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## RECONSIDERATION DECISION

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**Before:** Ian Maedel, Adjudicator

**Date:** April 23, 2020

**File:** 18-002397/AABS

**Case Name:** Ummugulsum Yatar v. TD Insurance Meloche Monnex

**Written Submissions by:**

For the Applicant: Jillian Van Allen, Counsel

For the Respondent: Derek Greenside, Counsel

## OVERVIEW

- [1] On April 29, 2019, the Licence Appeal Tribunal (the "Tribunal") issued a preliminary issue decision in this matter pursuant to the Statutory Accident Benefits Schedule – Effective November 1, 1996 (the "Schedule"). The applicant has filed a request for reconsideration.
- [2] Pursuant to the written submissions and in-person cross-examination conducted, I found the following:
- i. The application for income replacement benefits ("IRB") is statute-barred by operation of the two-year limitation period. The limitation period for this benefit lapsed in April 2014. The application for IRB is dismissed.
  - ii. The application for housekeeping and home maintenance benefits is statute-barred by operation of the two-year limitation period. The limitation period for this benefit lapsed in April 2014. The application for this benefit is dismissed.
  - iii. Any claim of interest for housekeeping and home maintenance benefits or income replacement benefits is dismissed.
  - iv. A case conference shall be reconvened within thirty days to address the outstanding issue of an award pursuant to s. 10 of Regulation 664 of the *Insurance Act* which remains an issue in dispute.
- [3] The applicant has requested a reconsideration of the decision pursuant to the criteria set out in s. 18.2(b) of the Common Rules of Practice & Procedure. Specifically, the applicant claims that the Tribunal made errors of law or fact such that the Tribunal would likely have reached a different result had the errors not been made.
- [4] The applicant submits I made the following errors:
- a) failing to decide the issue in dispute between the parties and instead making a finding that was irrelevant to that issue;
  - b) finding that her IRB and housekeeping benefit were denied on January 7, 2011 rather than suspended pending insurer's medical examinations;
  - c) finding that the February 16, 2011 correspondence to the applicant was a denial of her housekeeping and IRB, when it was only a denial of her housekeeping benefit;
  - d) having made the finding that the Applicant's Right to Dispute Form was not attached to the February 16, 2011, erred in failing to make any finding with

respect to whether or not the failure to include the Applicant's Right to Dispute Form invalidated TD Insurance's denial;

- e) failing to find that the Applicant's Right to Dispute Form was not attached to the September 19, 2011 denial of IRB; and
- f) failing to make any finding with respect to whether or not the failure to include the Applicant's Right to Dispute Form invalidated the insurer's denial.

## **DECISION AND REASONS**

- [5] The applicant's request for reconsideration is dismissed.
- [6] In considering this request, I have undertaken a thorough review of my notes from the hearing, the evidence including the affidavits filed, the hearing submissions, the transcript of the proceeding, and the submissions provided by the parties pursuant to the request for reconsideration.
- [7] There was an error at paragraph 12 of the preliminary decision where it was noted that IRB was denied in the correspondence of February 16, 2011. Both parties agreed that correspondence was sent to the applicant on September 28, 2011 which indicated the IRB was terminated.
- [8] This case turns on three sets of correspondence provided by the insurer to the applicant:
  - i. January 7, 2011 – Correspondence indicating the applicant is not entitled to IRB and housekeeping and home maintenance as a result of the failure or refusal to submit a completed Disability Certificate (OCF-3) within the timeframe specified. Payment of these benefits were stopped as of January 4, 2011. The applicant was directed to provide a completed Disability Certificate and was provided a Notice of Examination (OCF-25);
  - ii. February 16, 2011 – Correspondence determining the applicant is not entitled to housekeeping and home maintenance based on the attached s. 44 insurer's examination reports of Dr. Zabieliauskas, Psychiatrist, and Dr. Mandel, Psychologist. The housekeeping benefit was stopped on February 16, 2011;
  - iii. September 19, 2011 – Correspondence determining the applicant is not entitled to an IRB based on the attached s. 44 insurer's examination report completed by Dr. Mandel, Psychologist. The IRB was stopped on September 28, 2011.

