

BETWEEN:

RUTH ROBERTS

Applicant

and

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY

Insurer

DECISION

Issues:

The Applicant, Ruth Roberts, was injured in a motor vehicle accident on April 21, 1993. She applied for and received statutory accident benefits from the State Farm Mutual Automobile Insurance Company ("State Farm"), payable under Ontario Regulation 672 Prior to January 1, 1994, Ontario Regulation 672 was called the *No-Fault Benefits Schedule*. After that date it became the *Statutory Accident Benefits Schedule - Accidents Before January 1, 1994*. In this decision, the term "Schedule" will be used to refer to Regulation 672.. However, State Farm refused some of her claims for supplementary medical and rehabilitation benefits.

After an unsuccessful attempt at resolving the dispute through mediation, Ms. Roberts applied for arbitration under the Insurance Act, R.S.O. 1990, c.I.8, as amended. The issues in this hearing are:

1. Is Ms. Roberts entitled to supplementary medical and rehabilitation benefits under section 6 of the Schedule for the following:

a) Individual lessons provided by Grace Miyagawa, Mitzvah Technique Practitioner (128 lessons x \$50 per lesson = \$6,400), plus transportation to and from these lessons (128 lessons x 16 km per lesson = 2,048 km).

b) A stationary exercise bike (CombiCycle - \$1,608.85).

c) Athletic shoes.

2. Should Ms. Roberts be required to repay State Farm for any of the benefits that it provided?
3. Should State Farm be ordered to pay a special award under section 282(10) of the Insurance Act because it unreasonably withheld or delayed the payment of accident benefits?
4. Ms. Roberts also claims interest on any amounts owing, and her expenses incurred related to the arbitration.

Result:

1. Ms. Roberts is:
 - (a) not entitled to any additional benefits for Mitzvah Technique lessons, or for her travel costs;
 - (b) not entitled to benefits for an exercise bicycle; and,
 - (c) not entitled to benefits for athletic shoes.
2. Ms. Roberts is not required to repay State Farm for any of the benefits that it provided.
3. State Farm is not required to pay a special award.
4. Ms. Roberts is entitled to her expenses related to the arbitration.

Hearing:

The hearing was held in North York, Ontario, on November 14, 15 and 16, 1994, before me, David R. Draper, arbitrator.

Present at the Hearing:

Applicant: Ruth Roberts

Applicant's Gary Spector

Representative: Spector and Partners

Insurer's David Zarek

Representative: Barrister and Solicitor

Insurer's Valerie MacDonald

Officer: Claims Adjuster

Witnesses:

1. Ruth Roberts - Applicant
2. Malka Cohen-Nehemia - Co-founder of the Mitzvah Technique
3. Dr. Reuven Lexier - Orthopaedic surgeon
4. Valerie MacDonald - Claims adjuster

Exhibits:

The exhibits filed in this hearing and the other documents before the arbitrator are set out in Appendix A to this decision.

Reasons for Decision:

1. The factual background

Ms. Roberts was involved in a motor vehicle accident on April 21, 1993. She explained that she was looking for street parking close to her apartment. She pulled in behind a pick-up truck that appeared to be leaving a legal parking place. She turned her car off, waiting for the truck to leave. The truck then backed into the front end of her car.

The accident resulted in very little property damage. In fact, it is difficult to see any damage to Ms. Roberts' car in the photographs taken at State Farm's assessment centre. Ms. Roberts accepted \$391 in full settlement of her property claim, although she has not had her vehicle repaired.

At the time of the accident, Ms. Roberts was 35 years old and was self-employed as a registered massage therapist. She was also studying martial arts. After the accident, she continued working, but testified that, within a week or two, she developed headaches and pain in her neck and back.

On May 3, 1993, approximately two weeks after the accident, Ms. Roberts saw Dr. Anderson, a physical medicine specialist at the Whiplash & Headache Clinic. Ms. Roberts testified that she went to the Whiplash & Headache Clinic, rather than her family doctor, because it specializes in treating people injured in motor vehicle accidents.

Ms. Roberts complained to Dr. Anderson of headaches, neck ache and low back pain. On examination, he found that she also had a long-standing jaw problem that he felt had been aggravated by the accident, and problems with her hips and feet. Dr. Anderson's "impression" was that she had chronic tension cervicogenic generated headaches, left and right sacroiliac problems, poor lower limb mechanics, and temporomandibular joint disorder (TMJ).

