



FSCO A13-005094

BETWEEN:

JIAN LIN ZHAO

Applicant

and

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY

Insurer

REASONS FOR DECISION

Before: James Robinson

Heard: August 18, 2015, at the offices of the Financial Services Commission of Ontario in Toronto.

Appearances: No one attending for Mr. Zhao

Courtney Madison for State Farm Mutual Automobile Insurance Company

Issues:

The Applicant, Jian Lin Zhao, was injured in a motor vehicle accident on October 9, 2010. He applied for statutory accident benefits from State Farm Mutual Automobile Insurance Company ("State Farm"), payable under the *Schedule*.¹ A dispute arose between the parties with respect to the payment of those benefits. The parties were unable to resolve their dispute through mediation, and Mr. Zhao 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 - Effective September 1, 2010*, Ontario Regulation 34/10, as amended.

The issues in this hearing are:

1. Is Mr. Zhao entitled to receive a medical benefit in the total amount of \$2,846.24 for services provided by Point Grey Physio as further described in the Application for Arbitration?
2. Is Mr. Zhao entitled to attendant care benefits in the amount of \$474.20 per month for the services provided by Wen Peng Lin from October 10, 2010 through October 9, 2011?
3. Is Mr. Zhao entitled to payments for housekeeping and home maintenance services in the amount of \$100.00 per week for the services provided by Wen Peng Lin from October 10, 2010 through October 9, 2012?
4. Is Mr. Zhao entitled to payments for the following:
 - a. \$2,389.09 for the total cost of assessments conducted by Point Grey Physio as further described in the Application for Arbitration?
 - b. \$1,898.62 for the cost of a psychological assessment and other services by Inner Balance Psychological Services Inc. as further described in the Application for Arbitration?
5. Is State Farm liable to pay Mr. Zhao's expenses in respect of the arbitration?
6. Is Mr. Zhao liable to pay State Farm's expenses in respect of the arbitration?
7. Is Mr. Zhao entitled to interest for the overdue payment of benefits?

Result:

1. The applicant's claims are dismissed in their entirety.
2. The applicant shall pay to the respondent its expenses of the arbitration fixed in the amount of \$1,500.00.

EVIDENCE AND ANALYSIS:

The applicant failed to attend the pre-hearing in this matter on April 7, 2014. He failed to make the documentary production required pursuant to the disclosure order made at the pre-hearing. He failed to attend the resumption of pre-hearing which proceeded on March 13, 2015.

On June 18, 2015 the applicant's former representative obtained an order removing himself from the record. The applicant failed to attend upon the return of that motion nor did any other person appear on his behalf.

The hearing of this matter was scheduled to commence at 10:00 a.m. on August 18, 2015 at the offices of the Financial Services Commission of Ontario in Toronto.

The applicant failed to attend nor did any other person attend upon his behalf. Notice of the hearing was properly served. The respondent and its counsel were in attendance and prepared to proceed. I waited thirty minutes and then proceeded to hear this matter.

The applicant having failed to attend or to adduce evidence in this matter, I was satisfied on the basis of the available evidence and upon the totality of the circumstances that the applicant has abandoned his application. I accordingly dismissed the applicant's claims in their entirety.

EXPENSES:

Section 12 of Ontario Regulation 664, R.R.O. 1990 (the "Expense Regulation"), prescribes the criteria which I must consider in the exercise of my discretion with respect to any award of expenses in the present arbitration. I agree with the submission of respondent's counsel that the only such criterion relevant in the present proceeding is the "degree of success in the outcome of the proceeding." I find that the respondent is entitled to its reasonable expenses of this arbitration.

The respondent has been placed to considerable inconvenience and needless expense by the failure of the applicant to participate in any meaningful way in a process which he himself invoked. I find that this is an appropriate case in which to exercise my discretion to fix expenses in order to alleviate further cost and delay. With the agreement of the respondent and its counsel I accordingly assess expenses fixed in the amount of \$1,500.00 against the applicant, inclusive of all fees, disbursements and taxes.

James Robinson
Arbitrator

September 8, 2015
Date



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JIAN LIN ZHAO

Applicant

and

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY

Insurer

ARBITRATION ORDER

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

1. The applicant's claims are dismissed in their entirety.
2. The applicant shall pay to the respondent its expenses of the arbitration fixed in the amount of \$1,500.00.

James Robinson
Arbitrator

September 8, 2015

Date