



Citation: Hass v. TD General Insurance Company, 2024 ONLAT 22-010492/AABS

Licence Appeal Tribunal File Number: 22-010492/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:

Leona Hass

Applicant

and

TD General Insurance Company

Respondent

DECISION

ADJUDICATOR: Rachel Levitsky

APPEARANCES:

For the Applicant: Andre Bourdon, Counsel

For the Respondent: Christina Chiu, Counsel

HEARD: By way of written submissions

OVERVIEW

- [1] Leona Hass, the applicant, was involved in an automobile accident on December 14, 2017, 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, TD General Insurance Company, and applied to the Licence Appeal Tribunal - Automobile Accident Benefits Service (the “Tribunal”) for resolution of the dispute.

PRELIMINARY ISSUE

- [2] At the end of the applicant’s submissions, she requests an award pursuant to s. 10 of O. Reg. 664. The respondent submits that this was not listed as an issue in the Case Conference Report and Order, and the applicant did not bring a motion to add this as an issue in dispute, and therefore the issue is not properly before the Tribunal.
- [3] I decline to add the issue of an award to this hearing. The applicant did not raise this as an issue prior to filing her submissions, did not make any submissions regarding her entitlement to an award, and simply requested an order granting one. In addition, she declined to make any reply submissions, despite the respondent requesting that this issue not be considered.

ISSUES

- [4] The issues in dispute are:
- i. Is the applicant entitled to \$112.98 for a camera, submitted on a claim form (OCF-6) dated December 30, 2020, and denied on January 29, 2021?
 - ii. Is the applicant entitled to \$353.60 for travel costs, submitted on a claim form (OCF-6) dated December 30, 2020, and denied on January 29, 2021?
 - iii. Is the applicant entitled to interest on any overdue payment of benefits?

RESULT

- [5] The applicant is not entitled to payment for the expenses in dispute, or interest.
- [6] This application is dismissed.

ANALYSIS

Camera

- [7] I find that the respondent is not liable to pay the expense for the camera.
- [8] The applicant submits that a virtual s. 44 assessment was arranged with Dr. Ralph Lubbers for November 11, 2020. On September 28, 2020 the respondent emailed counsel for the applicant advising that a front-facing digital camera was required for the assessment. At the time, the applicant's camera was functioning, and her counsel confirmed that with the respondent. Some time after, the applicant's camera stopped functioning, so she purchased a new one for \$112.98. The applicant submits that the respondent should reimburse her for this cost. She relies on s. 25(2) of the *Schedule*.
- [9] The respondent submits that the cost of a camera is a personal expense and does not fall under any category of benefits that are payable under the *Schedule*. In the alternative, it argues that it is not a medical or rehabilitation expense pursuant to s. 15 or 16, and the applicant does not require the camera for accident-related needs.
- [10] I find that the applicant has not met her onus in proving that the camera is payable. I do not find that s. 25(2) is applicable. It states that an insurer is not required to pay for an assessment or examination conducted in an insured person's home unless they have sustained an impairment that is not a minor injury. That does not assist the applicant here. She has not cited any other authority to support her claim. I agree with the respondent that there is no evidence that the applicant requires a camera because of the accident, or for medical or rehabilitation needs.
- [11] Even if there was a provision in the *Schedule* that would allow reimbursement for an item such as this to assist with an in-home assessment, I find that it is not payable in the circumstances. The applicant had a camera, the camera stopped working, and she purchased a new one to replace it. That is not the same as purchasing something new that may have been required to attend an assessment, which the applicant would not have purchased otherwise. In any event, she has not provided any submissions or evidence that she would not have replaced this camera but for the assessment.

Mileage

- [12] I find that the applicant is not entitled to the mileage expense in dispute.

- [13] The applicant is claiming \$353.60 for travel costs. In December 2020, the applicant was travelling with her children from her home in Alban to her mother's home in Woodstock for the holidays. She had begun the drive, but experienced panic attacks and was unable to continue the trip. She called her mother and sister, who came to meet her on the side of the road, and they transported her to and from Woodstock. The round trip mileage was 868 kilometres. She is claiming the mileage of her mother and sister. I note that the OCF-6 submitted by the applicant indicates that the round trip cost \$347.20. The additional \$6.40 was for a trip to a nursing station, which the respondent paid for. The respondent denied the mileage for the trip to Woodstock because the expense was not considered related to a medical and/or rehabilitation benefit; it was for a personal trip.
- [14] The applicant argues that the respondent approved OCF-6s for mileage for these exact same trips on previous occasions, and as such it is payable under s. 38(2)(d). This section indicates that an insurer is liable to pay an expense under \$250 for goods or services referred to in s. 15(1)(h) or 16(3)(l), if it agrees that the expense is essential for the treatment or rehabilitation of the insured person. However, the respondent submits that it denied those previous OCF-6s, and they were included in a partial settlement on January 23, 2020, the specific details of which have been redacted. I do not find that a negotiated settlement implies that the respondent has agreed to pay for these types of expenses on an ongoing basis.
- [15] Further, the applicant has not directed me to any correspondence from the respondent showing that it agreed to pay for these types of trips, or this trip in particular. The only document before me in this regard is a statement of benefits from January 31, 2018, which does not include enough information to allow me to conclude that the respondent agreed that a trip home for the holidays was essential. It simply states that the respondent paid \$183.18 for "all goods of a medical nature", and \$554.09 for "transportation expenses to attend treatment." I am left in the dark as to the nature of the trips and whether they differ from the one at issue before me.
- [16] The respondent submits that it is not liable to pay for transportation expenses other than authorized transportation expenses, which are set out in the *Superintendent's Guideline No. 04/16: Transportation Expense Guideline* ("Guideline"). Under the Guideline, an insurer is liable to pay for all reasonable and necessary transportation expenses for each trip that an insured person, and their aide or attendant, makes to and from treatment sessions, counselling sessions, training sessions, assessments, or examinations. The applicant has not provided any evidence that the transportation to and from her mother's home

for the holidays was related to treatment, counselling, training, assessments, or examinations.

[17] I accordingly find that the applicant has not met her onus in proving that the mileage expense in dispute is reasonable and necessary.

Interest


[18] Interest applies on the payment of any overdue benefits pursuant to s. 51 of the *Schedule*. As no benefits are payable, interest does not apply.

ORDER

[19] The applicant is not entitled to payment for the expenses in dispute, or interest.

[20] This application is dismissed.

Released: September 27, 2024



Rachel Levitsky
Adjudicator