Tribunals Ontario
Licence Appeal Tribunal

Tribunaux décisionnels Ontario
Tribunal d'appel en matière de permis

2024 CanLII 46877 (ON LAT)

Citation: Haj Ahmad v. Allstate Canada, 2024 ONLAT 22-002102/AABS-R

RECONSIDERATION DECISION

Before:	**Monica Ciriello, Vice Chair**
Licence Appeal Tribunal File Number:	**22-002102/AABS**
Case Name:	**Mustafa Haj Ahmad v. Allstate Canada**

Written Submissions by:

For the Applicant:	Julia Logoutova, Paralegal
For the Respondent:	Kamil Podleszanski, Counsel

OVERVIEW

[1] The request for reconsideration was filed by the applicant. It arises out of a decision dated December 19, 2023 (“decision”), in which I found that the applicant’s injuries were predominately minor and therefore subject to treatment within the Minor Injury Guideline (“MIG”), his treatment plans were not payable, and he was not entitled to interest or an award.

RECONSIDERATION CRITERIA

[2] Rule 18.2 of the *Licence Appeal Tribunal Rules, 2023* (“Rules”) states that a request for reconsideration will not be granted unless one or more of the following criteria are met:

a. The Tribunal acted outside its jurisdiction or committed a material breach of procedural fairness;

b. The Tribunal made an error of law or fact such that the Tribunal would likely have reached a different result had the error not been made; or

c. There is evidence that was not before the Tribunal when rendering its decision, could not have been obtained previously by the party now seeking to introduce it, and would likely have affected the result.

[3] In this instance, the applicant is seeking reconsideration of the decision under Rule 18.2(b).

[4] Rule 18.4 provides that the following remedies are available to the Tribunal on request for reconsideration:

a. Dismiss the request; or

b. After providing responding parties an opportunity to make submissions,

i. Confirm, vary, or cancel the decision or order; or

ii. Order a rehearing on all or part of the matter.

[5] The applicant is requesting the Tribunal vary the decision or order a rehearing on the applicant’s eligibility for medical benefits and costs of examinations.

RESULT

[6] The applicant’s request for reconsideration is dismissed.

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ANALYSIS

[7] The test for reconsideration under Rule 18.2 involves a high threshold. The reconsideration process is not an opportunity for a party to re-litigate its position where it disagrees with the Tribunal's decision, or with the weight assigned to the evidence. The requestor must show how or why the decision falls into one of the categories in Rule 18.2.

Rule 18.2(b) error of law or fact

[8] In order for the applicant to establish grounds for reconsideration, he must establish that there was an error of fact or law in the decision, and that the Tribunal would likely have reached a different result had the error not been made. I agree with the applicant and find that I did err in my decision, however, I find that the applicant did not establish grounds for reconsideration because the error did not lead to a different outcome.

[9] The applicant takes the position that the Tribunal failed to consider or apply his arguments with respect to sections 38(8), 44(5), 64(2)(c), 64(4)(d), 64(4)(e), 64(19), and 66 of the *Schedule*. The applicant submits that the Tribunal ultimately failed to make a decision with respect to his application and did not consider the evidence or his submissions about what led to the denial of the January 14, 2021, treatment and assessment plan.

[10] In the original submissions, the applicant intertwined vague MIG submissions with arguments on his disputed treatment plans. The applicant's arguments as they related to the treatment plans were reviewed by the Tribunal, at paragraph 9 of the decision, I found that the applicant's submissions regarding the MIG were vague and unpersuasive. To make this finding, I considered the medical records disclosed in the submissions and found that the applicant had not met his onus of proving entitlements to the issues in dispute.

[11] The respondent submits that the applicant has not discharged his onus to establish a valid ground for reconsideration in accordance with Rule 18.2(b), and furthermore there were no errors of law or fact that would have likely affected the result. The respondent seeks to have the request dismissed.

[12] It is well established that the Tribunal does not have to refer to every argument offered by a party in arriving at a decision.

The Tribunal erred failing to properly consider the consequences of section 38(8) and 38(11)

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[13] I disagree with the applicant that I made an error of law in not properly outlining my analysis of section 38 in my decision. Furthermore, I find that even if I did make an error, it does not meet the second part of the test in Rule 18.2(b), in that it does not change the outcome of my decision for the following reasons.

[14] Pursuant to section 38(11)1, the respondent is prohibited from taking the position that the applicant has an impairment to which the MIG applies. Section 38(11)2 provides that the insurer shall pay for all goods, services, assessments and examination in the treatment plan that relate to the period starting on the 11th business day after the day the respondent received the plan and ending on the day the respondent gives a notice in accordance with section 38(8).

[15] In my decision I did review the treatment and plans submitted by the applicant. Furthermore, I reviewed the notice, and was persuaded that within 10 days of receiving the treatment plans, the respondent provided notice to the applicant in compliance with section 38(8) of the *Schedule*. The notice of denial was clear and would enable an unsophisticated person to understand and make an informed decision to challenge the denial, because it stated that there was no compelling evidence to support it and indicated how to appeal. The Tribunal has previously held that, ultimately what is required is a principled rational for the decision to which, the insured person can respond.

[16] Therefore, section 38(11) of the *Schedule* was not triggered, and the treatment plans not payable under this section. Therefore, even if I did error, it would not likely have changed the outcome, I find that the applicant has not established grounds for reconsideration under Rule 18.2(b).

The Tribunal made no error with respect to section 64

[17] Section 64 of the *Schedule* specifics notice and delivery and the requirements for documents to be in writing. The applicant submits that the Tribunal omitted evidence of the respondent's refusal to accept the applicant's submissions by way of section 64. I disagree, in reviewing the applicant's submissions section 64 was not cited by the applicant in his initial hearing submissions.

[18] It is not an error to not consider arguments that were not put before the Tribunal, therefore this does not constitute a basis for reconsideration under Rule 18.2(b).

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The Tribunal made no error with respect to section 44(5)

[19] Section 44(5) of the *Schedule* specifics that if the respondent requires an examination under this section, the respondent shall arrange for the examination at its expense and shall give the applicant a notice. The applicant submits that this was not done by the respondent with regards to item iii.b. In reviewing the applicant's reconsideration submissions, item iii.b is not listed. Therefore, this does not constitute a basis for reconsideration under Rule 18.2(b).

[20] As noted above, the onus is on the applicant to establish grounds for reconsideration. While the applicant refers to item iii.b in his section 44(5) reconsideration submissions he did not substantiate it there is no explanation of an alleged failure to consider the sections nor how it amounts to a reviewable error. Therefore, his onus is not met.

CONCLUSION & ORDER

[21] I stand by my decision, and I find the applicant has not established grounds for reconsideration pursuant to Rule 18.2(b).

[22] For the reasons noted above, I dismiss the applicant's request for reconsideration.

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Monica Ciriello
Vice-Chair
Tribunals Ontario – Licence Appeal Tribunal

Released: April 19, 2024

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