



FSCO A13-014261

BETWEEN:

SHU YUAN LI

Applicant

and

**STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY**

Insurer

REASONS FOR DECISION

Before: Arbitrator Maggy Murray

Heard: November 17, 2016, at the offices of the Financial Services Commission of Ontario in Toronto

Appearances: No one appeared for Ms. Li
Courtney Madison for State Farm Mutual Automobile Insurance Company

Issues:

The Applicant, Shu Yuan Li, was injured in a motor vehicle accident on January 16, 2011. She applied for statutory accident benefits from State Farm Mutual Automobile Insurance Company ("State Farm"), payable under the *Schedule*.¹ State Farm refused to pay for various benefits. The parties were unable to resolve their disputes through mediation, and Ms. Li applied for arbitration at the Financial Services Commission of Ontario under the *Insurance Act*, R.S.O. 1990, c.I.8, as amended.

¹The Statutory Accident Benefits Schedule — Effective September 1, 2010, Ontario Regulation 34/10, as amended.

The issues in this hearing are:

1. Is Ms. Li entitled to receive a non-earner benefit from July 17, 2011 and ongoing in the amount of \$185 per week?
2. Is Ms. Li entitled to receive a medical benefit for the following:
 - a) **Service Provider:** **Toronto HealthCare Clinic Inc.**
Type of Service: #1 - Massage, Chiropractic Treatment, Functional Exercise Program, Passive PT Modalities
Date of OCF-18: January 22, 2011
Amount in Dispute: **\$399.30**
 - b) **Service Provider:** **Toronto HealthCare Clinic Inc.**
Type of Service: #2 - Massage, Chiropractic Treatment, Functional Exercise Program, Passive PT Modalities
Date of OCF-18: April 2, 2011
Amount in Dispute: **\$2,689.71**
 - c) **Service Provider:** **Toronto HealthCare Clinic Inc.**
Type of Service: #3 - Massage, Chiropractic Treatment, Functional Exercise Program, Passive PT Modalities
Date of OCF-18: May 17, 2011
Amount in Dispute: **\$2,253.08**
 - d) **Service Provider:** **Toronto HealthCare Clinic Inc.**
Type of Service: #4 - Massage, Chiropractic Treatment, Functional Exercise Program, Passive PT Modalities
Date of OCF-18: July 9, 2011
Amount in Dispute: **\$1,710.09**
 - e) **Service Provider:** **Century Diagnostics & Assessment Centre**
Type of Service: Psychological Screening
Date of Completion: September 17, 2011
Amount in Dispute: **\$300.00**
 - f) **Items:** Emergency visit, Ambulance fee, Emergency doctor fee
Amount in Dispute: **\$790.00**
3. Is State Farm liable to pay Ms. Li's expenses in respect of the arbitration?
4. Is Ms. Li liable to pay State Farm's expenses in respect of the arbitration?
5. Is Ms. Li entitled to interest for the overdue payment of benefits?

Result:

1. Ms. Li's claims are dismissed.
2. Ms. Li shall pay State Farm's expenses of the arbitration fixed in the amount of \$3,500.00, inclusive of fees, disbursements and HST.

EVIDENCE AND ANALYSIS:

Ms. Li did not attend the pre-hearing on January 14, 2015. Ms. Li did not attend the motion to remove her counsel from representing her on September 6, 2016 at the Financial Services Commission of Ontario. On September 6, 2016, Ms. Li's counsel was removed from representing her.

Ms. Li did not attend the arbitration hearing at 10:00 a.m. on November 17, 2016 and no one appeared on her behalf. State Farm requested that the arbitration proceed in the absence of Ms. Li. I adjourned the hearing until 10:35 a.m. to allow time for Ms. Li to attend. At 10:35 a.m., I resumed the hearing in Ms. Li's absence.

Rule 37.7 of the *Dispute Resolution Practice Code* (Fourth Edition — Updated January 2014) states:

Where notice of hearing has been sent to a party and a party does not attend at an oral or electronic hearing, or participate in a written hearing, the arbitrator may proceed with the hearing in the party's absence or without the party's participation, as the case may be, and the party is not entitled to any further notice in the proceeding.

Notice of the hearing was sent to the Applicant by FSCO at her last known address and it was not returned as undeliverable.

The burden of proof in this arbitration proceeding lies with Ms. Li. In order to establish her entitlement to benefits, she must provide evidence supporting her claims. She presented no evidence and has failed to meet the burden of proof. Consequently, her claims for statutory accident benefits, interest and expenses are dismissed.

EXPENSES:

State Farm sought an order that Ms. Li was liable to pay costs, inclusive of fees, disbursements and HST, calculated in accordance with the legal aid rates for the law clerk and lawyers.

I have considered the criteria in the expense regulation, which are contained in Rule 75.2 of the *Code*. The relevant criteria are:

1. Each party's degree of success in the outcome of the proceeding.
2. Any written offers to settle that were made in accordance with the rules of practice and procedure applicable to the proceeding after the conclusion of mediation and before the conclusion of the hearing.
3. Whether novel issues are raised in the proceeding.
4. The conduct of a party or a party's representative that tended to prolong, obstruct or hinder the proceeding, including a failure to comply with undertakings and orders.
5. Whether any aspect of the proceeding was improper, vexatious or unnecessary.

I find that Ms. Li was unsuccessful in all of her claims. I was not advised of any written offers to settle. There were no novel issues raised in the proceeding. An important consideration is that Ms. Li's conduct prolonged the proceeding. I was presented with no evidence that any aspect of this proceeding was improper or vexatious. It appears that some aspects of the proceeding were unnecessary due to Ms. Li's conduct. I find that State Farm is entitled to its reasonable expenses in this arbitration based on its success.

The Insurer should be compensated at an appropriate rate for the services of its legal counsel and law clerk in reviewing the file, preparing a Response and preparing for and attending at the pre-hearing conference. Based on the submissions of State Farm’s counsel, I fix expenses at \$3,500.00, inclusive of disbursements and HST, payable by Ms. Li to State Farm.

Maggy Murray
Arbitrator

February 3, 2017
Date



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and

**STATE FARM MUTUAL AUTOMOBILE
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ARBITRATION ORDER

Under section 282 of the *Insurance Act*, R.S.O. 1990 c. I.8 as it read immediately before being amended by Schedule 3 to the *Fighting Fraud and Reducing Automobile Insurance Rates Act*, 2014, and Regulation 664, as amended, it is ordered that:

1. Ms. Li's claims in this arbitration are dismissed.
2. Ms. Li shall pay State Farm's expenses of the arbitration fixed in the amount of \$3,500.00, inclusive of disbursements and HST.

Maggy Murray
Arbitrator

February 3, 2017
Date