**Citation: Atkinson v. Economical Insurance Company, 2024 ONLAT 22-002008/AABS - R**

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**RECONSIDERATION DECISION**

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| **Before:** | **Clive Forbes** |
| **Licence Appeal Tribunal File Number:** | **22-002008/AABS** |
| **Case Name:** | **Patricia Atkinson vs. Economical Insurance Company** |

**Written Submissions by:**

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| **For the Applicant:** | Ashu Ismail, Counsel |
| **For the Respondent:** | Martin Forget, Counsel<br>Stephen Whibbs, Counsel |

## BACKGROUND

[1] This request for reconsideration was filed by the applicant. It arises out of a decision dated October 3, 2023 (“decision”), in which I found the applicant is not entitled to attendant care and housekeeping benefits, occupational therapy (“OT”) & case management services, physiotherapy, chiropractic, visual assessment & voice therapy treatment plans and medical cannabis, botox injections & prescription medication expenses. I also found the applicant is not entitled to any interest pursuant to s. 51 of the *Statutory Accident Benefits Schedule Effective September 1, 2010 (including amendments effective June 1, 2016) (“Schedule”)* or an award under s. 10 of Regulation 664*.*

[2] The applicant has requested a reconsideration pursuant to Rule 18.2(a) and (b). The respondent asks that the request for reconsideration be dismissed.

## RESULT

[3] The applicant's request for reconsideration is dismissed.

## ANALYSIS

[4] The grounds for a request for reconsideration are contained in Rule 18.2 of the *Licence Appeal Tribunal Rules, 2023* (“Rule”). The applicant’s request relies on the following criteria: 18.2(a) that I acted outside my jurisdiction or committed a material breach of procedural fairness; and 18.2(b) that I made an error of law or fact such that the Tribunal would likely have reached a different result had the error not been made.

[5] Reconsideration involves a high threshold. The requestor must show how or why the decision falls into one of the categories in Rule 18.2.

[6] The applicant submits that I:

i. Committed a material breach of procedural fairness.

ii. Erred in several areas of law.

iii. Erred in fact, in relation to some of the benefits claimed by the applicant.

***No material breach of procedural fairness or reasonable apprehension of bias.***

[7] I find that the applicant has not established grounds for reconsideration under Rule 18.2(a) with respect to my treatment of key issues and central arguments advanced for the following reasons. The applicant submits that I committed a

material breach of procedural fairness because I denied her the right to be heard and that there is institutional bias on the part of the Tribunal. She also argues that my decision represents a denial of her right to be heard because I failed to grapple with key issues and relies on the Supreme Court's decision in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 (CanLII), [2019] 4 SCR 653 at paras 127 and 128 to support her position.

[8] I respectfully do not agree with the applicant for the following reasons. In my decision from paragraphs 14 to 81, I provided a detailed analysis of the reasons why the applicant was not entitled to the benefits claimed. As stated in *Vavilov* at para 128, administrative decision makers are not expected to respond to every argument or line of possible analysis, or to make an explicit finding on each constituent element, however subordinate, leading to its final conclusion.

[9] Furthermore, I find that my decision fell well inside the requirements set out in *Vavilov* at para 125 with respect to the importance of making a reasonable decision. The fact that the applicant disagrees with the findings in my decision does not mean that I failed to grapple with key issues. Throughout my decision, I highlighted the evidence that I considered relevant to the issues in dispute and assigned weight accordingly. On this basis, I found that the applicant is not entitled to the benefits claimed.

[10] The test for a reasonable apprehension of bias is whether an informed person, viewing the matter realistically and practically and having thought the matter through, would think that it is more likely than not that the tribunal, whether consciously or unconsciously, would not decide fairly: *Committee for Justice and Liberty et al. v National Energy Board et al.*, 1976 CanLII 2 (SCC), [1978] 1 SCR 369 at 394. There is a strong presumption of adjudicative impartiality. The burden lies on the party alleging bias to establish that there are "serious" or "substantial" grounds for such a finding: *Wewaykum Indian Band v Canada*, 2003 SCC 45 at paras 59, 76.

[11] The applicant's argument with respect to institutional bias is that the Tribunal has appointment practices, systems and structures which deprive the Tribunal's adjudicators from the appearance of independence and/or impartiality and transparency.

[12] I find the applicant has not overcome the strong presumption against adjudicative impartiality. Her submissions do not identify "serious" or "substantial" grounds for a finding of bias. Rather, they consist of broad unfounded assertions. Furthermore, I agree with the respondent that the applicant has failed to show

how my professional background or the Tribunal's appointment process in any way impacted the hearing outcome.

