

Tribunal File No: 20-005604/aabs

Tammy J Dockstater vs. Technology Insurance Company Inc.

Please see the Motion Order related to your Automobile Accident Benefits Service dispute.

Provided you have any questions regarding this file **please contact Monesa Hashemi, assigned Case Management Officer**, or the Tribunal via phone 416-326-1356 or via email LATregistrar@ontario.ca.

Sincerely,

Shaneen Laity

Case Management Officer

Licence Appeal Tribunal

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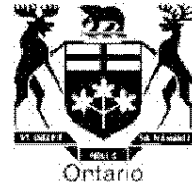
Tribunaux décisionnels Ontario

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Tribunals Ontario
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Tribunaux décisionnels Ontario
Tribunal d'appel en matière de permis



Tribunal File Number: 20-005604/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:

Tammy Dockstater

Applicant

and

Technology Insurance Company Inc.

Respondent

MOTION ORDER

Order made by: Craig Mazerolle, Adjudicator

Date of Order: April 13, 2021

BACKGROUND

- [1] The applicant was injured in an automobile accident on **July 24, 2017** and sought benefits pursuant to the *Statutory Accident Benefits Schedule - Effective September 1, 2010* (the “*Schedule*”). The issues in dispute include two requests for medical benefits (i.e., social work treatment and physical therapy), as well as an award and interest.
- [2] During a case conference held on January 21, 2021, the applicant contested certain production requests from the respondent. In short, the applicant did not agree to provide medical records created before July 24, 2014 (i.e., three years prior to the subject accident), nor would she provide the accident benefits file from her 2013 accident.
- [3] For the following reasons, I find the applicant is required to produce most of the disputed production requests, save for social media posts created before July 24, 2014.

PARTIES’ POSITIONS

- [4] The respondent argued that its production requests are all relevant, as it will be raising causation during any potential hearing. That is, in its motion materials, the respondent takes the position that “there was overlap between injuries complained of as a result of a motor vehicle accident in 2013 and the subject Accident.” As such, the respondent wants medical records that pre-date the 2013 accident by approximately one year (i.e., June 1, 2012 to date and ongoing). The respondent then noted that the applicant’s present application was started shortly after settlement of her claim related to the 2013 accident. Therefore, the respondent contended that the 2013 accident benefits file is necessary to determine “whether any of those settlement funds had been used for treatment injuries [*sic*] from either the 2013 or 2017 losses.”
- [5] The respondent did note that it would hold off on its request for further production of the Employment Insurance file, as it first wanted to see what was available in the parts that the applicant is willing to produce (i.e., the file from July 24, 2014 onwards).
- [6] The applicant disputed the respondent’s production requests as both irrelevant and disproportional. That is, the applicant argued that providing the respondent with medical records from three years prior to the subject accident to date should be more than sufficient for the parties to understand her impairments and limitations. Evidence of this lack of relevance is that neither of the respondent’s assessors requested additional information from the applicant. In fact, neither assessor who reviewed the denied physical therapy treatment plan raised causation as an issue (even though they were aware of her 2013 accident). Finally, the applicant noted that there is less than \$4,000.00 worth of treatment at issue, so these requests are not only out of proportion with the dispute but

obtaining them will delay an already delayed proceeding (i.e., the case conference was adjourned twice).

- [7] In addition to requesting the dismissal of the motion, the applicant is also seeking costs from the respondent. No submissions were made in support of this request.
- [8] In reply, the respondent added that it does not matter if its assessors felt it had enough information to reach a conclusion on the applicant's medical condition. As an insurer, it has an ongoing obligation to adjust the claim, so it is reasonable for it to request further medical records.

ANALYSIS

- [9] Rule 3.1 of the *Common Rules of Practice and Procedure* (the "LAT Rules") requires the Tribunal to conduct its proceedings in a fair, proportional, and efficient manner that allows disputes to be decided on the merits of the case.
- [10] Rule 9.3 of the LAT Rules then states that the Tribunal may make an order to: "Disclose any document or thing the Tribunal considers relevant to the issues in dispute." Relevance is, therefore, the key consideration for production orders.

Requests for Medical Records

- [11] I find that many of the contested production requests are producible, because there is a rational link between the respondent's argument about causation and the requested scope for production for both the medical records and the 2013 accident benefits file. Briefly, it is clear that the adjudicator will be asked to consider causation during the hearing. As such, I am satisfied that medical records predating the 2013 accident (including the accident benefits file itself) will be highly relevant to the adjudication of this key argument. Adjudicators require the best available evidence to ensure that determinations are made on the merits of the case, so I find these requests to be relevant and, thus, producible.
- [12] Turning to the applicant's arguments, I first do not accept her contention that obtaining several additional years' worth of records will unreasonably delay the dispute. Beyond the fact that the respondent is willing to obtain these records (pending receipt of completed authorization forms), I fail to see how expanding the scope of requests that the applicant has already agreed to produce will significantly delay this matter. In fact, there is a possibility that production of further records will help the parties clarify their positions such that the chances of settlement may increase.
- [13] In this same vein, I do not accept the applicant's argument that these requests are disproportionate to the dispute. Not only are the costs of obtaining these records being covered by the respondent, but the highly relevant nature of these documents greatly outweighs any minor prejudice and inconvenience that the applicant may face through their collection and exchange.

