



**Citation: Vu v. Pembridge Insurance, ~~2023~~ 2024 ONLAT 21-008218/AABS**

**Licence Appeal Tribunal File Number: 21-008218/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:

**Thi Vu**

**Applicant**

and

**Pembridge Insurance**

**Respondent**

**AMENDED DECISION**

**VICE-CHAIR:**

**Brett Todd**

**APPEARANCES:**

For the Applicant:

No Submissions Filed

For the Respondent:

Jaime Naumis, Counsel

**HEARD:**

**By way of written submissions**

## OVERVIEW

- [1] Thi Vu (the “applicant”) was involved in an automobile accident on October 19, 2020 and sought benefits pursuant to the *Statutory Accident Benefits Schedule – Effective September 1, 2010 (including amendments effective June 1, 2016)* (the “*Schedule*”). Pembridge Insurance (the “respondent”) denied a claim for certain benefits. The applicant filed an application with the Licence Appeal Tribunal – Automobile Accident Benefits Service (the “Tribunal”) for resolution of the dispute.

## ISSUES

- [2] The issues in dispute are:
1. Are the applicant’s injuries predominantly minor as defined in s. 3 of the *Schedule* and therefore subject to treatment within the \$3,500.00 Minor Injury Guideline (“MIG”) limit?
  2. Is the applicant entitled to \$2,200.00 for a psychiatric assessment, proposed by Pain Rehabilitation Clinic in a treatment plan dated March 10, 2021 and denied March 10, 2021?
  3. Is the applicant entitled to \$3,200.80 for physical rehabilitation proposed by the Pain Rehabilitation Clinic in an OCF-18 submitted March 31, 2021 and denied March 31, 2021?
  4. Is the applicant entitled to \$1,250.28 for chiropractic services proposed by Pain Rehabilitation Clinic in an OCF-18 submitted February 19, 2021 and denied February 19, 2021?
  5. Is the applicant liable to pay costs of \$2,500.00 to the respondent?
- [3] In submissions, the respondent added the above request for costs. As Rule 19.2 of the Tribunal’s *Common Rules of Practice & Procedure* (the “*Rules*”) allows a party to make a request for costs in writing or orally at a case conference or hearing at any time before a decision or order is released, I have added it to the list of items in dispute.

## RESULT

- [4] The application is dismissed. As the applicant has made no submissions for this hearing, I find that she has not met her evidentiary burden with regard to the benefits in dispute.

- [5] I find that the applicant is liable to pay costs of \$250.00 to the respondent due to her frivolous conduct in this matter.

## ANALYSIS

### Proceeding in the absence of one of the parties

- [6] I find that the Tribunal has met its notice obligations and that I may proceed with this written hearing.
- [7] Proceeding with a written hearing where a party fails to participate, under s. 7(2) of the *Statutory Powers Procedure Act*, RSO 1990, c. S.22 (“SPPA”), requires the Tribunal to be satisfied that the absent party received notice of the written hearing that complies with ss. 6(1) and 6(4) of the SPPA.
- [8] Both parties participated in a case conference that was held on December 12, 2022. This was a resumption of the original case conference on October 12, 2022, as neither the applicant nor her representative attended, and provided no reason for this non-attendance.
- [9] This resumed case conference was attended by both parties and resulted in a Case Conference Report and Order (“CCRO”) released on February 7, 2023 that set this matter down for a written hearing. This CCRO established production deadlines, with the initial document exchange to be completed no later than 90 days from the case conference, other documents to be exchanged no later than 120 days from the case conference, and responsive items to be filed no later than 150 days from the case conference.
- [10] The CCRO also set a timetable for submissions. It ordered the applicant to file her written submissions and evidence 30 calendar days prior to the written hearing date, the respondent to file its submissions and evidence 14 days prior to the hearing date, and the applicant to file her reply submissions seven days prior to the hearing date.
- [11] On March 9, 2023, the Tribunal emailed a Notice of Written Hearing (“NoWH”) to both parties that set the written hearing date for August 18, 2023. As a result of the NoWH, the applicant’s written submissions were due on July 19, 2023, the respondent’s written submissions were due on August 4, 2023, and the applicant’s reply submissions were due seven days before the hearing date on August 11, 2023.
- [12] The NoWH also included the provisions that the hearing adjudicator may not consider documents filed after deadlines ordered by the Tribunal, and that the

Tribunal may make a decision without the participation of one or both parties if submissions are not filed.

- [13] As the applicant and her representative attended the case conference, I am satisfied that she received notice for this hearing as required by ss. 6(1) and 6(4) of the *SPPA*. I am also satisfied that neither party requested a change of format from a written hearing under s. 6(4)(b) of the *SPPA*.
- [14] There is no evidence that the applicant's address changed or was otherwise incorrect in Tribunal records. If the applicant's address differed from what was originally provided to the Tribunal, she had an obligation under Rule 4.4 of the *Rules* to notify the Tribunal with the correct address.
- [15] For the above reasons, I may proceed with this written hearing pursuant to s. 7(2) of the *SPPA*.