Dr. Anderson recommended a treatment plan that initially involved micro-manipulation therapy by Dan Palma (also at the Whiplash & Headache Clinic), orthotics, treatment by a TMJ specialist, and follow-up care by himself. State Farm paid for all of these treatment modalities, and also for counselling.

In June 1993, Ms. Roberts started attending private Mitzvah Technique lessons with Ms. Grace Miyagawa. I find that Ms. Roberts initially suggested the Mitzvah Technique to Dr. Anderson, although he agreed that a trial period was warranted.

Ms. Miyagawa submitted invoices directly to State Farm. State Farm paid the first three invoices for 19 half-hour, Mitzvah Technique "lessons" (19 lessons x \$50/lesson = \$950).

State Farm continued to pay for a range of treatment, but in August 1993, advised Ms. Miyagawa that it would not accept any further invoices from her. Ms. Roberts was given formal notice, dated September 16, 1993, that State Farm would not pay for additional Mitzvah Technique lessons, or for running shoes, because they were "not considered reasonable or necessary." Further Assessment of Claim forms, dated January 20, 1994, January 31, 1994 and March 30, 1994, confirm State Farm's position.

Ms. Roberts continued with the Mitzvah Technique lessons. She testified that Ms. Miyagawa has not demanded payment, but expects to be paid for her services. Ms. Roberts is claiming benefits for 128 individual lessons at \$50 per lesson, plus mileage of 16 kilometres for each lesson:

August 1993 14 lessons

September 1993 16 lessons

October 1993 14 lessons
November 1993 12 lessons
December 1993 12 lessons
January 1994 10 lessons
February 1994 13 lessons
March 1994 13 lessons
April 1994 9 lessons
May 1994 9 lessons
June 1994 6 lessons

128 lessons x \$50/lesson = \$6,400

State Farm claims that it never received a specific request for funding for a stationary exercise bicycle. It was agreed, however, that this claim would be included in this arbitration (CombiCycle - \$1,608.85).

2. Analysis and Conclusions

Ms. Roberts is claiming benefits under section 6 of the Schedule. The relevant sections provide as follows:

6.-(1) The insurer will pay with respect to each insured person who sustains physical, psychological or mental injury as a result of an accident **all reasonable expenses resulting from the accident . . .** for,

(a) medical, psychological, surgical, dental, hospital, chiropractic, nursing and ambulance services and the services of physiotherapists;

(b) prostheses, dentures, prescription eyewear, hearing aids and other medical or dental devices;

(c) rehabilitation, life-skills training and occupational counselling and training;

(d) transportation for the person to and from treatment, counselling and training sessions, including transportation for an assistant;

...

(f) other goods and services, whether medical or non-medical in nature, which the insured person requires because of the accident.

...

(4) Subject to subsections (5) and (6), the insurer, before making a payment for an expense under subsection (1), may require the insured person to submit a statement signed by the insured person's qualified medical practitioner or psychological advisor stating that **the expense is necessary for the insured person's treatment or rehabilitation.**

...

(7) In case of a dispute concerning an expense described in clause (1)(a), (b), or (d), the insurer will pay the expense pending resolution of the dispute.

[emphasis added]

The issue is whether Ms. Roberts' claims for benefits under section 6 involve reasonable expenses that are necessary for her treatment or rehabilitation.

a) The Mitzvah Technique

The onus is on Ms. Roberts to establish that as a result of her accident, she required Mitzvah Technique lessons for her treatment or rehabilitation, and that the expenses are reasonable. For the following reasons, I conclude that she has not met that onus.

The Mitzvah Technique is not the typical treatment for someone with soft tissue injuries. This does not mean that funding is unavailable under the Schedule. Insured persons and their medical advisors should be allowed to work out an appropriate treatment plan, including alternative approaches. However, it is reasonable for an Insurer to require a clear explanation of the need for unusual therapies.

I heard evidence about the Mitzvah Technique from Ms. Cohen-Nehemia, one of the co-founders. She and her husband have been teachers of the Alexander Technique for many years. The Alexander Technique deals with faulty postural patterns. Mr. and Ms. Cohen-Nehemia established and continue to operate the Canadian Centre for the Alexander Technique.

