Citation: Smith v. Intact Insurance Company, 2024 ONLAT 21-015217/AABS

RECONSIDERATION DECISION

Before:	Terry Hunter
Licence Appeal Tribunal File Number:	**21-015217/AABS**
Case Name:	**Moreen Smith v. Intact Insurance Company**

Written Submissions by:

For the Applicant:	Gordon W Harris, Counsel
For the Respondent:	Sonya Katrycz, Counsel

OVERVIEW

[1] On February 9, 2024, the applicant requested reconsideration of the Tribunal's decision dated January 19, 2024 ("decision").

[2] In the decision I found the applicant was not entitled to any of the disputed benefits, to interest, or to an award.

[3] The decision was released January 19, 2024; therefore, the *Licence Appeal Rules 2023 (Rules)* apply.

[4] The grounds for a request for reconsideration are found in Rule 18.2 of the Rules. To grant a request for reconsideration, the Tribunal must be satisfied that one or more of the following criteria are met:

a) The Tribunal acted outside its jurisdiction or committed a material breach 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; or

c) 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 likely have affected the result.

[5] The applicant is proceeding under Rule 18.2a) and b) of the *Rules.*

[6] The applicant seeks an order varying the decision of January 19, 2024, that the applicant is not entitled to the benefits in dispute or to remit the decision back to the Tribunal for a redetermination.

[7] The respondent submits the applicant's request for reconsideration should be denied and asks for costs.

RESULT

[8] I find the applicant has not established any grounds for me to reconsider my decision.

[9] The respondent is not entitled to costs.

ANALYSIS

[10] The applicant's request is limited to my determination on two issues: 1) is the applicant entitled to $4,729.00 for a neurological assessment from Dr. Rathbone, submitted June 13, 2020? and, 2) is the applicant entitled to $2,941.57 for a multi-disciplinary chronic pain assessment from the Michael G. Degroote Pain Clinic submitted January 26, 2021?

[11] Pursuant to section 25 of the *Schedule* the maximum payable for section 25 assessments is $2,000.00 plus HST.

[12] The test for reconsideration under Rule 18.2 involves a high threshold. The requestor must show how or why the decision falls into one of the categories in Rule 18.2. I find that the applicant has failed to do so.

[13] The applicant alleges that I acted outside my jurisdiction or committed a material breach of procedural fairness pursuant to Rule 18.2 (a). However, the applicant did not make any, submissions to establish this as a ground for reconsideration. I, therefore, dismiss the applicant's request for reconsideration on this ground.

[14] The applicant has also failed to establish that I made an error in fact or law in rendering my decision pursuant to Rule 18.2(b). In terms of errors in fact, the applicant for example, argues that I made an error in fact in finding that the applicant's family doctor did not diagnosis her with a head injury because he checked off that the applicant had "Diseases of the Senses" in a Ministry of Transportation form. The applicant also argues that I made an error in correctly identifying the multi-disciplinary chronic pain assessment that is the subject of this reconsideration, such that I would have come to a different conclusion had I not made this error.

[15] In paragraph 15 of my decision, I state that "the applicant bears the onus of proving on a balance of probabilities that any proposed treatment or assessment plan is reasonable and necessary". My decision and assessment of the evidence was correctly founded on determining whether the treatment plans at issue in this reconsideration were reasonable and necessary as required by sections 14 and 15 the *Schedule*.

[16] The applicant's reconsideration submissions focus almost exclusively on the errors in fact that the applicant alleges I made. The applicant argues that if these errors had not been made, I would likely have come to a different conclusion. I disagree. For the reasons provided below, I find that the applicant has failed to

establish that I made any errors in fact which likely would have resulted in a different outcome.

Neurological Assessment - Is the applicant entitled to $4,729.00 for a neurological assessment from Dr. Rathbone, submitted June 13, 2020?

[17] The reconsideration process is not an opportunity for a party to re-litigate its position where it disagrees with the Tribunal's decision, or with the weight assigned to the evidence.

[18] In her reconsideration submissions, the applicant continually points out why she disagrees with my decision and how I weighed the evidence. For instance, the applicant disagrees with my finding that the applicant's family physician, Dr. Norrie, was in the best position to determine if the disputed neurological assessment was reasonable and necessary. The applicant argues that because Dr. Norrie referred the applicant to physiotherapy, Dr. Norrie "effectively" outsourced the applicant's treatment for post-concussion symptoms and was therefore not in the best position to determine if a neurological assessment was reasonable and necessary. I agree with the respondent that, instead of pointing out errors of fact, the applicant is essentially attempting to re-argue her case.

