



FSCO A12-006508

BETWEEN:

HONEY GEELE

Applicant

and

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY

Insurer

REASONS FOR DECISION

Before: Arbitrator Jeff Musson

Heard: In person at Hamilton on November 24, 2014 and by written submissions due February 27, 2015

Appearances: Ms. Honey Geele did not participate
Ms. Marni Miller, Mr. Bob Atkins, and Ms. Jen Stewart participated for State Farm Mutual Automobile Insurance Company

Issues:

The Applicant, Ms. Honey Geele, was injured in a motor vehicle accident on June 30, 2010 and sought accident benefits from State Farm Mutual Automobile Insurance Company (“State Farm”), payable under the *Schedule*.¹ The parties were unable to resolve their disputes through mediation, and Ms. Geele, through her representative, 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 – Accidents on or after November 1, 1996*, Ontario Regulation 403/96, as amended.

The issues in this Hearing are:

1. Is the Applicant entitled to Caregiver Benefits?
2. Is the Applicant entitled to Housekeeping Benefits?
3. Is the Applicant entitled to Attendant Care Benefits?
4. Is the Applicant entitled to Medical Benefits?
5. Is the Applicant entitled to payment for Costs of Examinations?
6. Is the Applicant entitled to interest for the overdue payment of benefits?
7. Is State Farm liable to pay the Applicant's expenses in respect of the Arbitration?
8. With the Applicant's non-attendance at the Arbitration Hearing, should the Application for Arbitration be dismissed with costs in favour of State Farm pursuant to subsection 282(11) of the *Insurance Act*?
9. Is the Applicant liable to repay benefits paid by State Farm, pursuant to section 47(1)(a) of the *SABS*?²

Result:

1. I find that the Applicant is not entitled to receive Caregiver Benefits and the claim for this benefit is dismissed.
2. I find that the Applicant is not entitled to receive Housekeeping Benefits and the claim for this benefit is dismissed.
3. I find that the Applicant is not entitled to receive Attendant Care Benefits and the claim for this benefit is dismissed.
4. I find that the Applicant is not entitled to receive Medical Benefits and the claim for this benefit is dismissed.
5. I find that the Applicant is not entitled to receive payment for Costs of Examinations and the claim for this benefit is dismissed.

² As of September 1, 2010, section 52.

6. I find that the Applicant is not entitled to receive interest for the overdue payment of benefits and the claim for interest is dismissed.
7. I find that State Farm is not liable to pay the Applicant's expenses in respect to the Arbitration and the claim is dismissed.
8. I find that the Applicant shall pay State Farm's expenses in regards to this Arbitration proceeding in the amount of \$4,087.56, inclusive of fees, disbursements, and H.S.T., within 30 days of this decision.
9. I find that the Applicant shall repay to State Farm, the amount of \$17,102.86 (\$12,405.72 for Caregiver Benefits and \$4,697.14 for Housekeeping/Home Maintenance Benefits), within 30 days of this decision.

EVIDENCE AND ANALYSIS:

Background

In good faith, State Farm began to pay Ms. Geele the benefits which she claimed. After completing three Examinations Under Oath ("EUO") on November 5, 2012, November 26, 2012, and May 28, 2014, State Farm sent a letter to the Applicant denying further benefits under section 48³ of the *SABS* on the basis of willful misrepresentation and/or fraud. State Farm is requesting repayment of the benefits pursuant to section 47(1)(a)⁴ of the *Schedule* in the amount of \$44,186.19. The following is the total breakdown of the repayment amount that State Farm is requesting: Caregiver Benefits \$12,405.72; Housekeeping/Home Maintenance \$4,697.14; Medical Benefits \$10,599.02; Examinations (section 24)⁵ \$5,574.69; Examinations (section 42)⁶ \$10,909.62. Note: Ms. Geele claimed entitlement to Attendant Care Benefits, but State Farm did not pay this benefit.

