Citation: J.T. v. Certas Home and Auto Insurance Company, 2022 ONLAT 19-001148/AABS - R

RECONSIDERATION DECISION

Before:	**Rebecca Hines**
Licence Appeal Tribunal File Number:	**19-001148/AABS**
Case Name:	**Jeyanathan Thangarajah v. Certas Home and Auto Insurance Company**

Written Submissions by:

For the Applicant:	David S. Wilson, Counsel
For the Respondent:	Jonathan Schrieder, Counsel

OVERVIEW

[1] This reconsideration request follows a Tribunal decision dated June 3, 2022, in which I determined that the applicant was entitled to a treatment plan ("OCF-18") recommending home modifications, payment of a housekeeping benefit for a certain time period, an award and interest. I also determined that the applicant was not entitled to an OCF-18 recommending the purchase of a new home and that the respondent is entitled to repayment of past income replacement benefits ("IRBs") paid to the applicant by error.

[2] The applicant has requested a partial reconsideration of the decision on my finding that he is not entitled to the OCF-18 for the purchase a new home, the denial of the housekeeping benefit for a specified time period. In addition, he has sought reconsideration of my finding that the respondent is entitled to repayment of past IRBs. The applicant argues that I breached the rules of procedural fairness. Further, that I made several errors of law that would have resulted in an alternative decision.

[3] The respondent argues that my decision is correct. Further, that the applicant's reconsideration request is an attempt to relitigate issues which already failed at the hearing.

RESULT

[4] After reviewing the applicant's submissions, I order as follows:

(i) The applicant's partial reconsideration request is dismissed.

RECONSIDERATION CRITERIA

[5] 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, (Effective February 7, 2019* ("Rules").

[6] Rule 18 states that 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 natural justice or procedural fairness;

(b) The Tribunal made an error of law or fact such that the Tribunal would likely have reached a different decision;

(c) The Tribunal heard false or misleading evidence from a party or witness, which was discovered only after the hearing and would have affected the result; or

(d) There is new evidence that could not have reasonably been obtained earlier and would have affected the result.

[7] The applicant relies on Rule 18.2(a) and (b) and argues that I breached the rules of procedural fairness by failing to consider essential evidence that was readily available. The applicant further argues that I erred in law in my determination of the various issues in dispute and had these errors not been made I would have reached an alternative decision.

[8] The following remedies are available to the Tribunal on a request for reconsideration:

(i) dismiss the request;

(ii) confirm, vary or cancel the decision or order; or

(iii) order a rehearing on all or part of the matter.

[9] The applicant requests that I vary my decision and make an alternative finding in his favour.

ANALYSIS

A) Did I breach the rules of procedural fairness in rendering my decision by failing to consider evidence referred to by the applicant in closing submissions?

[10] I did not breach the rules of procedural fairness or error in law in rendering my decision for the following reasons.

[11] The applicant argues that I breached the rules of procedural fairness because I failed to consider key evidence referred to in his closing submissions because he did not specify the relevance of same. In paragraph [2] of my decision I state:

> The hearing of this matter was delayed as a result of difficulties with language interpretation. To ensure procedural fairness, I permitted the parties to make closing submissions in writing. However, I did direct the parties that if they referred to other records in their closing submissions (not already admitted as an exhibit) to specifically indicate the relevance of

each document. Of significance, the applicant did not follow my instructions in his closing submissions and explain the relevance of each document. Where he failed to do so, I gave those records little or no weight.

[12] The applicant acknowledged in his submissions on this reconsideration request that he failed to adhere to my instructions. However, he asserts that I did not outline the consequences for failing to follow my instructions. Further, the evidence he relied on in his closing submissions was obvious. He submits that my rejection of this evidence on this basis violated the rules of procedural fairness. Further, the respondent did not follow my instructions, without consequence.

