Citation: Wildman v. Economical Mutual Insurance Company, 2023 ONLAT 21-013400/AABS

Licence Appeal Tribunal File Number: 21-013400/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:

Carrie-Anne Wildman

Applicant

and

Economical Mutual Insurance Company

Respondent

DECISION

ADJUDICATOR: **Ludmilla Jarda**

APPEARANCES:

For the Applicant: Tina Radimisis, Counsel

For the Respondent: Nivedita Misra, Counsel
Jagpreet Sekhon, Counsel

HEARD: **By Written Submissions**

OVERVIEW

[1] Carrie-Anne Wildman (the "applicant") was involved in an automobile accident on April 14, 2018 and sought benefits pursuant to the *Statutory Accident Benefits Schedule – Effective September 1, 2010* (the "*Schedule*"). The applicant was denied benefits by Economical Mutual Insurance Company (the "respondent") and applied to the Licence Appeal Tribunal – Automobile Accident Benefits Service (the "Tribunal") for resolution of the dispute.

ISSUES

[2] The issues in dispute are:

1. Is the applicant entitled to attendant care benefits ("ACB") in the amount of $763.19 per month from October 28, 2019 to date and ongoing?

2. Is the applicant entitled to income replacement benefits ("IRB") in the amount of $400.00 per week from April 21, 2018 to date and ongoing?

3. Is the applicant entitled to $14,284.78 for bathroom renovations, proposed by Lisa McGowan in a treatment plan/OCF-18 ("plan") submitted on August 27, 2020, and denied on August 16, 2021?

4. Is the applicant entitled to $1,667.06 for occupational therapy treatment, proposed by Lisa McGowan in a plan submitted on February 16, 2022, and denied on March 8, 2022?

5. Is the applicant entitled to $3,344.79 for a therapy pool cover, proposed by Lisa McGowan in a plan submitted on May 10, 2022, and denied on June 8, 2022?

6. Is the applicant entitled to $861.44 for a tankless water heater, solar pump kit and propane tanks, proposed by Lisa McGowan in a plan submitted on June 26, 2022, and denied on July 11, 2022?

7. Is the applicant entitled to $969.76 for occupational therapy treatment, proposed by Lisa McGowan in a plan submitted on July 29, 2021, and denied on August 14, 2021?

8. Is the applicant entitled to $2,200.00 for a psychological assessment, proposed by Dr. Jon Mills in a plan submitted on March 18, 2019, and denied on April 1, 2019?

9. Is the applicant entitled to $1,214.74 for a snow blower, proposed by Lisa McGowan in a plan submitted on November 28, 2019, and denied on December 10, 2019?

10. Is the respondent liable to pay an award under s. 10 of Regulation 664 because it unreasonably withheld or delayed payments to the applicant?

11. Is the applicant entitled to interest on any overdue payment of benefits?

RESULT

[3] For the reasons that follow, I find that:

1. The applicant is not entitled to ACB.

2. The applicant is barred from proceeding with her claim for IRB.

3. The applicant is barred from proceeding with her claim for a psychological assessment in the amount of $2,200.00 proposed by Dr. Mills in a plan dated March 18, 2019.

4. The respondent approved the plan dated July 29, 2021 for occupational therapy in the amount of $969.76 proposed by Ms. McGowan, and there is no evidence of unpaid expenses incurred under this plan.

5. The applicant is not entitled to the balance of the disputed plans.

6. The applicant is not entitled to interest.

7. The respondent is not liable to pay an award.

ANALYSIS

Attendant Care Benefits (“ACB”)

[4] Section 19 of the *Schedule* states that an insurer shall pay for all reasonable and necessary expenses incurred by or on behalf of an insured person as a result of an accident for attendant care services provided by an aide or attendant.

[5] Section 42(1) of the *Schedule* provides that an application for ACB must be in the form of, and contain the information required to be provided in, the approved version of the document entitled Assessment of Attendant Care Needs (“Form-1”).

[6] Section 3(7)(e) of the *Schedule* provides that expenses are not incurred by an insured person unless: (i) they have received the goods or services to which the expense relates; (ii) they have paid the expense, have promised to pay the expense, or are otherwise legally obligated to pay the expense; and (iii) the person who provided the goods or services (a) did so in the course of the employment, occupation, or profession in which he or she would ordinarily have been engaged, but for the accident, or (b) sustained an economic loss as a result of providing the goods or services to the insured person.

