



Q.: WHAT IS AN INSURER'S DUTY TO INFORM?

Part X of the *Schedule* sets out the procedure for claiming benefits. In particular, section 32 requires that where a person has notified the insurer of the intention to apply for a benefit (within the prescribed time), the insurer is required to *promptly* provide the person with the appropriate application forms, a written explanation of the benefits available under the Regulation, information to assist the person in applying for benefits and information on any possible elections relating to income replacement, non earner and caregiver benefits. The person is then required to submit a signed application form within 30 days of the receipt of the application package from the insurer. If the insurer receives an incomplete application form, the insurer is obligated to notify the person within 10 business days from the date the package was received that the application is incomplete and shall inform the person of what is missing. The person then has 30 days from the date the additional application form is received from the insurer to submit the completed application form.

The FSCO appeal decision of *Primum v. Totic* (July 26, 2004) found that the application process, as set out in section 32 of the *Schedule*, is threefold:

1. A person seeking statutory benefits shall notify the insurer of his or her intention to apply for a benefit.
2. The insurer must provide the person with, among other things, information to assist the person in applying for benefits.
3. The applicant shall submit an application for the benefit within 30 days after receiving the application forms.

Director's Delegate Evans went on to conclude that simply because further information was necessary to determine a claim, it did not mean that the application process was incomplete. In addition, he held that perfection was not a requirement to a completed application. Finally, he noted that the three-step process places obligations on the insurer to help the insured person in complying with section 32.

The decision of *Syed v. Allstate* (FSCO A02-000461, February 14, 2003) indicates that the insurer's obligations do not arise "unless the insured person advises the insurer that he or she intends to claim benefits, which normally occurs when the person advises that he was injured in the accident." Later decisions discuss the insurer's obligation in more detail. For example, in *Allstate v. Estate of Basil McIntosh* (FSCO Appeal, P04-00019, January 24, 2005), Director's Delegate Makepeace concluded that it was the insurer's obligation to explain to the applicant that the failure to submit a timely application could prevent him from proceeding with his claim. Furthermore, the decision of

Michalski v. Wawanesa (FSCO A03-001363, November 2004) extends the insurer's obligation to include assisting a claimant to gain access to an enhanced level of benefits. Most recently, in *Dicerbo v. Citadel General Assurance Company* (FSCO A04-000594, January 25, 2005), the Arbitrator found that simply providing the insured with a copy of the *Schedule* does not satisfy the insurer's obligation to inform the claimant within the meaning of section 32 of the *Schedule*.

To discuss your case, please contact information@ztgh.com.

