



**Licence Appeal Tribunal File Number: 22-005951/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:

**Dawn Donaldson**

**Applicant**

and

**The Personal Insurance Company**

**Respondent**

**MOTION ORDER**

**VICE CHAIR:**

Terry Hunter

**APPEARANCES:**

For the Applicant:

Michele Velvet, Counsel

For the Respondent:

Nathalie Rosenthal, Counsel

**Motion heard by  
Teleconference:**

**May 4 & 9, 2023**

## OVERVIEW

- [1] The applicant was injured in an automobile accident on December 20, 2016, and sought benefits pursuant to the Statutory Accident Benefits Schedule - *Effective September 1, 2010 (Schedule)*.
- [2] The applicant was denied certain benefits and submitted an application to the Licence Appeal Tribunal - Automobile Accident Benefits Service ("Tribunal").
- [3] A case conference took place on March 15, 2023 before Adjudicator Sofia Ahmad and an order was issued dated March 22, 2023. The respondent requested Adjudicator Ahmad provide a separate preliminary issue hearing date and timeline for submissions given that it could potentially be dispositive of the attendant care benefit claim and the OCF-6 claim. Instead, Adjudicator Ahmad invited the respondent to provide written materials by way of a motion.

## MOTION

- [4] On April 20, 2023, the respondent filed a Notice of Motion requesting that the Tribunal:
  - i. Grant an order that the applicant is barred from proceeding with an Expense Claim Form (OCF-6) dated February 3, 2022 in the amount of \$1,199.00 as the applicant has not complied with s. 55(1) of the SABS. (Issue #7 in the Case Conference Report and Order); and
  - ii. Grant an order that the applicant is barred from proceeding with a claim for Attendant Care Benefits (ACBs) as the applicant failed to dispute the denial within the two-year limitation period. (Issue #9 in the Case Conference Report and Order).

## RESULT

- [5] The respondent's motion is granted.

## ANALYSIS

### Issue i – OCF-6

- [6] The respondent submits the applicant is barred from proceeding before the Tribunal on Issue #7 as set out in the Case Conference Report and Order. Issue #7 pertains to expenses the applicant submitted via an OCF-6 dated February 3, 2022, which was accompanied by invoices for a nutri-body analysis, an initial health and fitness assessment, 12 personal training sessions, and 8 personal training sessions.
- [7] The applicant has not filed a treatment plan related to these expenses, just the OCF-6. The respondent submits the applicant is barred from proceeding with this

claim as the applicant submitted the OCF-6 on February 3, 2022 without submitting a treatment plan, in contravention of s. 38(2) of the *Schedule*.

- [8] Section 38(2) of *Schedule* states that “an insurer is not liable to pay an expense in respect of a medical or rehabilitation benefit or an assessment or examination that was incurred before the insured person submits a treatment plan and assessment plan.”
- [9] I find that the applicant is not entitled to the expenses listed in the OCF-6 because she incurred the expenses without submitting a treatment plan and supplied no evidence to the contrary.
- [10] There are exceptions to paying for treatment when a treatment plan is not submitted. The only exceptions that could apply to this case are s. 38(2)© and (d) of the *Schedule*. Section 38(2)(c) provides that expenses in the absence of a treatment plan may be payable by an insurer if the expense is reasonable and necessary as a result of the impairment and the goods or expenses are contained in clauses 15(1)(d) to (f) and 16(3)(h) to (j) and have a cost under \$250.00. In a similar vein, under s. 38(2)(d), expenses without a treatment plan may be payable where the insurer agrees that the expense is essential, falls within certain categories under s. 15 and s. 16, and has a cost of less than \$250 per item or service.
- [11] The only invoice provided by the applicant that is less than \$250.00 is the “initial health and fitness assessment” which is for a 30–60-minute assessment in the amount of \$50.00. The remaining items in the OCF-6 all exceed the \$250 threshold.
- [12] The respondent submits that although this \$50.00 expense is under the threshold of \$250.00, the applicant provided no explanation as to why the expense is reasonable and necessary under s. 38(2)(c) and, as it is challenging the expense claim, the respondent does not consider the expense to be an essential one.
- [13] I agree with the respondent. The applicant provided no medical evidence upon which I can find that the “initial health and fitness assessment” for \$50.00 was a reasonable and necessary expense which would excuse the failure to submit a treatment and assessment plan. Accordingly, the applicant cannot proceed with this claim.

