Tribunals Ontario
Licence Appeal Tribunal

Tribunaux décisionnels Ontario
Tribunal d'appel en matière de permis

Citation: Ramnathsingh v. Echelon Insurance Company, 2025 ONLAT 24-001936/AABS

Licence Appeal Tribunal File Number: 24-001936/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:

Cindy Ramnathsingh

Applicant

and

Echelon Insurance Company

Respondent

DECISION

ADJUDICATOR: **Melanie Malach**

APPEARANCES:

For the Applicant: Cindy Ramnathsingh, Self-Represented

For the Respondent: Joseph Tumini, Counsel

HEARD: **By way of written submissions**

OVERVIEW

[1] Cindy Ramnathsingh, the applicant, was involved in an automobile accident on February 2, 2022, 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, Echelon Insurance Company, and applied to the Licence Appeal Tribunal - Automobile Accident Benefits Service (the "Tribunal") for resolution of the dispute.

[2] At the Case Conference on July 3, 2024, the applicant was represented by legal counsel. On February 12, 2025, her legal counsel submitted a Removal of Representative form. By email dated March 7, 2025, the applicant advised the Tribunal that she could not find new legal counsel and therefore she is self-represented.

PRELIMINARY ISSUES

[3] The preliminary issue to be decided is:

i. Is the applicant barred from proceeding to a hearing for all of the benefits claimed in this application because the applicant failed to attend insurer's examinations under s. 44 of the *Schedule*?

SUBSTANTIVE ISSUES

[4] The substantive issues in dispute are:

i. Are the applicant's injuries predominantly minor as defined in s. 3 of the *Schedule* and therefore subject to treatment within the $3,500.00 Minor Injury Guideline limit?

ii. Is the applicant entitled to a non-earner benefit of $185.00 per week from March 2, 2022 to ongoing?

iii. Is the applicant entitled to $3,795.50 for physiotherapy services, proposed by Mackenzie Medical Rehab Centre in a treatment plan submitted on February 14, 2022?

iv. Is the applicant entitled to $2,460.00 for a psychological assessment, proposed by 101 Assessments in a treatment plan submitted on June 1, 2022?

v. Is the respondent liable to pay an award under s. 10 of Reg. 664 because it unreasonably withheld or delayed payments to the applicant?

vi. Is the applicant entitled to interest on any overdue payment of benefits?

RESULT

[5] The applicant is barred from proceeding to a hearing on the issues in dispute as a result of her failure to attend the s. 44 assessments.

PRELIMINARY ISSUE

The applicant is barred from proceeding to a hearing on the issues in dispute because she failed to attend s. 44 assessments

[6] I find that the applicant is barred from proceeding to a hearing on the issues in dispute because she failed to attend the s. 44 assessments, and she did not provide a reasonable explanation for her non-attendance.

[7] Section 44(1) of the *Schedule* provides that, for the purposes of assisting an insurer to determine if an insured person is or continues to be entitled to a benefit for which the application is made, but no more often than is reasonably necessary, an insurer may require an insured person to be examined by one or more persons chosen by the insurer who are regulated health professionals or who have expertise in vocational rehabilitation.

[8] The requirements for a Notice of Examination ("NOE") are set out in s. 44(5) of the *Schedule:*

> If the insurer requires an examination under this section, the insurer shall arrange for the examination at its expense and shall give the insured person a notice setting out,
>
> a. The medical and other reasons for the examination;
>
> b. Whether the attendance of the insured person is required at the examination;
>
> c. The name of the person or persons who will be conducting the examination, any regulated health profession to which they belong and their titles and designations indicating their specialization, if any, in their professions; and

d. If the attendance of the insured person is required at the examination, the day, time and location of the examination and, if the examination will require more than one day, the same information for the subsequent days.

[9] Section 55(1)2 of the *Schedule* provides that an insured person shall not apply to the Tribunal if the insurer has provided the insured person with notice that it requires an examination under s. 44, but the insured person has not complied with its request for attendance.

[10] The NOE dated February 25, 2022, sets out that an Insurer's Examination ("IE") with Dr. Jamsheed Desai, neurologist, was scheduled by the respondent for March 30, 2022, to assess the applicant's entitlement to the treatment plan for physiotherapy services, dated February 14, 2022.

[11] The NOE dated March 17, 2022, sets out that the following assessments were scheduled by the respondent to assess the applicant's complaints and diagnoses and because there was insufficient medical evidence to support the applicant's injuries warranting entitlement to a non-earner benefit:

i. Neurological Assessment by Dr. Jamsheed Desai, neurologist, on March 30, 2022

ii. Orthopedic assessment with Dr. Ato Sekyi-Otu, orthopedic surgeon, on April 20, 2022

iii. Psychological assessment with Dr. Fabio Salerno, psychologist, on May 20, 2022

iv. In-Home Occupational Therapy assessment with an occupational therapist whose name and date was to be advised at a later date.

[12] The NOE dated March 21, 2022, sets out that the In-Home Occupational Therapy IE with Mr. Bertolo was scheduled for May 31, 2022.

[13] By correspondence dated March 21, 2022, the applicant's then representative requested that the IE scheduled with Dr. Desai on March 30, 2022 be cancelled. The representative advised that the applicant would not be attending and "we will proceed once our s. 25 report is available". No s. 25 report was subsequently provided.

