



FSCO A09-002515

BETWEEN:

JASWANT KAUR

Applicant

and

PERSONAL INSURANCE COMPANY OF CANADA

Insurer

REASONS FOR DECISION

- Before:** Arbitrator Denise Ashby
- Heard:** January 4 and 5, 2012, at the offices of the Financial Services Commission of Ontario in Toronto.
- Appearances:** Iqbal S. Bedi for Mrs. Kaur
Ryan M. Naimark for Personal Insurance Company of Canada
- Issues:**

The Applicant, Jaswant Kaur, was injured in a motor vehicle accident on April 21, 2007. She applied for and received statutory accident benefits from Personal Insurance Company of Canada ("Personal"), payable under the *Schedule*.¹ Personal suspended weekly caregiver benefits effective September 10, 2007. The parties were unable to resolve their disputes through mediation, and Mrs. Kaur applied for arbitration at the Financial Services Commission of Ontario under the *Insurance Act*, R.S.O. 1990, c.I.8, as amended.

¹ *The Statutory Accident Benefits Schedule - Accidents on or after November 1, 1996, Ontario Regulation 403/96, as amended.*

The issues in this hearing are:

1. Is Mrs. Kaur entitled to receive weekly caregiver benefits at the rate of \$240.00 from September 10, 2007 to March 8, 2009?
2. Is Personal liable to pay a special award, pursuant to subsection 282(10) of the *Insurance Act*, because it unreasonably withheld or delayed payments to Mrs. Kaur?
3. Is Personal liable to pay Mrs. Kaur's expenses in respect of the arbitration?
4. Is Mrs. Kaur liable to pay Personal's expenses in respect of the arbitration?
5. Is Mrs. Kaur entitled to interest for the overdue payment of benefits?

Result:

1. Mrs. Kaur is not entitled to receive weekly caregiver benefits.
2. Personal is not liable to pay Mrs. Kaur a special award.
3. Mrs. Kaur is not entitled to interest for the overdue payment of benefits.
4. The parties made no submissions with respect to expenses. They are encouraged to resolve the issue, failing which they may request an expense hearing within **30 days** of this decision pursuant to Rule 79 of the *Dispute Resolution Practice Code*.

BACKGROUND:

The hearing of this matter was preceded by procedural decisions issued on April 16, 2010, December 29, 2010 and August 12, 2011. As Mrs. Kaur and Mr. Bedi complied with the requirements set out in my decision of December 29, 2010, Mr. Bedi was allowed to represent his mother-in-law, Mrs. Kaur at this hearing.

EVIDENCE:

Mrs. Kaur claims a caregiver benefit in respect of her grandson. At the time of the accident she was visiting from her home in India. Mrs. Kaur testified that she came to Canada as a visitor to look after her grandson and help her daughter care for him.

Mr. Bedi re-examined Mrs. Kaur having waived his right to examine her in chief. Mr. Larry Matsuyama, an independent adjuster employed by Vanler Insurance Adjusters, was retained by Personal to adjust Mrs. Kaur's claim. He testified on behalf of Personal.

Mrs. Kaur submits that Personal improperly suspended her child care benefit and therefore she is entitled to benefits at the weekly rate of \$240.00 from September 10, 2007 to March 8, 2009.

Personal submits that Mrs. Kaur failed to attend an insurer's examination which had been rescheduled to a date that her representative, Mr. Bedi, indicated she would be available. Due to Mrs. Kaur's return to India the examination was cancelled prior to the rescheduled date. As Mrs. Kaur failed to attend the examination Personal suspended Mrs. Kaur's caregiver benefits pursuant to section 37 of the *Schedule*.

Mrs. Kaur entered Canada on December 29, 2006 on a Visitor's Visa effective from November 14, 2006 to February 12, 2007. The Visa was issued by Citizenship and Immigration Canada and was subsequently extended to September 30, 2007.² Mrs. Kaur testified that her daughter and son-in-law told her the only flight available before her Visa expired on September 30 was the flight on September 2, 2007.

