



Woods v. Economical Insurance, 2023 ONLAT 22-014140/AABS-PI

Licence Appeal Tribunal File Number: 22-014140/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:

Jennifer Woods

Applicant

and

Economical Insurance

Respondent

PRELIMINARY ISSUE HEARING DECISION AND ORDER

VICE-CHAIR:

Tavlin Kaur

APPEARANCES:

For the Applicant:

Mark Grossman, Counsel

For the Respondent:

Ainsley Shannon, Counsel

**Heard by way of written
submissions:**

OVERVIEW

- [1] Jennifer Woods, the applicant, was involved in an automobile accident on November 24, 2021, 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 (“Economical”), and applied to the Licence Appeal Tribunal - Automobile Accident Benefits Service (the “Tribunal”) for resolution of the dispute.

PRELIMINARY ISSUE IN DISPUTE

- [2] Is the applicant barred from proceeding to a hearing as she failed to notify the respondent of the circumstances giving rise to a claim for benefits no later than the seventh day after the circumstances arose or as soon as practicable after that day, and because she failed to submit a completed OCF-1 within 30 days of receiving an application package from the respondent?

RESULT

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

ANALYSIS

Background

- [4] The applicant was involved in an accident on November 25, 2021. On January 14, 2022, she reported the accident to the respondent. The respondent provided the applicant with an Application for Accident Benefits (“OCF-1”) on January 17, 2022 and requested that it be returned within 30 days. The respondent received the application on March 7, 2022.

The Law

- [5] Pursuant to section 32(1) of the *Schedule*, a person who intends to apply for statutory accident benefits shall notify the insurer of their intention no later than the seventh day after the circumstances that give rise to the entitlement to the benefit, or as soon as practicable after that day.
- [6] Once an insurer receives notice of an applicant’s intention to apply for statutory accident benefits, the insurer must provide the applicant with the appropriate OCF-1 forms, a written explanation of the benefits available, information to assist the person in applying for benefits and information on the election relating to the specified benefits, as required by section 32(2). Pursuant to section 32(5) of the *Schedule*, the applicant must then submit a completed and signed application for benefits to the insurer within 30 days after receiving the forms.

[7] I note that section 34 of the *Schedule* states that “a person’s failure to comply with a time limit set out in this Part does not disentitle the person to a benefit if the person has a reasonable explanation.” The onus is on the applicant to establish a reasonable explanation for the delay. The interpretation of “reasonable explanation” is guided by *Horvath and Allstate Insurance Company of Canada*, FSCO A02-000482, June 9, 2003, and was more recently reiterated in *K.H. vs Northbridge*, [2019 CanLII 101613](#) (ON LAT) at paragraph 9. The guiding principles are summarized as follows:

1. An explanation must be determined to be credible or worthy of belief before its reasonableness can be assessed.
2. The onus is on the insured person to establish a “reasonable explanation.”
3. Ignorance of the law alone is not a “reasonable explanation.
4. The test for “reasonable explanation” is both a subjective and objective test that should take account of both personal characteristics and a “reasonable person” standard.
5. The lack of prejudice to the insurer does not make an explanation automatically reasonable.
6. An assessment of reasonableness includes a balancing of prejudice to the insurer, hardship to the claimant and whether it is equitable to relieve against the consequences of the failure to comply with the time limit.

[8] It is not disputed that the applicant did not notify the respondent within the timeframe set out in section 32(1) of the *Schedule*. I must now determine whether the applicant has a reasonable explanation for the delay.

[9] The applicant submits that she has a long-standing history of mental illness such as anxiety, procrastination, mania and dissociation. Her mental health conditions cause her to stop functioning in a meaningful manner. The applicant submits that “she ignored the issues.”

[10] The respondent submits that the applicant’s explanation is not worthy of belief. She has not provided any evidence showing an inability to notify them within the seven-day time limit for psychological reasons or otherwise. In fact, the evidence shows that the applicant was aware of the injuries that she suffered from the accident and that she required treatment, she was physically and mentally able to articulate the injuries and the accident to her family doctor and to her lawyer, she understood the accident benefits process so far as to understand, immediately after the accident, that the accident may affect her benefits from the other previous accident.

- [11] I do not find the applicant's explanation credible or worthy of belief. While the applicant alleges that she suffers from a variety of mental health issues, submissions are not evidence. She has not submitted any medical evidence about her psychological conditions and how they may have contributed to the delay. Nor is there any evidence that she actually suffers from mania, dissociation and procrastination. In her submissions, it mentioned that she sees Dr. Okonkwo and takes Zoloft. However, the applicant did not submit records from Dr. Okonkwo.
- [12] I note that the respondent's brief contains the clinical notes and records from Dr. Steven Chan. On December 7, 2021, the applicant reported that she has anxiety. However, Dr. Chan did not diagnose her with anxiety. In fact, Dr. Chan noted "no acute distress" and diagnosed the applicant with a soft tissue injury. No referrals were made for psychological treatment and there is no record of medication being prescribed. While I recognize that the applicant has reported to her doctor that she has anxiety, there is nothing that explains how her anxiety resulted in the delay in notifying the respondent.
- [13] On the contrary, it appears that the applicant was able to engage in a variety of activities such as seeking treatment and working odd jobs. There is also evidence that she was able to notify her lawyer and her doctor about the accident.
- [14] Without an explanation that is credible or worthy of belief there is no need to assess the reasonableness of the explanation. In other words, the first principle is a threshold that must be met in order to engage the other principles. It is incumbent upon the applicant to provide evidence that supports her position. In my view, she has not.
- [15] As I have determined that the applicant has not provided a reasonable explanation for the delay, I find that it is unnecessary to consider whether she failed to submit an OCF-1 to the insurer within 30 days after receiving the application forms.

CONCLUSION AND ORDER

- [16] The applicant failed to notify the respondent of her intention to apply for benefits no later than the seventh day after the circumstances arose that give rise to the entitlement to the benefit, or as soon as practicable after that day.

[17] The application is dismissed.

Released: October 24, 2023



Tavlin Kaur
Adjudicator