#### **The applicant has not met her burden**

- [16] I find that the applicant had the opportunity to make submissions for this hearing and chose not to do so. Accordingly, she has failed to meet her burden to demonstrate entitlement to the benefits claimed.
- [17] As held in *Scarlett v. Belair Insurance* 2015 ONSC 3635, the evidentiary onus is on the applicant to demonstrate that she is entitled to any claimed benefits.
- [18] The applicant failed to meet this onus as she did not file written submissions or evidence with the Tribunal in accordance with the timeline established by the CCRO and the NoWH as noted above. Nor did she file submissions or evidence in the subsequent four months since the hearing date of August 18, 2023 or contact the Tribunal with a request for an extension of the submission deadlines. Nor did she respond to reminder emails that were sent by the Tribunal on July 19, 2023 and August 11, 2023.
- [19] The respondent filed its submissions and evidence on August 3, 2023 in accordance with the timeline established in the CCRO and NoWH. In these submissions, the respondent noted the applicant's failure to provide a case conference summary ("CCS") for either of the case conferences, as well as her failure to provide specific productions for this hearing as set in the CCRO and her failure to provide submissions or evidence for the written hearing. It also included an argument and evidence addressing the substantive issues in dispute.
- [20] Given the applicant's failure to provide submissions or evidence, it is clear that she has not met her evidentiary burden. This application shall be dismissed.

## Costs

- [21] I find that the applicant is liable to pay \$250.00 in costs to the respondent, due to her frivolous conduct.
- [22] Costs are a discretionary remedy that the Tribunal may impose when it is determined that a party has acted unreasonably, frivolously, vexatiously, or in bad faith, pursuant to Rule 19.1 of the *Rules* and s. 17.1 of the *SPPA*.
- [23] In this instance, the respondent requests \$2,500.00 in costs. It argues that costs are warranted for the following reasons:
- i. The applicant and her representative failed to attend the original case conference on October 12, 2022 and provided no reasons for this non-attendance.
  - ii. The applicant has, to date, failed to serve and file a CCS in contravention of Rule 20.4 of the *Rules*, which specifies the content of such documents and mandates that both parties file a CCS at least 10 days before any scheduled case conference with the Tribunal.
  - iii. The applicant has, to date, failed to serve and file her written hearing submissions and evidence. This is in contravention of the CCRO released on February 7, 2023 and the NoWH dated March 9, 2023, which together ordered the applicant to file submissions and evidence by July 19, 2023.
- [24] The respondent relies on *Ahmed v. Economical Mutual Insurance Company*, 2023 CanLII 50618 (ON LAT) (“*Ahmed*”). This Tribunal decision ordered an applicant to pay \$1,000.00 in costs due to unreasonable behaviour and acting in bad faith that was not considerate of the Tribunal’s processes. As in this matter, *Ahmed* involved an applicant who failed to file a CCS, did not meet submission deadlines for a written hearing, and did not contact the respondent or the Tribunal regarding any of the above issues.
- [25] I agree with the respondent, in part.
- [26] In accordance with the criteria set forth in Rule 19.5, I find that the applicant’s frivolous conduct interfered with the Tribunal’s ability to carry out a fair, efficient, and effective process, and that she prejudiced the respondent’s ability to respond to her claims. Although the threshold required for costs is high, the applicant meets it in this case given the blatant disregard displayed for Tribunal orders on multiple occasions from the case conference through submissions for the written hearing. All of this misconduct was compounded by the applicant’s silence

throughout this process when contacted by the Tribunal regarding missed deadlines and missing documents.

- [27] However, I find the \$2,500.00 in costs requested by the respondent to be excessive—and possibly in contravention of Rule 19.6, which establishes that the amount of costs shall not exceed \$1,000.00 for each full day of attendance at a motion, case conference, or hearing. Moreover, the applicant’s conduct does not rise to the level where a maximum costs award would be warranted. In my view, missing a case conference without explanation and failing to file submissions demonstrates frivolous conduct, not the bad faith that would be required for me to order a maximum costs award.
- [28] Further, I take into account the potential impact that a high award for costs would have on individuals accessing the Tribunal system. Lastly, I also note that I find *Ahmed* to involve similar circumstances, as noted by the respondent. However, I am not bound by other decisions of this Tribunal.
- [29] For the above reasons, I order that the applicant pay \$250.00 in costs to the respondent, pursuant to Rule 19 and s. 17.1 of the *SPPA*.

#### **ORDER**

- [30] As the applicant has failed to provide any submissions, it follows that she has not met her evidentiary burden to establish entitlement to the benefits in dispute.
- [31] The applicant is liable to pay \$250.00 in costs to the respondent.
- [32] The application is dismissed.

**Released: January 4, 2024**

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**Brett Todd  
Vice-Chair**