



FSCO A15-005120

BETWEEN:

NICOLE BREADNER

Applicant

and

CO-OPERATORS GENERAL INSURANCE COMPANY

Insurer

REASONS FOR DECISION

Before: Caroline King

Heard: February 16, 2016, at the offices of the Financial Services Commission of Ontario in Toronto. Written submissions completed by November 28, 2016.

Appearances: Jennifer Baic for Ms. Breadner
Helen Friedman for Co-operators General Insurance Company

Issues:

The Applicant, Nicole Breadner, was injured in a motor vehicle accident on February 20, 2014. She applied for and received statutory accident benefits from Co-Operators General Insurance Company ("Co-Operators"), payable under the *Schedule*.¹ Co-Operators paid some but not all benefits claimed. The parties were unable to resolve their disputes through mediation, and Ms. Breadner applied for arbitration at the Financial Services Commission of Ontario under the *Insurance Act*, R.S.O. 1990, c.I.8, as amended.

¹*The Statutory Accident Benefits Schedule — Effective September 1, 2010*, Ontario Regulation 34/10, as amended.

The issues in this hearing are:

1. Is Ms. Breadner entitled to receive a payment for the cost of examination for the remaining balance on a treatment plan dated January 26, 2015 in the amount of \$2,828.50 relating to a neuropsychological assessment?
2. Is Ms. Breadner entitled to interest for the overdue payment of benefits?

Result:

1. Ms. Breadner is not entitled to receive a payment for the cost of examination for the remaining balance on a treatment plan dated January 26, 2015 in the amount of \$2,828.50 relating to a neuropsychological assessment.
2. There is no overdue payment of benefits and therefore no interest is owing.

EVIDENCE AND ANALYSIS:

Overview:

The Applicant was a pedestrian crossing a road when she was struck on her right side by the mirror of a motor vehicle on February 20, 2014. The Applicant applied for and received some benefits from Co-Operators, the Insurer.

The Applicant submitted to the Insurer a treatment and assessment plan which recommended neuropsychological assessment with costs totalling \$5,028.50. The Insurer paid the Applicant \$2,000.00 for the costs of one assessment/examination, plus \$200.00 related to the completion of the OCF-18 form. The Insurer also paid related taxes.

The parties agree that costs for one assessment/examination is capped by law at \$2,000.00, plus any applicable taxes. The parties disagree about whether the work done constitutes two assessments/examinations, as submitted by the Applicant, or one assessment/examination, as

submitted by the Insurer. The disagreement about whether the work done constitutes one or two assessments is the basis for this arbitration.

If the work done constitutes two assessments/examinations within the meaning of the *Schedule*, then \$2,000.00 plus any applicable taxes, is outstanding. If the work done constitutes one assessment/examination within the meaning of the *Schedule*, then the application will be dismissed as all required payments have been made.

The decision will set out the background facts in more detail, the law, and evidence, analysis and conclusion.

Background:

The Applicant submitted a treatment and assessment plan in an OCF-18 dated January 26, 2015 from Dr. Harold Becker of Omega Medical Associates (“OCF-18”)². The OCF-18 recommended neuropsychological assessment listing the following breakdown of costs:

DESCRIPTION	COST
neuropsychological interview	\$2,000.00
neuropsychological testing	\$2,000.00
neuropsychological screen related to the OCF-18	\$250.00
OCF-18	\$200.00
Subtotal	\$4,450.00
Taxes	\$578.50
Grandtotal	\$5,028.50

²Exhibit #1 Tab 10

It is agreed that:

- The Insurer paid to the Applicant \$2,200.00 representing \$2,000.00 for the cost of one assessment plus \$200.00 for the cost of completing the OCF-18.
- The Insurer paid applicable HST to Omega related to one assessment.
- The Applicant claims entitlement to the costs for a second assessment.

The Law:

The parties agree that subsection 25(5)(a) of the *Schedule* caps the amount an Insurer may pay to an insured at \$2,000.00 for fees and expenses for conducting any one assessment or examination including the reports connected to it. It is of particular relevance to this case that the word “report” is in the plural. This indicates that the number of reports does not itself trigger entitlement for additional assessment/examination costs.