[7] The applicant submits that she is highly restricted with regard to her housekeeping and homemaking chores and that the medical evidence supports her need for attendant care services. She relies on an occupational therapy assessment report dated October 1, 2019 completed by Lisa McGowan, occupational therapist, and a Form 1 dated September 12, 2019 completed by Ms. McGowan.

[8] In response, the respondent argues that the applicant failed to meet her onus to prove her entitlement to ACB, and that no evidence has been provided to indicate that ACB was incurred. The respondent relies on an insurer examination occupational therapy report dated August 6, 2021 completed by Rasul Kassam, occupational therapist.

The applicant is not entitled to ACB

[9] I find that the applicant has not established, on a balance of probabilities, that she is entitled to ACB in the amount of $763.19 per month from October 28, 2019 to date and ongoing.

ACB is not reasonable and necessary

[10] I am not persuaded by the applicant's evidence and submissions that she suffers from functional limitations which require the provision of the attendant care services identified in the Form 1, and as such, these services are not reasonable and necessary.

[11] The applicant's evidence supports that she did not suffer from functional limitation for nearly a year following the accident. Indeed, although the applicant consulted her treating nurse practitioner, Roseanne VanHoof, on several occasions following the accident with respect to a previous head injury, the applicant did not complain of any accident-related injuries or impairments until April 10, 2019. At that time, the applicant complained of having worsening tremors, headaches, and neck pain since the April 14, 2018 accident. Ms.

VanHoof diagnosed the applicant with post-concussion syndrome with an underlying brain injury. She also noted that the applicant needed assistance at home, but she did not provide particulars.

[12] Moreover, there is no objective evidence to support the applicant's alleged functional limitations. According to the Form 1, the applicant requires assistance with: dressing her lower body; shaving; shampooing and drying her hair; preparing, serving, and feeding meals; cleaning the tub, shower, sink, and toilet; changing her bedding, making her bed, and cleaning her bedroom; preparing daily wearing apparel; and transferring to and from the bathtub or shower. However, a review of Ms. McGowan's report indicates that these functional limitations are entirely based on the applicant's self-reporting. Indeed, there is no objective evidence to support these limitations, and Ms. McGowan did not conduct any functional testing of the applicant.

[13] Additionally, functional testing of the applicant, which was carried out by Mr. Kassam, supports the finding that the applicant does not suffer from functional limitations requiring the attendant care services outlined in the Form 1. When Mr. Kassam assessed the applicant in her home on June 22, 2021, she demonstrated sufficient abilities in her cervical, thoracic, and lumbar spine and upper and lower extremities to perform all daily activities. The applicant also demonstrated moderate strength in her upper and lower extremities. There was no objective evidence of the applicant's ability to transfer to and from the bathtub as she declined to perform the task. However, the applicant self-reported using the tub two to three times per week. She also reported being independent with dressing, preparing meals, and carrying out light housekeeping tasks.

[14] Accordingly, I find that the applicant has not met her evidentiary burden to demonstrate that the attendant care services described in the Form 1 are reasonable and necessary.

ACB has not been incurred

[15] I further find that the applicant has not demonstrated that she has incurred attendant care benefits as defined by s. 3(7)(e) of the *Schedule*.

[16] The applicant has presented no evidence in her hearing submissions supporting that she has incurred attendant care expenses. Although the applicant reportedly received assistance from her mother and her adult son, she has not particularized the attendant care services that she received. Also, she has not indicated whether she paid, promised to pay, or is otherwise legally obligated to pay for attendant care expenses. Further, there is no evidence that the

applicant's mother or son sustained an economic loss as a result of providing attendant care services to the applicant.

[17] Accordingly, I find that the applicant has not met her burden of proof to demonstrate that she incurred ACB.

Income Replacement Benefits ("IRB")

[18] Two sections of the *Schedule* define the process required to determine entitlement to IRB. To receive payment for pre-104-week IRB under s. 5(1), the applicant must be employed at the time of the accident and, as a result of and within 104 weeks after the accident, suffer a substantial inability to perform the essential tasks of that employment. She must identify essential tasks of her employment, which tasks she is unable to perform, and to what extent she is unable to perform them. To receive payment for post-104-week IRB under s. 6, the applicant must demonstrate on a balance of probabilities that she suffers from a complete inability to engage in any employment or self-employment for which she is reasonably suited by education, training, or experience.

