

2017 CarswellOnt 21426
Ontario Licence Appeal Tribunal

17-004584/AABS v. Wawanesa Mutual Insurance Company

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**In the Matter of an Application pursuant to subsection 280(2) of the
Insurance Act, RSO 1990, c I.8, in relation to statutory accident benefits**

Davood Mirzaie (Applicant) and Wawanesa Mutual Insurance Company (Respondent)

Ian Maedel Adjud.

Heard: December 21, 2017
Judgment: December 29, 2017
Docket: 17-004584/AABS

Counsel: Gary Mazin, for Applicant, Davood Mirzaie
Karen Bernofsky, for Respondent

Ian Maedel Adjud.:

OVERVIEW:

- 1 The applicant was injured in an automobile accident on September 14, 2011 and sought benefits pursuant to the *Statutory Accident Benefits Schedule - Effective September 1, 2010* ("Schedule").
- 2 The applicant filed an application before the Licence Appeal Tribunal - Auto Accident Benefits Service ("Tribunal") on July 18, 2017.
- 3 A case conference took place on September 4, 2017 and an Order was issued on that October 17, 2017. The issues in dispute include: a claim for attendant care benefit, medical treatment plan, cost of an exam, and interest.
- 4 A three-day, in-person hearing was set for January 15-17, 2018, in Toronto, Ontario.
- 5 On November 27, 2017, the respondent brought a motion in writing to request productions from the applicant.
- 6 The respondent is seeking:
 - i. Production of 8 different items as outlined at paragraph three of the Order of Adjudicator Hans dated October 17, 2017;
 - ii. An additional production request for the following:
 - a. applicant's employment file,
 - b. All of the applicants income tax returns following the accident,
 - c. The clinical notes and records of the Cannaboid Medical Clinic.

RESULT:

i. The respondent's motion for further productions pursuant to the Order of Adjudicator Hans dated October 17, 2017 is denied;

ii. The respondent's motion for additional productions is denied.

8 Rule 3.1(b) of the *Licence Appeal Tribunal Rules of Practice and Procedure* (the "Rules") provides that the *Rules* shall be interpreted to ensure efficient, proportional and timely resolution of the merits of the proceedings before the Tribunal.

9 The hearing dates were set on October 17, 2017 on consent of the parties with eight witnesses scheduled to provide evidence.

10 Applicant counsel indicated that his firm has made best efforts to fulfil the production order and has provided all of the materials directly to the respondent. Applicant counsel is aware that evidence he plans to rely may be excluded at hearing if not produced to the respondent as per Rule 9.4

11 The applicant was able to provide income tax returns via email to respondent counsel during the motion hearing proceedings. Applicant counsel indicated that he would provide best efforts to produce the records of the attendant care provider and other outstanding productions in advance of the hearing date.

12 In the interest of efficient, proportional and timely resolution of the matter, I will not order any further productions. The Order, including productions was made on October 17, 2017. To order further productions at this stage, less than four weeks from the hearing date, would complicate the matters and further delay the hearing. The applicant has indicated he will make best efforts to provide outstanding productions in advance of the hearing date. The respondent's motion for productions pursuant to the Order of October 17, 2017 is dismissed. Similarly, the motion for additional productions not included in the Order of October 17, 2017 is also dismissed.

13 All remaining terms of the Order remain in full force and effect.