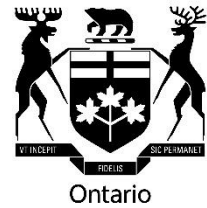


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RECONSIDERATION DECISION

Before: Maureen Helt, Vice-Chair

Date: June 11, 2019

File: 17-005691/AABS

Case Name: D.N.F. v. Aviva Insurance Canada

Written Submissions by:

For the Applicant: Jeton Memeti, Counsel

For the Respondent: Ramandeep Kaur Pandher, Counsel

OVERVIEW

- [1] This is a request for reconsideration made by the respondent (insurer) of a decision of the Licence Appeal Tribunal (Tribunal) dated August 10, 2018 (Decision). In the Decision the Tribunal found that the applicant was entitled to the cost of medical benefits and the cost of an examination for a psychological assessment.
- [2] By way of reconsideration, the respondent seeks an order that the Tribunal made an error in law in finding that \$200 in dispute with respect to the cost of an examination was reasonable and necessary.
- [3] Pursuant to her authority under s. 17(2) of the *Adjudicative Tribunals Accountability, Governance and Appointment Act, 2009*, S.O. 2009, c.33, Sched. 5, the Executive Chair delegated to me the responsibility to decide this reconsideration request.

RESULT

- [4] I find that the respondent has failed to establish that the Tribunal made a significant error of law such that it would likely have made a different decision had the error not been made.

ANALYSIS

- [5] The respondent's request for reconsideration is made pursuant to rule 18.2 of the *Licence Appeal Tribunal, Animal Care Review Board, and Fire Safety Commission Common Rules of Practice and Procedure, Version 1 (October 2, 2017)* (Rules).
- [6] The onus is on the party seeking reconsideration to establish the criteria set out in Rule 18.2 The respondent relies on Rule 18.2(b) in submitting that the Tribunal made a significant error of law or fact such that the Tribunal would likely have reached a different decision had the error not been made.
- [7] By way of background, the applicant was seen by a psychologist who proposed an assessment and mental health and addictions plan in the amount of \$2,200.
- [8] In the application before the Tribunal the applicant sought entitlement to the payment for a cost of an examination in the amount of \$200 noting that the respondent had partially approved \$2000 of the \$2,200 claimed.
- [9] The Tribunal found that the applicant was entitled to payment of the remaining \$200 related to the assessment.
- [10] In its request for reconsideration the respondent argues that the Tribunal made an error in law in basing its finding on whether the \$200 difference between the assessor's recommended amount was or was not "significant".

- [11] The respondent submits that the error is found at paragraph 29 of the Decision wherein the Tribunal states that the “respondent’s own IE assessor agreed that the assessment plan is necessary but offered a different opinion about the amount of hours that would be required to complete it, and the difference is, quite simply, insignificant.”
- [12] In its reconsideration submissions the respondent refers to section 25 of the Schedule which states that the applicant bears the onus of satisfying the Tribunal, on a balance of probabilities that the fees being charged by the assessor are reasonable. The respondent argues that there was no explanation provided by the applicant as to why the \$200 was being charged for documentation.
- [13] In its response the applicant sets out the test articulated by the Tribunal in *P.R. v. Aviva Canada Insurance*,¹ a reconsideration decision which states:
- A party seeking reconsideration, and indeed the Tribunal itself, has a high onus to meet to engage this remedy. Minor inconsequential procedural or substantive mistakes do not qualify for reconsideration. It is only warranted in cases where an adjudicator has either made a significant legal or evidentiary mistake preventing a just outcome, where false evidence has been admitted, or where genuinely new and undiscoverable evidence comes to light after a hearing.
- [14] The applicant states that the Tribunal’s finding was reasonable.
- [15] In reviewing the Decision I find that the Tribunal carefully reviewed the evidence before it in making its finding that the assessment plan as presented was reasonable and necessary. The Tribunal considered the plan as presented by the applicant and the respondent’s own IE assessors opinion about the plan. The dispute concerned the number of hours to complete the assessment and the Tribunal found the evidence of the applicant’s assessor to be persuasive.
- [16] I find that the Tribunal at first instance is in the best position to carefully weigh all of the evidence and it did so in this case with respect to the reasonableness of the cost of the psychological assessment.
- [17] The Tribunal did not make any error of law such that the Tribunal would likely have reached a different decision.
- [18] Based on the above reasons, I deny the request for reconsideration.

Maureen Helt
Vice-Chair
Tribunals Ontario – Safety, Licensing Appeals and Standards Division

Released: June 11, 2019

¹ *P.R. v. Aviva Insurance Canada*, 16-002782/AABS, at paragraph 18 (Reconsideration Decision April 24, 2018), Tab 1 of Applicant’s Responding Submissions to Reconsideration request.