On April 26, 2007, Mrs. Kaur signed a statement witnessed by Mr. Matsuyama. Mr. Matsuyama testified that the statement was translated to her by Mr. Bedi. Mrs. Kaur stated that she was visiting from December 14, 2006 to July 28, 2007 to care for her one year old grandson. Mrs. Kaur stated that at the time of the accident she experienced pain in her "right shoulder, right wrist, right thumb and right side of my lower back and right leg." Mrs. Kaur did not go to

² Exhibit 3, Tab 3(b)

hospital, rather she attended at a physiotherapy clinic where she received treatment 3 times per week commencing on April 27, 2007. In her statement she described her current pain as constant and severe in her right thumb and wrist. Mrs. Kaur was experiencing constant moderate pain in the right side of her back down to her right knee. She stated that since the accident she was unable to care for her grandson and could not engage in her pre-accident tasks of cleaning her daughter's apartment and cooking.³

On the same date, April 26, 2007, Sandeep Bedi also signed a statement in which she states: "I am the primary care giver for my child. My mother is visiting from India from Dec 2006 to July 28/07 with the sole purpose of helping me with looking after my child while I am at work and cleaning my apartment and cooking." She stated that she was employing her husband's cousin to provide the child care and housekeeping that her mother did prior to the accident. Ms. Bedi stated that she had promised to pay the cousin \$10.00 per hour for four days work from 9:00 a.m. to 5:00 p.m.⁴

On May 1, 2007, Mr. Matsuyama wrote to Mrs. Kaur advising that as she might have a claim to a weekly income replacement benefit or caregiver or non-earner benefit she should complete the attached Election of Benefits, OCF-10, and return it.⁵

On May 28, 2007, Mrs. Kaur signed an Application for Accident Benefits in which she stated that, at the time of the accident, she was the unpaid main caregiver for her grandson, born June 27, 2005.⁶

On June 7, 2007, Personal issued an Explanation of Benefits advising that it could not confirm Mrs. Kaur's entitlement to a caregiver benefit until it received a completed Disability Certificate.⁷

³ Exhibit 2, Tab "Liability"

⁴ Exhibit 2, Tab "Liability"

⁵ Exhibit 8

⁶ Exhibit 2, Tab "FSCO, 3"

⁷ Exhibit 2, Tab "FSCO, 5"

On June 25, 2007, Dr. Pathak, a chiropractor, signed a Disability Certificate. He indicated that Mrs. Kaur suffered a complete inability to carry on a normal life as a result of the accident. As well, she was substantially unable to engage in her pre-accident caregiving and housekeeping and home maintenance activities. Dr. Pathak indicated that he anticipated Mrs. Kaur would have these limitations for 5 to 8 weeks.⁸

On July 14, 2007, an In-home assessment was conducted by Mohsen Rafieian-Koupaei, R.P.T. Mrs. Kaur reported having returned to light housekeeping duties. There are numerous activities enumerated: personal care, transportation, cooking/serving meals, cleaning, laundry and shopping. Mrs. Kaur was described as being able to do them all, albeit with some restrictions. The main restriction was lifting heavy objects. The July report confines its analysis of Mrs. Kaur's need for caregiving assistance to the following:

Furthermore, Ms. Kaur reports that she is suffering from pain resulting from injuries sustained during this MVA, right shoulder, right thumb and lower back as well as constant headaches, she is taking care of her grandson when his mom is at work during the day; she has a hard time providing care for her grandchild as she did prior to the MVA. Therefore, it is recommended that Ms. Kaur also be provided with **25 hours per week** to accommodate for care giving that she is unable to provide for her child, as a result of injuries sustained during this MVA.⁹

On July 16, 2007, Personal issued a notice advising that it had scheduled an In-home assessment pursuant to section 42 of the *Schedule*. The purpose of the assessment was to "...**Confirm Your Entitlement to Care Givers [sic] Benefits...**" The assessment was to be conducted by an Occupational Therapist on July 25, 2007 at 6:30 p.m."¹⁰

On July 22, 2007, Mrs. Kaur signed an Election of Income Replacement, Non-Earner or Caregiver Benefit, OCF-10, electing a Caregiver Benefit.

