



Citation: Temple v. Economical Mutual Insurance Company, 2023 ONLAT 21-005510/AABS-PI

Licence Appeal Tribunal File Number: 21-005510/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:

Roxanne Temple

Applicant

and

Economical Mutual Insurance Company

Respondent

PRELIMINARY ISSUE HEARING DECISION AND ORDER

ADJUDICATOR: Tavlin Kaur

APPEARANCES:

For the Applicant: Roxanne Temple, Applicant
Satwant Merwar, Counsel

For the Respondent: Nivedita Misra, Counsel

**Heard by way of written
submissions**

OVERVIEW

[1] Roxanne Temple, the applicant, was involved in an automobile accident on September 12, 2018 and sought benefits pursuant to the Statutory Accident Benefits Schedule - *Effective September 1, 2010 (including amendments effective June 1, 2016)* (the “Schedule”). The applicant was denied benefits by the respondent, Economical Insurance Company, and applied to the Licence Appeal Tribunal - Automobile Accident Benefits Service (the “Tribunal”) for resolution of the dispute.

PRELIMINARY ISSUE IN DISPUTE

[2] I must decide whether the applicant is barred, pursuant to s. 55(1)3 of the *Schedule*, from proceeding with this application because the applicant failed to provide information to the respondent in accordance with s.46.2 and s.46.3 of the *Schedule*?

RESULT

[3] The applicant is barred from proceeding with this application.

ANALYSIS

[4] Under section 46.2(1) of the *Schedule*, an insurer may request any information from a provider that the insurer requires, acting reasonably, to determine its liability for the payment, including access to inspect and copy the originals of any treatment confirmation form, treatment and assessment plan, assessment of attendant care needs and other documents giving rise to the claim for payment.

[5] The same provision also allows the insurer to request the provider’s statutory declaration as to the circumstances that gave rise to the invoice, including particulars of the goods and services provided. In addition, s.46.2(2) mandates the provider to give the information requested by the insurer within 10 business days after receiving the request.

[6] Pursuant to section 46.3 (1), an insurer may request any of the following information from an insured person who submits an invoice to the insurer for payment for goods or services under this Regulation, or from an insured person on whose behalf such an invoice is submitted:

1. Confirmation in writing that the goods or services were provided to the insured person.

2. A statutory declaration as to the circumstances that gave rise to the invoice, including particulars as to when, where and by whom the goods or services were provided. O. Reg. 14/13, s. 6.

- [7] Section 46.3(2) requires that the insured person shall give the insurer the information requested under subsection (1) within 10 business days after receiving the request.
- [8] Another provision relevant to this matter is section 55(1) of the *Schedule*, which bars an insured person from applying to this Tribunal if, among other circumstances, the issue in dispute relates to the insurer's denial of liability to pay an amount under an invoice on the grounds that:
- i. the insurer requested information from a provider under subsection 46.2(1), and
 - ii. the insurer is unable, acting reasonably, to determine its liability for the amount payable under the invoice because the provider has not complied with the request in whole or in part.
- [9] The respondent made multiple requests for the particulars pertaining to the invoices for the attendant care as well as a statutory declaration from the applicant and the service provider. The respondent required this information in order to determine its liability for the amount payable under the invoices because the provider has not complied with the request in whole or in part.
- [10] The respondent submits that the applicant has willfully ignored more than five requests made by the respondent seeking particulars of invoices submitted pursuant to section 46.3. Moreover, the applicant agreed to provide the particulars when the parties attended the case conference and has failed to do so. It is the respondent's position that the applicant should be barred from proceeding with her application because she has ignored all of its request letters and provided no explanation for her failure to provide the particulars.
- [11] The applicant submits that she and the service provider, Kleinburg Assessment Inc., complied with the respondent's request by providing all reasonable information to assess the Personal Support Worker ("PSW") invoices submitted to the respondent for payment. The applicant is of the view that all of the information that was provided to the respondent addressed every question outlined in the Statutory Declaration rendering any request for further information a redundancy, and a blatant attempt by the respondent to forgo their liability for payment of attendant care benefits.

- [12] In order to determine whether or not the information requested by the respondent is reasonably required, and if so, whether it has been provided, I begin my analysis by looking at the information that has been provided by the provider and the applicant.
- [13] The invoices that were provided by the service provider do not provide a breakdown of the services or the amount of time that was spent. Nor is there information as to when these services were provided. Rather, the invoices indicate the amount that was charged and the month. I find that the invoices that were provided lack details of what services were provided to the applicant.
- [14] I have reviewed the statutory declaration form that was given to the applicant to complete. The statutory declaration requests a variety of information such as the specific details as to the services that were received, dates, description of services, the duration and information about who provided the services, information about forms, record keeping and how the applicant paid for the services. The applicant returned an incomplete statutory declaration. She did not provide any of the information that was requested by the respondent and nor did she provide an explanation as to why she did not fill out the statutory declaration.
- [15] I have reviewed the weekly logs from Kelz Respite Support Services from November 2019 to February 2020. The weekly logs do not provide any information that would assist in determining what services were provided and the duration. For example, the boxes for the services provided are not checked off in the weekly logs from November 2019 to December 2019. In the weekly logs from January 2020 to February 2020, the boxes for the services provided are checked off. However, it is unclear how much time was spent for each service and who provided the service.
- [16] Based on my review of the statutory declaration, the weekly logs and the invoices that were provided, it is difficult to ascertain whether or not the applicant has received the amount of care from the service provider in accordance with the Form 1. Therefore, it was reasonable for the respondent to request this information.
- [17] The applicant is relying on my decision in *Stewart v Travelers Canada*, 2023 CanLII 7297 (ON LAT) (“*Stewart*”). In paragraph 18 of my decision, I referred to the *Aviva Insurance Company of Canada v. McKeown*, 2017 ONCA 563 (CanLII) where the Court of Appeal found that the applicant must co-operate with the respondent so that the respondent has the information necessary to determine entitlement. This principle applies here as well. The respondent was quite clear

in its requests that it required additional information. The applicant should have provided it. In my view, unlike the facts in *Stewart*, the respondent did not have sufficient information.

- [18] The applicant directs the Tribunal to *17-001098/AABS v. Aviva Insurance Canada*, 2017 CanLII 63619 at paragraph 41 which addresses the Tribunal's discretion to permit an insured person to apply to Tribunal despite their failure to provide the requested information to their insurer. The adjudicator in that case exercised her discretion based on the facts before her. In the case before me, the applicant has not provided a reasonable explanation for not complying with the respondent's requests for information. Therefore, I decline to exercise my discretion. Moreover, I am not bound by the decision in 17-001098/AABS and decline to follow it.

ORDER

- [19] I order that the applicant is barred from proceeding with this application before the Tribunal. The application is dismissed.

Released: June 5, 2023



Tavlin Kaur
Adjudicator