

**LICENCE APPEAL
TRIBUNAL**

**TRIBUNAL D'APPEL EN MATIÈRE
DE PERMIS**



**Safety, Licensing Appeals and
Standards Tribunals Ontario**

**Tribunaux de la sécurité, des appels en
matière de permis et des normes Ontario**

Tribunal File Number: 18-009967/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:

Craig Benson

Applicant

and

Allstate Insurance Company of Canada

Respondent

MOTION ORDER

Order made by: Ian Maedel, Adjudicator

Date of Order: August 20, 2020

Appearances:

For the Applicant: Brent McQuestion, Counsel

For the Respondent: Denise Felstead, Adjuster

Ryan Kirshenblatt, Counsel

Motion Hearing conducted via teleconference on August 20, 2020

OVERVIEW

- [1] The applicant was injured in an automobile accident on June 4, 2016, and sought benefits pursuant to the *Statutory Accident Benefits Schedule - Effective September 1, 2010 (the "Schedule")*.
- [2] The applicant was denied certain benefits and submitted an application to the Licence Appeal Tribunal - Automobile Accident Benefits Service ("Tribunal") on October 12, 2018.
- [3] A case conference took place on April 21, 2020 before Adjudicator Chakravarti. An in-person hearing was set for February 16-19, 22-25, 2021 in Hamilton, Ontario.
- [4] The issues in dispute are a catastrophic impairment designation, income replacement benefits, attendant care benefits, three medical treatment plans, the cost of five examinations, an award, and interest.
- [5] In a Motion Decision dated July 31, 2020, Adjudicator Chakravarti addressed outstanding productions and costs.

MOTION

- [6] The applicant filed a Notice of Motion dated July 22, 2020 and requested the following relief:
 - i. An order for the following payments for form completion, examinations, and assessments which ought not to have been paid from the applicant's medical/rehabilitation benefit policy limits:
 - a) The cost of a catastrophic assessment in the amount of \$2,660.00 by Dr. Diana Velikonja submitted via Treatment Plan (OCF-18) dated May 11, 2017 and approved by the respondent on June 28, 2017;
 - b) The cost of a catastrophic impairment GOS-E Assessment in the amount of \$2,200.00 by Ms. Margo Kindree submitted via Treatment Plan (OCF-18) on March 28, 2018 and approved by the respondent on April 10, 2018;
 - c) The cost of an Attendant Care Needs Assessment in the amount of \$1,938.84 by Ms. Margo Kindree submitted via Treatment Plan (OCF-18) on January 9, 2017 and approved by the respondent on February 3, 2017;
 - d) The cost of the preparation of a Disability Certificate (OCF-3) in the amount of \$129.50 prepared by Dr. Fera Alsawnaa dated June 8, 2016;

e) The cost of the preparation of the second Disability Certificate (OCF-3) in the amount of \$200.00 by Ms. Margo Kindree, dated June 11, 2018.

ii. An order for the costs of this motion pursuant to Rule 19 of the *Common Rules of Practice & Procedure* (“Rules”).

[7] The applicant states that if successful, he will be able to access additional funds for treatment prior to the hearing of this matter. The applicant submits the completion of the Disability Certificates (OCF-3’s), the Form 1 and Attendant Care Assessment are not “in connection with any benefit” within the meaning of s. 18(5) of the *Schedule*. The applicant submits the completion of these forms ensures the respondent has information to adjust the applicant’s claim, and completion of these forms do not entitle the applicant’s access to attendant care benefits (“ACB”).

[8] The respondent agrees the costs of catastrophic assessments do not fall within the medical/rehabilitation limits in s. 18(3) and 18(5) of the *Schedule*. Thus, these costs will be paid by the insurer and are no longer at issue for this Motion Hearing. However, the respondent submits that the ACB Assessment and the Disability Certificates at issue are included in the limits of s. 18(3) and 18(5) of the *Schedule*. A plain language interpretation of these sections indicates this assessment and forms are captured under this section as “in connection with any benefit” which has been given broad interpretation, versus the exceptions at ss. 18(5)(a) and (b) which are narrow. Given this broad conception of “benefit” pursuant to s. 18(5), this includes attendant care assessments.

RESULT

[9] The respondent has agreed to fund issues i a) and i b) as listed above regarding the catastrophic impairment assessments. These two issues are no longer at issue for this Motion Hearing.