On July 30, 2007, Mr. Matsuyama wrote to Mr. Bedi advising that Personal would pay a caregiver benefit at the weekly rate of \$240.00 for the period from April 22, 2007 to July 21,

⁸ Exhibit 1, Tab "B"

⁹ Exhibit 3, Tab 2(a), page 13

¹⁰ Exhibit 2, Tab "FSCO, 9"

2007, the sum of \$3,120.00. The letter also confirmed that Mrs. Kaur did not participate in the assessment scheduled for July 25. As a consequence, Mrs. Kaur's caregiving benefits were being suspended effective July 25, 2007 until she participated in an assessment.¹¹

On August 7, 2007, Mr. Bedi wrote to Mr. Matsuyama advising: "Please feel free to reschedule the In-home assessment in the second week of September 2007 for all of us. I apologize that we were not able to attend previously since all of us were not feeling well and were down with viral fever and cold." Mr. Bedi went on to state that the family would be away on vacation from August 10 to August 26, 2007.¹² Mrs. Kaur testified she recalled being ill prior to going on vacation with fever and runny nose. However, she could not state that this illness was the reason for her non-attendance at the In-home Assessment scheduled for July 25, 2007.

On August 10, 2007, Mrs. Kaur participated in a Follow-up In-home Assessment which was conducted by Mr. Rafieian-Koupaei.¹³ The report reiterates that Mrs. Kaur's impairments prevent her from lifting heavy objects. The follow-up session was a training session. Mr. Rafieian-Koupaei modelled the proper use of assistive devices, approved and paid for by Personal, and Mrs. Kaur's performance was observed. He described Mrs. Kaur as walking at a normal pace with a normal gait. He also observed that Mrs. Kaur did not have difficulty "accessing her bathtub, toilet, or her bed." Notwithstanding these comments the assessor notes:

Currently, the Client is functioning at light level of performance in regards to homemaking skills, as she continues to experience pain in her right shoulder, right thumb, lower back, as well as headaches. Due to her persisting pain the Client is unable to independently manage the majority of her pre-accident household tasks and responsibilities; however, with the devices provided she should be able to encourage appropriate mechanics, over time, while performing these tasks.¹⁴

There is no analysis of Mrs. Kaur's pre-accident caregiving activities or the impairments which prevent her from engaging in those activities and requiring 25 hours per week of caregiving assistance.

¹¹ Exhibit 7

¹² Exhibit 5, Tab 1

¹³ Exhibit 3, Tab 2(b)

¹⁴ Exhibit 3, Tab 2(b), page 11

On August 14, 2007, Mr. Matsuyama issued a Notice of Examination in respect of a rescheduled insurer's examination on September 10, 2007.¹⁵

On August 21, 2007, Mr. Matsuyama wrote to Mrs. Kaur advising that Personal accepted her reason for not attending the Insurer's In-home Assessment and was reinstating caregiving and housekeeping and home maintenance benefits.¹⁶

On August 30, 2007, Mrs. Kaur signed an Activities of Normal Life (OCF-12). The form does not indicate who prepared the form or translated it to her. The responses indicate that Mrs. Kaur needed some assistance with grooming because of pain in her thumb and wrist. She was mobile but required help to climb stairs. Mrs. Kaur is described as being functionally and emotionally incapable of riding in a car because of her fear of another accident. Mrs. Kaur was reported to be unable to prepare meals, cook, wash dishes, sweep, dust because of headaches and pain in her thumb, back and right arm.

Mrs. Kaur testified that she and the family, including her grandson, his parents, the caregiver and her husband, went on a long road trip in August of 2007. She testified the trip took 5 to 7 hours but she could not recall where they went. They travelled in a van which seated 7 people. Mrs. Kaur testified she had difficulty sitting on the trip.

On September 2, 2007, Mrs. Kaur flew home to India.¹⁷

On September 7, 2007, Mr. Matsuyama spoke with Mr. Bedi who advised that Mrs. Kaur was flying back to India on September 8, 2007 and would not be available for the In-home assessment scheduled for September 10, 2007. Mr. Matsuyama then called the assessor retained by Personal to conduct the assessment and left a message to cancel Mrs. Kaur's examination.¹⁸

¹⁵ Exhibit 2, Tab "FSCO, 12"

¹⁶ Exhibit 2, Tab "External Correspondence"

¹⁷ Exhibit 4, Tab 4

¹⁸ Exhibit 6

On September 19, 2007, Mr. Matsuyama wrote to Mrs. Kaur, enclosing an Explanation of Benefits and advising her that Personal would pay the submitted caregiver benefits from September 2, 2007 to September 7, 2007. However, it was suspending the benefits effective September 10, 2007 because Mrs. Kaur had not attended the examination.¹⁹