Is the assessment work done related to the OCF-18 one assessment or two assessments?

For the reasons that follow, I find that the assessment work done related to the OCF-18 is properly considered to be one assessment within the meaning of the *Schedule*.

The Applicant’s position is that the Applicant is entitled to two costs of assessment/examinations as represented by the number and content of the two reports (and the amount of work done regarding them), and that therefore the Applicant is entitled to \$2,000.00 for the second assessment/examination, which has not been paid.

The documents:

Two documents were submitted by Omega Medical Associates. They are both dated June 18, 2015. They are both under the signature of Dr. Lara Davidson. The “Tests Administered” in both documents contains the same lists of tests³. One document is called the “Independent Neuropsychological Examination Interview & Analysis.”⁴ The document, excluding appendices, is 15 pages long. The other document is called “Independent Neuropsychological Examination Testing”.⁵ This document, excluding the appendix, is 6 pages long.

Both documents have the same introductory paragraphs described as: “Purpose of Assessment:”

[The Applicant] was assessed at Omega Medical Associates on March 31, 2015⁶ and April 1, 2015 in relation to the accident of February 20, 2014 upon the referral of Zare Paralegal Services in a letter dated March 20, 2015 by Ms. Jennifer Baic. *I have been instructed to conduct a neuropsychological assessment and to comment on several issues outlined in that letter.* [my emphasis]

The scope, purpose and procedures surrounding this evaluation, as well as the limits of confidentiality, were thoroughly reviewed with [the Applicant]. She agreed to participate within the explained context. [The Applicant] was advised that the examination will be conducted as an independent examination and as such, does not constitute a treatment relationship with Omega Medical Associates or the examiner.

This assessment was carried out in accordance with the expert duty acknowledgement and related accompanying Form 53. Should new information become available in the future, the opinions herein may be reconsidered.

The information in the second document is incorporated by reference into the first document.⁷

³Exhibit #1 Tab 15, p.9; Exhibit #1 Tab 16, p.2

⁴Exhibit #1 Tab 15

⁵Exhibit #1 Tab 16

⁶Only Exhibit #1 Tab 15 includes this date.

⁷Exhibit #1 Tab 15, p. 10

Analysis and Conclusion:

I find that it is more likely than not the assessment work done related to the OCF-18 constitutes one assessment within the meaning of the *Schedule*.

The law clearly anticipates that an assessment may include more than one report. The question is whether the scope and nature of the work done constitutes two assessments. The decision in this case turns on the facts, and the facts support a finding that only one assessment was done.

Note in particular:

- The OCF-18 identifies a neuropsychological assessment

- The documents/reports themselves:
 - Have the same purpose identified (a neuropsychological assessment);
 - Have same author were issued on the same date;
 - Have the same dates of examination (with the exception noted above);
 - The “Tests Administered” are the same; and
 - The results and information in the second document is incorporated by reference into the first document.

When these points are considered as a whole, I find that the nature, content, and language of the documents clearly supports a finding that the work done constituted one assessment. As all costs have been paid for that assessment, nothing further is owing to the Applicant, and the application will be dismissed.

EXPENSES:

If the parties are unable to deal with the issue of expenses between themselves, I may be spoken to on that issue, provided only that the request is made within 30 days of the delivery of these reasons.

Caroline King
Arbitrator

January 11, 2017
Date



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ARBITRATION ORDER

Under section 282 of the *Insurance Act*, R.S.O. 1990, c.I.8 as it read immediately before being amended by Schedule 3 to the *Fighting Fraud and Reducing Automobile Insurance Rates Act*, 2014, and *Ontario Regulation 664*, as amended, it is ordered that:

1. The Application is dismissed.
2. If the parties are unable to agree on the matter of expenses of this hearing, either party may request in writing and within 30 days of the issuing of this decision, an appointment before me to determine expenses, as per Rule 79 of the *Dispute Resolution Practice Code*.

Caroline King
Arbitrator

January 11, 2017

Date