



**Citation: N.D. v. Aviva Insurance Canada, 2021 ONLAT 19-002508/AABS-R**

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## **RECONSIDERATION DECISION**

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**Before:** Jesse A. Boyce, Vice-Chair  
**Date of Order:** 07/22/2021  
**Tribunal File Number:** 19-002508/AABS  
**Case Name:** Nigel Davey v. Aviva Insurance Canada

**Written Submissions by:**

**For the Applicant:** Jordan Kirlik, Counsel

**For the Respondent:** Maia Abbas, Counsel

## OVERVIEW

- [1] This request for reconsideration was filed by the applicant. It arises out of a decision dated October 26, 2020, in which I determined that the applicant was not entitled to \$2,298 for a physiotherapy treatment plan or applicable interest because he had not demonstrated that it was reasonable and necessary. In his request, the applicant asserts that I “would benefit from reviewing updated medical information and did not globally consider the existing evidence before me.”

## RESULT

- [2] The request for reconsideration is dismissed.

## ANALYSIS

- [3] The grounds for a request for reconsideration are contained in Rule 18 of 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 (“*Common Rules*”). A request for reconsideration will not be granted unless one or more of the criteria are met. The applicant asserts that I made an error of fact in my interpretation of the evidence under Rule 18.2(b) and that new evidence obtained after my decision would have affected the outcome of the hearing, pursuant to Rule 18.2(d).
- [4] I find the applicant’s submissions are largely an attempt to use the reconsideration process as an opportunity to reargue the merits of his case. The applicant first dedicates 15 paragraphs of submissions to the argument that Aviva never issued a proper denial, an argument that was not made at first instance and was not addressed in my original decision and is therefore not a proper ground for reconsideration.
- [5] Next, the applicant argues that the treatment plan is, in fact, reasonable and necessary because I was “not directed to the medical evidence that demonstrates the true severity of [the applicant’s] condition” at first-instance or that I “perhaps” overvalued a particular assessment. Neither of these submissions are grounds for a reconsideration. The first submission speaks only to the applicant’s failure to meet his burden of proof; the latter submission simply goes to weight, which is the role of an adjudicator. In any case, my preference for certain evidence or the finding of an assessor is not an error of fact that would have affected my decision. The applicant completes his submissions by re-arguing that interest and a s. 10 award are appropriate. Suffice to say, I find

neither argument compelling nor supportive of granting his reconsideration request.

- [6] Finally, it is well-settled that the reconsideration process is not an opportunity to reargue a failed case or to present new arguments and the Tribunal is not required to reweigh the evidence. With regard to the new evidence that the applicant attempts to introduce on reconsideration, I agree with Aviva that where the majority of this evidence was not even available at the time the treatment plan was submitted, it cannot be said that this new evidence was relevant to my determination or that it would have affected the outcome at first-instance: chiefly, that the applicant had not demonstrated that electrotherapy, spinal manipulations, active therapy and a re-assessment in the amount of \$2,298.20 was reasonable and necessary. On review, my determination remains unchanged.
- [7] Aviva sought its costs in the amount of \$1,500.00 pursuant to Rule 19 of the Tribunal's *Common Rules*, submitting that the reconsideration request was so devoid of merit that it constitutes an abuse of process. The applicant did not breach a direction and did not interfere with the Tribunal's ability to carry out a fair, efficient, and effective process. I find costs are not appropriate, as there is no evidence that his request was unreasonable, frivolous, vexatious or in bad faith.

## ORDER

- [8] The request for reconsideration is dismissed.



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**Jesse A. Boyce**  
Vice Chair  
Tribunals Ontario – Licence Appeal Tribunal

Released: July 22, 2021