On April 9, 2009, a Statement of Claim was issued in the Ontario Court of Justice in which Iqbal Bedi, Sandeep Kaur Bedi and Jaswant Kaur all claim, *inter alia*, caregiver benefits pursuant to the *Schedule*.²⁰

ANALYSIS:

Suspension of Benefits:

Mrs. Kaur submits that Personal improperly suspended her benefits as the Notice of Examination was sent before Mrs. Kaur elected a caregiver benefit. Consequently, it was improper to suspend the benefits. Mrs. Kaur relied on *Kong and Personal Insurance Company of Canada*²¹ as authority that the procedures have to be met before a benefit can be suspended. As well, *Grewal and Certas Direct Insurance Company*²² provided authority for the role of the adjuster in the process and the importance of the election.

Personal submits that as Mrs. Kaur failed to attend a rescheduled insurer's examination, Personal had statutory authority to suspend her benefits by operation of sections 42 and 37 of the *Schedule*. Personal submits that it has a right to have an insured examined pursuant to section 42 of the *Schedule*. If an insured person fails to attend and comply with subsection 42(10), then, pursuant to subsection 37(7), the insurer has the right to determine the insured person is no longer entitled to the benefit and may suspend the benefit until the insured complies with subsection 42(10). This was the second suspension caused by Mrs. Kaur's failure to attend a

¹⁹ Exhibit 3, Tab 3(a)

²⁰ Exhibit 2, Tab "Pleading"

²¹ (FSCO P06-00007, July 2, 2008)

²² (FSCO P09-00001, July 10, 2009)

properly scheduled assessment. As Mrs. Kaur returned to India, Personal was not able to exercise its right to have Mrs. Kaur examined and invoked its right to suspend her caregiver benefit.

Mrs. Kaur's submissions have no merit for the following reasons.

Subsection 36(1) of the *Schedule* provides that an insured may receive only one of the following benefits at a time: An income replacement benefit, a non-earner benefit or a caregiver benefit.

Subsection 36(2) provides:

If a person's application indicates that he or she may qualify for more than one of the benefits referred to in subsection (1), the insurer shall notify the person that he or she must elect within 30 days after receiving the notice which benefit he or she wishes to receive.

Subsection 12(1)1 of the *Schedule* provides that an insured person is only entitled to a non-earner benefit if within 104 weeks of the accident he or she suffers a complete inability to carry on a normal life. This is the test which an insured must meet to be eligible for a non-earner benefit. By operation of subsection 12(7) an insured is not entitled to a non-earner benefit for the first 26 weeks after the insured has met the complete inability test. Subsection 12(1)2 provides for an insured whose caregiver benefit is terminated because there is no longer a person in need of care and who is completely unable to carry on a normal life, to receive a non-earner benefit.

Subsection 42(1) provides:

For the purpose of determining whether an insured person is entitled to a benefit for which an application is made, an insurer may give the insured person notice requiring the insured person to be examined by one or more persons specified by the insurer, each of whom is a member of a health profession or a person with expertise in vocational rehabilitation.

Subsection 42(10)(b) provides that if an insured is required to attend the examination, the insured shall attend and "submit to all reasonable physical, psychological, mental and functional examinations requested by the person or persons conducting the examination."

Subsection 37(7) provides:

If the insured person fails to comply with subsection 42(10), the insurer may,

- (a) Make a determination that the insured person is no longer entitled to the specified benefit; and
- (b) Despite subsection (9), refuse to pay specified benefits relating to the period after the insured person failed or refused to comply with subsection 42(10) and before the insured person submits to the examination or provides the material required under that subsection.