During their work as teachers of the Alexander Technique, Mr. and Ms. Cohen-Nehemia developed the Mitzvah Technique "to help Alexander pupils work on themselves between lessons with the teacher". Mr. Cohen-Nehemia has described the Mitzvah Principle as "the natural defence and corrective mechanism of the neuromuscular and skeletal system inherent in the body, and the interplay which triggers that defence mechanism." The Mitzvah Technique and

the Mitzvah Exercise were developed to restore the proper operation of the Mitzvah Principle. According to Mr. Cohen-Nehemia:

The Mitzvah Exercise consists of a sequence of natural movements which magnifies the rippling motion of the spine to invoke the operation of the Mitzvah Principle and its beneficial effect on body performance, bringing immediate and continuing changes to the body. It is the one exercise for total fitness and the prerequisite for all forms of fitness conditioning. Indeed, all methods and techniques which deal with body movement, body use, and proper body performance are fully dependent on the mechanism of the Mitzvah Principle.

Ms. Cohen-Nehemia stressed that Mitzvah Technique practitioners are teachers, not therapists. The teachers are trained and certified by the Cohen-Nehemias through the Mitzvah Technique Therapy Centre Ltd. In addition to Mr. and Ms. Cohen-Nehemia, there are currently approximately 10 to 12 qualified Mitzvah Technique teachers.

Ms. Roberts' teacher, Ms. Miyagawa, described the Mitzvah Technique, as follows:

- The Mitzvah Technique is a method of re-educating and re-integrating postural and movement patterns, and the Mitzvah practitioner [sic] is a teacher.
- A session or class consists of a weight-bearing and a "table work" component. The weight-bearing work involves standing and walking, and also the use of the chair or stool and the Mitzvah exercise in relationship to these objects. The teacher encourages improved use through developing awareness verbally, ie. as in instructions, explanations or physically by example and touch. The "table work" component is a gentle non-invasive technique that encourages the body to let go of habitual tension patterns.
- The effect of a session is usually a greater awareness on the part of the student, as well as a release of tension and consequent stress on the body with the student moving with greater poise, balance, coordination and ease. Every body is different, however as with other disciplines and therapies, especially where soft tissue is involved, the process of change and re-integration takes time. Habitual patterns are not easily overcome. The process of re-integration also requires effort and reinforcement to become effective.

State Farm challenged the legitimacy of the Mitzvah Technique through the evidence of Dr. Reuven Lexier, an orthopaedic surgeon. It was suggested that the Mitzvah Technique would

never be a reasonable expense under section 6 of the Schedule.

Dr. Lexier approached the Mitzvah Technique with considerable scepticism. First, he believes in using established procedures. Second, as an orthodox Jew, he is offended by the use of the term "mitzvah" for a commercial enterprise. He explained that "mitzvah" means commandment, and feels that it is an improper appropriation of the term to use it in this manner.

Dr. Lexier strongly challenged the claims made for the Mitzvah Technique in Mr. Cohen-Nehemia's paper. He described the Mitzvah Technique as "a form of deception", and some of its claims as "ludicrous", "false", "unsubstantiated", and "non-scientific". He believes that, if anything, the Mitzvah Technique offers postural education that could be provided much more directly and inexpensively by a physiotherapist.

I found the explanations of the Mitzvah Technique provided to me to be vague and confusing, and some of the claims of its founders seem extravagant. Despite my questions, however, I do not believe that it is either necessary or appropriate for me to reach a general conclusion in this case about the value of the Mitzvah Technique. That would require more than the opinion of one doctor, however strongly held and persuasively presented.

In my view, the most startling aspect of this case was Ms. Roberts' inability to explain the Mitzvah Technique. After 147 private half-hour educational sessions (128 lessons claimed + 19 lessons paid for by State Farm = 147), I would have expected her to be able to explain, in considerable detail, the Mitzvah Technique, the exercises or techniques that she has learned, and their impact on her condition. This is particularly true given her background in massage, dance, and martial arts. Instead, she stated that she was unable to say what the Mitzvah Technique was, and deferred to Ms. Cohen-Nehemia.

The other aspect of this case that causes me concern is that Ms. Roberts' treatment seems out of line with her injuries. This was a minor accident in which she suffered soft tissue injuries. Ms. MacDonald testified that State Farm has paid over \$5,000 for various treatments at the Whiplash & Headache Clinic, between \$5,000 and \$6,000 for counselling, just under \$1,000 for TMJ treatment, approximately \$950 for 19 Mitzvah Technique sessions, and various prescriptions and miscellaneous items. Ms. Roberts is claiming an additional \$6,400 for Mitzvah Technique lessons.