[19] The applicant bears the burden of proving, on a balance of probabilities, that she meets these tests and criteria.

[20] Section 7(1) of the *Schedule* establishes that weekly IRB payments are calculated by using 70 per cent of the insured person's base amount less the total of all other income replacement assistance for the particular week the benefit is payable. Section 4(1) sets out that the base amount is the insured person's gross annual income divided by 52. Other income replacement assistance includes short term disability ("STD") benefits, long term disability ("LTD") benefits, and Canada Pension Plan Disability ("CPPD") benefits. In accordance with s. 7(3) of the *Schedule*, an insurer may also deduct 70 per cent of any gross employment income from the weekly IRB payable to an insured person received during the period in which he or she is eligible to receive an IRB.

[21] Section 56 of the Schedule provides that an application under s. 280 of the *Insurance Act*, R.S.O. 1990, c. I.8 to dispute a denial of a benefit shall be commenced within two years of the insurer's refusal to pay.

[22] The *Reopening Ontario (A Flexible Response to COVID-19) Act, 2020*, O. Reg 73/20 was enacted in response to the COVID-19 pandemic on March 20, 2020. This regulation suspended limitation periods retroactively from March 16, 2020. It remained in force for 183 days until it was repealed on September 14, 2020. As a

result, a limitation such as the two-year period specified in s. 56 of the *Schedule* can be extended by 183 days.

[23] Section 7 of the *Licence Appeal Tribunal Act, 1999*, S.O. 1999, c. 12, Sched. G ("*LAT Act*") also allows the Tribunal to extend a limitation period. In considering whether to exercise its discretion to extend the limitation period, the Tribunal may consider the following four factors to determine if the justice of the case requires the extension:

1. A bona fide intention to appeal within the limitation period;
2. The length of the delay;
3. Prejudice to the other party; and
4. Merits of the appeal.

[24] These four factors do not need to be strictly met. Rather, they are a guide to assist in determining the justice of the case. Whether to grant an extension of time will depend on the facts of each case, and the party seeking the extension bears the onus of satisfying the Tribunal that the extension should be granted.

[25] At the time of the accident, the applicant was 45 years old and was employed as a senior project officer with the Government of Canada. The applicant states that she took time off work for approximately ten months before returning to work on modified duties. She later applied for and was approved for various disability benefits, including STD benefits in October 2019, LTD benefits in January 2020, and CPPD benefits in May 2020. The applicant submits that she is entitled to IRB at the rate of $400.00 per week for the period of April 21, 2018 to date and ongoing.

[26] In response, the respondent submits that the applicant's entitlement to IRB was terminated on September 16, 2019 pursuant to s. 37(2)(g) of the *Schedule* after the applicant advised that she was not pursuing IRB because she continued to work on a full-time basis. The respondent further submits that the applicant failed to dispute the denial of entitlement to IRB within two years of the denial. Therefore, the applicant should be barred from proceeding with her claim for IRB pursuant to s. 56 of the *Schedule*.

[27] In her reply submissions, the applicant submits that the limitation issue should not be considered as it was not raised at the case conference. The applicant indicates that she has been prejudiced by having limited time to respond, and she submits that she has been denied a fair and justifiable opportunity to

adequately address this issue. The applicant further argues that the Tribunal should exercise its discretion under s. 7 of the *LAT Act* to extend the limitation with respect to her entitlement to IRB.

The applicant is barred from proceeding with her claim for IRB

[28] I find that the applicant is barred from proceeding with her claim for IRB in the amount of $400.00 per week for the period of April 21, 2018 to date and ongoing as the applicant failed to dispute the respondent's denial within the timeframe prescribed by s. 56 of the *Schedule* and the *Reopening Ontario (A Flexible Response to COVID-19) Act, 2020.*

[29] I do not find that the applicant has been prejudiced by the respondent raising an issue with the limitation period. The applicant has not directed me to any authority to support that a respondent cannot raise a limitation defence at a hearing. Further, in terms of procedural fairness, the applicant had the opportunity to respond to the issues raised by the respondent, and she exercised her participatory rights by delivering reply submissions. This is consistent with the duty of fairness.