[13] I find that an informed person, viewing the matter realistically and practically and having thought the matter through, would conclude that I decided the application fairly. The applicant has not established reasonable apprehension of bias or that I breached my duty of procedural fairness.

[14] I see no material breach of procedural fairness or reasonable apprehension of bias.

***No errors of law such that the Tribunal would likely reach a different result had the errors not been made.***

[15] I find that the applicant has not established grounds for reconsideration under Rule 18.2(b) with respect to alleged errors of law.

[16] The applicant submits that I made errors of law in finding that the economic loss of a service provider cannot include mileage when it does not say this in s.3(7)(e)(B) of the *Schedule*, nor is this statement supported by case law or the Tribunal's obligation to interpret the legislation. She argues that section 33 of the *Schedule* cannot be used to request medical documents and deny medication/drugs prescribed by a regulated health professional. She also argues that I made errors of law in failing to recognize illegal denials of prescribed medications utilizing the Minor Injury Guideline, s. 44 and s. 33 of the *Schedule*; in the acceptance of Dr. Mohamed Khalid's s.44 reports without permitting cross-examination despite the applicant's challenge to his reports; and in failing to consider the applicant's non-objective injuries in violation of her s. 15 *Charter Rights*.

[17] I disagree with the applicant. Firstly, at paragraphs 34 of my decision, I addressed the applicant's argument about economic loss of a service provider. I correctly stated that "in addition to the fact that the applicant has not established that she has a substantial inability to perform housekeeping and house maintenance services that she normally performed before the accident, a review of the OCF-6 dated January 07, 2022 revealed that a large portion of the $7,575.04 the applicant is claiming is for mileage for the applicant's mother to travel to and from her home, which is not payable under the *Schedule*". I made no error of law when I correctly stated that the applicant's mother was not a professional housekeeper, and neither was I directed to any corresponding loss of income for the applicant's mother, which would be required for the applicant to establish an entitlement to benefits pursuant to s. 3(7)(e) of the *Schedule*.

[18] Secondly, I agree with the respondent that the applicant is requesting that I reweigh the evidence, and the Tribunal has long recognized that a reconsideration is not an opportunity to simply reargue one's case or to present new arguments. Reconsideration is not a forum for reweighing evidence, unless grounds for reconsideration under Rule 18.2 have been established. From paragraphs 14 to 81 of my decision, I provided a detailed analysis of the evidence and my findings in coming to my conclusion. The fact that the applicant would have preferred that I reached a different conclusion renders the reasons neither insufficient nor unfair. Nor does it mean that I failed to consider her non-objective injuries in violation of her s.15 *Charter Rights*.

[19] Thirdly, at paragraph 71 of my decision I correctly stated that pursuant to s. 38(2)(c)(i) of the *Schedule*, an insurer is not liable to pay an expense unless the expense is "reasonable and necessary" as a result of the impairment sustained by the insured person for drugs prescribed by a regulated health professional. As such, if an insurer is not sure if an expense for drugs prescribed is reasonable and necessary, the insurer may request additional information pursuant to s. 33 of the *Schedule*. In addition, the insurer may deny the claim pursuant to s. 33(6) of the *Schedule*. Moreover, the *Schedule* does not state that if the requested additional information is "medical in nature" that it is an illegal request as argued by the applicant.

[20] Furthermore, from paragraphs 71 to 81, I found that in compliance with the *Schedule*, the respondent could request further information on the reasonableness and necessity of the prescription medications, medical cannabis and botox injections that were in dispute. I do not find an error of law in my analysis of the prescription medications, medical cannabis and botox injections expenses. In addition, I made no error of fact such that I would likely have reached a different result had the error not been made.

[21] Lastly, during the hearing I heard submissions from the parties on the inclusion of Dr. Khalid's s.44 reports as evidence. At paragraphs 10 to 13 of my decision, I found that Dr. Khalid's reports could be admitted as evidence even if he was not called as a witness by the respondent and the applicant was having difficulty getting Dr. Khalid, who was summoned by the applicant, to appear before the Tribunal and give testimony. I made no error of law in allowing Dr. Khalid's report to be admitted pursuant to s. 15(1) of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22.

[22] As a result, I do not see any error of law or fact such that I would likely have reached a different result had the error not been made.

***No errors of fact in the analysis of each of the benefits claimed by the applicant such that the Tribunal would likely reach a different result had the errors not been made.***

[23] I also find that the applicant has not established grounds for reconsideration under Rule 18.2(b) with respect to my analysis of the benefits claimed by the applicant for the following reasons. The applicant argues that I made several errors of fact in relation to some of the benefits claimed and that the Tribunal would likely have reached a different result had the errors not been made.