I do not suggest that there is a direct relationship between the damage to the vehicle and the

therapeutic needs of the occupants. However, in an accident as minor as this one, it is at least surprising that someone would need such extensive, or unusual treatment or rehabilitation.

I find that the medical evidence falls short of establishing that Ms. Roberts required ongoing Mitzvah Technique lessons. Mr. Palma, Ms. Roberts' micro-manipulation therapist at the Whiplash & Headache Clinic, initially supported her involvement with the Mitzvah Technique. On October 29, 1993, however, he advised Ms. MacDonald of State Farm that he considered it "excessive".

Dr. Anderson's opinion is more difficult to interpret. My impression is that he went along with Ms. Roberts suggestion that she try the Mitzvah Technique. He seems to view the Mitzvah Technique as an active exercise program, which is not the way it was described by Ms. Cohen-Nehemia. There is no indication that Dr. Anderson had any contact with Ms. Miyagawa, the Mitzvah teacher. He reported, based on Ms. Roberts' reports to him, that the Mitzvah Technique was helping her, and recommended that she continue. In his most recent note, dated November 15, 1994, Dr. Anderson stated that he "agreed that a trial of therapy was warranted" [emphasis added].

An initial period of Mitzvah Technique lessons may have been justified. State Farm paid for 19 private half-hour lessons. I am not persuaded, however, that Ms. Roberts needed ongoing lessons, particularly in light of the other treatment that she was receiving.

Therefore, I conclude that Ms. Roberts is not entitled to any additional benefits for Mitzvah Technique lessons.

b) Stationary exercise bicycle

Ms. Roberts provided a note from the Whiplash & Headache Clinic, dated June 28, 1993, that she "requires . . . a cycle for home". In his report, dated August 3, 1993, Dr. Anderson states that he gave Ms. Roberts a prescription for "a special bicycle so she can do a total body workout in the meantime and try and regain back some of her strength."

It appears that Ms. Roberts needed to improve her fitness. It is not clear to me why she needed a \$1,600 stationary bicycle to do so. In my view, the reasons that she gave for being unable to do other types of exercise, and for needing special equipment to monitor her cardiovascular system during exercise, simply were not reasonable.

I conclude, therefore, that Ms. Roberts is not entitled to benefits for a stationary bicycle (CombiCycle).

c) Athletic shoes

Ms. Roberts' claim for athletic shoes is somewhat unclear. In its Assessment of Claim by Insurer, dated September 16, 1993, State Farm refused Ms. Roberts' claim for \$137.95 for running shoes. This refusal was repeated in the Assessment of Claim, dated January 20, 1994.

Ms. Roberts provided a note from the Whiplash & Headache Clinic, dated September 2, 1994, that is difficult to read, but appears to state: "Requires a biomechanically assisted [?] pair of running shoes and a special shoe for tae kwon do." She also provided a receipt, dated January 24, 1994, for \$155.24.

The difficulty with this claim is that it is unclear why Ms. Roberts needed "special shoes", or how this need related to the accident. In addition, there is nothing to suggest that the shoes that she purchased were anything but regular athletic shoes.

I conclude that the evidence is insufficient to establish that Ms. Roberts required athletic shoes as a result of her motor vehicle accident.

2. Special Award

Ms. Roberts submitted that State Farm should be ordered to pay a special award under section 282(10) of the Insurance Act because it unreasonably withheld or delayed the payment of benefits to her. Section 282(10) provides:

282 (10) If the arbitrator finds that an insurer has unreasonably withheld or delayed payments, the arbitrator, in addition to awarding the benefits and interest to which an insured person is entitled under the Statutory Accident Benefits Schedule, shall award a lump sum of up to 50 per cent of the amount to which the person was entitled at the time of the award together with interest on all amounts then owing to the insured (including unpaid interest) at the rate of 2 per cent per month, compounded monthly, from the time the benefits first became payable under the Schedule.

A special award is based on the amount owing at the time of the award. Because I have concluded that there are no benefits owing, I have no authority to order a special award in this case. Even if I had the authority to order a special award, however, I conclude that State Farm has not unreasonably withheld or delayed the payment of benefits to Ms. Roberts.

3. Repayment

It was suggested by State Farm that Ms. Roberts took the Mitzvah Technique lessons because she was interested in becoming a Mitzvah Technique instructor, and not for any therapeutic purpose. In my opinion, the evidence does not support this allegation.