[30] For the reasons that follow, I find that the applicant did not dispute her claim for IRB within the applicable limitation period, and I am not persuaded to extend the limitation period.

[31] I find that the applicant did not have a bona fide intention to appeal her entitlement to IRB within the limitation period. The applicant's entitlement to IRB was denied on September 16, 2019. Therefore, with the 183-day extension, she had until March 18, 2022 to dispute the respondent's denial. Although the applicant filed her application on November 2, 2021, at that time, the sole issue in dispute was ACB. The applicant did not notify the respondent of her intention to dispute her entitlement to IRB until October 13, 2022, and IRB was added as an issue in dispute at the case conference held on October 21, 2022.

[32] I find that the length of the delay in disputing the respondent's denial is excessive and unreasonable. While the applicant contends that the delay in question is relatively short and not extensive, I disagree. There is a 209-day delay between the expiry of the limitation period and the day the applicant first notified the respondent of her intention to dispute her entitlement to IRB. Further, although the applicant argues that she changed legal representatives after filing her application, there is no evidence to suggest that this change in representation contributed to the delay. Indeed, the applicant did not change her legal representation until August 3, 2022, and she filed a Declaration of

Representative on August 24, 2022. This change happened over four months after the limitation period had expired.

[33] I am not persuaded by the applicant's submissions that there is no evidence of prejudice to the respondent if the extension is granted. Prejudice is presumed when a prescribed time limit is missed. Further, there is a public interest in ensuring that the time limit is met and that applications are filed within the prescribed time limit. In this case, the prejudice that is relevant to consider is the prejudice that is caused, perpetuated, or exacerbated by the applicant's proposed delay. Here, the delay is nearly seven months, and the applicant has provided insufficient reasons to justify the length of the delay.

[34] I find that the applicant has not established that her appeal has merits. The respondent denied the applicant's entitlement to IRB pursuant to s. 37(2)(g) of the *Schedule* after the applicant advised that she was not pursuing IRB because she continued to work on a full-time basis. There is no evidence to support that the applicant took time off work for approximately 10 months following the accident and that she returned to work on modified duties. Further, the applicant did not identify the essential tasks of her employment, which tasks she was unable to perform, and to what extent she was unable to perform them.

[35] Although the applicant stopped working on September 20, 2019, there is no evidence that the applicant further pursued a claim for IRB within 104 weeks of the accident. Indeed, the applicant's evidence is that she did not pursue a claim for IRB until October 13, 2022, approximately four and a half years after the accident.

[36] Additionally, there is insufficient evidence before me to determine the weekly amount of IRB as it is unclear what amount, if any, of STD benefits, LTD benefits, CPPD benefits, and post-accident employment income, is deductible from the weekly amount of IRB. As noted above, other income replacement assistance and the gross amount of any post-accident employment income are deductible from the weekly amount of IRB pursuant to s. 4(1) and 7(3) of the *Schedule*. Also, relevant income information, including but not limited to income tax returns, paystubs, and payment summaries for STD benefits, LTD benefits, and CPPD benefits, has not been included in the evidentiary record.

[37] As such, I decline to exercise my discretion to allow the applicant an extension of time to appeal her entitlement to IRB. Accordingly, I find that the applicant is statute-barred from proceeding with her claim for IRB.

The Treatment Plans

[38] To receive payment for the disputed plans under s. 15 and 16 of the *Schedule*, the applicant bears the burden of demonstrating on a balance of probabilities that the benefits are reasonable and necessary as a result of the accident. To do so, the applicant should identify the goals of treatment, how the goals would be met to a reasonable degree and that the overall costs of achieving them are reasonable.

[39] The applicant submits that she sustained physical, psychological, and cognitive injuries as a result of the accident. She claims that the disputed plans are tailored to meet her rehabilitative goals. She submits that there is sufficient medical evidence to support that the disputed plans are reasonable and necessary. She relies on her medical records, and on Ms. McGowan's reports dated October 1, 2019 and June 19, 2023.

[40] The respondent submits that as a result of the accident, the applicant suffers from post-concussion syndrome, low back pain, and neck pain. The respondent takes the position that the disputed plans are excessive and denies that they are reasonable and necessary. It relies on a physiatry report dated July 29, 2021 completed by Dr. Deborah Rabinovitch as well as Mr. Kassam's report.