#### **Issue ii - Attendant Care Benefits (ACBs)**

- [14] The applicant claims entitlement to ACBs in the amount of \$1,199.00 per month from December 20, 2016 to date and ongoing. The respondent denied the applicant’s entitlement to ACBs in an Explanation of Benefits dated October 13, 2017. The respondent included the s. 44 reports completed by Dr, Saplys and Dr. Goldberg dated September 25, 2017. In an Explanation of Benefits dated October 27, 2017, the respondent again denied the applicant’s entitlement to ACBs and provided the applicant with a copy of a section 44 occupational report

completed by Leslie Hisey.

- [15] Pursuant to s. 56 of the *Schedule*, an application in respect of a benefit shall be commenced within two years after the insurer's refusal to pay the amount claimed. The applicant filed their application with the Tribunal disputing the denial of ABCs on May 25, 2022.
- [16] I agree with the respondent and find that the two-year time limit for disputing the denial of ABCs expired on October 27, 2019. The applicant submitted the current application to the Tribunal on May 25, 2022 is two years and seven months after the two-year time limit expired. Based on the aforementioned facts, I find that the applicant missed the time-limit to dispute her entitlement to ABCs ongoing from December 20, 2016 and is statute barred from proceeding with this claim.
- [17] Section 7 of the *Licence Appeal Tribunal Act* allows an adjudicator the discretion to extend the two-year time limit under s.56 of the *Schedule* to allow an applicant to proceed with their application. The four criteria for allowing an extension of the time limit are: whether a bona fide intention to appeal exists, the length of delay, prejudice to the respondent, and merits of the appeal.
- [18] The applicant argued that she submitted a prior application to the Tribunal for ABCs which establishes that the applicant had a bona a fide intention to pursue her appeal. On the day of the motion hearing held on May 9, 2023, the applicant submitted an undated and unsigned partial release related to her first application to the Tribunal in the amount one dollar for ABCs from December 20, 2016, to March 24, 2021 payable to Goodman Elbassiouni LLP in trust. The applicant argued that this document somehow shows that she intended to appeal her claim for ABCs. As it was unsigned and undated, I put no weight on this document and did not find that it in anyway established that the applicant intended to peruse her appeal of ABCs.
- [19] I agree with the applicant and find that she did file a previous application with the Tribunal disputing the denial of ABCs. That application was submitted on August 8, 2021, and withdrawn by the applicant on March 26, 2022.
- [20] The withdrawn application was submitted one year and nine months after the two-year time limit expired on October 27, 2019. I am not persuaded that the first application submitted by the applicant establishes that she had a bona fide intention to pursue an appeal because it was also filed with the Tribunal after the two-year time limit expired and, more importantly, was withdrawn, despite the risk to the applicant. I find that the withdrawal of the first application establishes on balance that the applicant did not in fact have an intention to proceed with the appeal or she would not have withdrawn it.
- [21] I also find that to allow the appeal to proceed on this application, which was filed almost three years after the two-year time limit, would unduly prejudice the respondent in terms of the potential costs associated with such a lengthy delay. I

weighed the prejudice to the respondent and the applicant in light of the merits of the applicant's appeal. The respondent's denial of ACBs was based on several insurer examinations, the applicant provided little, if any, medical evidence to rebut the respondent's medical evidence, and did not submit any ACB expenses to the respondent since the date of loss. I, therefore, am not persuaded that the merits of the applicant's appeal warrants that I exercise my discretion to extend the two-year time limit to allow her application for this benefit to proceed.

- [22] For the reasons noted above, the respondent's motion is granted. Pursuant to s. 55(1)1 of the *Schedule*, the applicant shall not proceed with her claims for OCF-6 expenses or the ACBs.

### **ORDER**

- [23] **The applicant is barred from proceeding with her claim for the OCF-6 dated February 3, 2022 in the amount of \$1,199.00.**
- [24] **The applicant is barred from proceeding with their claim for ACBs.**
- [25] **Except for the provisions contained in this Motion Order all previous orders made by the Tribunal remain in full force and effect.**

### **OTHER PROCEDURAL MATTERS**

- [26] If the parties resolve the issue(s) in dispute prior to the hearing, the applicant shall immediately advise the Tribunal in writing.
- [27] I am not seized of this matter.

**Released: September 27, 2023**



---

**Terry Hunter, Vice-Chair**