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Ontario

RECONSIDERATION DECISION

Before: Cezary Paluch, Adjudicator

Date: June 25, 2019

File: 17-006934/AABS

Case Name: R.G. v. State Farm Insurance

Written Submissions by:

For the Applicant: Ryan Steiner, Counsel

For the Respondent: Michael P. Taylor, Counsel

OVERVIEW

[1] This Request for Reconsideration was filed by the applicant in this matter. It arises out of a decision released on January 30, 2019 in which the Tribunal found that the home accessibility and alternative housing assessments sought by the applicant are subject to the $2,000.00 cap placed on assessments and examinations pursuant to s. 25(5)(a) of the *Schedule.*[1]

[2] The applicant submits that the Tribunal made an error of law or fact such that the Tribunal would likely have reached a different decision had the error not occurred.

[3] The applicant is seeking an order to cancel the decision and a new consideration of the evidence and decision be provided. In other words, she seeks confirmation that the respondent is unable to rely on s. 25(5)(a) and should pay the full costs of the report or assessment.

[4] Pursuant to s. 17(2) of the *Adjudicative Tribunals Accountability, Governance and Appointments Act*[2]*,* I have been delegated responsibility to decide this matter in accordance with the applicable rules of the Tribunal.

RESULT

[5] The applicant's Request for Reconsideration is denied.

FACTS

[6] The applicant was involved in a motor vehicle accident on January 17, 2009 and suffered injuries which resulted in a catastrophic designation being accepted in February 2012 by the respondent.

[7] Subsequently, the applicant sought home modifications to accommodate her needs. In order to identify what housing accommodations were required, her treating Occupational Therapist submitted a Treatment Plan dated February 22, 2016 in the amount of $8,381.20.

[8] On March 4, 2016, the respondent informed the applicant that this Treatment Plan was partially approved[3] up to the $2,000.00 limit placed on assessments and examinations under the *Schedule* and *Superintendent's Guideline 08/10.*[4]

[9] Having determined that the home modifications would not be possible through renovating the applicant's existing home, a further Treatment Plan was submitted in

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[1] O. Reg. 34/10 *Statutory Accident Benefits Schedule* effective September 1, 2010 (the "*Schedule*")
[2] 2009, S.O. 2009, c. 33, Sched. 5.
[3] The Respondent agreed to pay $2,460.00 leaving the balance $5,921.20.
[4] *Financial Services Commission of Ontario Cost of Assessments and Examination Guideline No. 08/10* issued pursuant to s. 268.3(1) of the *Insurance Act* for the purpose of the *Schedule*. (the "*SG08/10*")

the amount of $5,002.50 on September 12, 2017, to determine alternative housing arrangements.

[10] On September 23, 2017, the respondent notified the applicant that this treatment plan was denied in full as it was a duplication of the home accessibility treatment plan previously submitted and already partially approved up to the maximum amount.

ANALYSIS

[11] The grounds for a Request for Reconsideration are contained in *Rule 18* of the Tribunal's *Common Rules of Practice and Procedure*.

[12] The applicant is relying on one ground in this reconsideration – that the Tribunal made a significant error of law or fact such that the Tribunal would have reached a different decision pursuant to *Rule* 18(b).

[13] As explain below, this ground of reconsideration should fail and I deny this reconsideration request.

Error of law or fact

[14] Section 25(5)(a) of the *Schedule* states that an insurer shall not pay more than $2,000.00 for conducting any one assessment or examination and for preparing reports in connection with it. *SG08/10* provides further guidance and defines an "assessment" and "examination" as a "clinical evaluation or appraisal of a claimant's health status".

[15] The applicant takes issue with the Tribunal's interpretation of "*any assessment or examination*" in s. 25(5)(a) as it is his position that it is limited in scope to only clinical evaluations or appraisals of a claimant's health status. As opposed to here, where the evaluation that was conducted was of the applicant's house (and not of the claimant) and the home modification report was neither a "clinical evaluations" or "appraisals of the claimant's health status" to come within the ambit of s. 25(5)(a). As a result, he submits, it should not be subject to the $2,000.00 cap and the Tribunal erred in law in its interpretation of this section in the *Schedule*.

[16] I disagree.

[17] The modern approach to statutory interpretation requires that the words of a statute be read "in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament."[5] This approach involves consideration of three factors: the language of

[5] *Rizzo & Rizzo Shoes Ltd. (Re),* [1998] 1 S.C.R. 27, 1998 CanLII 837 (SCC) citing Driedger on the Construction of Statutes (3rd ed. 1994) at page 87.

the provision, the context in which the language is used, and the purpose of the legislation or statutory scheme in which the language is found.[6]

[18] More recently, the Ontario Court of Appeal in *Skunk v. Ketash*[7], made the following additional comment about the proper approach to statutory interpretation: "The principles of statutory interpretation require that the court first look to the plain meaning of the statute. If the words have a plain meaning and give rise to no ambiguity, then the court should give effect to those words."

