeds on the preliminary issues, then the tribunal will schedule a case conference to deal with the remaining substantive issues in dispute.

### ISSUES

- [5] Is Pembridge relieved of liability to pay IY benefits for the period of September 18, 2017 to July 18, 2018 because IY failed to provide it with requested information as he was required to do by s.33(1)1 of the Schedule?

### RESULT

- [6] Pembridge is not liable to pay IRBs to IY under s.33(6) of the Schedule, because IY has failed to comply with a request for information pursuant to s.33 of the Schedule, without a reasonable explanation as provided for by s.33(8).
- [7] IY’s reimbursement claim is not affected by this decision. It remains outstanding.

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<sup>1</sup> O.Reg. 34/10

## **ANALYSIS**

### **Compliance with s.33 Information Request**

- [8] Under s. 33(1)1 of the Schedule, the applicant (the insured person) must provide on request any information reasonably required to assist the insurer in determining his or her entitlement to a benefit. The time-period for complying is 10 business days.
- [9] The insurer is not liable to pay a benefit during any period in which the applicant fails to provide the insurer with the requested information: s. 33(6). If the applicant eventually complies with the insurer's request, with a reasonable explanation for the delay, the insurer must pay the withheld benefit: s. 33(8).

### **Events Leading to Dispute**

- [10] The parties agree that Pembridge requested the following documents pursuant to s.33 of the Schedule in an explanation of benefits ("OCF-9") dated September 18, 2017:
1. OCF-5<sup>2</sup> for family physician clinical notes and records (CNRs)
  2. OCF-5 for hospital records
  3. OCF-5 for any clinic(s) or health professional providing treatment;
  4. OCF-5 for OHIP summary
  5. prescription summary
  6. any application and files for WSIB, other accident benefits (AB) claims, ODSP, CCAC, CPP (disability) claims
  7. a photocopy if IY's Ontario Driver's Licence (ODL) or other proof of identity.
- [11] The parties agree that Pembridge repeated its request for the above-noted documents in subsequent correspondence, including those dated: October 26, 2017; November 13, 2017; December 6, 2017; April 2, 2018; April 3, 2018; and April 4, 2018.

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<sup>2</sup> Permission to Disclose Health Information form, which enabled Pembridge to obtain information from IY's health service providers.

[12] It is uncontested that, within each of these requests, Pembridge advised that the applicant's claim for ABs was denied due to non-compliance with his s.33 disclosure obligations.

### **Pembridge's Position**

[13] To date, IY has only provided item 1 in response to Pembridge's s.33 requests, which Pembridge received on July 18, 2018, almost a year after it was initially requested.

[14] Pembridge states that IY has simply failed to produce "any of the standard documentation required to assist the insurer in assessing his claims". States Pembridge: "This non-compliance has hamstrung the insurer's ability to determine his entitlement to benefits, including NEBs and medical benefits, since the date of the accident."

[15] Pembridge submits that, where the applicant is still non-compliant with his section 33 obligations, IY's appeal cannot proceed. Pembridge asserts that it is not and has not been liable to pay any benefits for essentially the entire life of IY's claim for accident benefits due to IY's non-compliance with s.33.

[16] Pembridge states that IY has not provided any explanation for his failure to provide the requested documents.

### **IY's Position**

[17] IY argues that the requests listed by Pembridge as items 1, 2, 4, and 7 "were satisfied" by way of a letter dated July 19, 2018 from his legal representatives.

[18] IY argues that the following information requests were "unnecessary":

1. OCF-5 for hospital records – because his OCF-1 indicates he did not go to the hospital after the accident.
2. OCF-5 for OHIP summary – because he had refugee status at the time of the accident and was not covered by OHIP.
3. prescription summary – because he didn't take prescription meds.
4. any application and files for WSIB, other accident benefits (AB) claims, ODSP, CCAC, CPP (disability) claims – because his OCF-1 indicated that he was receiving no collateral benefits

5. Ontario Driver's Licence (ODL)/Proof of Identity – because his OCF-1 included his ODL number.

[19] IY states that he made an “AB statement”<sup>3</sup> on September 18, 2017 that provided the information sought by Pembridge and explanations noted above.

**Did IY comply with Pembridge’s s.33 request?**

[20] I find that IY failed to comply with Pembridge’s seven s.33 information requests, and that he failed to provide a reasonable explanation for doing so.

[21] IY gives no evidence that his AB statement of September 18, 2017 provided requested OCF-5s or any of his explanations for failing to provide the information requested by Pembridge. His counsel waited until March 5, 2019 to ask Pembridge for a copy of this statement<sup>4</sup> and his submissions do not include the statement or indicate that he sought production of it for this hearing. Accordingly, I am disinclined to attach any persuasive weight to this part of IY’s argument.

[22] I find that IY failed to comply with s.33(1)1 and has failed to provide a reasonable explanation for this for the following reasons:

- i. I find that IY failed to provide the required OCF-5 for the CNRs of his family physician, Dr. Yacouwar, until July 19, 2018 and has offered no explanation for the delay.
- ii. In my view, to be “reasonable” for the purposes of s.33(8), an explanation must be provided promptly after the reason for inability to provide information is known: IY knew about his prescription history and OHIP status from the outset, but he failed to communicate this to Pembridge. IY argues that he believed that he had provided the requested information about collateral benefits and his ODL in his OCF-1, but his failure to communicate this until July 19, 2018 is too late to be considered a reasonable explanation.
- iii. IY’s arguments are weak and disingenuous because he provides no evidence that he responded to any of Pembridge’s seven OCF-9s with any explanation for his not providing requested information. There is no

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<sup>3</sup> “AB” stands for “accident benefits”. IY was asked by Pembridge to provide a signed statement in relation to his AB claim. Pembridge’s OCF-9 indicates that they were taking a priority statement. Pembridge told IY that they were investigating priority, explained what that meant and said they’d arrange a signed statement by him because they required additional information about his AB claim.

