



Licence Appeal Tribunal File Number: 21-000240/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:

Michael McAulay

Applicant

and

Certas Home and Auto Insurance Company

Respondent

MOTION ORDER

ADJUDICATOR:

Samia Makhamra

**Motion heard by
Teleconference:**

April 8, 2022

BACKGROUND

- [1] The applicant was injured in an automobile accident on August 28, 2016 and sought benefits pursuant to the Statutory Accident Benefits Schedule *Effective September 1, 2010 (including amendments effective June 1, 2016)*.
- [2] The applicant was denied certain benefits and submitted an application to the Licence Appeal Tribunal - Automobile Accident Benefits Service ("Tribunal").
- [3] A videoconference hearing is scheduled for May 2-6 and 9-11, 2022. A catastrophic impairment determination is in dispute.

MOTION

- [4] On March 8, 2022, the respondent filed a Notice of Motion requesting that the Tribunal:
 - i. Adjourn the hearing to allow for additional in-person assessments to take place; and,
 - ii. An order for productions.
- [5] The respondent argues it would be unfair to proceed to the hearing without the opportunity to respond recent evidence. It argues a recent report from an occupational therapist and a recent opinion by the applicant's psychologist, Dr. Levitt, warrant a response. In addition, its own assessments are dated in 2019 and require updated opinions in light of more recent medical evidence, as well as the in-person assessments - these are scheduled in a few months' time.
- [6] The applicant does not consent. In summary, the applicant argues the new in-person assessments the respondent is proposing are unwarranted and unreasonable. Regarding the new evidence the respondent is concerned about, these are a situational assessment report of Mr. Kelly Farrell, occupational therapist, as well as an addendum report of Dr. Levitt dated December 16, 2021, and January 19, 2022. The applicant submits there is no new evidence in these documents. As for productions, the applicant argues they are unreasonable and too late to be satisfied ahead of the imminent hearing.

RESULT

- [7] **The motion is dismissed. The hearing of May 2-6 and 9-11, 2022 shall proceed as scheduled.**

Reasons for dismissing the respondent's requests

- [8] On balance, I am not persuaded that an adjournment is warranted. The order for this hearing set January 21, 2022 as the deadline for exchange of all documents and allowed the respondent until March 25, 2022 to produce addendum reports. I

am not convinced that this timeframe anticipated in-person assessments. Nor am I prepared to move the hearing dates for what could be a delay of several months, if not a year. This hearing has been on the calendar since April 2021, and I am not prepared to interfere with it, or the order for this hearing, at this time, mere weeks before the hearing.

- [9] Based on the submissions, each party has its own set of CAT assessments, and, as the applicant stated, there is no new opinion in Dr. Levitt's recent report. Should there be any prejudice to the respondent that cannot be alleviated by the expert witnesses, the hearing adjudicator will be able to address it as s/he sees fit. As for the respondent's concern with its assessments being dated in 2019, I note that this was the case at the case conference as well, when the respondent agreed to the procedures for this hearing.
- [10] As for the request for productions, it is indeed very close to the scheduled hearing. I am not prepared to make an order at this time. The adjudicator will certainly be in a better position to consider whether these documents are necessary and what other remedy may be warranted
- [11] Except for the provisions contained in this Motion Order all previous orders made by the Tribunal remain in full force.

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.

Released: April 19, 2022



Samia Makhamra, Adjudicator