[19] In this case, the Tribunal's conclusion is summarized in the following three paragraphs of its decision with a clear emphasis at looking at the plain meaning of the language [emphasis added]:

> 17. I find that section 25(5)(a) of the 2010 *Schedule* **is clear in its language**. It places a $2,000.00 cap on the fees and expenses charged for conducting any one assessment or examination and for preparing reports in connection with it. There are no built in exceptions with respect to the type of assessment covered by the cap. If there was a **legislative intention** to omit coverage of housing assessments from this cap, it could have been done in the same way that vocational assessments were omitted under section 24(5) of the Statutory Accident Benefits Schedule – Effective November 1, 1996.
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> 18. I also find that **the assessments in dispute in this case fall within the definition of an "assessment" and "examination" under SG08/10.** The Treatment Plan's in question were submitted by the applicant's occupational therapist. The Treatment Plans recommended the services of Adapt-Able. Adapt-Able made recommendations with respect to the home modifications that would be necessary to accommodate the applicant. Adapt-Able's recommendations were based on: the medical information provided to it, a meeting with the applicant, a home site visit, consultation with treating rehabilitation professionals and an investigation of zoning restrictions for the property. **I find that this, by its very nature, involves an appraisal of the applicant's health status**.
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> 19. I am not persuaded by the applicant's submission that SG08/10 clarifies that when section 25(5)(a) of the 2010 *Schedule* refers to "any assessment or examination", it means a medical assessment or evaluation performed by a health care practitioner in a medical context. This position is not supported **by a plain reading** of section 25(5)(a) of the 2010 Schedule or SG08/10.

[20] Taking into account the above rules of statutory interpretation, I am not satisfied that the Tribunal made any significant error of law such that the Tribunal would likely have reached a different decision. The adjudicator read the words of the *Schedule* by first looking at its plain meaning "in their entire context and in their grammatical and ordinary sense harmoniously with the scheme and object of the Act, and the intention

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[6] *M.F.Z. v Aviva Insurance Canada*, 2017 CanLII 63632 (ON LAT) para. 39.
[7] 2018 ONCA 450 (CanLII) para. 7.

of Parliament" supports this conclusion and correctly applied the meaning to the facts of this case.

[21] On a plain reading of s. 25(5)(a) of the *Schedule*, I note that the legislature opted to include the word "**any** one assessment or examination." This is important as the language of the provision specifically states "any." In my view, the use of the word "**any**" means that it could be any kind of assessment and not necessarily restricted to a medical assessment prepared by a medical practitioner in a medical context, as the applicant argues. In my opinion, the plain and ordinary meaning of the section means exactly what the Tribunal held. The assessments in dispute fall within the definition of "assessment" and "examination" as the Adapt-Able recommendations were based on the medical information provided to it and by its nature this did involve "an appraisal of the applicant's health status." Looked differently, if the legislature wanted to limit the assessments to only medical assessments it could have substituted the words "any" for "medical assessments."

[22] The applicant further submits that the Tribunal erred in reviewing the plain and ordinary meaning of the phrase "*clinical evaluation or appraisal of a claimant's health status*" and did not provide any analysis as to what that term means. I disagree. In paragraph 12, the Tribunal set out the entire definition of an "assessment and "examination" from SG08/10 noting that it "must be a clinical evaluation or appraisal of a claimant's health status" and applied it to the facts of this case. The Tribunal did apply the plain meaning and explained what the term means by stating that "any assessment or examination" does not mean a medical assessment or evaluation performed by a health care practitioner in a medical context. Again, the Tribunal concluded that the applicant's position is not supported by "a plain reading of s. 25(5)(a) of the 2010 Schedule or SG08/10."

[23] Further, the applicant submits that the Tribunal erred in focusing solely on the treatment plans. Again, I disagree with this submission as it is clear that the tribunal also focused on the tasks undertaken by Adapt-Able in preparing the reports. For example, although the Tribunal did reference the treatment plans and acknowledged they were prepared by the applicant's occupational therapist, this was just one part of its evaluation process with the main focus throughout being on the home accessibility and alternate housing reports themselves from Adapt-Able in determining whether they fell within the definition of "assessment" and "examination." This was most evident in the Tribunal noting that Adapt-Able's recommendation were based on, the medical information provided to it, a meeting with the applicant, a home visit, consultation with treating professions, and an investigation of zoning restrictions for the property. In effect, in noting all these tasks, the Tribunal looked at whether the assessment involved an appraisal of the applicant's health status.

[24] Finally, the applicant argues that all written materials were submitted on April 24, 2018, with a hearing date of May 4, 2018. However, the decision listed a hearing date of July 8, 2018. The applicant is concerned that this matter may have been "hastily determined without a full and proper analysis" once it was determined that the mater remained stagnant for a prolonged period.

[25] My review of the history of the file confirms that a case conference was held on February 21, 2018, with a written and teleconference hearing[8] schedule for May 4, 2018 and the decision was released to the parties on January 30, 2019. I do not have any information before me why the hearing date was scheduled for May 4 but was listed as July 8, 2019 on the reasons. I also do not see how the decision was hastily decided and I think it is difficult for the applicant to make this assertion.

[26] Contrary to applicant's submission, the Tribunal clearly indicated in its decision that it considered the applicant's submissions and set out several paragraphs of analysis including why the Tribunal disagreed with them and explaining why the assessment in dispute did fall under the definition in SG08/10. It also explained why it does not have to be strictly a "medical assessment" to come with s. 25(5)(a) rather it is the nature of the assessment and what tasks were involved in conducting the assessment that must be considered and looked at– ie. looking at the medical information, home visit, consultation with treating rehabilitation professions – all of which was done by Adapt Able as part of the assessment process. Accordingly, I am not satisfied that this is an error of fact such that the Tribunal would likely have reached a different decision.

CONCLUSION

[27] For the reasons noted above, I find no error of fact or law with respect to the Tribunal's interpretation of the Schedule. Therefore, I deny the applicant's Request for Reconsideration.

[28] Pursuant to the Tribunal's rule 18.4(b) the decision of the Tribunal dated January 30, 2019, is confirmed.

Cezary Paluch
Adjudicator
Tribunals Ontario – Safety, Licensing Appeals and Standards Division

Released: June 25, 2019

[8] The teleconference hearing scheduled for May 4, 2018 (to cross examine a potential affiant) was not required (the affidavit was never filed) and the parties agreed that this matter could proceed by written submissions only which it did