<sup>4</sup> Indicating that she could not find it on file. There is no evidence that IY was not provided with a copy of his statement.

suggestion that he sought clarification of any potentially confusing requests. No evidence that he told Pembridge that he had already covered their request in his OCF-1.

- iv. IY's contention that some of the documents listed in Pembridge's s.33 request were "unnecessary" is unpersuasive to me because it is based on his argument that he had already provided these documents, but I do not find that he did so. For example:
  - a. Providing an ODL number on the OCF-1 is not the same as providing a legible photocopy of the ODL as requested in the OCF-9.
  - b. Answering "no" to Part 9<sup>5</sup> of the OCF-9 is not the same as answering whether or not IY has any other AB claim, or the range of possible disability claims listed in the OCF-9.

[23] Although IY did not suggest that Pembridge's requests were in any way deficient, I find it important to note that the requests were clearly worded, detailed and well-explained. I found very little room for misunderstanding when I read them, and IY was invited to contact Pembridge for any clarification he needed. I found it remarkable that there is no evidence from IY that he attempted to work with Pembridge to clarify their request despite seven repeat requests for information.

[24] I find that IY failed to comply with s.33(1)1 of the Schedule and as a result, Pembridge is not liable to pay any benefits in respect of the period up to July 19, 2019. This covers all of the medical and rehabilitation benefits, and the claimed costs of examinations listed in IY's appeal.

[25] I also find from the evidence in submissions, that as of the date of Pembridge's Reply submission, IY still had not furnished Pembridge with all of the information it requested under s.33(1)1 of the Schedule, or an explanation of why that information cannot be provided. Until and unless IY complies fully with s.33, Pembridge will not be liable to pay ABs to IY.

### **Reimbursement Claim**

[26] IY's appeal includes a claim of \$376.40 for expenses incurred in completing a statutory declaration and documentation, which was denied by Pembridge on

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<sup>5</sup> Part 9 of the OCF-1 covers other insurance or collateral payments and asks whether the insured or family has any other covering benefit plan.

April 16, 2018. This is not a benefit within the meaning of s.33(6), in my view, and is not covered by this decision.

## Costs

- [27] Rule 19.1<sup>6</sup> permits a party to request that the Tribunal order the other party to pay costs, where the requesting party “believes that another party in a proceeding has acted unreasonably, frivolously, vexatiously, or in bad faith”. There is a \$1,000.00 cap on cost awards.
- [28] Rule 19.5 requires me to consider all relevant factors, including:
- i. the seriousness of the misconduct
  - ii. whether the conduct was in breach of a direction or order issued by the Tribunal
  - iii. whether or not a party’s behaviour interfered with the Tribunal’s ability to carry out a fair, efficient, and effective process
  - iv. prejudice to other parties; and
  - v. the potential impact an order for costs would have on individuals accessing the Tribunal system.
- [29] Both parties have requested \$500.00 in costs from the other.
- [30] IY requests costs because Pembridge simply ignored the information he provided to them and refused to accept that he had provided them with request information. There is no evidence of this. I can find no basis for IY’s cost claim.
- [31] Pembridge asks for costs of \$500.00 because IY brought a claim forward despite his obvious, persistent and unexplained failure to comply with s.33 of the Schedule. Pembridge argues that this sum represents “fair compensation” and “an amount high enough to discourage this conduct from occurring again.”
- [32] I agree with Pembridge that IY’s conduct in this proceeding is unreasonable. IY’s submissions so strain credibility and credulity that they do not support any contention that they are reasonable, good faith contentions.

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<sup>6</sup> All references to a “Rule” are made to the *Licence Appeal Tribunal Rules of Practice and Procedure, Version 1* (October 2, 2017)

[33] The effective sanction borne by IY for non-compliance with s.33 will be the loss of ability to collect on the disputed benefits. I am reluctant to characterize the mere filing of an appeal itself as “unreasonable”, but IY’s submissions so strain credibility and credulity that they do not support any contention that they are reasonable, good faith contentions, and the proceeding has wastefully consumed Tribunal and Pembridge’s time and resources. As a consequence, I find that a further sanction is warranted in response to the filing of obviously pointless and unreasonable appeal.

[34] In making this finding, I considered the potential impact that a cost award would have on individuals accessing the Tribunal system. I find that the potential effect of discouraging appeals is outweighed by the potential for delaying other individuals’ appeals if the clogging of the Tribunal system by unreasonable and wasteful appeals is not discouraged.

[35] I order IY to pay \$250.00 in costs to Pembridge pursuant to Rule 19.

#### **CONCLUSION**

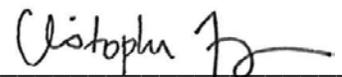
[36] Pembridge is not liable to claim any of the benefits claimed by YI in this appeal.

[37] IY’s reimbursement claim is not affected by this decision. It remains outstanding.

[38] IY is ordered to pay \$250.00 in costs to Pembridge under Rule 19.1.

[39] The issue of IY’s reimbursement claim remains outstanding.

**Released: July 17, 2019**



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**Christopher A. Ferguson**  
Adjudicator