At the time Personal sought a section 42 examination, Mrs. Kaur had undergone an In-home Assessment paid for by Personal. As well, it authorized some of the assistive devices recommended by Mohsen Rafieian-Koupaei in his July 14, 2007 report. At that time, Mrs. Kaur reported having returned to light housekeeping duties. There are numerous activities enumerated: personal care, transportation, cooking/serving meals, cleaning, laundry and shopping. Mrs. Kaur was described as being able to do them all, albeit with some restrictions. The main restriction was lifting heavy objects. The July report confines its analysis of Mrs. Kaur's need for caregiving assistance to the following: "Furthermore, Ms. Kaur reports that she is suffering from pain resulting from injuries sustained during this MVA, right shoulder, right thumb and lower back as well as constant headaches, she is taking care of her grandson when his mom is at work during the day; she has a hard time providing care for her grandchild as she did prior to the MVA."²³

This report provides weak support for a conclusion that Mrs. Kaur was substantially disabled from engaging in her pre-accident caregiving activities. Therefore, it was reasonable that Personal would seek to have Mrs. Kaur assessed pursuant to section 42 of the *Schedule*.

The Application for Accident Benefits which Mrs. Kaur signed on May 28, 2007 indicates that she was both unpaid and the main caregiver of her grandson, born June 27, 2005. It also indicates

²³ Exhibit 3, Tab 2(a), page 13

that she was unemployed at the time of the accident.²⁴ Notwithstanding Mrs. Kaur was provided with an Election of Benefits form in May 2007, she did not sign and return her election to Personal until July 22, 2007.

On June 25, 2007, Dr. Pathak diagnosed Mrs. Kaur as being injured in a manner that would qualify for a non-earner benefit. A person who suffers a complete inability to carry on a normal life is severely injured. Dr. Pathak describes strain and sprain of the right thumb, lumbar spine and cervical spine. There is no analysis of how these impairments would qualify her for a non-earner benefit. Mrs. Kaur's description of her impairments in her Statement of April 26, 2007 did not suggest she had a complete inability to carry on a normal life. On July 14, 2007, Mr. Rafieian-Koupaei reported Mrs. Kaur had returned to light housekeeping duties. Mr. Rafieian-Koupaei's opinion is relatively contemporaneous with Dr. Pathak's June 25 assessment. Therefore, I place no weight on Dr. Pathak's Disability Certificate.

I find that Personal complied with its obligation to provide Mrs. Kaur with an Election of Benefits form in a timely manner. Mrs. Kaur stated in her Application for Accident Benefits she was unemployed and the main caregiver for her grandson. A Non-earner Benefit was not available to Mrs. Kaur until October 21, 2007 by operation of the provisions of subsection 12(7). There is no reliable evidence that at any point after the accident on April 21, 2007 Mrs. Kaur would have qualified for a non-earner benefit. As a consequence, Personal was not required to request that Mrs. Kaur file an Election form as it was apparent from her Application for Accident Benefits that she did not qualify for any benefit other than potentially qualifying for a caregiver benefit.

Mr. Matsuyama issued the Notice of Examination in respect of the rescheduled examination on August 14, 2007. This was after he received Mrs. Kaur's election. Therefore, contrary to Mrs. Kaur's submissions, Personal had her signed Election of Benefits form prior to issuing the Notice of Examination.

²⁴ Exhibit 2, Tab "FSCO, 3"

Mrs. Kaur failed to attend the properly scheduled Insurer's In-Home Assessment on July 25, 2007. She testified she could not specifically recall the reasons for her failure to attend. However, Personal accepted the reason given in Mr. Bedi's letter dated August 8, 2007 and reinstated Caregiver Benefits. Mr. Matsuyama then rescheduled the In-home Assessment for September 10, 2007, a date within the period Mr. Bedi suggested in his letter.

Mrs. Kaur returned to India on September 2, 2007. I accept that Mr. Matsuyama spoke with Mr. Bedi on September 7, 2007 and was advised that Mrs. Kaur was returning to India on September 8, 2007. As a consequence, the examination scheduled for September 10, 2007 was cancelled. At the time of this conversation Mr. Bedi was aware that Mrs. Kaur had returned to India. He misled Mr. Matsuyama.

Mrs. Kaur did not have independent knowledge that the flight on September 2, 2007 was the only flight available before the expiration of her Visa on September 30, 2007. She relied on what Ms. Bedi and Mr. Bedi told her. Ms. Bedi did not testify. There is no reliable evidentiary support for Mr. Bedi's submission that this was the only flight available before her Visa lapsed. As a consequence, I find that Mrs. Kaur had no reasonable explanation for her failure to attend the rescheduled assessment on September 10, 2007 and therefore, pursuant to section 37(7), Personal had authority to determine that Mrs. Kaur was no longer entitled to caregiver benefits and suspend those benefits.

