



Licence Appeal Tribunal File Number: 20-010268/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:

Muhammad Shaikh

Applicant

and

Certas Direct Insurance Company

Respondent

MOTION ORDER

VICE CHAIR:

Terry Hunter

APPEARANCES:

For the Applicant:

Nergiz Sinjari, Counsel

For the Respondent:

Shirline Apiou, Counsel

**Motion heard by
Teleconference:**

December 15, 2022

BACKGROUND

- [1] The applicant was injured in an automobile accident on **August 28, 2018**, and sought benefits pursuant to the Statutory Accident Benefits Schedule *Effective September 1, 2010 (including amendments effective June 1, 2016)*.
- [2] The applicant was denied certain benefits and submitted an application to the Licence Appeal Tribunal - Automobile Accident Benefits Service ("Tribunal").
- [3] A case conference took place on **March 22, 2022** and an order was issued scheduling a ten day videoconference hearing for January 9-20, 2023.

MOTION

- [4] On December 2, 2022, the respondent filed a Notice of Motion requesting that the Tribunal:
 - i. Order the applicant to provide productions within 10-days of this order.
 - ii. Adjourn the hearing until productions are completed.
- [5] The applicant in their response to the respondent's motion seek an order for the respondent to provide the complete log notes from the date of loss to date with an explanation for any redactions.

RESULT

- [6] The applicant is ordered to provide the productions as listed in paragraph 15 of the Submissions of the Applicant dated December 13, 2022, or evidence of best efforts by December 30, 2022.
- [7] The respondent shall provide the adjuster's log notes from the date of loss to the present with redactions for privilege and reserves by December 30, 2022. Any redactions shall be accompanied by an explanation citing the privilege claimed and the subject matter of the redaction.
- [8] The respondent's request to stay the hearing is denied.

ANALYSIS

- [9] The respondent did not provide a list of the outstanding productions they are seeking. The motion materials advise "the respondent has not received the requested medical documentation in respect of the issues in dispute for the hearing". The applicant in the response to the motion advise they have produced a number of productions and the remaining production requests are for updates to previous records produced. It is difficult to determine what productions are outstanding and their relevance to the issues in dispute.

- [10] If the respondent has further issues with outstanding productions, it will be for the hearing adjudicator to resolve.
- [11] Applicant's Request for Log Notes: The log notes document the ongoing adjustment of the applicant's claim for benefits and reflect the decisions made by the adjuster. They are prima facie relevant pursuant to Rule 9.3(e) and 9.1 of the Tribunal's Rules and are presumptively producible. The respondent may redact privileged portions of the log notes but must provide the log notes which contain details of the decision-making process related to the applicant's file. This type of order is not novel and has been ordered by the Tribunal in similar cases since late 2018.¹
- [12] It is well settled that the tribunal is entitled to control its own procedure and is entitled to deference on matters requiring the exercise of discretion, such as adjournment requests. When considering a request to stay a hearing I consider the timeliness of the request; whether the parties had an opportunity to canvass their availability; the specific reason for requesting the stay; and the length of the requested stay.
- [13] The request is made 48 days before the hearing in a period which includes the Christmas holiday. The request is not timely given that the case conference setting the hearing date was held March 22, 2022.
- [14] It is difficult to determine from the respondent's motion materials the extent of productions outstanding and their relevance to the issues. It appears from the applicant's submissions that a substantial number of productions have been made. If highly relevant material is outstanding at the commencement of the hearing the respondent can invoke the provisions of Tribunal Rule 9.
- [15] In denying the request for a stay I have considered the prejudice to the applicant. A stay would result in the matter not being heard for 6 to 9 months. This unduly delays the resolution of this file.
- [16] **Except for the provisions contained in this Motion Order all previous orders made by the Tribunal remain in full force and effect.**

¹ *Sheriffe v. Aviva Insurance Company of Canada*, 2021 CanLII 19405 (ON LAT)

OTHER PROCEDURAL MATTERS

- [17] If the parties resolve the issue(s) in dispute prior to the hearing, the applicant shall immediately advise the Tribunal in writing.

Released: December 21, 2022



Terry Hunter, Vice Chair