[13] The applicant's submission that I did not specify the consequence for failing to follow my instructions in closing submissions is not accurate. In advance of the hearing, both parties filed several volumes of document briefs which consisted of thousands of pages of documents. At the beginning of the hearing, I instructed both counsel that if they wanted a document to be considered that they would have to request that it be entered as an exhibit, and where they failed to do so I would not be considering the document.

[14] This was an oral hearing, and the bulk of the evidence should have been addressed and entered through witnesses. I provided the parties with the opportunity to file closing submissions because there were delays due to language interpretation. I instructed both parties that they should specify the relevance of any evidence referred to in closing submissions. Further, that little weight would be assigned where they failed to do so. The purpose of these instructions was to ensure a fair, timely and efficient hearing. In his closing submissions, the applicant referred to numerous tabs in several different briefs. Of significance, many of the documents referred to by the applicant were marked as exhibits which were all considered by me. However, the applicant referred to numerous tabs that were not and did not refer to the title of the document or page numbers. In my view, it would be inappropriate for the Tribunal to review hundreds of pages of medical records and make the applicant's case for him. The respondent did not refer to numerous documents that were not already marked as exhibits in its closing submissions.

[15] In my view, I went above and beyond to ensure the hearing was procedurally fair. Closing submissions should have been done orally. However, due to delay, I allowed the parties to file closing submissions in writing and gave them lots of time to file those submissions. What this is really about is the applicant's failure

to enter evidence during the course of the hearing or make submissions about the relevance of same in his closing written submissions.

[16] For the above-noted reasons, the applicant has failed to convince me that I breached the rules of procedural fairness in rendering my decision.

B) Did I err in fact and/or law by failing to amend the OCF-18 in the amount of $166,437.70 for home modifications recommended by Functionability?

[17] I do not find that I erred in law on this issue.

[18] The applicant argues that I made an error of fact and law in paragraphs [5] and [6] of my decision in denying the applicant's request to amend the amount of the OCF-18 for home modifications from $166,437.70 to $199,426.92. Further, that this error was of such significance it would have resulted in a different decision. The applicant submits that I incorrectly listed the value of the requested amendment as $228,015.92 when the request was to amend the issue in the amount of $199,426.92. The applicant also asserts that I erred in law by failing to use my discretion in granting his request.

[19] The respondent submits that I made a typographical error in my decision. However, this error would not result in an alternative decision as in paragraph [5] I note that the applicant's request for the amendment was a 20% increase to the original value of the OCF-18. Further, simple math indicates that a 20% increase to the original $166,437.70 is $199,725.24. Therefore, the error would not result in an alternative decision. I agree.

[20] Although I acknowledge that I made an error of fact in referring to the amount of the amendment as $228,015.92, I agree with the respondent that it would not result in an alternative decision. I provided clear and detailed reasons in my decision for not granting the applicant's request to amend the issue in dispute. The applicant has failed to convince me that failing to use my discretion to amend an issue in dispute is an error of law. I agree with the respondent that the applicant simply disagrees with my decision and is relitigating his position.

C) Did I err in law in my determination that the applicant is not entitled to the OCF-18 dated November 20, 2020, in the amount of $839,104.50 for the purchase of a new home recommended by Funtionability?

[21] I do not find that I erred in law or breached the rules of procedural fairness in my determination of this issue.

[22] The applicant submits that I breached the rules of procedural fairness in my determination on this issue as I failed to consider key evidence referred to by the applicant in his closing submissions. Further, had I considered this evidence the outcome of my decision would have been different.

[23] As highlighted above, it is not the Tribunal's role to determine the relevance of evidence where a party fails to make submissions on same. If the evidence referred to in his closing submissions was "key" to the issue in dispute the applicant should have requested that it be marked as an exhibit over the course of the three-day hearing. Instead in his closing submissions, the applicant referred to Tabs 1 to 19 with no reference to the documents or page numbers. As highlighted above, it is not up to the Tribunal to make the applicant's case for him. Furthermore, the applicant did address in this reconsideration request what key evidence I disregarded that would result in alternative decision.