However, whether or not Mrs. Kaur was properly suspended is merely a procedural finding. It has no relevance because Mrs. Kaur never met the test for entitlement to caregiver benefits as set out in section 13 of the *Schedule*.

Entitlement to a Caregiver Benefit:

Subsection 13(1) of the *Schedule* provides:

The insurer shall pay an insured person who sustains an impairment as a result of an accident a caregiver benefit if the insured person meets all of the following qualifications:

1. At the time of the accident,
 - i. the insured person was residing with a person in need of care, and
 - ii. the insured person was the primary caregiver for the person in need of care and did not receive any remuneration for engaging in caregiving activities.

2. As a result of and within 104 weeks after the accident, the insured person suffers a substantial inability to engage in the caregiving activities in which he or she engaged at the time of the accident.

Section 13 is drafted in a manner that makes it clear that the caregiver must have a caregiving relationship with the person in need of care which is of some permanence and not merely casual or occasional.

Residing With:

Mrs. Kaur was visiting her grandson from India on a Visitor's Visa issued by Citizenship and Immigration Canada. Many legislative regimes have residency requirements. Commonly the meaning of "resident", "ordinarily resident" or "residing" is undefined. Such is the situation in the *Schedule*.

In *Cruz and Royal & SunAlliance Insurance Company of Canada*, (FSCO AOO-001179, June 13, 2001), the arbitrator held that Ms. Cruz did not meet the residency requirement of section 57 of the *Schedule* and was therefore not entitled to benefits. In reaching his decision the arbitrator relied on the Supreme Court of Canada decision in *Thomson v. Minister of National Revenue*, [1946] S.C.R. 209, which had been followed in several insurance cases cited by the arbitrator. In *Thomson*, the five justices hearing the matter each issued reasons. Four of the five justices concurred in finding that Mr. Thomson was required to pay Canadian income tax notwithstanding he had a home in another country and stayed there for significant periods of the year.

Justice Rand observed:

The gradation of degrees of time, object, intention, continuity and other relevant circumstances, shows, I think, that in common parlance "residing" is not a term of invariable elements, all of which must be satisfied in each instance. It is quite

impossible to give it a precise and inclusive definition. It is highly flexible, and its many shades of meaning vary not only in the contexts of different matters, but also in different aspects of the same matter. In one case it is satisfied by certain elements, in another by others, some common, some new.

... It is held to mean residence in the course of the customary mode of life of the person concerned, and it is contrasted with special or occasional or casual residence. The general mode of life is, therefore, relevant to a question of its application.

Mr. Justice Estey found:

A reference to the dictionary and judicial comments upon the meaning of these terms indicates that one is "ordinarily resident" in the place where in the settled routine of his life he regularly, normally or customarily lives. One "sojourns" at a place where he unusually, casually or intermittently visits or stays. In the former the element of permanence; in the latter that of the temporary predominates... It is not the length of the visit or stay that determines the question.

I agree with Justice Rand's observation that the term "residing" is very flexible. The meaning in law must consider all of the relevant facts and the length of stay is not determinative as Justice Estey observed.

Mrs. Kaur by law was a visitor to Canada. In her April 26, 2007 Statement, Mrs. Kaur claimed the sole purpose of her visit was to care for her grandson. That statement is not realistic. The visit would have had various reasons including a familial need to meet her grandchild and spend time with him. Another purpose would be to visit with her daughter. The family took an extensive road trip, so clearly touring Canada was also part of the visit's agenda. Mrs. Kaur's stay was at all times intended to be temporary. Her caregiving activities were those of a helpful visiting grandparent. Therefore, I find that Mrs. Kaur was not residing with her grandson within the meaning of subsection 13(1)1(i) and she is not entitled to a caregiver benefit.

Primary Caregiver:

I accept the signed statement of the mother, Ms. Bedi, that she was the primary caregiver. I also accept Mrs. Kaur's testimony that prior to the accident she helped her daughter care for her grandson by caring for him while her daughter was at work and her daughter would resume

caregiving when she returned home from work. As Mrs. Kaur was not the primary caregiver of her grandson within the meaning of subsection 13(1)1(ii), she is not entitled to receive a caregiver benefit.