[24] I disagree with the applicant that any such errors exist. Furthermore, I find the applicant's submissions are largely an attempt to use the reconsideration process as an opportunity to reargue the merits of her case. As mentioned earlier, the Tribunal has long recognized that a reconsideration is not an opportunity to simply reargue one's case or to present new arguments. Reconsideration is not a forum for reweighing evidence, unless grounds for reconsideration under Rule 18.2 have been established.

[25] In my decision at paragraphs 14 to 81, I conducted a thorough analysis by considering and assessing all the testimony relevant to the issues in dispute and reviewing the medical and documentary evidence. When my decision is read in its entirety, it is clear that I considered all of the evidence in relation to each of the benefits claimed. I agree with the respondent that the alleged errors of fact amount to disputes that the applicant has with the way I weighed the evidence and came to my conclusions.

[26] From paragraphs 38 to 48 of my decision, I addressed the OT treatment plans in dispute and provided detail reasoning for my conclusions. Based on the reasons contained therein I made no error of fact in finding that the applicant was not entitled to OT services. Likewise, from paragraphs 49 to 53 of my decision I addressed the case management services in dispute. I made no error in fact in stating that based on the contemporaneous evidence a) all of her neurological examinations were normal, b) she made psychological progress and psychotherapy was providing her with relief and helping her manage, cope and reduce her psychological impairments, and c) with the appropriate medical treatment, the applicant's psychiatric and psychological condition improved, and she was encouraged to continue working part time during the COVID-19 pandemic. Therefore, I was not persuaded that the case management plans were reasonable and necessary.

[27] Also, at paragraph 58 of my decision, I correctly stated that Dr. Veall's CNRs from August 13, 2021, to August 16, 2022, reveals that most of the applicant's

complaints to Dr. Veall were about her psychological condition. During that same period of time, there were also a few notations of pain complaints that were mostly associated with headaches and migraine. In addition, these CNRs did not indicate any recommendation by Dr. Veall that the applicant would significantly benefit from further physiotherapy and or chiropractic services.

[28] From paragraphs 62 to 64 of my decision, I addressed the applicant's visual assessment plan, and I made no error in fact when I stated at paragraph 64 that for more than one year and three months after the subject accident, Dr. Veall's CNRs did not indicate any "accident-related visual impairments from the applicant nor make any referral to an optometrist or ophthalmologist". Furthermore, at paragraph 64 of my decision, the applicant's visual assessment was denied based on the findings therein of Dr. Randhawa, the s. 44 ophthalmologist, Dr. Scanlan, the ophthalmologist the applicant was referred to by her family physician and the CNRs of Dr. Jahangirvand, her treating neurologist.

[29] Moreover, the fact that I accepted and assigned more weight to the findings of Dr. Ngo and Dr. Belchetz, otolaryngologists, that the applicant's speech condition is not as a result of the subject accident is not an error. In addition, I made no error of fact in stating at paragraph 67 of my decision, that the applicant did not present any medical evidence "to support that her speech condition was due to a psychological injury that was a result of the accident". I assigned less weight to the conclusion of Dr. Van Reekum because of all of the constraints and limitations that he cited with his conclusion in his report dated May 23, 2023, among other things. In my decision, I analyzed and provided reasons as to why more weight was placed on certain evidence and less weight on others.

[30] Furthermore, it is well-established that the reasons of the Tribunal are not to be measured against a standard of perfection. As the Supreme Court of Canada stated in *Vavilov*, at paragraph 91, the fact that a tribunal's reasons do not include all the arguments, statutory provisions, jurisprudence or other details that a reviewing judge would have preferred does not on its own create a basis to set aside the decision. Assigning less or more weight or preferring certain evidence is not an error; it is an intrinsic function of the Tribunal. The reconsideration process involves a high threshold. It is not an invitation for the Tribunal to reweigh evidence, or an opportunity for a party to re-litigate its position where it disagrees with the decision, or the weight assigned to the evidence. As mentioned earlier, throughout my decision I highlighted the evidence that I considered more relevant to the issue in dispute and assigned weight

accordingly. On this basis, I found that the applicant was not entitled to the benefits claimed.

[31] I see no error of fact that would have affected the outcome of my decision had the error not been made.

[32] I find the applicant has not established grounds for reconsideration pursuant to Rule 18.2(a) and (b).

**CONCLUSION**

[33] For the reasons noted above, I dismiss the Applicant's request for reconsideration.

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Clive Forbes
Adjudicator
Tribunals Ontario – Licence Appeal Tribunal

**Released: January 18, 2024**