[24] The applicant also submits that I erred in that I failed to make a finding that there were no renovations to the applicant's former home that would accommodate his disability. Further, that my failure to address this was critical to my decision. I disagree. The ultimate determination of this issue was not dependent on the medical reports referred to by the applicant in his closing submissions or throughout the hearing. Instead, it came down to the legal argument of whether the *Schedule* or the case law supports that he was entitled to the OCF-18 for the full purchase price of a new home, without any deductions from the value of his pre-accident home. I determined that it did not. Furthermore, I provided very detailed reasons in paragraphs [34] to [42] of my decision to support my finding.

[25] The applicant submits that my reliance on the Tribunal's decision in *Mirzaie v. Wawanesa*[1] submitted by the respondent was inappropriate as s. 16 (4) (c) of the *Schedule* does not apply to this case. I disagree. The applicant provided no authority to prove that I erred in applying s.16 (4) (c) of the *Schedule* or that Mirzaie does not apply to the present matter.

[26] The reconsideration process is not meant to provide the unsuccessful party with the opportunity to relitigate their position that failed at the hearing. That is what the applicant has done on this reconsideration request. The applicant has failed to convince me that I breached the rules of procedural fairness or that I erred in law in rendering my decision on this issue.

[1] Mirzaie v. Wawanesa Mutual Insurance Company, 2021 CanLII 104417 (ON LAT)

(D) Did I error in law in my finding that the applicant was not entitled to payment of a housekeeping benefit from July 7, 2016 to February 27, 2019?

[27] I do not find that I erred in law in my determination of this issue.

[28] The applicant submits that I erred in fact/and or law in my decision on this issue. In paragraph [47] of my decision I determined that the applicant's evidence on the housekeeping issue for this time period was vague and lacking in detail. I also found it was inconsistent with other evidence for that time period. I ultimately determined that the applicant did not prove entitlement to the housekeeping issue until February 27, 2019, the date of Shelly Stephenson's OT report. The applicant argues that there was no difference between the information contained in his initial statements submitted to the respondent in June 2016 from the information outlined in Ms. Stephenson's report dated February 27, 2019. The applicant's submissions are not accurate. Ms. Stephenson's report specifically addressed the housekeeping benefit. It is within the Tribunal's discretion to weigh and evaluate evidence as it sees fit. I provided detailed reasons for how I came to my conclusions in paragraphs [43] to [52] of my decision.

[29] I find the applicant is relitigating his position that failed at the hearing. To reiterate, that is not the purpose of the reconsideration process. The applicant has failed to persuade me that I erred in law on my determination on this issue.

(E) Did I error in law in my determination that the respondent is entitled to repayment for past IRBs overpaid to the applicant in the amount of $8,747.42?

[30] I do not find that I erred in my determination of this issue.

[31] The applicant submits that I erred in fact and/or law in determining that the respondent notified the applicant that an error had been made in paragraph [69] of my decision. He submits that the notice did not comply with the Schedule because the word "error" was not used in the correspondence sent to the applicant. Therefore, I erred in determining that the respondent was entitled to repayment. The applicant also argues that I did not interpret and apply the case law appropriately.

[32] I do not find that I erred in law in my finding that the respondent's notice complied with section 52 of the Schedule. Although I agree that the notice did not contain the word "error" it contained enough information for the applicant to understand that a mistake had been made and that repayment was required. Further, I did

not find that I erred in law by finding the case law referred to by the applicant unhelpful to his case. The applicant has failed to convince me that I made an error of law that would result in an alternative decision on this issue.

CONCLUSION

[33] The applicant's request for reconsideration of my decision is dismissed.

Rebecca Hines
Adjudicator
Tribunals Ontario – Safety, Licensing Appeals and Standards Division

Released: November 10, 2022