Citation: Patel vs. Allstate Insurance Company, 2021ONLAT 20-007690/AABS - R

RECONSIDERATION DECISION

Before:	Adjudicator Robert Watt
Date of Order:	12/01/2021
Tribunal File Number:	20-007690/AABS
Case Name:	Monal Patel vs. Allstate Insurance Company

Written Submissions by:

For the Applicant:	Mireille Dahab Counsel
For the Respondent:	Jessica Telfer Counsel

BACKGROUND

[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 and rehabilitation benefits that were in dispute at the hearing and not mutually resolved.

[3] The issues that were before the Tribunal were: whether the applicant was entitled to medical and rehabilitation benefits for: assistive devices, chiropractic services(resolved), sleep assessment, psychological services (resolved), physiotherapy services, orthopaedic services, and a chronic pain assessment, interest and an award.

[4] The Tribunal found no medical and rehabilitation benefits were owing and no interest or award was owing.

[5] Although not specifically mentioned, the Applicant's request for reconsideration relies on the grounds found in Rules 18.2(a) and (b) and submits that the Tribunal:

1. Acted outside of its jurisdiction or violated the rules of procedural fairness; and

2. Made errors of fact and law such that the Tribunal likely would have reached a different result if the errors had not been made.

[6] The Applicant is seeking an order:

a. Varying the Tribunal's decision to find the Applicant is entitled to the benefits in dispute; or

b. For a rehearing on all of the matters.

RESULT

[7] The Applicant's request for a reconsideration is dismissed.

ANALYSIS

[8] The grounds for a request for reconsideration to be allowed are contained in Rule 18.2 of the Tribunal's Common Rules of Practice and Procedure. 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 would have 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 have affected the result.

[9] 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.

[10] Reconsideration is not an opportunity to re-argue one's claim that was not accepted at first instance.

Chronic Pain Assessment

[11] The applicant's position is that the Tribunal made an error of fact in concluding that the applicant's health practitioners did not recommend the treatment and assessment plan for a chronic pain assessment.

[12] The applicant's position is that both Dr. Al Jazrawi and Dr. Getahun recommended a chronic pain assessment. The applicant also argues that the Tribunal made an error of law by applying the incorrect operative test for reasonability of chronic pain assessments.

[13] It is settled law that an adjudicator should review all evidence put before him or her but does not need to refer to every piece of evidence in rendering a decision.[1]

[14] The Tribunal gave greater weight to the applicant's health practitioners' positions as to any appropriate treatment needed than to other medical practitioners' recommendations. The applicant's health practitioners recommended no chronic

[1] A.G. v. Aviva General Insurance Company, 2020 CanLII 58835 (ON LAT) (Reconsideration) at paras. 15-17 and M.K. v. Aviva General Insurance Company, 2020 CanLII 30403 (ON LAT) (Reconsideration) at paras. 29-30.

pain assessment. The Tribunal also gave other reasons for denial of the benefit requested, as set out in paragraphs [37] and [38] of the decision.

[15] As outlined in the reasons given by the Tribunal, the correct test for the requested benefit is whether it is reasonable and necessary. The onus is on the applicant to prove that the proposed chronic pain assessment is reasonable and necessary. The applicant failed to prove this requirement.

[16] At the hearing, the respondent gave an alternative reason for refusing to pay for the benefit requested by the applicant, namely the applicant had failed to prove its inability to be funded under OHIP. Section 47(2) of the *Schedule* requires no payment of a benefit by the respondent if the payment is reasonably available to the applicant by other means (e.g. OHIP). The respondent's position was that the chronic pain assessment was available under OHIP to the applicant, thereby shifting the onus to the applicant to prove otherwise. The applicant already received an assessment for an orthopaedic assessment under OHIP. Dr. Getahun's comment on wait times for any assessment does not address the actual availability of the assessments. It is the insured which has the burden of proving that the service is not reasonably available elsewhere.[2]

[17] The applicant has not disputed by evidence that the chronic pain assessment is not available to the applicant under OHIP. The applicant has not attempted to pursue OHIP coverage for a chronic pain assessment. The LAT has held that the section 47(2) test necessarily requires an insured to use reasonable efforts and accept reasonable delays to obtain the benefits mentioned in section 47(2) and is a broad statement.[3]

[18] The applicant argues that the respondent's Explanation of Benefits related only to OHIP issues and no medical reasons for denial were given. This argument was not put forth on the written hearing submissions and therefore cannot be raised on any reconsideration.

