



**Licence Appeal Tribunal File Number: 21-012298/AABS**

In the matter of an Application for Dispute Resolution pursuant to subsection 280(2) of the *Insurance Act*, RSO 1990, c I.8., in relation to statutory accident benefits.

Between:

**Michelle Chandler**

**Applicant**

and

**Coachman Insurance Company**

**Respondent**

**MOTION ORDER**

**ADJUDICATOR:**

**Craig Mazerolle**

**APPEARANCES:**

For the Applicant:

**Michelle Velvet, Counsel**

For the Respondent:

**Jennifer Cosentino, Counsel**

**Date of Order:**

**June 15, 2023**

## **BACKGROUND**

- [1] The applicant was injured in an automobile accident on **June 29, 2019**, and sought benefits pursuant to the *Statutory Accident Benefits Schedule - Effective September 1, 2010*.
- [2] A written hearing is set for June 23, 2023. The issues in dispute include, in part, a non-earner benefit and an award.
- [3] The applicant's initial written submissions were due on May 24, 2023, with the respondent's submissions due on June 9, 2023. The applicant's reply is due on June 16, 2023. Only the respondent's submissions have been filed with the Tribunal.
- [4] The page limits are: 10 pages for the applicant's initial submissions, 10 pages for the respondent's submissions, and 5 pages for the applicant's reply.

## **NOTICE OF MOTION**

- [5] The applicant filed a Notice of Motion (submitted June 6, 2023) seeking the following relief:
  - a. An order extending the hearing dates; and,
  - b. An order converting the written hearing to a videoconference hearing; or,
  - c. In the alternative, an order increasing the applicant's initial submissions and reply page limits to 25 pages and 12 pages, respectively; or,
  - d. In the further alternative, an order extending the deadline for the applicant's reply to June 23, 2023 (with a page limit increase to 20 pages); or,
  - e. In the further alternative, an order scheduling a case conference resumption to allow the parties to set up oral testimony.
- [6] The respondent consented to extending the submission deadlines. It opposed the hearing format conversion and page limit increases.
- [7] A motion hearing was held via teleconference on June 14, 2023. I took my decision under reserve.

## **PARTIES' POSITIONS**

- [8] The applicant supported the hearing format conversion by claiming that the case conference report and order was silent on her request to have an in-person hearing. That is, while her case conference summary requested the use of oral testimony (a common practice for disputes with specified benefits), there were no

reasons in the resulting order to indicate why a written hearing was chosen. The applicant also compared the prejudice she would face from proceeding in writing (namely, her inability to testify about the non-earner benefit) to the lack of prejudice that the respondent would face from granting this relief. In the alternative, the applicant claimed it is impossible to address all of the issues in writing without more pages.

- [9] Turning to the requested deadline extension, the applicant claimed that her legal representative was first assigned to this case in April 2023, after a series of other representatives from the same firm were taken off the file. Her current legal representative did not become aware of the initial submission deadline until in and around May 25, 2023, and she took prompt steps to address this clerical error once it was discovered. Additionally, the legal representative was a party to her own legal proceedings in and around this same time. Finally, the applicant highlighted her exchange of productions with the respondent following the case conference as evidence of her intention to participate in the proceeding.
- [10] The respondent opposed the requested hearing format conversion and page limit increases as untimely. Overall, the respondent argued that it is too late in the proceeding to significantly alter the procedural decisions made at the case conference. In particular, converting the written hearing to a videoconference hearing would likely delay the hearing by several months. The accident took place in June 2019, so the parties need resolution on this dispute. The respondent also argued that the applicant's stated preference for an in-person hearing in her summary is irrelevant. Finally, the respondent claimed that there is no reason why a non-earner benefit cannot be addressed in writing.

## **ANALYSIS**

- [11] In light of the Tribunal's mandate for merits-based adjudication (as well as the respondent's consent for these extensions), I will reschedule the written hearing to a later date. I will not grant the other forms of relief.
- [12] To start, though I find the applicant should have taken more timely steps to address the missed deadline, I accept that an extension is still merited in this case. Specifically, I find the inefficiency caused by delaying the written hearing is outweighed by the Tribunal's interest in adjudicating this application on its merits. The benefits at issue are significant to both parties, and so deciding the issues with the assistance of comprehensive arguments and evidence from both sides is the preferred way forward. I would also note that the applicant's exchange of documents following the case conference lends credence to her claim that the missed deadline was a clerical error, since this exchange evidences an intention to participate in the proceeding.

- [13] I do note that the respondent has already provided its submissions for the written hearing. However, considering its consent, I am satisfied that this relief is still warranted. The respondent will have an opportunity to either resubmit these submissions or to file fresh submissions.
- [14] Turning to the other requests, I will not convert the written hearing to a videoconference hearing. Though the applicant may contend that the hearing format was not discussed at the case conference, I do not accept this submission. Paragraph 1 of this order states that all orders, unless otherwise indicated, were made at on consent. This statement suggests that, despite the applicant's initial preference for oral testimony, the parties eventually agreed to a written hearing.
- [15] Converting the format would also likely lead to a longer delay than the submission extensions I am ordering. As opposed to only pushing back the submission deadlines (and the written hearing itself), a videoconference hearing would require new deadlines for witness lists and briefs. Adding these new requirements at such a late stage in the proceeding would likely to a longer delay in the adjudication of this dispute.
- [16] Finally, I am not satisfied that oral testimony is required. Despite the applicant's contention that clinical notes and records will not be an adequate basis for establishing entitlement to a non-earner benefit, I do not agree. A number of the applicant's medical records have been exchanged since the case conference, and these documents will provide a sufficient foundation to support the parties' arguments about functional capacity, activities of daily living, etc.
- [17] The applicant cited several cases from the Tribunal in support of her requested conversion. Not only am I not bound by prior decisions from the Tribunal, but adjudicators maintain broad discretion to order the hearing format they find to be the most appropriate in the particular circumstances before them. Overall, and in line with s. 5.1(2) of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, the applicant has not satisfied me that "there is good reason" for not holding a written hearing.
- [18] I do not then find that the parties require more pages to argue the issues in dispute. Not only were these page limits set at the case conference with the parties' consent (since, again, there was no indication that either side opposed the limits), but I am not satisfied that the issues require more pages. Rather, I find the limit of ten pages for the applicant's initial submissions is sufficient for her to address the law, facts, and arguments for the issues in dispute.

## **ORDER**

- [19] The Tribunal shall vacate the written hearing set for June 23, 2023.

[20] The Tribunal shall reschedule the written hearing on a date to be set by the Tribunal.

[21] The parties will exchange (and file with the Tribunal) their written submissions and evidence as follows:

<b>Submissions:</b>	<b>Due Date:</b>
Applicant's initial submissions and evidence	<b>30 days before the hearing</b>
Respondent's submissions and evidence:	<b>14 days before the hearing</b>
Applicant's reply submissions and evidence (or notice that no reply will be filed):	<b>7 days before the hearing</b>

[22] Except for the provisions contained in this order, all previous orders made by the Tribunal remain in full force and effect.

**Released: June 15, 2023**

  
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**Craig Mazerolle  
Adjudicator**