- [14] I also do not place significant weight on the assessors' comments highlighted by the applicant. Though award requests are generally focused on the records that an insurer (and its experts) had at the time of the adjusting the claim, a hearing adjudicator still requires the best available evidence when deciding whether an applicant is entitled to disputed medical benefits. As such, to ensure that this determination is made on the merits of the case, I am satisfied that the production of both the medical records and the 2013 accident benefits file will assist the adjudicator in reaching a fair and comprehensive ruling on the two, disputed treatment plans.

Other Production Requests

- [15] Most of the parties' motion materials focused on the disputed scope for production of clinical notes and records, as well as the 2013 accident benefits file. However, there are several other categories of requests that I will now address.
- [16] Though not fleshed out in the parties' submissions, there is a request from for the: "Preservation and production of all social media posts and photographs relevant to the claims in this proceeding". The applicant is willing to provide all such records from July 24, 2014 to date and ongoing and I see no reason to order any more records under this category.
- [17] When considering that these social media posts will likely have significantly less probative value than the medical records ordered above, I find producing almost a decade's worth of these posts will require a disproportionate amount of effort on the part of the applicant for little to no additional, relevant information. Put another way, since the applicant will have to collect these personal posts herself (as opposed to using funds from the respondent to pay a medical provider to do this work for her), I am satisfied that limiting this request from July 24, 2014 onwards is a reasonable balance in line with Rule 3.1 of the LAT Rules.
- [18] Moving to the request for attendance records at sporting facilities, gyms, etc., I find that there is relevance to these documents such that they are producible. Again, there is limited probative value compared to the many medical records at issue, but I am still satisfied that attendance at a gym or fitness centre is an indication of one's functional abilities. As such, I am satisfied that these documents are producible from June 1, 2012 onwards.
- [19] Finally, the requested collateral benefits files are all producible, as they will not only contain further medical records, but—if they do exist—the adjudicator will have to determine if these plans provide funding for treatment that would otherwise be covered through the accident benefits regime. This latter point is essential to the dispute, as it will affect if the medical benefits are payable.

Costs Request

- [20] I do not find any behaviour on the part of the respondent that reaches the high

threshold for ordering costs under Rule 19.1 of the LAT Rules. Though the applicant may take issue with the broad scope of the respondent's production requests, I find nothing unreasonable in requesting records for the purpose of forwarding the adjudication of a contested claim.

ORDER

[21] The applicant shall provide the respondent with the following productions **by July 2, 2021**:

- i. All ambulance call reports (from June 1, 2012 to date and ongoing);
- ii. Prescription summaries from all pharmacies attended (from June 1, 2012 to date and ongoing);
- iii. Complete clinical notes and records of Dr. William Bates (from June 1, 2012 to date and ongoing);
- iv. Complete clinical notes and records of Dr. David Ballingall (from June 1, 2012 to date and ongoing);
- v. Complete clinical notes and records of Dr. Shahzia Khan (from June 1, 2012 to date and ongoing);
- vi. Complete clinical notes and records of Dr. Virginia Walley (from June 1, 2012 to date and ongoing);
- vii. Complete clinical notes and records of Dr. Fawaz Siddiqi (from June 1, 2012 to date and ongoing);
- viii. Complete clinical notes and records of Dr. Vineet Nair (from June 1, 2012 to date and ongoing);
- ix. Complete clinical notes and records of Dr. John Kay (from June 1, 2012 to date and ongoing);
- x. Complete clinical notes and records of Dr. Michael Lacerte (from June 1, 2012 to date and ongoing);
- xi. Complete clinical notes and records of Dr. Donald Taves (from June 1, 2012 to date and ongoing);
- xii. Complete clinical notes and records of Dr. Kamath Vrandra (from June 1, 2012 to date and ongoing);
- xiii. Complete clinical notes and records of Dr. Christine Richardson (from June 1, 2012 to date and ongoing);
- xiv. Complete clinical notes and records of Dr. Tarek Loubani (from June 1,

