

**Licence Appeal Tribunal
Safety, Licensing Appeals and
Standards Tribunals Ontario**

**Tribunal d'appel en matière de permis
Tribunaux de la sécurité, des appels en
matière de permis et des normes
Ontario**



Tribunal File Number: 17-005617/AABS

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

Between:

Eslyn Sitaram

Applicant

and

RSA Insurance

Respondent

ORDER

Order made by: **Monica Purdy, Adjudicator**

Date of Order: **June 26, 2018**

OVERVIEW

- [1] The applicant was injured in an automobile accident on April 2, 2015 and sought benefits pursuant to the *Statutory Accident Benefits Schedule - Effective September 1, 2010* (the "Schedule").
- [2] The applicant submitted an application for dispute resolution services to the Licence Appeal Tribunal - Automobile Accident Benefits Service (the "Tribunal").

[3] The parties participated in a case conference that I adjudicated on March 19, 2018. At that time, I ordered a 4 day in person hearing starting on August 13, 2018, to determine whether the applicant is entitled to income replacement benefits, attendant care benefits, chiropractic benefits, psychological benefits, interest and a special award.

[4] At the case conference, the applicant objected to providing the following documents to the respondent:

- a. any documents predating April 2, 2014 and
- b. accident benefits file from December 12, 2012.

[5] I asked the parties for their written submissions on the production issues for me to make the decision.

Production Issues

[6] The production issues I must decide are:

- I. Should the applicant provide the respondent with documents that predates April 2, 2014?
- II. Should the applicant provide the accident benefits file from December 12, 2012 to the insurer?

Order

[7] The documents predating April 2, 2014 and the accident benefits file from December 12, 2012 are not producible.

Reasons for the decision

Should the applicant provide the accident benefits file from December 12, 2012 to the insurer?

[8] I reviewed the parties' submission and I am not persuaded that the respondent's request for the accident benefits file from the December 16, 2012 motor vehicle accident are relevant.

[9] The respondent submits that "key documents dating back to December 16, 2012" and the entire accident benefits file from the December 16, 2012 motor vehicle accident are necessary for the Tribunal to have a full understanding of

the issues. The respondent noted that the information requested is reasonable required to determine the applicant's entitlement to the disputed benefits. The respondent also argues that the requested documents are required to test the credibility and reliability of the applicant.

- [10] The applicant maintains her objection to providing the documents on the basis that the documents requested are irrelevant, privileged and disproportional to the issues that are in dispute. Further the applicant argues that disclosure of the documents undermines the Licence Appeal Tribunal mission statement.
- [11] The test for productions is relevance. The respondent's denial for the income replacement benefits, attendant care benefits and medical benefits were denied based on the insurer's examination of the applicant's injuries from the current accident. The assessments do not involve the December 2012 accident and neither do the denials. This tells me that the respondent is able to make decisions on the applicant's claim and deny the benefits without having access to the full 2012 accident file.
- [12] I realized that the issues dealing with income replacement benefits, medical benefits and attendant care benefits are substantive. However, the applicant has noted in her submission that the income replacement benefits and medical benefits that are in dispute in this case are narrow in focus. The benefits cover a defined period, limiting the respondent's exposure.
- [13] For instance the applicant is claiming income replacement benefits from one week post-accident, April 9, 2015 to January 12, 2017, when the applicant returned to work, for a maximum claim of \$36,800.00. Although, the respondent has requested a list of documents in their case conference summary the applicant noted that an OCF-13 (Declaration of Post-Accident Income and Benefits form) is not among them, which I find more relevant to the claim.
- [14] I also note that the applicant provided the respondent with the 2014 and 2013 income tax returns, EI file and employment file from Community Living Toronto to assist the respondent in adjusting the applicant's income replacement benefit claim. The Statutory Accident Benefits Schedule only requires proof of a person's gross employment income 4 weeks prior to the accident or 52 weeks before the accident to calculate income replacement benefits. I find that the respondent has information in its keep to adjust the applicant's file.
- [15] Furthermore, attendant care benefits are determined based on whether the applicant is out of the Minor Injury Guideline and has impairments. The respondent does not require information of the December 2012 accident to adjust the applicant's file for attendant care benefits or the medical benefits that are in dispute.

[16] All the benefits that are in dispute relates to the current accident of April 2, 2015. I am satisfied that the accident benefits file from the December 2012 accident is not producible because it is not relevant to the issues that are in dispute.

Should the applicant provide the respondent with documents that predates April 2, 2014?

[17] I noted in the case conference Order that the, *"applicant agreed to provide all the documents listed in the respondent's case conference summary from one year pre-accident, to the respondent no later than June 13, 2018"*.

[18] The applicant argued that the respondent is essentially broadening the scope of the disclosure obligation by requesting documents beyond the one year mark. Moreover, the respondent's request for the documents undermines the cost effectiveness of the appeal process and is disproportional to the limits and the amounts that are being claimed.

[19] I find it reasonable for the applicant to provide the information that the respondent request one year pre accident as this conforms to the usual practice. Further, production requirement must not only be relevant and proportional, it must also be timely, as it leads to early resolution of the issues.

[20] The respondent raised the issue of credibility and reliability and the applicant raised the issue of cost. All of which I am leaving for the hearing adjudicator to decide at the 4 day in person hearing scheduled to begin August 13, 2018.

Order

[21] The documents predating April 2, 2014 and the accident benefits file from December 12, 2012 are not producible.



Monica Purdy

Adjudicator