

**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: 17-005328/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:

**J.T.**

**Applicant**

and

**RBC Insurance Company**

**Respondent**

**DECISION**

**ADJUDICATOR:**

**Robert Watt**

**APPEARANCES:**

**Counsel for the Applicant:**

**Devika Maharaj**

**Counsel for the Respondent:**

**Nathalie v. Rosenthal**

**HEARD: Written Hearing:**

**February 26, 2018**

**OVERVIEW**

[1] The applicant was injured in an automobile accident on April 9, 2016 and sought

benefits pursuant to the Statutory Accident Benefits Schedule - Effective September 1, 2010 (the "Schedule").

- [2] The applicant submitted an application to the Licence Appeal Tribunal – Auto Accident Benefits Service (the "Tribunal").
- [3] The parties participated in settlement discussions at a case conference held on November 1, 2017, but were not able to resolve the issues in dispute.
- [4] With the consent of the parties, a hearing in writing was scheduled for February 26, 2018.

### **ISSUES IN DISPUTE:**

- [5] Is the applicant entitled to receive non-earner benefits in the amount of \$185.00 per week from October 9, 2016, and onwards?
- [6] Is the applicant entitled to interest on any overdue payment of benefits?
- [7] Is the respondent entitled to costs of the written hearing?

### **RESULT**

- [8] I find that the applicant is not entitled to receive non-earner benefits in the amount of \$185.00 per week, from October 9, 2016, and onwards.
- [9] I find that the applicant is not entitled to interest as there are no overdue payments owing by the respondent.
- [10] I find that there are no costs ordered for the written hearing.

### **BACKGROUND**

- [11] The applicant was 72 years old at the time of the accident when his car was struck on the driver's side by another party. The applicant did not have to go to the hospital, but went to his family doctor two days later. The applicant complained of decreased range of motion, neck pain, and pain in the lower back area, which radiated down his left leg. He had been retired at the time of the accident.

- [12] The applicant had previously been diagnosed with longstanding depression over the past 20 years<sup>1</sup>. He had also fallen a week before the accident<sup>2</sup>.
- [13] The applicant attended on April 25, 2016 at the Mackenzie Medical Rehabilitation Centre. Inc. and reported that he had returned to activities of daily living<sup>3</sup>.
- [14] On October 21, 2016, the applicant saw Dr. Julie Millard, Physical and Medicine Rehabilitation specialist for an assessment at the request of the respondent of an insurer's examination (IE) under Section 44 of the Schedule and indicated to the doctor that he "is able to perform his personal care independently with the exception of bathing." <sup>4</sup>
- [15] The applicant saw Dr. C. West a neuropsychologist on a section 44 IE on November 3, 2016, and discussed the activities that he engaged in prior to and after the motor vehicle accident. The applicant indicated that pre- accident, he drove regularly, enjoyed watching soccer, attended church once a week, and participated in family activities with his wife. He also indicated that he, after the accident, continues to drive, be a big soccer fan, attends church as before and participates in all other activities in the same fashion as before, with no limitations or restrictions.<sup>5</sup>
- [16] Both Dr. Millard and Dr. West opined in their reports that the applicant does not suffer a complete inability to carry on a normal life. Dr. West also indicated that the applicant did not report that he suffered a complete inability to carry on a normal life. <sup>6</sup>
- [17] The applicant's family physician, Dr. Andrea Garcia in a letter dated August 8, 2017, indicated that the applicant "has severe inability to function and carry out his regular day to day activities. He is unable to carry social, at times self- care, recreational and housekeeping tasks." The doctor gave no details on what she based her conclusions.

## ANALYSIS

---

<sup>1</sup> Psychiatry Report by Dr. Michael Lang dated July 26, 2016

<sup>2</sup> Section 44 Psychiatry IE report of Dr. Julie Millard, Physical Medicine and Rehabilitation Specialist dated October 21, 2016

<sup>3</sup> Mackenzie Medical Rehabilitation Centre Inc. Patience Attendant Chart April 25, 2016

<sup>4</sup> Section 44 Psychiatry IE Report of Dr. Julie Millard dated October 21 2016

<sup>5</sup> Section 44 Psychology IE Report of Dr. C. West dated November 17, 2016 page 5

<sup>6</sup> Ibid page 10, Ibid 5 page 11

- [18] Section 12(1) of the *Schedule* requires non-earner benefits to be paid to an insured who sustains an impairment as a result of an accident, if the insured suffers a complete inability to carry on a normal life, as a result of and within 104 weeks after the accident.
- [19] The courts have held that an insured must sustain an impairment that continuously prevents him or her from engaging in substantially all of the activities in which they ordinarily engaged in before the accident.<sup>7</sup>
- [20] The applicant's position is that the respondent's refusal dated December 5, 2016 to provide non-earner benefits, is invalid as both Dr. West and Dr. Millard did not have the applicant's Disability Certificate (OCF-3) to review on their IE assessments, nor the medical records from the applicant's family doctor, Dr. Garcia, which, the respondent received on June 30, 2016, but did forward to the assessors.
- [21] The respondent's position is that a Disability Certificate (OFC-3) was not a necessary document that the assessors had to review, as it is not a diagnosis but a preliminary impression of the applicant's physical presentation, based on information provided by the applicant. The courts have supported this position in past decisions.<sup>8</sup>
- [22] There is no requirement under the *Schedule* to submit a Disability Certificate to the assessor. The lack of providing it does not reduce the weight of the other evidence submitted in the medical reports.
- [23] The respondent's position is that it passed all relevant information onto the assessors. Its position on Dr. Garcia's August 8, 2017, recent letter is that it reflects a "blanket statement of the applicant's inability to function and carry out his regular day to day activities", without any supporting details, as to what activities that the applicant can't carry out post- accident, that he was carrying on pre accident.
- [24] I agree with the respondent's position on this letter. Dr. Garcia's letter is the only medical evidence submitted by the applicant, on the issue of entitlement to a non-earner benefit. I find that Dr. Garcia's letter dated August 8, 2017, does not set out any detail to support her conclusion that the applicant has "an inability to function and carry out his regular day to day life activities". This report also fails to analyze pre-accident and post- accident activities, to show that the applicant meets the entitlement requirements, as set out in section 12(1) of the *Schedule*.

---

<sup>7</sup> Heath v Economical Mutual Insurance Company 2009 ONCA 391

<sup>8</sup> Applicant v Aviva Economical Mutual Insurance Company, 2009 ONCA 392 para 33

- [25] I prefer the medical reports of Dr. Millard and Dr. West whose reports provide greater details as to the applicant's pre and post- accident activities.
- [26] I also find that the applicant has, through the reports of Dr. Millard and Dr. West, clearly indicated, that he is able to continue all his pre- accident activities after the accident, and is therefore not suffering a continuous complete inability to carry on a normal life.
- [27] I find that there is no interest owing as there are no overdue payment of benefits.
- [28] I find that there has been no evidence put before me by either party in this proceeding, that either party has acted "unreasonably, frivolously, vexatiously, or in bad faith" as required by the Rules for costs to be awarded<sup>9</sup> . Therefore costs are not awarded to either party.

**Released:** April 6, 2018

  
\_\_\_\_\_  
**Robert Watt, Adjudicator**

---

<sup>9</sup> Licence Appeal Tribunal Act Common Rules of Practice and Procedure, October 2017 Rule 19