[41] The respondent further submits that the applicant failed to dispute the denial of entitlement to the psychological assessment within two years of the denial pursuant to s. 56 of the *Schedule* and that she should be barred from proceeding with this claim.

[42] The applicant's reply submissions are silent regarding whether to extend the limitation period for the denied psychological assessment.

[43] I agree with the respondent. For the reasons that follow, I find that the applicant is barred from proceeding with her claim for a psychological assessment pursuant to s. 56 of the *Schedule*. I further find that the applicant has failed to demonstrate that bathroom renovations, occupational therapy treatment, a therapy pool cover, a tankless water heater, a solar pump kit, propane tanks, and a snow blower are reasonable and necessary to address the applicant's accident-related injuries. Finally, the plan identified at paragraph 3(7) above for occupational therapy was approved by the respondent in September 2021.

The applicant is barred from proceeding with her claim for a psychological assessment in the amount of $2,200.00

[44] I find that the applicant is barred from proceeding with her claim for a psychological assessment in the amount of $2,200.00 proposed by Dr. Jon Mills, psychologist, in a plan dated March 18, 2019, as she failed to dispute the respondent's denial within the time prescribed by s. 56 of the *Schedule* and the *Reopening Ontario (A Flexible Response to COVID-19) Act, 2020*.

[45] The applicant did not specifically request that the Tribunal extend the time limit to appeal this medical benefit, nor did the applicant tender evidence or make submissions to that effect. As a result, I find that the applicant has not met her onus to establish reasonable grounds for an extension under s. 7 of the *LAT Act*.

[46] I further agree with the respondent that the applicant failed to dispute the respondent's denial for this medical benefit within the prescribed time limit. Since the applicant's entitlement was denied on April 1, 2019, with the 183-day extension, she had until October 1, 2021 to dispute the denial. Therefore, her claim was already barred when she filed her application on November 2, 2021 and when she added the medical benefit as an issue in dispute at the case conference held on October 21, 2022.

[47] Accordingly, I find that the applicant is statute-barred from proceeding with her claim for a psychological assessment.

$14,284.78 for bathroom renovations is not reasonable and necessary

[48] I find that the applicant has failed to demonstrate, on a balance of probabilities, that the plan dated August 27, 2020 for bathroom renovations in the amount of $14,284.78 is reasonable and necessary.

[49] The plan proposes to move the shower and install a bathtub in the bathroom located on the main floor of the applicant's home. Ms. McGowan indicated that the use of the bathtub will allow the applicant to soak her muscles daily in hot water to relieve pain. The plan also proposes to change the toilet in the main floor bathroom to a chair height toilet. Ms. McGowan indicated that both toilets are very low, and the applicant has difficulty transferring on and off the toilet.

[50] I find that there is insufficient medical evidence to support that the bathroom renovations are reasonable and necessary. According to the clinical notes and records of Ms. VanHoof and PhysioHouse, the applicant's accident-related injuries consist of post-concussion syndrome, sprain and strain to the lumbar

spine, left shoulder strain, and whiplash associated disorder (WAD II) with complaint of neck pain with musculoskeletal signs. While I agree with the applicant's submission that pain relief is a legitimate goal for treatment, I find that there is insufficient evidence to support the need for bathroom renovations when the applicant's physical accident-related injuries are predominantly minor.

[51] Moreover, I find Mr. Kassam's report persuasive as he conducted functional testing which demonstrated that the applicant had sufficient functional abilities to perform all daily tasks associated with daily activities. Meanwhile, Ms. McGowan's report dated October 1, 2019 is heavily based on the applicant's self report. Further, there is no objective evidence to support that the applicant has difficulty with transferring to and from the toilet.

[52] Accordingly, I find that the applicant has not proven that the plan is payable.

$1,667.06 for occupational therapy is not reasonable and necessary

[53] I find that the applicant has failed to demonstrate, on a balance of probabilities, that the plan dated February 16, 2022 in the amount of $1,667.06 is reasonable and necessary. I note that the plan proposes twelve in-home physical rehabilitation sessions with a massage therapist as opposed to occupational therapy treatment.

[54] The applicant has not directed me to evidence to support that in-home physical rehabilitation sessions are reasonable and necessary. While pain relief is a legitimate goal for treatment, the applicant's submissions do not identify why the cost and duration of this plan is reasonable approximately four years post-accident when the applicant's accident-related physical injuries were predominantly soft tissue injuries.

