



Citation: Parker v. Intact Insurance Company, 2022 ONLAT 20-012337/AABS

Licence Appeal Tribunal File Number: 20-012337/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:

Jennifer Parker

Applicant

and

Intact Insurance Company

Respondent

DECISION

VICE-CHAIR:

Chloe Lester

APPEARANCES:

For the Applicant:

Jennifer Parker, Applicant

For the Respondent:

Kevin Shapcott, Representative
Oliver Gorman-Asal, Counsel

Court Reporter:

Anthony Ng

Heard by Videoconference:

February 28, March 1 and March 4, 2022

REASONS FOR DECISION

BACKGROUND

- [1] The applicant, Ms. Jennifer Parker, was involved in an automobile accident on June 19, 2018, and sought benefits pursuant to the *Statutory Accident Benefits Schedule – Effective September 1, 2010 (including amendments effective June 1, 2016)* (“*Schedule*”).¹ The applicant was denied income replacement and medical benefits by the respondent and submitted an application to the Licence Appeal Tribunal - Automobile Accident Benefits Service (“Tribunal”).²

PRELIMINARY ISSUES

- [2] When this application was filed with the Tribunal, the applicant was represented by legal counsel. One month prior to the hearing, the legal representative removed himself from the record. The applicant, nor her previous counsel, had filed a brief for the hearing.
- [3] On the first day of the hearing, the applicant advised that she attempted to retain counsel with no success. The applicant attempted to obtain a copy of her legal file, also with no success. She also advised that her mother passed away the week before.
- [4] I explained to the applicant that she could ask for an adjournment to have an opportunity to seek legal representation, obtain evidence for the hearing, and because she was also going through personal circumstances that might make it difficult to represent herself. I also explained the possible outcomes if she chose to go forward with the hearing considering that she had not filed a document brief with the opposing counsel and the Tribunal. The applicant chose to continue with the hearing. The applicant requested to bring two treating practitioners as witnesses to the hearing. I agreed so long as the witnesses’ testimony did not venture outside the records that were already in possession of the respondent. The respondent also had scheduled witnesses to attend the hearing.
- [5] I explained the hearing process and the applicant had the rest of the afternoon to prepare.
- [6] On day 2 of the hearing, the applicant requested a motion to exclude the respondent’s document brief. She argued that the respondent did not submit the

¹ *Statutory Accident Benefits Schedule – Effective September 1, 2010, O. Reg. 34/10 as amended* (“*Schedule*”).

² Tribunals Ontario, Safety, Licensing Appeals and Standards Division, Licence Appeal Tribunal – Automobile Accident Benefits Service (“Tribunal”)

brief in accordance with the deadlines contained in the Tribunal's order and should not be able to rely upon it.

- [7] I explained that if this motion is granted, as she had not provided a brief for this hearing, there would be no documentary evidence. This would mean that the witnesses would not be able to testify, and it would be nearly impossible for her to prove her case.
- [8] The applicant acknowledged that she understood the possible repercussions and requested that the motion be argued.
- [9] The respondent agreed to the motion.
- [10] Therefore, on the basis of the parties' agreement, there was no documentary evidence or witnesses' that testified. The only person that testified was the applicant herself.

ISSUES

- [11] The issues for this hearing are:
 - a. Is the applicant entitled to an income replacement benefit (IRB) in the amount of \$157.19 per week from October 20, 2020 to date and ongoing?
 - b. Is the applicant entitled to \$1,820.44 for physiotherapy services, recommended by LifeMark North Bramalea in a treatment plan (OCF-18) dated September 22, 2020?
 - c. Is the applicant entitled to \$5,204.88 for a therapeutic mattress, recommended by Dr. Aiden Huynh in a treatment plan (OCF-18) dated August 4, 2020?
 - d. Is the respondent liable to pay an award under Regulation 664 because it unreasonably withheld or delayed payments to the applicant?
 - e. Is the applicant entitled to interest on any overdue payment of benefits?

RESULTS

- [12] The applicant is not entitled to the benefits in dispute. The application is dismissed.

LAW

- [13] The law is clear that the onus is on the applicant to prove her case. That being said the *Schedule* is consumer protection legislation and should be interpreted in such a way to reflect that.
- [14] The applicant requests entitlement to an income replacement benefit after the first 104 weeks of the disability. This is commonly referred to as a post-104 IRB. In order to prove entitlement to a post-104 IRB the applicant must show that as a result of the accident, she is suffering a complete inability to engage in any employment or self-employment for which she is reasonably suited by education, training, or experience.³
- [15] To be entitled to the medical benefits and assistive devices that are in dispute the applicant must prove that the benefits are reasonable and necessary to improve upon the impairments suffered as a result of the accident.⁴
- [16] An award and interest can only be awarded if benefits are granted and if she meets the test in connection with it.

