



Tribunal File Number: 20-000103/AABS

In the matter of an Application for Dispute Resolution pursuant to subsection 280(2) of the *Insurance Act*, RSO 1990, c I.8., in relation to statutory accident benefits.

Between:

Elizabet Sotirova

Applicant

and

Motor Vehicle Accident Claims Fund (MVACF)

Respondent

MOTION ORDER

Order made by: Craig Mazerolle, Adjudicator

Date of Order: February 25, 2021

OVERVIEW

- [1] The applicant was injured in an automobile accident on **May 7, 2015** and sought benefits pursuant to the *Statutory Accident Benefits Schedule - Effective September 1, 2010*.
- [2] A videoconference hearing is scheduled for March 1 – 5, 2021. The issues in dispute include requests for an attendant care benefit, a non-earner benefit, medical benefits, and an award.
- [3] The parties were expected to exchange their witness lists by February 1, 2021.

NOTICE OF MOTION

- [4] The applicant filed a Notice of Motion (dated February 12, 2021) seeking the following relief:
 - i. An order adding the respondent's adjuster, Rosa Assenza, to the hearing.
- [5] At the motion hearing held on February 22, 2021, the respondent informed the Tribunal that it did not consent to this request.

PARTIES' POSITIONS

- [6] The applicant submitted that the adjuster's evidence is highly relevant to the dispute, as there is an award at issue. In particular, the applicant would like to question the adjuster on why the previous denials of the non-earner benefit and attendant care benefit were both upheld following the decision to deem the applicant catastrophically impaired in June 2019. Disallowing the applicant from pursuing this line of questioning with Ms. Assenza would severely prejudice her ability to present her case. The applicant also noted that the adjuster's name was included in her case conference summary, but—for some reason—it was accidentally left off her witness list.
- [7] The respondent contended that the late addition of the adjuster will severely prejudice its ability to prepare a fulsome defense. As such, if Ms. Assenza is required to attend the hearing, the respondent asked for an adjournment of the hearing. The respondent also challenged the applicant's claim that there is any relevant information that the adjuster can add to this dispute, as the respondent did not become the insurer responsible for this claim until such point that all of its log notes are now litigation privileged. In fact, the initial decisions to deny the disputed benefits were all from the previous insurer. Finally, the respondent asked the Tribunal to disregard the claim that it had notice of the applicant's

intention to call the adjuster due to her case conference summary, as it is commonplace for parties to reconsider their witnesses leading up to a hearing.

- [8] In reply, the applicant noted that she is not seeking to cross-examine the adjuster on her log notes. Rather, the relevant testimony that Ms. Assenza can add to this dispute is her reasons for continuing to deny the applicant the disputed benefits.

ANALYSIS

- [9] The threshold for requiring a witness to participate in a hearing is relevance. As such, I am satisfied that the adjuster's testimony meets this low threshold. The applicant's claim for an award will hinge on whether an adjudicator finds that the respondent unreasonably withheld and/or delayed payment of a disputed benefit. Therefore, even though the respondent may not have been the insurer who initially denied these benefits, its decision to maintain these denials may still be grounds for an award.
- [10] Further, even though the adjuster's log notes will not be a part of the hearing record, I am satisfied that testimony concerning Ms. Assenza's reasoning behind continuing to maintain these denials will be of assistance to the hearing adjudicator. It may be true, as the respondent suggested, that these denials were simply based on the available medical evidence—thereby meaning that the adjuster herself has little to add. However, the threshold of relevance is quite low, and I am satisfied that her testimony meets the test.
- [11] Finally, I do not find it necessary to adjourn the hearing. The order allowing the adjuster to attend the hearing was provided to the parties during the motion hearing held on February 22, 2021. As such, I am satisfied that the respondent had sufficient time to prepare for this change. Additionally, though the parties disputed whether Ms. Assenza's inclusion in the applicant's case conference summary constituted proper notice, I do not find it necessary to reach on a finding on this point. Instead, I find that the respondent had prior notice of the applicant's intention to question its handling of the case, since the award was listed as an issue in dispute during the case conference. As such, the respondent must have been aware that its actions would be questioned during the hearing, even if this particular witness's testimony may now be newly added to the case.

ORDER

- [12] The applicant is allowed to call the respondent's adjuster, Rosa Assenza, as a witness for the hearing set to commence on March 1, 2021.

- [13] **Except for the provisions contained in this order, all previous orders made by the Tribunal remain in full force and effect.**
- [14] If the parties resolve the issues in dispute, the **applicant shall immediately** inform the Tribunal in writing.

Date of Issue: February 25, 2021



Craig Mazerolle, Adjudicator