[55] As such, I find that the applicant has not proven that the plan is payable.

$3,344.79 for a therapy pool cover is not reasonable and necessary

[56] I find that the applicant has failed to demonstrate, on a balance of probabilities, that the plan dated May 10, 2022 in the amount of $3,344.79 for a therapy pool cover is reasonable and necessary.

[57] I find that there is insufficient evidence to support that the therapy pool cover is reasonable and necessary. In the plan, Ms. McGowan proposes the purchase of a therapy pool cover in order to keep the heat in the pool, to decrease cleaning needs, and to allow the applicant to use the pool for a longer period of time throughout the year. In her report dated June 19, 2023, Ms. McGowan further

indicated that the pool cover would allow the applicant to optimize the use of the pool for 3 seasons a year and to maximize her rehabilitation time with the pool. While longer use of the pool may provide the applicant with pain relief, the applicant does not identify why the cost of a therapy pool cover would be reasonable to treat her soft tissue injuries.

[58] As such, I find that the applicant has not proven that the plan is payable.

$861.44 for a tankless water heater, a solar pump kit, and propane tanks is not reasonable and necessary

[59] I find that the applicant has failed to demonstrate, on a balance of probabilities, that the plan dated June 26, 2022 in the amount of $861.44 for a tankless water heater, a solar pump kit, and six propane tanks are reasonable and necessary.

[60] I find that there is insufficient evidence to support that the pool accessories are reasonable and necessary. Like the therapy pool cover, Ms. McGowan indicated that these pool accessories will allow the applicant to use her pool for 3 seasons in a year; however, the applicant has not identified why the cost of these pool accessories are reasonable to treat her soft tissue injuries.

[61] As such, I find that the applicant has not proven that the plan is payable.

$1,241.74 for a snow blower is not reasonable and necessary

[62] I find that the applicant has failed to demonstrate, on a balance of probabilities, that the plan dated November 28, 2019 for a snow blower in the amount of $1,241.74 is reasonable and necessary.

[63] I am not persuaded by the applicant's evidence that the cost of a new snow blower is reasonable and necessary. In her report dated June 16, 2023, Ms. McGowan indicated that a snow blower will allow the applicant to maintain her property safely, with minimal impact to her injuries as it is self-propelling. However, the applicant, who already has a snow blower, does not explain why a second snow blower is reasonably required. While Ms. McGowan noted that the applicant's current snow blower is loud and heavy, the applicant fails to direct me to medical evidence or make submissions to support that her accident-related injuries prevent her from utilizing her current snow blower.

[64] As such, I find that the applicant has not proven that the plan is payable.

$969.76 for occupational therapy was approved by the respondent

[65] I find that the respondent approved the plan dated July 29, 2021 in the amount of $969.76 on September 25, 2021, and I note that the plan is for a naturopath assessment and six acupuncture sessions for pain management as opposed to occupational therapy treatment. Further, while the plan is payable, there is no evidence of unpaid expenses incurred under this plan. Therefore, no amount is owing under this plan.

Interest

[66] The applicant is not entitled to interest pursuant to s. 51 of the *Schedule* as there are no overdue benefits.

Award

[67] Pursuant to s. 10 of Regulation 664, the respondent may be liable to pay an award if the Tribunal finds that it unreasonably withheld or delayed the payment of a benefit. As I have concluded that the applicant is not entitled to ACB, IRB, or the disputed plans, it follows that no benefit were unreasonably withheld or delayed.

[68] As no benefits are payable, the respondent is not liable to pay an award.

ORDER

[69] For the reasons outlined above, I find that:

1. The applicant is not entitled to ACB.
2. The applicant is barred from proceeding with her claim for IRB.
3. The applicant is barred from proceeding with her claim for a psychological assessment in the amount of $2,200.00 proposed by Dr. Mills in a plan dated March 18, 2019.
4. The respondent approved the plan dated July 29, 2021 for occupational therapy in the amount of $969.76 proposed by Ms. McGowan, and there is no evidence of unpaid expenses incurred under this plan.
5. The applicant is not entitled to the balance of the disputed plans.
6. The applicant is not entitled to interest.

7. The respondent is not liable to pay an award.

Released: December 19, 2023

Ludmilla Jarda
Adjudicator