- 2012 to date and ongoing);
- xv. Complete clinical notes and records of Dr. Gracey Janel (from June 1, 2012 to date and ongoing);
 - xvi. Complete clinical notes and records of Dr. Matthew Davis (from June 1, 2012 to date and ongoing);
 - xvii. Complete clinical notes and records of Dr. Ailbue O'Riordan (from June 1, 2012 to date and ongoing);
 - xviii. Complete clinical notes and records of Dr. Robert Gibson (from June 1, 2012 to date and ongoing);
 - xix. Complete clinical notes and records of Dr. David Peck (from June 1, 2012 to date and ongoing);
 - xx. Complete clinical notes and records of Dr. Hocke (from June 1, 2012 to July 10, 2018, and from November 28, 2018 to date and ongoing);
 - xxi. Complete clinical notes and records of Dr. Bhasharat (from June 1, 2012 to July 10, 2018, and from November 28, 2018 to date and ongoing);
 - xxii. Complete clinical notes and records of Dr. McNeil (from June 1, 2012 to July 10, 2018, and from November 28, 2018 to date and ongoing);
 - xxiii. Complete clinical notes and records of Dianne Spargo (from June 1, 2012 to date and ongoing);
 - xxiv. Complete clinical notes and records of Medix College (from June 1, 2012 to date and ongoing);
 - xxv. Complete clinical notes and records of Fanshaw Family Medical Centre and/or Our Clinic and/or Fanshaw Health Group (from June 1, 2012 to date and ongoing);
 - xxvi. Complete clinical notes and records of Optimal Physiotherapy (from June 1, 2012 to date and ongoing);
 - xxvii. Complete clinical notes and records of MyHealth Partners Inc., including those of Dr. John Bennett, and any and all diagnostic imaging taken of the applicant (from June 1, 2012 to date and ongoing);
 - xxviii. Complete clinical notes and records of London Health Sciences Centre, including those of Dr. Donald Gutoski, and any and all diagnostic imaging taken of the applicant at same (from June 1, 2012 to date and ongoing);
 - xxix. Complete clinical notes and records of St. Joseph's Hospital and/or

Health Care Centre, and any and all diagnostic imaging taken of the applicant at same (from June 1, 2012 to date and ongoing);

- xxx. Complete diagnostic imaging taken of the applicant at London Xray Associates, including those taken by Dr. Said Osman, Dr. Pavlo Ohorodnyk and Dr. Andrew Lu (from June 1, 2012 to date and ongoing);
- xxxi. Clinical notes and records of all hospitals, examining, assessing and treating physicians, not listed above (from June 1, 2012 to date and ongoing);
- xxxii. Clinical notes and records from any Walk-in Clinic(s) attended (from June 1, 2012 to date and ongoing);
- xxxiii. Clinical notes and records for any medical service provider seen by the applicant, including but not limited to psychologists, psychiatrists and mental health counsellors, in relation to her depression, anxiety or other psychological or emotional issues (from June 1, 2012 to date and ongoing);
- xxxiv. Clinical notes and records from any chiropractors seen by the applicant as a result of the subject accident and as a result of the prior 2013 MVA (to date and ongoing);
- xxxv. Clinical notes and records from any non-OHIP providers, not listed above, consulted as a result of the impairments sustained as a result of the subject accident or as a result of the prior 2013 MVA (to date and ongoing);
- xxxvi. Attendance records of applicant at any fitness facilities, gyms, sporting clubs, etc. (from June 1, 2012 to date and ongoing);
- xxxvii. Complete employment insurance file, including but not limited to summaries of benefits, amounts received any initial application (from July 24, 2014 to date and ongoing);
- xxxviii. A copy of complete collateral benefits files, including ODSP, OW, CPP, LTD/STD, or Group Medical files (from June 1, 2012 to date and ongoing) – if no such files exist, written confirmation of same is required;
- xxxix. Copy of the accident benefits file from Western Assurance in relation to the applicant MVA in 2013, including but not limited to treatment plans, Statements of Benefits, and any pleadings and/or settlement documents relating to same;
- xl. Copy of the accident benefits file from any MVA that occurred on or after June 1, 2012, and subsequent MVAs, including but not limited to treatment plans, Statements of Benefits, and any pleadings and/or

settlement documents relating to same; and,

xli. Preservation and production of all social media posts and photographs relevant to the claims in this proceeding (from July 24, 2014 to date and ongoing).

- [22] Any redactions to these production requests for privilege must be particularized by the applicant.
- [23] If the applicant decides to allow the respondent to obtain these records itself, the applicant shall sign and provide the respondent with all of the necessary authorization requests for said productions **by April 30, 2021**.
- [24] No costs will be awarded for this motion.
- [25] If the parties settle the issues in dispute, the applicant shall **immediately** inform the Tribunal in writing.

Date of Issue: April 13, 2021



Craig Mazerolle, Adjudicator