



FSCO A11-003488

BETWEEN:

NASTEHO RAGE

Applicant

and

**STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY**

Insurer

REASONS FOR DECISION

Before: Richard Feldman

Heard: March 17, 2014, at the offices of the Financial Services Commission of Ontario in Toronto.

Appearances: No one appearing for Ms. Nasteho Rage
Marni Miller for State Farm Mutual Automobile Insurance Company

Issues:

The issues in this hearing, as identified in the pre-hearing letter of Arbitrator Rogers, dated August 23, 2012, are as follows:

1. Is the Applicant entitled to receive caregiver benefits in the amount of \$350.00 per week from June 8, 2010 to June 7, 2012 for the service provided by Muna Jelle?
2. Is the Applicant entitled to receive attendant care benefits as follows:
 - a. \$840.24 per month from June 8, 2010 to November 23, 2010? and
 - b. \$683.21 per month from November 24, 2010 to June 7, 2012?
3. Is the Applicant entitled to receive payments for housekeeping and home maintenance services in the amount of \$100.00 per week from June 8, 2010 to June 7, 2012 for the service provided by Muna Jelle?

4. Is the Applicant entitled to receive a medical benefit for the following expenses:
 - a. \$929.24 for assistive devices recommended by Assessment Direct in a treatment plan dated July 20, 2010?
 - b. \$14,154.00 for services provided by Osler Rehabilitation Centre, particulars of which were to be provided prior to this hearing?
5. Is the Applicant entitled to receive payment for assessments recommended by Assessment Direct as follows:
 - a. \$2,063.16 for a TMJ assessment dated October 16, 2010?
 - b. \$950.00 for an EMG and Nerve Conduction Assessment, dated October 30, 2010?
 - c. \$1,146.02 for an in-home assessment, dated November 15, 2010?
 - d. \$980.00 for a follow-up attendant care assessment, dated November 24, 2010?
6. Is the Applicant entitled to interest for the overdue payment of benefits pursuant to section 46(2) of the *Schedule*?
7. Is the Insurer liable to pay a special award because it unreasonably withheld or delayed payments to the Applicant?
8. Is the Insurer liable to pay the expenses of the Applicant in respect of the arbitration under s. 282(11) of the *Insurance Act*?
9. Is the Applicant liable to pay the Insurer's expenses in respect of the arbitration under s. 282(11) of the *Insurance Act*?

Result:

1. The Applicant's claims are dismissed.
2. The Applicant shall pay to the Insurer its expenses of this proceeding, fixed in the amount of \$3,500.00 (inclusive of all fees, disbursements and any applicable taxes).

BACKGROUND:

The Applicant, Nasteho Rage, claims that she was injured in a motor vehicle accident on June 8, 2010. She applied for statutory accident benefits from State Farm Mutual Automobile Insurance Company ("State Farm"), payable under the *Schedule*.¹ Disputes arose concerning the Applicant's entitlement to accident benefits. The parties were unable to resolve their disputes

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

through mediation, and Ms. Rage applied for arbitration at the Financial Services Commission of Ontario (“FSCO”) under the *Insurance Act*, R.S.O. 1990, c. I.8, as amended.

EVIDENCE AND ANALYSIS:

This hearing was scheduled to commence at 10:00 a.m. on March 17, 2014 at the offices of FSCO. At that time, Ms. Miller, counsel, appeared on behalf of the Insurer, together with Ms. Wendy Wong. By 10:30 a.m., the Applicant had still not appeared nor did anyone appear on her behalf. Pursuant to Rule 37.7 of the *Dispute Resolution Practice Code*, and being satisfied that the Applicant had been properly served at her last known address with the Notice of Hearing, the arbitration proceeded in her absence. As the Applicant did not attend to present any evidence, she failed to prove her entitlement to any of the benefits claimed (and her claims shall be dismissed).

EXPENSES:

The Insurer is seeking its expenses in the total amount of \$4,270.42, in accordance to its Bill of Costs (Ex. 1) and the oral submissions of Ms. Miller. The expenses claimed are somewhat higher than usual based on the number of interlocutory proceedings that arose in this matter, further described below.

In addition to other defences raised by the Insurer, State Farm questioned whether the Applicant was actually involved in an accident on June 8, 2010. The Applicant initially insisted that this issue be dealt with by way of a preliminary issue hearing. That hearing was originally scheduled for December 19 and 20, 2012. According to the record, the hearing of that preliminary issue was then adjourned twice (at the request of the Applicant).

On March 13, 2013, when the Applicant requested that the preliminary issue hearing be adjourned, Arbitrator Fadel indicated that he would be awarding to the Insurer its expenses (in any event of the cause) but would be setting the amount at the conclusion of the preliminary issue hearing. Ultimately, the Applicant abandoned her request for a preliminary issue hearing.

The Applicant then brought a motion for an order for the release by State Farm of information concerning the identity of other persons who might have information relevant to these claims. State Farm did not oppose this motion but took the position that, pursuant to the *Personal Information Protection and Electronic Documents Act* (PIPEDA), it could not release that information without an order from FSCO. The requested order was made by Arbitrator Fadel by way of letter dated March 28, 2013. In his order, Arbitrator Fadel ruled that neither party would be awarded any expenses related to that motion.

The Applicant's solicitors of record then brought a motion to be removed from the record on the basis that the Applicant failed to communicate with them or to provide them with instructions. The motion was granted by Arbitrator Fadel in an order contained in a letter dated July 26, 2013. That order and all subsequent communications from FSCO have been sent to the Applicant at her last known address. The Applicant has not communicated with FSCO or the Insurer since 2012 and the Applicant failed to attend the hearing before me on March 17, 2014.

In deciding the Insurer's claim for expenses, I have considered the written and oral submissions made on behalf of the Insurer, as well as: (1) the complete success of the Insurer; (2) the two previous orders of Arbitrator Fadel (i.e., one order finding that the Insurer is entitled to its expenses related to the abandoned preliminary issue hearing and the other order finding that neither party is entitled to any expenses with respect to the "PIPEDA motion"); (3) the apparent abandonment of this arbitration proceeding by the Applicant; and (4) the number of hours of legal services (and permitted hourly rate) that can reasonably be claimed on behalf of State Farm with respect to this matter. In the circumstances of this case, I find that the Insurer is entitled to its expenses of this arbitration proceeding, fixed in the sum of \$3,500.00 (inclusive of all fees, disbursements and any applicable taxes).

Richard Feldman
Arbitrator

April 17, 2014
Date



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NASTEHO RAGE

Applicant

and

**STATE FARM MUTUAL AUTOMOBILE
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Insurer

ARBITRATION ORDER

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

1. The Applicant's claims are dismissed.
2. The Applicant shall pay to the Insurer its expenses of this proceeding, fixed in the amount of \$3,500.00 (inclusive of all fees, disbursements and any applicable taxes).

Richard Feldman
Arbitrator

April 17, 2014
Date