



Citation: A.A. v. Certas Direct Insurance Company, 2021 ONLAT 18-008561/AABS-R

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## RECONSIDERATION DECISION

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**Before:** Robert Watt

**Date of Order:** 06/04/2021

**Tribunal File Number:** 18-008561/AABS

**Case Name:** A.A. vs. Certas Direct Insurance Company

**Written Submissions by:**

**For the Applicant:** Arash Goneh-Farahani Paralegal

**For the Respondent:** Jonathan B. Schrieder, Counsel

## OVERVIEW

- [1] This request for reconsideration was filed by the Applicant in this matter.
- [2] It arises out of a decision in which the Tribunal found that the applicant was not entitled to any medical benefits or assessments.
- [3] The issues that were before the Tribunal was whether the applicant was entitled to a medical benefit in the amount of \$1,992.81 for physiotherapy services, \$2,460.00 for the cost of a driver evaluation assessment, \$9,026.99 for a neuropsychological assessment, and interest.
- [4] The Tribunal found no medical benefits and assessments were owing and no interest was owing.
- [5] The Applicant submits that the Tribunal:
  - i. Has made an error of law or fact such that the Tribunal would likely have reached a different decision; and
  - ii. The Tribunal acted outside its jurisdiction or violated the rules of procedural fairness.
- [6] The Applicant is seeking an order:
  - a. Varying the Tribunal's decision to grant the costs for the Driving Anxiety Assessment and the Neurological Assessment and an order to be granted to review the applicant's eligibility to treatment outside the Minor Injury Guideline.
- [7] The respondent takes the position that the reconsideration should be dismissed.

## RESULT

- [8] The Applicant's request for reconsideration is dismissed.

## ANALYSIS

### Substantive Grounds for Reconsideration

- [9] The grounds for a request for reconsideration to be allowed are contained in Rule 18.2 *The Licence Appeal Tribunal, Animal Care Review Board, and Fire Safety Commission Common Rules of Practice and Procedure, Version 1*,

*October 2, 2017, as amended February 7, 2019* (“Rules”) A request for reconsideration will not be granted unless one or more of the following criteria are met:

- a) The Tribunal acted outside its jurisdiction or violated the rules of procedural fairness.
- b) The Tribunal made an error of law or fact such that the Tribunal would likely have reached a different result had the error not been made;
- c) The Tribunal heard false evidence from a party or witness, which was discovered only after the hearing and likely affected the result; or
- d) There is evidence that was not before the Tribunal when rendering its decision, could not have been obtained previously by the party now seeking to introduce it, and would likely have affected the result.

[10] Reconsideration is only warranted in cases where an adjudicator has made a legal, or evidentiary mistake, preventing a just outcome, where false evidence has been admitted, or where genuinely new and undiscoverable evidence comes to light after a hearing.

### **Error of Fact**

[11] The applicant’s position is that because she suffered with mild driving and passenger anxiety, she should be given a further driver evaluation assessment.

[12] This issue was clearly addressed in paragraphs [18] and [19] of the decision. The applicant is just re-arguing her case and the evidence on this issue. A reconsideration is not an opportunity to re-argue positions which failed at the hearing

[13] The applicant’s position on the neurological assessment is that the Tribunal failed to make reference to Dr. Gilman’s report or review the report. I reviewed all relevant evidence put forth by both parties. It is settled law that an adjudicator should review all the evidence put before him or her that is relevant, but an adjudicator does not need to refer to every piece of evidence in rendering a decision.<sup>1</sup>

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<sup>1</sup> AG v Aviva Gen. Insurance Company 2020 CanLII 58835 (ON LAT)(Reconsideration Decision) at para. 15.

[14] The absence of a reference to evidence does not render a decision unreasonable, nor does it amount to a breach of procedural fairness.<sup>2</sup>

### **Error of law**

[15] The applicant argues that the Tribunal failed to give weight to the medical reports of the applicant and gave weight to the evidence of the respondent who had not assessed the applicant.

[16] It is within the Tribunal's jurisdiction to weigh the evidence put before it, and to come to a conclusion on the evidence. The Tribunal can assess the medical evidence put before it, regardless of who assessed the applicant. Section 25 and section 44 reports were relied on by the Tribunal, as shown throughout its decision indicating, contrary to the applicant's position, that both parties had their own assessments which they relied on.

[17] The applicant essentially disagrees with the weight that the Tribunal accorded to this evidence. I find no error in how or why the Tribunal made this finding and thus have no reason to interfere with its assessment of the evidence or its decision.

### **Breach of Procedural Fairness**

[18] The applicant complains about the respondent not having a medical professional conduct a s 44 Insurance examination to respond to produced reports and CNR's. The applicant submits that this is a breach of procedural fairness. The respondent is allowed to conduct its investigations as it sees fit, in deciding whether medical benefits are reasonable and necessary as required under the *Schedule*. It is not up to the applicant or to the Tribunal to decide on how any party should conduct their investigations including collecting medical evidence or present their evidence for the purposes of any hearing.

### **CONCLUSION**

[19] Although the applicant is naturally disappointed with the outcome of the hearing, the purpose of the reconsideration process is not to give an unsuccessful party, a second opportunity to have its case heard.

[20] I have not taken into account new evidence provided by the applicant in her reply submissions. Only the evidence before the Tribunal at the written hearing

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<sup>2</sup> N.L.N.U. v Newfoundland Labrador (Treasury Board) 2011 SCC 62 (CanLii) at paras. 14-17.

is acceptable. Reply submissions must address issues raised by the respondent and not address new evidence and new arguments.

[21] I find that the applicant has failed to establish on the merits of her case, that the Tribunal made any error in law or in fact or that there was a breach of natural justice and procedural fairness, such that its decision should be reconsidered.

[22] For the reasons noted above, I deny the Applicant's request for reconsideration.



**Robert Watt**  
Adjudicator  
Tribunals Ontario – Licence Appeal Tribunal

Date of Issue: June 4, 2021