Analysis

³ As of September 1, 2010, section 53.

⁴ As of September 1, 2010, section 52.

⁵ As of September 1, 2010, section 25.

⁶ As of September 1, 2010, section 44.

The Applicant failed to attend the Arbitration Hearing without explanation. I am satisfied that Ms. Geele received notice of the Hearing at the address contained in our records as required by the *Dispute Resolution Practice Code*. The onus of proof is on the Applicant to prove her claims. Since there was no evidence advanced on her behalf to support her claims, her Application for Arbitration and claim for benefits, as a result of the automotive accident of June 30, 2010, are dismissed.

State Farm representatives and their counsel did attend the Hearing on November 24, 2014 and were prepared to proceed. At the Hearing, State Farm's counsel requested that the Application for Arbitration be dismissed and the Insurer's Arbitration expenses be paid by Ms. Geele, pursuant to subsection 282(11) of the *Insurance Act*. In addition, State Farm's counsel requested repayment of prior benefits paid to Ms. Geele. State Farm and its counsel were given an opportunity to provide written submissions within 30 days of the Arbitration Hearing to support their claim for repayment. Ms. Geele was given 30 days after the Insurer's submission to respond. To date, no response has been received from Ms. Geele.

In its written submissions, State Farm provided transcribed records from three Examinations Under Oath undertaken with the Applicant. State Farm, as part of its written submissions, also filed and relied upon the Applicant's Application for Arbitration, Affidavit of the Insurer and the Insurer's Factum. In addition, State Farm, as part of its Affidavit of the Insurer submission, included a copy of a letter, dated April 8, 2014 to the Applicant requesting repayment as required by section 47(2)(3)(4) of the *SABS*.⁷

Repayment as per the *SABS* (November 1, 1996, Ontario Reg. 403/96)

State Farm requested repayment of benefits paid to the Applicant on the basis that benefits were paid to her as a result of willful fraudulent misrepresentation. State Farm relies on section 47(1)(a)⁸ of the *SABS*.⁹

⁷ As of September 1, 2010, section 52(2)(3)(4).

⁸ As of September 1, 2010 section 52.

The onus of proof in this case resides with State Farm. State Farm must therefore establish that any amounts to be repaid were “benefits,” that they were “paid to the person,” and that the benefits were paid “as a result of willful misrepresentation or fraud.”

Did Ms. Geele wilfully misrepresent her claim and did State Farm pay benefits as a result of this misrepresentation?

Based on the evidence submitted by the Insurer, I am of the opinion that the Applicant did in fact receive benefits as a direct result of willful misrepresentation. State Farm, in good faith, paid the benefits claimed by the Applicant as a result of her June 30, 2010 accident. However, after three Examinations Under Oath, it was apparent to State Farm that the Applicant had misrepresented her claim for benefits.

Based on the information reviewed, State Farm sent a letter on April 12, 2014, denying Ms. Geele benefits under section 48¹⁰ of the *SABS*. With the Applicant’s non-attendance at the Hearing, I am left with no choice but to conclude that the Applicant is in agreement with this decision as it relates to her termination of benefits.

After reviewing the transcripts from the Examinations Under Oath, I identified many inconsistencies with Ms. Geele’s statements. As an example, when asked, Ms. Geele could not remember the names of her six children and had to rely on reading her children’s names from a card. In addition, Ms. Geele could not remember how long she required the services of Ms. Yasmin Ali, who was the person Ms. Geele claimed was responsible for her housekeeping/home maintenance and caregiving needs. Ms. Geele couldn’t recall the number of times in a week that Ms. Ali performed housekeeping/home maintenance and caregiving duties. Ms. Geele couldn’t remember the dollar amount that she paid Ms. Ali for her services. In addition, Ms. Geele’s OCF-6 forms that were submitted had the service provider’s name (Ms. Yasmin Ali), but did not

⁹ *The Statutory Accident Benefits Schedule – Accidents on or after November 1, 1996*, Ontario Regulation 403/96, as amended.

