



Citation: Abdi v. Allstate Canada, 2023 ONLAT 21-000750/AABS

Licence Appeal Tribunal File Number: 21-000750/AABS

In the matter of an application pursuant to subsection 280(2) of the *Insurance Act*, RSO 1990, c I.8, in relation to statutory accident benefits.

Between:

Abdi Dahir Abdi

Applicant

and

Allstate Canada

Respondent

DECISION

VICE-CHAIR:

Ian Maedel

APPEARANCES:

For the Applicant:

No one appearing

For the Respondent:

Sonya M. Katrycz, Counsel

HEARD:

By way of written submissions

OVERVIEW

[1] Abdi Dahir Abdi, the applicant, was involved in an automobile accident on January 15, 2018, and sought benefits pursuant to the *Statutory Accident Benefits Schedule - Effective September 1, 2010 (including amendments effective June 1, 2016)* (the “Schedule”). The applicant was denied benefits by the respondent, Allstate Canada, and applied to the Licence Appeal Tribunal - Automobile Accident Benefits Service (the “Tribunal”) for resolution of the dispute.

ISSUES

- [2] The issues in dispute are:
- i. Are the applicant’s injuries predominantly minor as defined in s. 3 of the Schedule and therefore subject to treatment within the \$3,500.00 treatment limit and in the Minor Injury Guideline (“MIG”)?
 - ii. Is the applicant entitled to income replacement benefits (“IRB”) of \$400.00 per week from January 15, 2018 to date and ongoing?
 - iii. Is the applicant entitled to \$3,729.39 for physiotherapy, proposed by Healthmax Physio Clinic in a treatment plan/OCF-18 denied October 11, 2019?
 - iv. Is the respondent liable to pay an award pursuant to s. 10 of O. Reg. 664 because it unreasonably withheld or delayed payments to the applicant?
 - v. Is the applicant entitled to interest on any overdue payment of benefits?
 - vi. Is the respondent entitled to costs pursuant to Rule 19 of the Tribunal’s *Common Rules of Licence Appeal Tribunal, Animal Care Review Board, and Fire Safety Commission (effective October 2, 2017)* (“Common Rules”)?

RESULT

- [3] The application is dismissed.
- [4] The applicant has not met his evidentiary burden to establish his impairments are not predominantly minor and therefore subject to treatment beyond the \$3,500.00 limit of the MIG. Also, having failed to establish he sustained a minor injury as a result of the accident, the applicant is not entitled to the disputed OCF-18 for

physiotherapy, as it proposes goods that fall beyond the MIG and the \$3,500.00 treatment limit.

[5] Further, the applicant is not entitled to IRB.

[6] Given there are no benefits owed or payments outstanding, the applicant is not entitled to an award, nor interest.

[7] The respondent is not entitled to costs pursuant to the *Common Rules*.

ANALYSIS

[8] The onus is on the applicant to demonstrate that he is entitled to the benefits claimed. He made no submissions and tendered no evidence in support of his claims before the Tribunal. Therefore, I find that the applicant has failed to meet his onus and dismiss the application.

[9] A case conference was conducted on February 8, 2022. A written hearing was scheduled for October 31, 2022 and specific written hearing submission deadlines were set.

[10] The submission deadlines were varied by Vice-Chair Hunter in his Motion Order released October 3, 2022.

[11] According to the Motion Order, the applicant was required to provide initial written submissions by October 7, 2022 and written reply submissions by October 28, 2022.

[12] On October 7, 2022, the Tribunal received email correspondence from the applicant's former legal representative indicating there had been a breakdown in communication. The legal representative was removed from the record on that date. The applicant proceeded as a self-represented individual before the Tribunal.

[13] The applicant failed to comply with the Motion Order and failed to provide any submissions by the deadlines imposed by the Tribunal.

[14] The applicant did not contact the Tribunal, seek an adjournment of the hearing, or seek any other procedural remedy related to the written hearing scheduled for October 31, 2022.

[15] The respondent provided written submissions by its deadline of October 21, 2022. The submissions were served on the Tribunal and directly on the applicant

via regular letter mail to his address. The respondent provided a signed Certificate of Service dated October 21, 2022.

- [16] The applicant did not respond after being served with the respondent's written submissions. The applicant's written hearing submissions were never filed with the Tribunal. More than seven months have now elapsed since the applicant's initial submission deadline and the October 31, 2022 written hearing date.
- [17] The applicant has been afforded multiple opportunities to provide submissions, or any procedural update regarding these submissions, and has failed to do so.
- [18] Given the applicant's failure to provide any hearing submissions or evidence, it is clear the applicant has not met her evidentiary burden with regard to the issues in dispute. This application shall be dismissed.

The request for costs is denied

- [19] The respondent's request for costs is denied. Costs are a discretionary remedy imposed when a party has acted unreasonably, frivolously, vexatiously, or in bad faith pursuant to Rule 19.1 of the *Common Rules*. The threshold for costs is high, and they are rarely awarded.
- [20] Although the applicant failed to provide any submissions in breach of the Motion Order, I do not find this rises to the threshold of costs pursuant to Rule 19.1. Additionally, pursuant to Rule 19.5, I must consider the chilling effect a cost award may have on similar self-represented individuals accessing the Tribunal system.
- [21] Given the totality of the circumstances, I am not satisfied the threshold for costs has been met. Thus, no costs shall be awarded.


ORDER

- [22] As the applicant has failed to provide any submissions, it follows that he has not met his evidentiary burden to demonstrate that he warrants treatment outside of the MIG, that he is entitled to the treatment plan in dispute, or that he is entitled to IRB. Given that there are no benefits owed or payments outstanding, the applicant is not entitled to an award, nor interest.

[23] The respondent is not entitled to costs pursuant to the *Common Rules*.

[24] The application is dismissed.

Released: June 14, 2023



Ian Maedel
Vice-Chair