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January 18, 2000

Mr. Domenic A. Romeo
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Ms. Jennifer Griffiths
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Barristers and Solicitors
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DECISION ON EXPENSES

Dear Mr. Romeo and Ms. Griffiths:

Re: Mrs. B. M. and State Farm Mutual Automobile Insurance Company
MVA: January 29, 1996
Commission File N^o: A97-000928-SSH
Your File N^o: 1009-0011

On March 30, 1999, I issued a decision in this matter. I dismissed Ms. M.'s claim for income replacement benefits, but allowed her claim for medical and rehabilitation benefits totalling \$4,457.74.

In a further decision dated September 21, 1999, I ordered State Farm to pay 80 percent of Ms. M.'s legal fees and 100 percent of her assessable expenses. The parties have since been unable to agree on the amount of some expenses and I heard their counsel by teleconference on December 23, 1999.

1. Review of Decision and Preparation of expense account by Mr. Romeo:

The Insurer submits that the three hours Mr. Romeo spent reviewing my decision with Ms. M was excessive. Mr. Romeo explained that Ms. M. had difficulty accepting that she failed to recover

IRBs when she was awarded medical and rehabilitation benefits, and that it took more time than usual to explain the decision and discuss the merits of an appeal because of her emotional state. Nonetheless, I find that two hours is ample time for such a review.

The Insurer also disputed Mr. Romeo's claim for five hours to prepare his account. I find some of this work could have been completed by an assistant, particularly where it involves collecting and adding dockets or invoices. Consequently, I allow only three hours for this item.

Disbursements:

2. Dr. Hanick's report

Dr. Hanick charged \$1800 for his report. This exceeds the \$1500 maximum set out in the Expense Regulation. I did not find his report particularly helpful or persuasive. Moreover, it was largely duplicative of Dr. Day's assessments. I therefore allow the sum of \$1200.

3. Dr. Ogilvie-Harris' report

Dr. Ogilvie-Harris charged \$1200. I find this reasonable; his report was relevant and he reviewed extensive medical information in order to prepare it.

4. Dr. Charendoff's report

Dr. Charendoff charged \$1700. In addition to exceeding the maximum allowable amount, his report did not directly address the issues, nor did it add significantly to the hearing or to my deliberations. I allow the sum of \$1200.

5. The Rehab Centre Functional Abilities Evaluation

The amount claimed is \$1200. State Farm argues that this disbursement was more in the nature of an assessment rather than an expert's report, and therefore should have been claimed under section 57. This would have allowed the Insurer to dispute the reasonableness and necessity of the expenditure at the hearing.

An expenditure may have more than one purpose. Although the F.A.E. was used to assess Ms. M., it was also obtained to support her claim and any resulting litigation. In any case, I find it was a reasonable and necessary expenditure, as it contained a useful job analysis and made sensible recommendations. I allow the entire amount.

6. Preparation fees for Dr. Steiner

Dr. Steiner claimed \$700 for preparation. The Regulation sets a maximum of \$500, which I so order.

7. Attendance fees and travel time for Dr. Wong

Dr. Wong charged attendance time (of 2.5 hours) at \$250 per hour, whereas the Regulation allows a maximum of \$200 per hour of attendance. Dr. Wong's account is reduced accordingly.

As well, Dr. Wong charged for one hour of travelling time. As several decisions have noted, the tariff does not allow for an expert's travel time. Therefore, that portion of Dr. Wong's account is disallowed.

8. Attendance fees and travel time for Dr. Hanick

Dr. Hanick claimed a total of five hours for travel time to and from the hearing and attendance at the hearing. Regrettably, he did not provide a breakdown, as travel time is not allowed. As Dr. Hanick's office is at Yonge and Eglinton, a fair estimate is one hour maximum travel time, leaving four hours recoverable for attendance, at the claimed amount of \$175 per hour.

9. Preparation time for Dr. Hanick

Dr. Hanick claimed 3.5 hours of preparation time at \$175 per hour for a total of \$612.50. The Regulation sets a maximum of \$500 for preparation time, which I so order.

10. Preparation time for Dr. Ogilvie-Harris

Dr. Ogilvie-Harris claimed \$1,000. This is reduced to the maximum allowable sum of \$500.

11. Attendance fees for Dr. Ogilvie-Harris

Dr. Ogilvie-Harris claimed \$1,000 in attendance fees, without documenting which portion represents time spent at the hearing site and which portion reflects travel time. Counsel disagreed as to whether Dr. Ogilvie-Harris was present for three or four hours. Neither had objective data. I will allow 3.5 hours at the hourly rate of \$200. No sum is permitted for travel time.

N.B. GST IS TO BE ADDED TO ALL THE ABOVE AMOUNTS

Reports obtained for tort proceedings:

State Farm asserts that there is significant overlap between many of the reports and notes obtained in the A.B. file and in the outstanding tort case. It submits that it would be unfair to

make State Farm pay for the entire amount of disbursements that may be recoverable in the tort action.

I am not persuaded that it is unfair for State Farm to pay the entirety of the disbursements awarded. At the time this hearing took place the tort claim was in its infancy. It had not progressed beyond a Statement of Claim. More importantly, the reports obtained in the A.B. case were largely relevant only to A.B. issues, being income replacement benefits and medical and rehabilitation expenses. Although small portions may be relevant to the general damages claim in the tort case (e.g. comments by Dr. Ogilvie-Harris regarding serious and permanent impairment), their content was largely driven exclusively by the issues in this case.

Finally, the criteria under section 5(3) of the Expense Regulation are that the reports were provided to the other party and were necessary for the arbitration, both of which were satisfied in this case.

For all these reasons, I decline to reduce the amount which State Farm must pay for the awarded disbursements.

Yours truly,

Deena Baltman
Arbitrator

Copies to:

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