Ms. Roberts believes strongly in alternative, preventive medicine. She is a registered massage therapist and has been actively involved in Tae Kwon-Do. In the past, she has studied dance. All of these activities reflect her views on caring for the body through holistic, non-invasive means.

I have some concern that Ms. Roberts was less than candid when she implied that Dr. Anderson suggested the Mitzvah Technique. However, I accept that she honestly felt that she needed ongoing Mitzvah Technique lessons. Therefore, I am not prepared to order that she repay any of the benefits provided for the Mitzvah Technique.

4. Expenses

An award for expenses may be made under section 282(11) of the Insurance Act, which provides as follows:

282 (11) The arbitrator may award to the insured person such expenses incurred in respect of an arbitration proceeding as may be prescribed in the regulations to the maximum set out in the regulations.

Arbitrators have consistently granted expenses unless the claim was fraudulent, manifestly frivolous or vexatious, or the applicant's conduct unduly prolonged the proceedings.

Despite some concerns about this claim, I conclude that I should exercise my discretion to award Ms. Roberts her expenses related to the arbitration, calculated according to Schedule 1 of the Dispute Resolution Practice Code and in Ontario Regulation 664, R.R.O. 1990.

The parties are encouraged to reach an agreement as to the amount of the expenses. However, if an agreement cannot be reached, I remain seized of this matter and either party may apply for an assessment of the expenses.

Order:

1. Ms. Roberts is:

(a) not entitled to any additional benefits for Mitzvah Technique lessons, or for her travel costs;

(b) not entitled to benefits for an exercise bicycle; and,

(c) not entitled to benefits for athletic shoes.

2. Ms. Roberts is not required to repay State Farm for any of the benefits that it provided.

3. State Farm is not required to pay a special award.

4. Ms. Roberts is entitled to her expenses related to the arbitration.

January 26, 1995

David R. Draper
Arbitrator

Date

APPENDIX A

Exhibit 1 - Material describing the Mitzvah Technique.

Exhibit 2 - Invoices from Grace Miyagawa, Mitzvah Technique Practitioner.

Exhibit 3 - The records of the Whiplash and Headache Clinic.

Exhibit 4 - Report of Dr. Reuven Lexier, orthopaedic surgeon, to State Farm, dated November 29, 1993.

Exhibit 5 - Letter, dated October 25, 1993, from State Farm to Dr. Lexier.

Exhibit 6 - Correspondence exchanged during the course of Ms. Roberts' claim (19 pages).

Exhibit 7 - The clinical notes and records of Dr. Trudy Chernin.

Exhibit 8 - Assessments of Claim, dated January 20, 1994, January 31, 1994, and March 30, 1994.

Exhibit 9 - Curriculum vitae of Grace Miyagawa.

Exhibit 10 - A letter, dated May 2, 1994, from Dr. Werner A. Fabian, general practitioner.

Exhibit 11 - An undated letter from Dr. Ravi Devgan.

Exhibit 12 - A letter, dated June 15, 1994, from Dr. Jan Kryspin.

Exhibit 13 - A letter, dated September 27, 1993, from Ms. Roberts to State Farm.

Exhibit 14 - A letter, dated October 27, 1993, from Ms. Roberts to State Farm.

Exhibit 15 - "Continuing Education, Winter 1995, George Brown, The City College".

Exhibit 16 - A letter, dated November 10, 1994, from Grace Miyagawa to Gary Spector, Spector and Partners.

Exhibit 17 - A letter, dated November 15, 1994, from Dan Palma, Muscular and Structural Therapist.

Exhibit 18 - A note, dated November 15, 1994, from Dr. P.W. Anderson.

Exhibit 19 - The curriculum vitae of Dr. Reuven R. Lexier.

Exhibit 20 - Material, including photographs, related to Ms. Roberts' claim for collision coverage.

Exhibit 21 - An Assessment of Claim, dated September 16, 1993.

In addition to the exhibits, the following documents were before the arbitrator from the Ontario Insurance Commission file:

Report of Mediator, dated March 4, 1994.

Application for Appointment of an Arbitrator, dated March 7, 1994.

Response by Insurer, dated April 18, 1994.

Letter, dated June 20, 1994, confirming the pre-hearing discussion held on June 16, 1994.

Letter, dated October 18, 1994, confirming the pre-hearing discussion held on October 14, 1994.