Tribunals Ontario
Licence Appeal Tribunal

Tribunaux décisionnels Ontario
Tribunal d'appel en matière de permis

Ontario

Citation: Campbell v. Aviva Insurance Company, 2021 ONLAT 19-012095/AABS - R

RECONSIDERATION DECISION

Before:	Lindsay Lake, Adjudicator
Date of Order:	05/25/2021
Tribunal File Number:	19-012095/AABS
Case Name:	Bernard Campbell v. Aviva Insurance Company

Written Submissions by:

For the Applicant:	Maka Metreveli, Paralegal
For the Respondent:	Kathleen Mertes, Counsel

OVERVIEW

[1] Aviva Insurance Company, the respondent, filed a request for reconsideration of the January 29, 2021 decision[1] of the Licence Appeal Tribunal – Automobile Accident Benefit Services (the "Tribunal").

[2] In the decision, I found the applicant, Bernard Campbell, was entitled to three treatment plans for chiropractic treatment, plus interest in accodrance with s. 51 of the *Schedule*, as a result of the respondent's failure to comply with s. 38(8) of the *Schedule*.

[3] The respondent has requested a reconsideration of my decision. The respondent submitted that I violated the rules of procedural fairness and that I made a significant error of law and/or fact in determining the issues that were before me.

[4] The applicant requested that I deny the respondent's request for reconsideration. The applicant's position is that I did not violate the rules of procedural fairness or make any significant errors of law or fact that would result in a different decision.

RESULT

[5] The respondent's request for reconsideration is dismissed.

ANALYSIS

[6] The grounds upon which a request for reconsideration can be granted are set out in Rule 18.2 of the *Licence Appeal Tribunal, Animal Care Review Board, and Fire Safety Commission's Common Rules of Practice and Procedure, Version I* (October 2, 2017) (the "*Rules*"). The grounds that the respondent submits apply in this matter are Rules 18.2(a) and (b) as it submitted that I violated the rules of procedural fairness and that I made errors of law and/or fact that, if corrected, I likely would have come to a different decision.

Procedural Fairness

[7] The respondent submitted that I violated the rules of procedural fairness by imposing my own arbitrary threshold in determining compliance with s. 38(8) of the *Schedule*.[2]

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[1] *Campbell v Aviva Insurance Company*, 2021 CanLII 13194 (ON LAT) (the "decision").
[2] Request for Reconsideration (Respondent), para. 12.

[8] Procedural fairness, however, encompasses the following:

(i) Ensuring that parties understand the case they must meet; and

(ii) Ensuring that the parties have an opportunity to be heard to allow him or her to respond accordingly.[3]

[9] The Tribunal's March 16, 2020 Order identified the issues in dispute between the parties and a written hearing was scheduled. The decision considered the issues in dispute as set out in the March 16, 2020 Order and both parties submitted written submissions and evidence which I considered in rendering my decision.

[10] For these reasons, I find that the respondent had a full opportunity to argue its case pertaining to the issues identified in the March 16, 2020 Order and to respond to the position taken by the applicant. Therefore, I do not find any violation of procedural fairness. Furthermore, I find that the respondent's position that I imposed an arbitrary threshold in determining compliance with s. 38(8) that was contrary to the requirements of the *Schedule* and binding case law is more appropriately analyzed under errors of fact and/or law.

Errors of Fact and/or Law

[11] The respondent relied upon Rule 18.2(b) for its position that I erred in fact and/or law by imposing requirements for compliance with s. 38(8) of the *Schedule* in the decision that were beyond what is required by the binding decision of the Divisional Court in *Hedley v. Aviva Insurance Company of Canada*[4] and by s. 38(8) of the *Schedule* itself.

[12] In order to interfere with a decision under Rule 18.2(b), however, I must not only have made an error of law or fact, but that error of law or fact must be enough that, if corrected, I likely would have come to a different decision. Minor or inconsequential procedural or substantive mistakes are not enough to interfere with a decision made at first instance.

[13] For the reasons that follow, I find that I made no error of law and/or fact and even if I had, it would not rise to such a level that I likely would have come to a different decision.

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[3] See the reconsideration decision of *IMN v. Intact Insurance Company*, 2019 CanLII 101473 (ON LAT) at para. 9 and *17-004229 v The Guarantee Company of North America*, 2018 CanLII 112115 (ON LAT) at para. 7.
[4] 2019 ONSC 5318 (CanLII) ("*Hedley*").

Failure to follow the Hedley decision

[14] The respondent submitted that I erred in law because my finding that its denial notices did not comply with s. 38(8) of the *Schedule* was contrary to the principles set out in the Divisional Court's decision in *Hedley.* In *Hedley*, the Divisional Court adopted the reasoning in the Tribunal's reconsideration decision in *T.F. v. Peel Mutual Insurance Company*[5] as well as the Ontario Court of Appeal decision in *Turner v. State Farm Mutual Automobile Insurance Company*.[6] The respondent submitted that based on the *Hedley*, *T.F. v. Peel* and *Turner* decisions, its three denial letters complied with s. 38(8) of the *Schedule* because they offered a principled rationale, provided meaningful reasons that were sufficient to permit the applicant to decide whether to challenge the denials and none of the three notice letters were "boilerplate" in nature.

