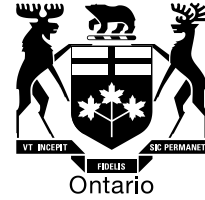


LICENCE APPEAL TRIBUNAL

Safety, Licensing Appeals and Standards
Tribunals Ontario



Date: October 14, 2016
Tribunal File Number: **16-000546/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:

M. S.

Applicant

and

Primum Insurance Company

Respondent

DECISION

Adjudicator: Chris Sewrattan

Appearances:

For the Applicant: Arichana Easwaralingam, representative for the Applicant
For the Insurance Company: Patrick Baker, counsel for the Insurance Company

HEARD by way of a written hearing, September 8, 2016

Overview

- [1] The Applicant, M. S., was injured in a motor vehicle accident on June 4, 2014. He applied for and received benefits under the *Statutory Accident Benefits Schedule – Effective after September 1, 2013* (the “*Schedule*”) including medical benefits.
- [2] Primmum Insurance Company (“Primmum”) paid for treatment in accordance with the *Minor Injury Guideline*, which is a statutory guideline for treatment for an injury that falls within the definition of “minor injury”. The term is a legal concept that looks at cost for treatment. It is not meant to suggest that an applicant like M. S. has suffered only minor harm as a result of his accident.
- [3] Primmum stopped agreeing to pay for treatment when M. S. approached the maximum allowed under the *Minor Injury Guideline*. M. S. disputes this stoppage.

Issues in Dispute:

- [4] Is M. S.’s injury outside the legal definition of “minor injury” in the *Minor Injury Guideline*?
- [5] Is M. S. is entitled to a medical benefit from the Progressive Rehab Clinic in the amount of \$1,747.20?
- [6] Is M. S. is entitled to interest from Primmum on any overdue payments?

Result:

- [7] M. S.’s appeal on these three issues is denied.

Discussion:

- [8] The denial of M. S.'s appeal is entirely based on his failure to put any evidence before the Licence Appeal Tribunal (the "Tribunal"). To explain the denial of the appeal, it is necessary to explain the background of the litigation process in this matter.

Timeline

- [9] A case conference was held on August 4, 2016 before Adjudicator Truong. Adjudicator Truong ordered that a written hearing be held on September 8, 2016
- [10] The parties were given deadlines for the submission of written argument and evidence. The parties complied with their respective deadlines; however, in three respects M. S.'s material was atypical. First, M. S.'s argument addressed issues different from those identified in Adjudicator Truong's Order. M. S. asked solely for \$70 to reimburse him for the administrative fee incurred to submit the \$1,747.20 treatment plan from Progressive Rehab Clinic. No mention was made of the *Minor Injury Guideline*, entitlement to the \$1,747.20 treatment plan from Progressive Rehab Clinic, or interest. Second, M. S.'s argument referenced two Exhibits but failed to provide those Exhibits to Primmum or the Tribunal. Third, Primmum raised the issue of the burden of proof in its written argument, and despite this, M. S. provided no reply argument or evidence. It is his right to not submit reply material. However, I had nothing before me on which to make a decision in his favour.
- [11] All of this occurred before the hearing date of September 8, 2016. Upon beginning the written hearing, the Tribunal was concerned about M. S.'s lack of an evidentiary record. It is best assumed that the absence of evidence was an

oversight, a failure by counsel to attach the Exhibits referenced in the written argument. Fairness in this exceptional circumstance requires, in my view, that M. S. be given an opportunity to convince me why these Exhibits should be submitted after the deadline. I am hesitant to dismiss an applicant's appeal solely on the basis of what could be an innocent omission by the applicant's counsel.

[12] On September 13, 2016, M. S. and Primmum were asked by the Tribunal for submissions on whether M. S. should be permitted to submit the two Exhibits referenced in his written argument. Deadlines were placed on these submissions. Primmum provided a compelling and timely submission. M. S. did not provide a submission.

The effect of a lack of evidence

[13] M. S. bears the onus of proof on each of the three issues before the Tribunal: *Scarlett v Belair Insurance*, 2015 ONSC 3635. Specifically, he must prove on a balance of probabilities:

1. That the treatment of his injury falls outside of the *Minor Injury Guideline*;
2. That the \$1,747.20 medical benefit for physiotherapy is reasonable and necessary; and,
3. His entitlement to interest on any overdue payments from Primmum.

[14] All of these issues require evidence. M. S. has put none before the Tribunal. The only possible conclusion is to dismiss his appeal.

Conclusion:

[15] M. S.'s appeal is dismissed.

Released: 14/10/2016

Chris Sewrattan,
Adjudicator