¹⁰ As of September 1, 2010, section 53.

provide a breakdown of services. Finally and most importantly, Ms. Geele could not provide receipts from Ms. Ali's services.

Upon further review of the EUO transcripts, there were additional inconsistencies in regards to the actual accident details, the number of occupants in the car, and the type of treatments that Ms. Geele received at the clinics.

While the issues related to the accident details are suspect, there is conclusive evidence that a motor vehicle accident involving Ms. Geele occurred on June 30, 2010 as State Farm paid Ms. Geele \$3,300 for her vehicle which was involved in the accident and proceeded to write the vehicle off. In terms of the legitimacy of her accident benefits claim related to this accident, as one reads the written submission materials, the legitimacy of the Applicant's claim for benefits tends to exponentially decline.

Without evidence provided by the Applicant to rebut the evidence presented to me by the Insurer, I am satisfied that State Farm has established that the Applicant received accident benefits as a result of willful misrepresentations as per section 48¹¹ of the *SABS*.¹²

Are the amounts that are being asked to be repaid benefits and were all of these benefits "paid to the person" as per the *SABS*?

State Farm takes the position that all the amounts for which it seeks repayment were "paid to the person" as per subsection 47(1)(a)¹³ of the *SABS*.¹⁴ With its submissions, State Farm is taking the position that all monies paid out on a claim, regardless of to whom the payments were issued, are the responsibility of the Applicant to repay to the Insurer. The definition of "paid to the person" has been arbitrated in prior cases. In those prior decisions, it is clearly defined that "paid to the person" means monies that are paid directly to the claimant, not monies which are paid to service

¹¹ As of September 1, 2010, section 53.

¹² *The Statutory Accident Benefits Schedule – Accidents on or after November 1, 1996*, Ontario Regulations 403/96, as amended.

¹³ As of September 1, 2010, section 52.

¹⁴ *The Statutory Accident Benefits Schedule – Accidents on or after November 1, 1996*, Ontario Regulations 403/96, as amended.

providers on behalf of the claimant.

In reviewing prior Arbitration decisions, which are similar in nature to this application, Arbitrator Feldman,¹⁵ Arbitrator Allen,¹⁶ and Arbitrator Bujold¹⁷ have all agreed, by way of their Arbitration decisions that claims for benefit repayment are only acceptable for those benefits which are paid *directly* to an insured person. As it relates to this case, *Geele v. State Farm*, repayment is limited to Housekeeping/Home Maintenance and Caregiver Benefits which were benefits paid directly to Ms. Geele. Payments made to others on behalf of an insured person are viewed differently than payments which are paid directly to the insured person.

When interpreting the meaning of “paid to the person”, Arbitrator Bujold’s decision in *Abdulkadir et al. and Economical Mutual Insurance Company* addresses the meaning in a clear and concise manner:

Economical also submits that, if I adhere to a narrow interpretation of the phrase “paid to the person” in subsection 47(1)(a), “insurers will, in all likelihood, begin making all payments for the costs of Section 24 assessments to their insureds. This will have the effect of slowing and/or interrupting the flow of benefits to service providers/assessors and run contrary to the over-arching intent of the *Statutory Accident Benefits Schedule* and the efficient delivery of benefits.” I have not been persuaded by Economical to depart from the interpretation of subsection 47(1)(a) provided by Arbitrators Feldman and Allen. I agree with them that the phrase “paid to the person” is clear and unambiguous. As Arbitrator Feldman notes, several provisions in the *Schedule* use the additional phrase “or on behalf of an insured person,” and “it would have been a simple matter, therefore, for the drafters of the *Schedule* to have permitted insurers to claim repayment of benefits ‘paid to or on behalf of the insured person’”.¹⁸

¹⁵ *Addae and Dominion of Canada General Insurance Company*, A06-000202.