[10] The applicant’s motion for the payment of disability certificates (OCF-3), a Form-1 and/or attendant care assessment is denied.

[11] I agree with the applicant’s submissions regarding the overall legislative purpose of the *Schedule* is consumer protection. However, the wording of s. 18 is very clear and should be read in its ordinary, plain language interpretation.

[12] When read together, ss. 18(3) and 18(5) address non-catastrophic medical and rehabilitation monetary limits, medical and rehabilitation benefits pursuant to s. 18(3) and according to s. 18(5) are deemed to include:

... all fees and expenses for conducting assessments and examinations and preparing reports in connection with any benefit or payment to or for and insured person under this Regulation, other than,

- a) fees in connection with any examination required by an insurer under section 44; and
- b) expenses in respect of a report referred to in subsection 7(4) (Relating to the cost of an accounting report for the calculation of income replacement benefits.)

- [13] A plain reading of the broad language in s. 18(5) indicates that “benefit” includes income replacement benefits (“IRB”), non-earner benefits (“NEB”), caregiver benefits (“CGB”), housekeeping expenses, and attendant care benefits (“ACB”). Conversely, the exceptions laid out in s. 18(5) are specific and narrow.
- [14] When s. 18(5) refers to “any benefit” “under this Regulation”, the Legislature has clearly signaled its intention that a broad category of items will be caught within the medical and rehabilitation limits under s. 18, as “benefit” is not interpreted narrowly or restrictively. The use of “under this Regulation” as opposed to “under this section” or “under this Part” as used in other portions of the *Schedule* indicates the legislative intent that “benefit” is a broad concept under s. 18(5) that includes IRB, NEB, CGB, housekeeping expenses and ACB. This use of broad language is highlighted with the use of words like “any” and “all” in s. 18(5) and the absence of any limiting language save for the explicit exceptions laid out at 18(5)(a) and (b).
- [15] Costs for disability certificates and attendant care assessments are listed in s. 25 of the Regulation. Section 18(5) does not base exclusions on whether a benefit is a s. 25 assessment. Had the Legislature intended the costs of preparing disability certificates and attendant care assessments be excluded from the s. 18(3) limits, s. 18(5) would have read differently.
- [16] By expressly listing exceptions so s. 18(5) at subparagraphs (a) and (b), the Legislature has clearly indicated what is not to be considered under the non-catastrophic medical and rehabilitation limits. Although catastrophic impairment examinations are not expressly listed in s. 18(5), they are excluded because they are not “in connection with any benefit”, as catastrophic impairment itself is not a benefit. That is precisely why catastrophic impairment assessments are exempted from s. 18(3) and why disability certificates for specified benefits and attendant care assessments are not.
- [17] Given that a “benefit” in s. 18(5) includes IRB, NEB, CGB, housekeeping expenses and ACB, it follows that all fees and expenses for conducting assessments, examinations and preparing reports in connection with any “benefit” are covered by the s. 18(3) medical and rehabilitation limits.
- [18] Thus, I am satisfied the fees for completing a disability certificate, a Form-1, and/or attendant care assessment at issue in this matter are captured under s. 18(5) of the *Schedule* and payable from the applicant’s non-catastrophic medical and rehabilitation limits.

- [19] Although the applicant submitted the non-catastrophic treatment limit had been exhausted, it was revealed during the Motion Hearing that more than seven thousand dollars of potential treatment remained with the limit for his use. With the removal of the cost of the two catastrophic assessments listed at issues i a) and i b), his available funds within the limit rises to more than nine thousand dollars.
- [20] The applicant submits that costs should be awarded, as this motion was required to receive clarity with regard to what has been paid to date and what treatment was available. Costs are a discretionary remedy pursuant to Rule 19 are awarded when a party has acted unreasonably, frivolously, vexatiously, or in bad faith. This is a high bar. Although there may have been confusion regarding the amounts that had been paid in the past, I do not find the respondent's actions attract a cost award at this juncture. Thus, no costs shall be awarded.
- [21] This matter remains scheduled for a hearing on **February 16-19, 22-25, 2021**.
- [22] Except for the provisions contained in this Motion Order all previous orders made by the Tribunal remain in full force and effect.

OTHER PROCEDURAL MATTERS

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

Date of Issue: September 10, 2020



**Ian Maedel
Adjudicator**