[14] On April 22, 2022, the IE assessment company advised the respondent that the applicant did not attend the Orthopedic IE scheduled with Dr. Sekyi-Otu on April

20, 2022. The letter notes that on April 14, 2022, the appointment was confirmed with the applicant.

[15] On April 29, 2022, the applicant's then representative requested that the psychological IE scheduled with Dr. Salerno for May 20, 2022 be cancelled. No reason was given as to why the applicant could not attend the examination.

[16] On May 31, 2022, the IE assessment company advised the respondent that the applicant failed to be present for the In-Home assessment scheduled on May 31, 2022. The letter notes that on May 26, 2022, it had left a detailed message with the appointment details for the applicant. It is further noted that, "This morning our office received a call from Angela Bertolo, OT. She went to the claimant's home but there was no answer. She called claimant and no answer. She then received a call back from the claimant advising that she was not aware of the assessment and had an appointment at Sunnybrook."

[17] On June 14, 2022, the respondent provided the applicant with a NOE setting out a psychological assessment scheduled with Dr. Howard Waiser, psychologist, on July 26, 2022, to assess her entitlement to the treatment plan recommending a psychological assessment dated June 1, 2022.

[18] By letter dated August 8, 2022, the respondent advised the applicant of the status of the IEs scheduled on her file as follows:

> Neurology Assessment on March 30, 2022 – cancelled at applicant's request
>
> Orthopaedic Assessment on April 20, 2022 – no show with no explanation
>
> Psychological Assessment on May 20, 2022 – cancelled at the applicant's request
>
> In-Home Assessment on May 31, 2022 – no show with no explanation
>
> Psychological Assessment on July 26, 2022 – no show with no explanation

[19] The respondent submits that the applicant should be barred from proceeding with her application to the Tribunal because she failed to attend the scheduled s. 44 assessments, and she did not provide a reason for her failure to attend. It argues that the NOEs dated February 25, 2022, March 17, 2022, and June 14, 2022, were proper pursuant to s. 44(5) of the *Schedule.* In all instances the applicant was advised of the medical reasons for the IEs; that her attendance

was required; the name and specialty of the assessor; and the date, time and location of the IE. Specifically, at all times the respondent provided the applicant with notices in excess of 30 days for her required attendance at the IEs.

[20] The respondent further submits that the IEs scheduled for the issues in dispute were reasonably required because the respondent had not previously secured any prior medical opinions or IEs on the nature of the applicant's injuries and the need for any further treatment or assessments. Further, the respondent submits that the IEs requested were relevant to the types of treatments the applicant requested be funded including physiotherapy, massage therapy, acupuncture, a psychological assessment and entitlement to a NEB. The respondent submits that by failing to attend the IEs, it has been prejudiced in the adjustment of the claim because it has been unable to secure necessary medical opinions on the applicant's injuries and treatment needs.

[21] The applicant submitted a letter to the Tribunal on March 11, 2025, setting out her submissions regarding her case and the miscommunication issues. She submits that with respect to the mental health assessment she states that she attempted to participate in the assessment, but she was only able to complete half of it before she had to stop. She submits that the process became too triggering for her, especially when she was home alone with her children. She therefore submits that the notion that she did not attend the mental health assessment is incorrect, as she did participate but had to halt it for her well-being. She submits that she was treated unfairly in some instances, particularly when the request for the assessments continued even after she had explained her inability to attend. She states that it was mentally distressing for her, and she feels that her concerns were not adequately considered.

[22] I find that the NOEs provided by the respondent were proper and that the applicant's failure to attend these assessments bars her from proceeding with her claim.

[23] First, I am satisfied that the NOEs provide comprehensive reasons for the assessments which satisfy the requirements in the *Schedule.*

[24] Second, I find that the applicant did not provide the respondent with a reason for her non-attendances despite having counsel at the time. The purpose of s. 44(5)(a) of the *Schedule,* is to protect an insured from unreasonable or unnecessary assessments, not to provide a shield for an applicant not to attend. The applicant provided no evidence to suggest that she viewed the assessments as unreasonable.

[25] Third, I find that the NOE and letters were sent directly by mail to the applicant and her counsel was copied. There is no evidence before me that the applicant's address or counsel's fax number was incorrect or that they did not receive the respondent's letters.

[26] Fourth, I find that assessments scheduled by the respondent were reasonably necessary pursuant to s. 44(1) of the *Schedule* to assess whether the applicant was entitled to a NEB or the treatment plans in dispute.

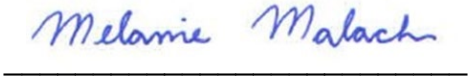
[27] Finally, while the applicant submits that she attended for part of a mental health assessment, there is no evidence before me of her attendance. In addition, even if I do accept that she attended the psychological assessment, the fact remains that she did not attend any of the other IE assessments that were scheduled, and she did not provide any reason for her non-attendance. I note that in addition to the applicant's submissions in her letter dated March 11, 2025, I reviewed her Case Conference Summary and attachments previously submitted on her behalf by her legal counsel in advance of the Case Conference. I found no evidence in the documents provided of any explanation for her non-attendance at the scheduled IEs.

[28] For the reasons outlined above, I find that the applicant is statute barred from proceeding with her application before the Tribunal pursuant to s. 55(1)(2) of the *Schedule.*

ORDER

[29] For the reasons outlined above, I find that the applicant is statute barred from proceeding to a hearing on the issues in dispute as a result of her failure to attend the s. 44 assessments. The application is dismissed.

Released: November 3, 2025



Melanie Malach
Adjudicator