[19] First, the applicant argues that it was prejudicial and an error for me to find that the neurological assessment was not reasonable and necessary because Dr. Norrie did not refer the applicant to her pre-accident neurologist. I disagree. In paragraph 32 of my decision, I state "as the applicant's treating physician, I find Dr. Norrie was in the best position to determine if the applicant required a neurological assessment following the accident". No where do I state that Dr. Norrie should have referred the applicant back to her pre-accident neurologist. In fact, in the same paragraph, I rejected the respondent's argument in that regard. I also did not state that the assessment should be OHIP funded. By making such arguments, the applicant is attempting to re-argue her case which is not a ground for reconsideration.

[20] Next, the applicant argues that I made an error in fact in finding that Dr. Norrie did not state that the applicant sustained a head injury in a Ministry of Transportation form dated April 16, 2019, because he checked off that the applicant had "Diseases of the Senses". What the applicant fails to mention is that Dr. Norrie also checked off that the applicant did not suffer from any "Neurological Diseases" including a "head injury". Even if I did make an error in fact regarding this form, which I did not, it would not have changed the outcome of my decision as it was not the only reason, I found the assessment was not reasonable and necessary. As stated in my decision at paragraph 34, one of the

reasons I found that the assessment was not reasonable and necessary was because Dr. Rathbone diagnosed the applicant with a sub-concussive injury.

[21] The applicant also argues that I made an error in putting little weight on Dr. Rathbone's December 9, 2020, report. Again, disagreeing with my decision and the weight I afforded to evidence is not a ground for a reconsideration.

[22] The applicant has also failed to demonstrate that I made an error in fact when I stated that Dr. Rathbone failed to reference the applicant's pre-accident MRI or pre-accident consult with Dr. Lad. In her reconsideration submissions the applicant concedes that Dr. Rathbone did not make direct reference to these documents in the narrative section of his report but points out that they were listed in the documents reviewed section. I agree, and my decision did not say that they were not in the documents reviewed section. Again, I find no error in fact as a result.

[23] With regards to the neurological assessment, I find that the applicant has failed to establish that I made any error in fact such that I would likely have reached a different result had the error not been made.

Interdisciplinary Chronic Pain Assessment - Is the applicant entitled to $2,941.57 for a multi-disciplinary chronic pain assessment from the Michael G. Degroote Pain Clinic submitted January 26, 2021?

[24] With regards to this assessment, the applicant argues that my "mischaracterization" of the assessment is evidence that I did not consider the multidisciplinary nature of the chronic pain assessment and failed to consider the non-physical components of the proposed treatment.

[25] The applicant is correct that I left out the word "multidisciplinary" in the description of the treatment plan. This is an oversight which would not have changed the outcome of my decision. The applicant argues that this error is evidence that I did not consideration the psychological aspect of the multidisciplinary chronic pain assessment. I do not agree. In paragraph 26 of my decision, I clearly note that the one of the reasons the applicant argues that the chronic pain assessment is reasonable and necessary is because of the psychological issues she had prior to the accident.

[26] As with the neurological assessment, the applicant's reconsideration submissions focus primarily on the weight that I assigned the evidence and repeats arguments already made at the hearing. The applicant repeats her argument that I erroneously put more weight on the fact that the applicant did not

report pain to her family doctor, Dr. Norrie, until January of 2021, rather than on the fact that she received treatment at Grand River Physiotherapy. This is not an error in fact; it is how I weighed the evidence. The applicant's disagreement is not a ground for reconsideration.

[27] The applicant also argues that she did not return to full time work after the accident and implies that I made in error in finding that she did. However, I correctly stated in paragraph 27 of my decision that the applicant "continued to work albeit at a reportedly slower and/or reduced rate." I see no error.

[28] With regards to the multidisciplinary pain assessment, I find that the applicant has failed to establish that I made any error in fact such that I would likely have reached a different result had the error not been made.

CONCLUSION & ORDER

[29] For the reasons noted above, the applicant has failed to establish that I acted outside my jurisdiction or committed a material breach of procedural fairness, or that I made an error in fact or law which likely would have resulted in me making a different result. The applicant's request for reconsideration is dismissed.

[30] As the respondent made no submissions as to why it should be awarded costs, its request is denied.

Terry Hunter
Vice-Chair
Tribunals Ontario – Licence Appeal Tribunal

Released: June 24, 2024