¹⁶ *Sadozai and Aviva Canada Inc.*, A11-002727.

¹⁷ *Abdulkadir et al. and Economical Mutual Insurance Company*, A11-001975, A11-001977, A11-001978, A12-005066.

¹⁸ *Ibid.*

In terms of the Housekeeping/Home Maintenance and Caregiver Benefits on this application, there is little doubt from the evidence provided, that the Applicant was in fact the recipient of the money paid for these two benefits. State Farm, however, did not provide any documentation to show that it paid the Applicant directly for her medical benefits and assessments. Without documentation showing Ms. Geele was paid directly for these benefits, I am left to assume that the service providers for these benefits were paid directly from State Farm for their services.

After taking into account all the evidence and case law presented before me, I am of the opinion that subsection 47(1)(a)¹⁹ of the *SABS*²⁰ only permits benefits paid directly to the insured person to be recovered in a claim for repayment.

Repayment to State Farm

With respect to Ms. Geele, State Farm claims repayment of \$12,405.72 for Caregiver Benefits; \$4,697.14 for Housekeeping/Home Maintenance Benefits; \$10,599.02 for Medical Benefits; \$5,574.69 for Examinations (section 24);²¹ and \$10,909.62 for Examinations (section 42).²²

For the above amounts, only \$12,405.72 was paid for Caregiver Benefits and \$4,697.14 was paid for Housekeeping/Home Maintenance Benefits, both of which were paid directly to Ms. Geele by State Farm. I therefore find Ms. Geele liable to repay State Farm in the amount of \$17,102.86. For the remaining amounts of benefits paid, State Farm failed to show that these amounts were paid directly to Ms. Geele and without proof, it is assumed that these amounts were paid directly to the various clinics that provided treatment and services to Ms. Geele.

EXPENSES:

Ms. Miller and State Farm claim fees and disbursements of \$4,087.56 inclusive of H.S.T. I find

¹⁹ As of September 1, 2010, section 52.

²⁰ *The Statutory Accident Benefits Schedule – Accidents on or after November 1, 1996*, Ontario Regulation 403/96, as amended.

²¹ As of September 1, 2010, section 25.

²² As of September 1, 2010, section 44.

these expenses are reasonable and within the guidelines set out in the *Dispute Resolution Practice Code*.

Jeff Musson
Arbitrator

April 29, 2015
Date



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BETWEEN:

HONEY GEELE

Applicant

and

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY

Insurer

ARBITRATION ORDER

Under section 282 of the *Insurance Act*, R.S.O. 1990, c.I.8, as amended, it is ordered that:

1. I find that the Applicant is not entitled to receive Caregiver Benefits and the claim for this benefit is dismissed.
2. I find that the Applicant is not entitled to receive Housekeeping Benefits and the claim for this benefit is dismissed.
3. I find that the Applicant is not entitled to receive Attendant Care Benefits and the claim for this benefit is dismissed.
4. I find that the Applicant is not entitled to receive Medical Benefits and the claim for this benefit is dismissed.
5. I find that the Applicant is not entitled to receive payment for Costs of Examinations and the claim for this benefit is dismissed.
6. I find that the Applicant is not entitled to receive interest for the overdue payment of benefits and the claim for interest is dismissed.
7. I find that State Farm is not liable to pay the Applicant's expenses in respect to the Arbitration and the claim is dismissed.

8. I find that the Applicant shall pay State Farm's expenses in regards to this Arbitration proceeding in the amount of \$4,087.56, inclusive of fees, disbursements, and H.S.T., within 30 days of this decision.
9. I find that the Applicant shall repay to State Farm, the amount of \$17,102.86 (\$12,405.72 for Caregiver Benefits and \$4,697.14 for Housekeeping/Home Maintenance Benefits), within 30 days of this decision.

Jeff Musson
Arbitrator

April 29, 2015
Date