

**Tribunals Ontario
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**Tribunaux décisionnels Ontario
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RECONSIDERATION DECISION

Before: D. Stephen Jovanovic
Date: April 8, 2019
File: 17-005698/AABS
Case Name: T.C. v. Unifund Claims Inc.

Written Submissions by:

For the Applicant: Lisa Bishop, Counsel

For the Respondent: Sarah Deol, Counsel

OVERVIEW

1. On May 7, 2018, the Tribunal issued its decision over the entitlement of the applicant, T.C., to automobile accident benefits under the *Statutory Accident Benefits Schedule – effective September 1, 2010* (“Schedule”).¹ The main issues before the Tribunal were:
 - i) whether T.C. sustained predominantly minor injuries, and therefore should be subject to treatment within the Minor Injury Guideline (“Guideline”);
 - ii) whether he was entitled to various medical and rehabilitation benefits; and
 - iii) whether he was entitled to an award under s. 10 of Regulation 664,² and interest on any overdue payment of benefits from his insurer, Unifund Claims Inc. (“Unifund”).
2. The hearing adjudicator found that T.C. sustained predominantly minor injuries and that he did not have a pre-existing medical condition, documented before the accident, which would prevent him from achieving maximal recovery if benefits were limited under the Guideline. The hearing adjudicator therefore found that T.C. was subject to treatment within the Guideline, and that it was unnecessary to determine his entitlement to the various medical and rehabilitation benefits claimed. The hearing adjudicator also denied T.C. a s. 10 award and interest.
3. T.C. requested a reconsideration of the decision on the basis that the Tribunal acted outside its jurisdiction and violated the rules of natural justice or procedural fairness. Specifically, T.C. submits that the Tribunal ignored an issue he raised about the sufficiency of notice from Unifund about its decisions on his entitlement to the benefits claimed.
4. Rule 18.2(a) of the Tribunal’s Rules of Practice and Procedure, Version 1 (April 1, 2016) provides the following:

A request for reconsideration will not be granted unless the Executive Chair is satisfied one or more of the following criteria are met:

 - (a) The Tribunal acted outside its jurisdiction or violated the rules of natural justice or procedural fairness;
5. I have been delegated the authority to decide this reconsideration request by the Executive Chair pursuant to s. 17(2) of the *Adjudicative Tribunals Accountability, Governance and Appointments Act, 2009*.³
6. For the reasons that follow, I allow T.C.’s request for reconsideration.

¹ O. Reg. 34/10.

² R.R.O. 1990, Regulation 664.

³ S.O. 2009, c. 33, Sched. 5.

ANALYSIS

7. I find that the Tribunal violated the rules of natural justice and procedural fairness by failing to address the issue of Unifund's alleged procedural breaches and the possible import of s. 38 of the *Schedule* in the circumstances.
8. T.C. submits that the Tribunal acted outside its jurisdiction and violated the rules of natural justice or procedural fairness by failing to properly address the issue of Unifund's alleged non-compliance with the notice requirements under s. 38(8)⁴ of the *Schedule* and the consequences thereof under s. 38(11).⁵
9. In response, Unifund takes the position that the Tribunal's decision did not indicate that s. 38(8) was not considered or applicable, but rather that the hearing adjudicator was of opinion that the Guideline applied to T.C.
10. A decision on entitlement to automobile accident benefits must be made on the basis of relevant considerations as determined primarily by reference to the governing regime set out in the *Insurance Act*⁶ and the *Schedule*. The Tribunal must not only restrict its consideration to factors within its statutory mandate but must also turn its mind to all the factors relevant to the proper fulfilment of its statutory decision-making function.
11. In doing so, the Tribunal is not required to mention or address all of the evidence or arguments it considered in rendering its decision. For example, the Tribunal may choose not to address an issue that is trivial, moot, merely of academic interest, or the determination of which is patently obvious from the record. However, the failure to consider an issue that is properly before the Tribunal is a matter of natural justice and procedural fairness because it pertains to the Tribunal not performing its statutorily mandated task nor fulfilling the parties' right to be heard.
12. Here, T.C. raised the important issue of the sufficiency of Unifund's notices of denial under s. 38(8) of the *Schedule*. The Tribunal failed to address this live and consequential issue despite submissions from both parties.
13. A determination on sufficiency of notice would have informed whether and when T.C. received adequate notice of Unifund's decisions on his entitlement. This finding would in turn have determined whether Unifund was prohibited by s. 38(11) from taking the position that T.C. has an impairment to which the

⁴ Subsection 38(8) of the *Schedule* requires an insurer to give notice to the insured of the goods/services that the insurer agrees to pay for, or not, and the reasons why within 10 business days after receiving the treatment plan.

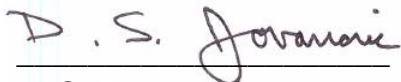
⁵ Subsection 38(11) of the *Schedule* provides that if an insurer fails to give notice as set out in s. 38(8), it is prohibited from taking the position that the insured has an impairment to which the Guideline applies, and further that it must pay for all goods/services described in the treatment plan that relate to the period starting on the 11th business day after the day it received the application and ending on the day it gives proper notice.

⁶ R.S.O. 1990, c. I.8.

Guideline applies, and whether Unifund was required to pay for the contested treatment plans during the relevant period as set out in s. 38(11). Further, those determinations could have impacted whether T.C. was otherwise entitled to the various medical and rehabilitation benefits claimed, and whether he was entitled to an award and interest. The Tribunal should have considered these issues with adequate reasons to explain its decision-making. The Tribunal's failure to address these issues in its reasons amounted to a denial of natural justice and procedural fairness.

CONCLUSION

14. For the reasons noted above, I allow T.C.'s request for reconsideration. I order that this matter be reheard in writing by a different adjudicator on the basis of considering anew the evidence and submissions already provided by the parties. This does not limit the new adjudicator's power to control the proceedings, including to require additional submissions from the parties as may be necessary.



D. Stephen Jovanovic

Associate Chair

Tribunals Ontario – Safety, Licensing Appeals and Standards Division

Released: April 8, 2019