Substantial Inability:

Assuming that Mrs. Kaur met the threshold requirements for caregiving benefits, which I have found she did not, Mrs. Kaur must establish on a balance of probabilities that she was substantially disabled from engaging in her pre-accident caregiving activities as a consequence of impairments sustained in the accident.

Mrs. Kaur's testimony did not clarify either her pre-accident caregiving activities or how her accident-related impairments prevented her from engaging in those activities. In his reports of July 14 and August 10, 2007, Mr. Rafieian-Koupaei fails to meaningfully analyse or comment on Mrs. Kaur's pre-accident caregiving activities or the accident-related impairments which prevented her from engaging in those activities. Further, the conclusions reached by the assessor in his Follow-up report are inconsistent with his observations of Mrs. Kaur's functional abilities in respect of her housekeeping activities.²⁵ I place no weight on the Activities of Normal Life form signed by Mrs. Kaur on August 30, 2007. Mrs. Kaur cannot speak or read English. The statement that she was functionally and emotionally unable to ride in a car is patently false given Mrs. Kaur's testimony that she was able to travel for 5 to 7 hours in a van earlier in August. This form was completed after the Follow-up In-home Assessment of August 10, 2007. The claim that she was unable to cook or prepare food is contrary to the findings of Mr. Rafieian-Koupaei who spent time educating Mrs. Kaur about the use of the assistive devices in food preparation, housekeeping and her personal care activities. Therefore, I find that the Follow-up In-home Assessment does not support a finding that Mrs. Kaur was substantially disabled from engaging in her pre-accident caregiving activities. As a consequence, any entitlement Mrs. Kaur might have had to a caregiving benefit ended on August 10, 2007 and she has no entitlement for the period from September 10, 2007 to March 8, 2009.

²⁵ Exhibit 3, Tab 2(b)

Conclusion:

On the basis of the foregoing, I find that Mrs. Kaur was not entitled to a caregiver benefit as a consequence of impairments suffered in the accident of April 21, 2007.

SPECIAL AWARD:

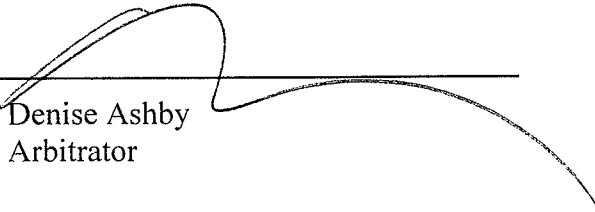
Subsection 282(10) of the *Insurance Act* provides:

If the arbitrator finds that an insurer has unreasonably withheld or delayed payments, the arbitrator, in addition to awarding the benefits and interest to which an insured person is entitled under the *Statutory Accident Benefits Schedule*, shall award a lump sum of up to 50 per cent of the amount to which the person was entitled at the time of the award together with interest on all amounts then owing to the insured (including unpaid interest) at the rate of 2 per cent per month, compounded monthly, from the time the benefits first became payable under the *Schedule*.

As I have found that Mrs. Kaur is not entitled to a caregiver benefit she is not entitled to a special award.

EXPENSES:

The parties made no submissions with respect to expenses. They are encouraged to resolve the issue, failing which they may request an expense hearing within **30 days** of this decision pursuant to Rule 79 of the *Dispute Resolution Practice Code*.


Denise Ashby
Arbitrator

March 20, 2012

Date



FSCO A09-002515

BETWEEN:

JASWANT KAUR

Applicant

and

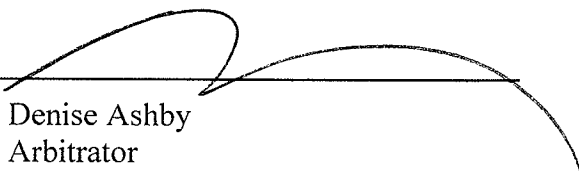
PERSONAL INSURANCE COMPANY OF CANADA

Insurer

ARBITRATION ORDER

Under section 282 of the *Insurance Act*, R.S.O. 1990, c.I.8, as amended, it is ordered that:

1. Mrs. Kaur is not entitled to receive weekly caregiver benefits.
2. Mrs. Kaur is not entitled to receive a special award.
3. Mrs. Kaur is not entitled to interest for the overdue payment of benefits.


Denise Ashby
Arbitrator

March 20, 2012

Date