[15] I find that the respondent's submissions regarding the principles set out in *Hedley* were arguments that could have been made at first instance but, for whatever reason, there were not included. In fact, the applicant relied upon the reconsideration of *T.F. v. Peel* at first instance and the respondent provided no submissions on this decision for the written hearing. Therefore, the respondent's submission that I erred at law for failing to consider *Hedley* is not properly before me as a ground for reconsideration. As a result, I do not give any weight to this argument in making my decision on the request for reconsideration.

[16] Even if I am incorrect and I am required to consider these submissions from the respondent, I find that I did not make any error of law such my decision was contrary to the decision in *Hedley*.

[17] The respondent omitted a significant portion of my decision from its Request for Reconsideration submissions. Specifically at paragraph 11(a) of its submissions, the respondent omitted my finding that, "in all three of the denial notices, Aviva failed to provide specific details about Mr. Campbell's injuries or conditions that formed the basis of Aviva's decision despite Dr. Kopansky-Giles setting out the conditions that Mr. Campbell sustained as a result of the accident in her July 10, 2017 report."[7]

[18] The requirement to provide specific details about the applicant's injuries or conditions in a denial of a treatment plan for compliance with s. 38(8) of the *Schedule* comes directly from the Executive Chair's comments in *T.F. v. Peel*

[5] 2018 CanLII 39373 (ON LAT) (reconsideration) ("*T.F. v. Peel*").
[6] 2005 CanLII 2551 (ON CA) ("*Turner*").
[7] The decision, para. [18](i).

which was endorsed by the Divisional Court in *Hedley.* The Executive Chair held in *T.F. v. Peel* that a denial notice should, *at the very least*, include specific details about the insured's condition forming the basis for the insurer's decision (my emphasis added).[8]

[19] In my opinion, the three denial letters dated November 2, 2017, February 9, 2018 and April 26, 2018 were boilerplate statements in regard to the applicant's injuries and conditions, as they all used the same language of, "as a result of the injuries sustained in the October 20, 2016 motor vehicle accident." No further description or specific details are provided in any of the letters regarding the applicant's injuries or conditions that formed the basis of the respondent's decision. Without such details, I find that the denial letters fell short of providing a "principled rationale" and, even though *Hedley* was not specifically considered at first instance, I find that the denials would also fall short of the requirements in *Hedley*.

[20] Therefore, even if I am incorrect that the respondent's reliance upon the Divisional Court decision in *Hedley* is a new argument that is not properly before me, upon reconsideration, I find that no error was made in the decision upon consideration of the principles set out in *Hedley*.

Requirements beyond s. 38(8)

[21] The respondent submitted that I also erred in law by imposing requirements for compliance with s. 38(8) of the *Schedule* that are beyond what is required by the section including:

(i) Attaching to the denial letters a copy of the July 10, 2017 Insurer's Examination ("IE") Chiropractic Assessment Report by Dr. Deborah Koplansky-Giles because the respondent referenced Dr. Koplansky-Giles' report in the denial letters;

(ii) Providing a "line-by-line assessment" of each of the individual proposed services set out on the OCF-18s when the denial letters were clear that the respondent did not agree to pay for any proposed goods, services, assessments or examinations set out in the disputed OCF-18s;

(iii) Identifying information about the applicant's condition that the respondent did not have, but required; and

[8] *Supra* note 5 at para. 19, citing *M.B. v. Aviva Insurance Canada*, 2017 CanLII 87160 at para. 26

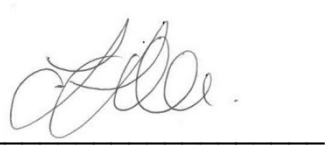
(iv) Providing a specific list to the applicant of what the respondent considers to be “compelling medical documentation” when the respondent, in good faith, advised the applicant that it may reconsider a past denial if new compelling medical documentation is provided.

[22] I do not agree with the respondent that the decision imposed all the above listed requirements for a finding of compliance with s. 38(8). In any event, even if I did agree with the respondent that I erred on any of the above bases, I find that such error, if corrected, would not lead me to come to a different decision. The respondent still failed to provide any specific details about the applicant’s condition or injuries in the three denial letters that formed the basis of the respondent’s decision as required by *T.F. v. Peel* as part of the “medical and other reasons” set out in s. 38(8).

[23] Therefore, I find that I did not impose requirements for compliance with s. 38(8) of the *Schedule* beyond what is set out by s. 38(8) and, even if I had, that these errors would not change the outcome of the decision.

CONCLUSION

[24] For the reasons noted above, the respondent's request for reconsideration is dismissed.



Lindsay Lake
Adjudicator
Tribunals Ontario - Licence Appeals Tribunal

Released: May 25, 2021