



**Citation: Taylor v. Unifund Assurance Company, 2021 ONLAT 20-008149/AABS**

**Licence Appeal Tribunal File Number: 20-008149/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:

**Dawnette Taylor**

**Applicant**

and

**Unifund Assurance Company**

**Respondent**

**DECISION**

**ADJUDICATOR: Derek Grant**

**APPEARANCES:**

For the Applicant: Michael Ferrante, Paralegal

For the Respondent: Gina Nardella, Counsel

**HEARD: By way of written submissions**

## BACKGROUND

- [1] D.T. was injured in an automobile accident on September 8, 2017, and sought benefits from the respondent, Unifund, pursuant to the Statutory Accident Benefits Schedule - *Effective September 1, 2010*.<sup>1</sup> (the “Schedule”). Unifund initially denied the disputed benefits based on its determination that D.T.’s accident-related impairments were predominantly minor injuries and therefore subject to the treatment limitations set out in the Minor Injury Guideline (the “MIG”). D.T. disagreed and submitted an application to the Tribunal for resolution of the dispute.
- [2] In the Explanation of Benefits letter dated February 19, 2021, Unifund removed D.T. from the MIG, and as a result, the medical benefits in dispute have been approved. According to Unifund, the decision to remove D.T. from the MIG and approve the medical benefits was based on updated medical records that were provided on December 18, 2020. While there is no decision required to determine entitlement to benefits, there continues to be a disagreement between the parties as it pertains to the issues of an award, interest and costs.

## ISSUES

- [3] The issues in dispute are as follows:
- a. Is D.T. entitled to an award under O. Reg. 664 because Unifund unreasonably withheld or delayed the payment of benefits?
  - b. Is D.T. entitled to interest on any overdue payment of benefits?
  - c. Is Unifund entitled to costs under Rule 19.1 of the Tribunal *Common Rules of Practice and Procedure*?

## FINDINGS

- [4] D.T. is not entitled to an award.
- [5] D.T. is entitled to interest on the overdue payment of benefits.
- [6] Unifund is not entitled to costs.

## ANALYSIS

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<sup>1</sup> O. Reg. 34/10, as amended.

### ***Special Award***

- [7] Under s. 10 of O. Reg. 664, the Tribunal may issue an award of up to 50 per cent of the amount to which an applicant is entitled if the Tribunal finds that the respondent has unreasonably withheld or delayed payments as a result of its conduct.
- [8] D.T. submits that Unifund unreasonably withheld or delayed payments to her when it notified her of the option to provide additional medical documents in support of her position, and upon review, it may alter its position and approve previously denied benefits. D.T. argues that she provided Unifund with additional medical evidence, however, Unifund did not provide its assessors with the updated medical documents, contrary to what it stated it would do.
- [9] D.T.'s position is that the s. 44 assessor noted that there is no specific time frame in making a diagnosis of chronic pain syndrome. As such, D.T. submits that Unifund had been provided with the necessary relevant medical evidence to have altered its position regarding the MIG and the denied benefits. D.T. posits that as no adjuster log notes were provided, it is difficult to determine what course of action the adjuster took when medical evidence was provided on July 19, 2019.
- [10] In response, Unifund submits that its determination was made at the earliest opportunity once the updated medical records were provided to it. Specifically, it notes that D.T. was provided with updated medical records from her family physician on or about March 11, 2020. It submits that these updated records were not provided until December 18, 2020, the deadline set out in the Tribunal Order. It further submits that D.T. received these updated records prior to the filing of her Tribunal application, further bringing into question the reason for the delay in providing the records to Unifund.
- [11] Unifund submits that the updated records, particularly the ones from Releva Pain Clinic and the family physician, were key factors in Unifund's decision to remove D.T. from the MIG and approve the disputed treatment plans. It further submits that had these updated records been provided sooner, perhaps the determination could have been made earlier and the parties could have avoided the time and expense associated with this proceeding. Unifund's position is that any delay in approving benefits was due to D.T.'s actions, or lack thereof, as the evidence shows that she had the relevant records for at least nine months prior to the document exchange deadline.
- [12] According to the evidence, on July 19, 2019, D.T. provided Unifund with some of the medical documentation, that would have been relevant to the May 2018,

November 2018, and April 2019 treatment plans. However, there does not seem to be any medical records that cover the period when the July 3, 2019 treatment plan was submitted. Unifund notes that the relevant records, being the Releva Pain Clinic records from November 19, 2018 to January 24, 2020 and Dr. Perera's records from March 19, 2019 to November 27, 2020 were the key documents that Unifund relied on to alter its determination.

- [13] Although D.T. submits that Unifund was provided with sufficient relevant documents, I agree with Unifund that it was not until it received the updated records that a fulsome determination could have been made. Even if Unifund agreed to remove D.T. from the MIG based on the July 2019 correspondence, updated records covering the period of all the disputed treatment plans were not included in the July 2019 correspondence. It would have been difficult for Unifund to make a fully informed determination regarding all of the treatment plans without having the full medical history.
- [14] Considering the timeliness of the receipt of these updated records on December 18, 2020, I accept that it would also have been difficult for Unifund to provide its assessors with the updated records and receive an addendum report right before the Christmas holidays. Further, given that updated records were not received until December 2020, it is not unreasonable that obtaining an addendum report, may not be feasible until some time in 2021. Additionally, due to the provision of the updated records in December 2020, I find that the February 19, 2021 Explanation of Benefits does not represent an excessive delay in notifying D.T. that she was taken out of the MIG and that the disputed treatment plans had been approved.
- [15] On the evidence, I find that an award is not appropriate. There is no evidence to establish that Unifund failed to uphold its duty to adjust the file in good faith as new information becomes available. I am not persuaded that Unifund acted unreasonably in denying, and subsequently removing D.T., from the MIG and approving the disputed benefits, or that it neglected its duty to adjust the file in good faith. Once it had received the updated records, it reviewed the file, and altered its initial determination about D.T.'s entitlement to benefits in a reasonable amount of time. For these reasons, I decline to order an award.

***Interest***

- [16] D.T.'s submissions on the issue of interest were brief, and essentially (erroneously) stated that Unifund should pay interest as stipulated by s. 46 of the *Schedule*.

- [17] Unifund provided no response to the issue of interest. I note that the February 2019 Explanation of Benefits did not address the issue of interest.
- [18] Interest should have been paid on the overdue payment of benefits, and it was not. D.T. does not argue that Unifund intentionally withheld interest, only that interest is payable. I agree.
- [19] D.T. is entitled to interest on the overdue payment of all approved benefits in accordance with s. 51 of the *Schedule*.

### **Costs**

- [20] D.T. submits that Unifund should not be entitled to costs because there is no evidence that she has acted in any way which would result in an award of costs being granted.
- [21] Unifund did not address the issue of costs in response.
- [22] I agree with D.T. that there is no evidence that she acted unreasonably, frivolously, vexatiously, or in bad faith to justify an award for costs. Accordingly, I decline to grant Unifund a cost award.

### **CONCLUSION**

- [23] D.T. is not entitled to an award.
- [24] D.T. is entitled to interest on the outstanding payment of benefits pursuant to s. 51 of the *Schedule*.
- [25] Unifund is not entitled to costs.

**Released: November 22, 2021**



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**Derek Grant  
Adjudicator**