ANALYSIS

- [17] The applicant testified and explained the following:
- a. The applicant and her husband were hit from behind and were thrown several feet across the highway. Because of the force of the accident, the husband's glasses were thrown off his face. The applicant was forced to get out of the car and lead him out of harm's way.
 - b. As a result of the accident, the applicant claims she suffered a potential mild stroke, impairments to her back, shoulder, neck, and left leg, headaches, earaches, fear of driving, and PTSD. The applicant claims she has some good days but most of them are bad.
 - c. She explained that at the time of the accident, she was working as a companion to an individual who was suffering from Lou Gehrig's disease. She testified that just prior to the accident her husband was retraining and pursuing a new career.

³ As per section 6(2)(b) of the *Schedule*

⁴ As per section 15(1) of the *Schedule*

- d. The car accident greatly impacted her and her family's life. Her sons had to step in and assist financially and provide caregiving responsibilities to her school-age daughters.
- e. The applicant testified how her doctor prescribed her a new mattress and to pursue physiotherapy and occupational therapy services to assist with her transition back to work.
- f. She explained that when she requested the medical benefits and assistive devices from the respondent, she was sent to several assessments. She felt that at the end of the assessments nobody believed her. She also claims that some of the respondent's assessment reports were authored by doctors she never met.
- g. The applicant testified that she researched the type of mattress that would be best for her condition with her occupational therapist and submitted a treatment plan for the least expensive one.
- h. The applicant testified that she cannot go back to her physical job of being a companion because of the pain she is in. She also cries constantly, she testified that she cannot imagine someone hiring her considering the emotional condition she is in. She also requires a 10-minute break every 30 minutes, and cannot lift, and she does not know an employer that would consider hiring her based on her medical restrictions. As a result of the IRB being terminated, the applicant was evicted from her residence and applied for Ontario Works and Canadian Pension Plan Disability Benefits.
- i. The applicant testified that her previous education, training and experience are in clerical, social work, life skills training, and employment training jobs.
- j. The applicant feels that the respondent has unfairly denied these benefits because not only is she not able to go back to work, but she also has not exhausted the funds available to her under her policy limit. The applicant testified that she is seeking approval of a small amount of benefits in relation to the policy limits available to her. She testified that the mattress would help her get a good night's sleep and the physiotherapy would help relax the muscles that are tense.

[18] The applicant argues that she should be entitled to the benefits because they are a result of the accident, because the mattress and physiotherapy were

recommended by her doctor, and the benefits will help her transition back to work. She also argued that she read a similar case where the applicant in that hearing was entitled to an IRB and had also been approved for Ontario Works.

- [19] The respondent argues that it believes that the applicant was injured in the car accident on June 19, 2018, but absent any evidence to support her testimony, she cannot meet her onus or prove entitlement to the benefits at issue.
- [20] The respondent relies on a number of decisions⁵ to demonstrate that it is the applicant's onus to prove entitlement to the benefits in dispute. The decisions also highlight how oral testimony alone is not sufficient to meet the tests required for the benefits in dispute. The respondent argues that the oral testimony needs to be supported by evidence.
- [21] In a review of the oral testimony provided by the applicant, I am extremely sympathetic that this accident caused a significant impact on her life. She claims that she no longer could fulfill her caregiving responsibilities, no longer could pursue employment as a companion to her disabled client and could no longer take care of her household responsibilities. The applicant's oral testimony explained the impact and repercussions this accident had on her family, financial situation, her ability to return to work and why she felt the mattress and physiotherapy would benefit her.
- [22] However, the respondent is correct that absence of evidence to support the oral testimony the applicant has not discharged her onus to prove entitlement to the benefits. Not all submissions are required to be supported by evidence, but the majority will require it. For example, in response to her request for a post-104 IRB, I believe the applicant when she described her previous training, education and experience. I did not require additional proof that she had experience or education in those areas. What I did need was evidence to support her claim that her accident-related injuries cause a complete inability to perform a reasonably suited job based on her experience, training, and education. I have no evidence to support what are the limitations and restrictions that allegedly prevent her from returning to any of the reasonably suited occupations. Again, I believe the applicant when she says she has trouble sleeping and that she believes a new mattress would help her resolve that. What I need is evidence to support her claim that her doctor recommended a new mattress and why the mattress proposed in the treatment plan is reasonable and necessary for her injuries.

⁵ The Respondent's Book of Authorities

- [23] I refer to the decision referenced by the respondent, in *Jones v. Intact Insurance*⁶, the adjudicator in paragraph 35 noted the applicant “...*provided insufficient objective medical evidence to support her claim*” for a pre-104 IRB. Even though the Schedule is consumer protection legislation and should be interpreted with that in mind, the fact is I have no medical evidence to support entitlement to any of the benefits. The applicant has not discharged her onus to prove entitlement to the benefits. Since no benefits are owing, the applicant is not entitled to an award or interest.
- [24] The application is dismissed.

Released: May 9, 2022

**Chloe Lester
Vice-Chair**

⁶ Jones v. Intact Insurance 2021 ONLAT 19-007580/AABS