[19] I find that the applicant is rearguing her claim that she put before the Tribunal at the hearing. I find that there had been no error of law or fact in the Tribunal's decision.

[2] A.M. v Certas Home and Auto Insurance, 2020 ONLAT 19-002869/AABS, 2020 CanLII 63538 (ON LAT), Respondent Brief of documents, Tab Y
[3] G.T. v Unifund Assurance Company, 2017 CanLII 81567 (ON LAT) Respondent's Brief Tab 22

Proposed Sleep Assessment

[20] The applicant argues that Dr. Steiner made a recommendation for a sleep assessment. The respondent submits that this is an incorrect interpretation of Dr. Steiner's report. Dr. Steiner did note sleep loss and recommended instruction in proper sleep hygiene. I agree with the respondent.

[21] The Tribunal noted that Dr. Steiner made no recommendation for a sleep assessment on a section 25 Psychological review. The Tribunal also noted that the applicant's family doctor, Dr. Ebrahim, made a note on April 19, 2017 that the applicant is sleeping well. Dr. Ebrahim made no recommendation for a sleep assessment.

[22] The applicant taking exception to the Tribunal's reasoning is not proper grounds for reconsideration.[4] The Tribunal found that the applicant had not met the burden of proof to establishing entitlement to his benefit under the *Schedule.*

[23] I find that there was no error of fact or law that the Tribunal would likely have reached a different result had the error not been made.

The Tribunal made an error of fact in stating that Dr. Getahun came to the same conclusion as. Dr. Tansey regarding applicant's accident related impairment

[24] The Tribunal in its decision in paragraph [13] stated that Dr. Getahun came to the same conclusion as. Dr. Tansey regarding the applicant's accident related impairment. I agree that this misstatement was an error as Dr. Getahun diagnosed chronic soft tissue to the cervical spine, lumbar spine, bilateral shoulders and thumbs while at the same time noting that Dr. Tansey's diagnosis was similar to and consistent with his own statement. The decision, however, was based mostly on the reports of Dr. Tansey and Dr. Soric and the applicant's own admission, which together showed that further facility-based treatment would obviously have no benefit.

[25] An error must be a significant legal or evidentiary mistake, preventing a just outcome, such that the Tribunal would likely have reached a different result had the error not been made.[5]

[4] Owusu v TD Ins. Co., 2010 ONSC 6627 (Div. Ct), Respondent's Brief, Tab 3
[5] S.K. v Certas Home and Auto Insurance, 2021CanLII 35578 (ON LAT), Respondent's Reconsideration Response Book of Documents & Authorities

[26] I find that the error was not a significant legal or evidentiary mistake, based on the totality of the other reports and the applicant's admissions, which the decision was based on. I find that the Tribunal would not have reached a different result had the error not been made.

The Tribunal acted outside its jurisdiction and violated the rules of natural justice and procedural fairness by unjustly preferring the opinions of the respondent's expert witnesses

[27] I find that the applicant is trying to re-argue her case. A reconsideration is not an opportunity to re-argue the facts of her case that previously failed. The applicant has failed to show any impropriety, error or prejudice to her.

[28] It is also not the role of the Tribunal on a reconsideration to re-weigh the evidence that has already been considered by the Tribunal, which is the decision maker of first instance. My role on a reconsideration is to determine if the Tribunal made an error in fact and in law as alleged by the applicant, which I find that it did not. The Tribunal reviewed all of the evidence submitted by both sides as the decision shows and gave weight to the evidence which it thought was more compelling.

[29] It is trite law that the Tribunal in its reasons is not required to refer specifically to every argument or piece of jurisprudence that it considered in arriving at its decision.

[30] I find that the Tribunal did not act outside its jurisdiction and did not violate the rules of natural justice and procedural fairness by unjustly preferring the opinions of the respondent's expert witnesses.

CONCLUSION

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

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Robert Watt
Adjudicator
Licence Appeal Tribunal
Tribunals Ontario

Released: December 1, 2021