- [9] The onus remains on the respondent to establish a proper denial was provided for the housekeeping and home maintenance and the IRB in dispute. Strict compliance with s. 51 of the applicable Schedule<sup>1</sup> and *Smith v. Co-operators General Insurance Co.*<sup>2</sup> requires that a person must be provided with written notice of his or her right to dispute in straightforward and clear language, directed towards an unsophisticated person.
- [10] The thrust of the submissions provided by the parties centred around the correspondence dated February 16, 2011 and September 19, 2011. Upon review of the correspondence appended to the affidavit evidence, I am not satisfied the Dispute Resolution Form was attached to either of these letters from the insurer. Thus, I cannot conclude these were valid denials pursuant to a strict interpretation of s. 51 and *Smith v. Co-operators*.
- [11] I must then turn once again to the correspondence dated January 7, 2011. I have already held the Dispute Resolution Form was attached to this correspondence. This correspondence indicated IRB and housekeeping and home maintenance were stopped as of January 4, 2011.
- [12] Upon receipt of this initial correspondence, the applicant had essentially two options: (i) provide a new Disability Certificate (OCF-3) and attend the s. 44 examination as per the notice provided pursuant to s. 25; or (ii) commence the dispute resolution process, as per the attached Dispute Resolution Form.
- [13] The Dispute Resolution Form clearly sets out three steps in the dispute process and warns in clear straightforward language of the two-year limitation period. Thus, I reaffirm my previous conclusion that this correspondence represented a denial of the IRB and housekeeping and home maintenance benefit.
- [14] Pursuant to the consumer protection nature of the Schedule, both s. 51 and *Smith v. Co-operators* aim to ensure the applicant is aware of the dispute resolution process. There is no 'imputed'<sup>3</sup> knowledge here. The denial is in clear language and the dispute resolution process is plainly evident from the attached Form.
- [15] This implicit acceptance of the denials effective January 4, 2011 is evident in the affidavits adduced by the applicant. Both the applicant, and her former counsel, specifically refer to the January 7, 2011 correspondence as a denial of these benefits.<sup>4</sup>

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<sup>1</sup> O. Reg. 403/96: Statutory Accident Benefits Schedule – Accidents on or After November 1, 1996 at s. 51

<sup>2</sup> *Smith v. Co-operators General Insurance Co.*, 2002 SCC 30 at para. 14.

<sup>3</sup> Applicant's Request for Reconsideration at para. 33.

<sup>4</sup> Affidavit of Ummuguslum Yatar at para. 5, Affidavit of Samiya Ahmad at para. 5.

- [16] When I review all of the evidence before me, I must affirm my previous finding and confirm the January 7, 2011 correspondence constituted a valid denial of the IRB and the housekeeping and home maintenance benefits and included the Dispute Resolution Form. The applicant received this denial and was made aware of the dispute resolution process as per the attached form.
- [17] The limitation period for the income replacement benefit and housekeeping and home maintenance would have otherwise lapsed in 2013, pursuant to s. 51 of the Schedule. As per my previous decision, this limitation period was extended into April 2014 following the mediation before the Financial Services Commission of Ontario.
- [18] When the applicant filed the application before this Tribunal on March 16, 2018, the statutory two-year limitation period had clearly lapsed.

### CONCLUSION

- [19] The applicant's request for reconsideration is dismissed.
- [20] The parties shall attend a case conference in the next sixty days to address the remaining issue of an award pursuant to s. 10 of Ontario Regulation 664, if necessary.



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Ian Maedel  
Adjudicator  
Tribunals Ontario - Safety, Licensing Appeals and Standards Division

Released: April 23, 2020