Tribunal File Number: 20-010308/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:

Harpreet Grewal

Applicant

and

Peel Mutual Insurance Company

Respondent

MOTION ORDER

Order made by: **Craig Mazerolle, Adjudicator**

Date of Order: **May 14, 2021**

BACKGROUND

[1] This proceeding, under the *Statutory Accident Benefits Schedule – Effective September 1, 2010* (the "*Schedule*")[1], arises out of a motor vehicle accident on **November 7, 2016**.

[2] A hearing is scheduled for October 18 – 20, 2021. The issues in dispute include: a *Minor Injury Guideline* determination, as well as requests for medical benefits, an award, and interest.

NOTICE OF MOTION

[3] The applicant filed a Notice of Motion (submitted January 26, 2021) seeking the following relief:

i. An order adding a request for punitive damages (in the amount of $150,000.00) to the dispute; and

ii. An order for certain productions from the respondent.

[4] The request to add punitive damages has been addressed in a separate motion decision.

PARTIES' POSITIONS

[5] Briefly, the applicant is seeking a complete copy of her accident benefits file. The respondent consents to producing the accident benefits file, but it takes issue with several of the specific items she expects to find in the file: namely, any item that might relate to invoices from assessors and assessment company.

[6] According to the applicant, these invoices should be produced, as they will reveal whether s. 44 examinations were scheduled. That is, since the invoices will list whether the respondent was charged a cancellation fee, they will provide a clear and efficient means of determining whether a compliant assessment was, in fact, arranged. The applicant would also like the invoices to see if the respondent paid its assessors in excess of the amount allowed under the *Schedule*.

[7] The respondent contended that these considerations are not relevant to the dispute, since there are reports that clearly state an examination was arranged, and the applicant did not attend. Further, it would not make sense for the respondent to pay amounts in excess of the *Schedule*'s limit, because the applicant did not attend these assessments.

[8] In reply, the applicant contested the existence of these no-show reports.

[1] O. Reg. 34/10.

[9] The respondent also stated that it would only provide the adjusters' log notes up to the date of the Tribunal application, while the applicant wanted notes up to the date of the motion hearing (i.e., April 6, 2021). The parties also argued over whether the respondent should be allowed to redact notes for relevance.

ANALYSIS

[10] Rule 3.1 of the *Common Rules of Practice & Procedure* (the "LAT Rules") requires the Tribunal to conduct its proceedings in a fair and efficient manner, all the while ensuring that decisions are made on the merits of the case.

[11] Rule 9.3 of the LAT Rules then states that the Tribunal may make an order to: "Disclose any document or thing the Tribunal considers relevant to the issues in dispute." Relevance is, therefore, the key consideration when determining whether to order production of a document.

[12] I do not find the invoices as listed in the applicant's Notice of Motion are producible.

[13] First, I fail to see how the invoices would provide any relevant information about whether these assessments were compliant with the *Schedule*, as these determinations can be effectively and efficiently made with other sections of the accident benefits file (namely, the notices of assessment). Additionally, the applicant has not established any relevant information that might flow from the respondent paying an assessor in excess of the limit, especially if the applicant did not attend these appointments. Instead, any investigation into the amounts paid to the respondent's assessors and/or the assessment company would not be in line with an efficient hearing process focused on the merits of the case.

[14] Moving to the scope of the log notes, I find that the applicant is entitled to the log notes from the date of loss to April 6, 2021 (redacted for privilege and reserves, with particulars provided for each redaction). I also decline to grant the respondent the right to redact for relevance alone.

[15] To start, I fail to see how any log note would be irrelevant to the determination of the applicant's award request, because the log notes as a whole provide a window into the respondent's adjusting process. It would also be improper for the respondent to pre-emptively determine whether a note is relevant or not, as this consideration should be left to the hearing adjudicator.

[16] In a similar vein, I fail to see how the relevance of these notes is affected by the filing of the Tribunal application. Rather, the respondent shall produce all the log notes (included those redacted for privilege and reserves), and the parties can then apply to the Tribunal to determine whether these redactions are appropriate or not.

[17] Finally, beyond the respondent's lack of concern about these other items, I am satisfied that the rest of the applicant's requested productions are all relevant to the award request and are, therefore, producible.

ORDER

[18] The following productions shall be provided to the applicant from the respondent **by June 7, 2021**:

i. Complete accident benefits file from the date of loss to April 6, 2021 (redacted for privilege and reserves, with particulars provided for each redaction).

ii. Copy of all documents in respondent's possession which evidences that it arranged the s. 44 assessments, for each assessment it purports to have arranged in accordance with s. 44, from the date of loss to the date of the case conference;

iii. Copy of all documents in respondent's possession which evidences that it provided such information and documents as are relevant or necessary for the review of the applicant's medical condition to the person or persons identified in any purported s. 44 notice that the respondent intends to rely on;

iv. Copy of all s. 50 statements prepared by the respondent and sent to the applicant from the date of loss to the date of the case conference;

v. Copy of all OCF-21s, including, but not limited to, all submissions related to any purported s. 44 insurer's examinations that the applicant attended or did not attend;

vi. Payment summary of all amounts paid to or on behalf of the applicant, listing the dates, amounts, and type of expenses;

vii. Copy of all telephone logs, notes, recordings, and any other record of communications relating to communications that relate to the applicant's claims, which have occurred between the respondent and any third party (e.g., surveillance companies, other insurance companies, assessment agencies, regulated health professionals, etc.);

viii. Copy of all telephone logs, notes, recordings, and any other record of communications relating to communications that relate to the applicant's claims, which have occurred between the respondent and any of the respondent's agents (e.g., assessment agencies, regulated health professionals, etc.);

ix. All evidence of communications between the respondent and its assessors relating to the applicant's accident benefits claim, as would be expected to be have occurred in accordance with s. 44(9)(2)(ii) of the *Schedule*; and,

x. Adjusters' log notes from the date of loss to April 6, 2021 (redacted for privilege and reserves, with particulars provided for each redaction).

[19] If an assessor or assessment company's invoice is captured under any of the above items, the respondent is not required to provide the invoice to the applicant.

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

Released: May 14, 2021

Craig Mazerolle
Adjudicator