

**LICENCE APPEAL  
TRIBUNAL**

**Safety, Licensing Appeals and  
Standards Tribunals Ontario**

**TRIBUNAL D'APPEL EN MATIÈRE  
DE PERMIS**

**Tribunaux de la sécurité, des appels en  
matière de permis et des normes Ontario**



**Tribunal File Number: 20-008952/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:

**Susan Godel**

**Applicant**

and

**Aviva General Insurance**

**Respondent**

**MOTION ORDER**

**Order made by: Terry Hunter, Vice Chair**

**Date of Order: January 6, 2021**

**Appearances:**

**Applicant: Gus Triantafillopoulos, Counsel**

**Respondent: Melinda J. Baxter, Counsel**

**Motion heard by teleconference: January 6, 2021**

## OVERVIEW

- [1] The applicant was injured in an automobile accident on **Sunday, March 4, 2018**, and sought benefits pursuant to the Statutory Accident Benefits Schedule - Effective September 1, 2010 (the "Schedule").
- [2] The applicant applied to the Tribunal dated July 27, 2020. The sole issue raised in the application is listed under Issues in Dispute as a claim for an award under section 10 of RRO 1990, Reg 664. The issue under section 10 is whether the respondent unreasonably withheld or delayed payments.
- [3] The particulars of the award contained in the application are;  
  
"Aviva contacted Ms. Godel (the applicant) and had her complete a survey with respect to her Accident Benefits Claim without providing a copy of the survey to her lawyer. Our office requested a copy of the survey and have not been provided one despite setting a deadline of July 17, 2020."
- [4] It is agreed between the parties that the application contained no claim for benefits to be paid.

## MOTION

- [5] On December 2, 2020, the respondent filed a Notice of Motion requesting that the Tribunal:
  - i. Dismiss the LAT Application without a hearing pursuant to Rule 3.4 (a) and (b) of the Tribunal's *Common Rules of Practice and Procedure*, as there is no basis for an award as the issue in the particulars is not relevant to whether there were unreasonably withheld or delayed payments.
  - ii. Order costs payable to the respondent by the applicant in the amount of \$1,000.00
- [6] The applicant opposes the motion and seeks costs of \$1,000.00.

## RESULT

- [7] The application is dismissed pursuant to Rule 3.4(b) on the basis that there is no jurisdiction to make the award. There are no allegations or evidence of delayed payments of the applicant's accident benefits. The application is premature.

## ANALYSIS

- [8] Both parties provided written submissions. The requirements of Rule 3.5 have been met.

- [9] The respondent's position is section 10 of Ontario Reg. 664 requires that an insurer has unreasonably withheld or delayed payment. Payment is the critical requirement. If payment is not an issue, there can be no award. The respondent submits the particulars advanced in support of the award do not refer to a withheld or delayed payment. The particulars reference a survey sent to the applicant and not her counsel. The respondent characterizes the award claim as a bad faith claim. Jurisprudence from the Court of Appeal in *Stegenga*<sup>1</sup> has established bad faith claims do not exist and are replaced by an analysis of whether there has been unreasonable conduct in the handling of a claim as it related to the delayed payment of accident benefits.
- [10] The applicant submits the survey questions reference both accident and treatment and assessment plans. The applicant submits these must reference the accident and treatment plans specific to the applicant. In paragraph 22 of the applicant's submission the applicant states the evidence of the award claim is in the respondent's possession and once available will support the claim for an award. The applicant noticed several treatment plans were denied following the survey but have not been added to the application at this time.
- [11] I find the application is premature. If the applicant finds in the log notes later, decisions with respect to the applicant's benefits referencing the survey they can renew the award claim. There is no foundation for an award without reference to an unreasonably withheld or delayed payment.

Both parties claim costs. I find it would hinder access to justice particularly for novel claims if costs were awarded. I do not find either of the parties acted unreasonably, frivolously or in bad faith. I make no order for costs.

#### **OTHER PROCEDURAL MATTERS**

- [12] If the parties resolve the issue(s) in dispute prior to the hearing, the applicant shall immediately advise the Tribunal in writing.

**Date of Issue: January 29, 2021**



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**Terry Hunter  
Vice Chair**

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<sup>1</sup> *Stegenga v. Economical Mutual Insurance Company*, 2019 ONCA 615 (CanLII)