



FSCO A08-001796

BETWEEN:

HAMID MOHAMMED

Applicant

and

ECONOMICAL MUTUAL INSURANCE COMPANY

Insurer

REASONS FOR DECISION

Before: Lloyd (J.R.) Richards

Heard: November 30, December 1, 2, 3, 2009, at the offices of the Financial Services Commission of Ontario in Toronto.

Appearances: Eric Boschetti for Mr. Mohammed
Heather Kawaguchi for Economical Mutual Insurance Company

Issues:

The Applicant, Hamid Mohammed, was injured in a motor vehicle accident on February 8, 2007. He applied for and received statutory accident benefits from Economical Mutual Insurance Company (“Economical”), payable under the *Schedule*.¹ Mr. Mohammed also requested that Economical pay for the cost of an assessment. Economical subsequently terminated Mr. Mohammed’s housekeeping and home maintenance benefits and also determined that he is not entitled to payment for the assessment. The parties were unable to resolve their disputes through mediation, and Mr. Mohammed 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. Pursuant to section 22 of the *Schedule*, is Mr. Mohammed entitled to receive payments for housekeeping and home maintenance services from February 8, 2007 to February 8, 2009 at the rate of \$100.00 per week?
2. Pursuant to section 24 of the *Schedule*, is Mr. Mohammed entitled to the cost of examinations in the amount of \$771.54 for a follow-up in-home assessment performed by Century Diagnostic and Assessment Centre, dated November 6, 2007?

Result:

1. Pursuant to section 22 of the *Schedule*, Mr. Mohammed is not entitled to receive payments for housekeeping and home maintenance services from February 8, 2007 to February 8, 2009 at the rate of \$100.00 per week.
2. Pursuant to section 24 of the *Schedule*, Mr. Mohammed is not entitled to the cost of examinations in the amount of \$771.54 for a follow-up in-home assessment performed by Century Diagnostic and Assessment Centre, dated November 6, 2007.

EVIDENCE AND ANALYSIS:²

Background

Mr. Mohammed was injured in a motor vehicle accident on February 8, 2007. As he was driving north on Highway 27 in Toronto, a vehicle travelling in the opposite direction made a left turn in front of him and impacted the front passenger side of his car. Mr. Mohammed did not attend hospital and returned to work the following day. Soon after, he travelled to Atlanta for work purposes and on his return sought medical attention for the injuries he sustained in the motor vehicle accident.

Mr. Mohammed claims that because of his injuries he was substantially unable to perform his housekeeping and home maintenance activities from February 8, 2007 to February 8, 2009.

Mr. Mohammed claims that his roommate, Mr. Abu Bakr Bah, performed his housekeeping tasks from February 2007 to August 2007.

Housekeeping and Home Maintenance Activities

The Applicable Law

Section 22 of the *Schedule* states that:

(1) The insurer shall pay for reasonable and necessary additional expenses incurred by or on behalf of an insured person as a result of an accident for housekeeping and home

² Mr. Mohammed and Economical submitted numerous documents for my consideration. For ease of reference I marked the parties document briefs as follows:

Arbitration Document Brief of the Applicant, Volume 1 – Exhibit “1”
Arbitration Document Brief of the Applicant, Volume 2 – Exhibit “2”
Arbitration Document Brief of the Respondent, Volume 1 – Exhibit “3”
Arbitration Document Brief of the Respondent, Volume 5 – Exhibit “4”

Within each of the above listed document briefs I marked submissions as exhibits as they were referred to during the hearing. Any submissions not specifically marked as exhibits do not form part of the record of this hearing.

maintenance services if, as a result of the accident, the insured person sustains an impairment that results in a substantial inability to perform the housekeeping and home maintenance services that he or she normally performed before the accident.

Therefore, the issue of Mr. Mohammed's entitlement to housekeeping benefits requires a determination of whether, based on a comparison of his pre- and post-accident household activities, and as a result of the accident, he suffered a substantial inability to perform his pre-accident housekeeping activities. The analysis also involves a determination of whether the housekeeping expenses he incurred as a result of the accident were reasonable and necessary.³

Mr. Mohammed's pre- and post-accident housekeeping activities

Mr. Mohammed is a chartered accountant and is employed as a financial controller. He works at a computer and sometimes travels to clients to review their accounts. He drafts reports based on his analysis of his clients' accounts. Mr. Mohammed gave evidence that he works 37.5 hours per week and between January to March, the peak season in the accounting industry, he works 45 hours per week. Mr. Mohammed returned to work the day after the accident and stated that he could not sit for more than two to three hours at a time and was compelled to delegate work to his colleagues because of his pain. As a result of his impairments he went to therapy twice per week for 9 to 12 weeks.

At the pre-hearing in this matter Arbitrator Kowalski ordered Mr. Mohammed to produce to Economical the following information from his employment file: information regarding his attendance; vacation requests or requests for leave; work related travel information; and any medication notations in the file covering the period from February 8, 2007 to February 8, 2009.⁴ Mr. Mohammed did not produce the records to Economical and stated that his counsel advised him that it was not necessary for him to do so.

³ *Hasan and State Farm Mutual Automobile Insurance Company* (FSCO A06-000665, November 9, 2007) and *Konstantakos and Aviva Canada Inc.* (FSCO A05-000546, May 17, 2006)

⁴ Exhibit "M" – Arbitrator Kowalski's pre-hearing letter dated March 19, 2009

After the motor vehicle accident, Mr. Mohammed travelled to the following destinations on the listed dates:

- February 19, 2007 to March 2, 2007 – Atlanta on business;
- June 27, 2007 to July 6, 2007 – San Diego on business;
- October 5, 2007 to October 8, 2007 – Minnesota on business;
- December 7, 2007 to December 30, 2007 – India for personal reasons;
- February 27, 2008 to March 5, 2008 – Atlanta on business;
- July 15, 2008 to July 18, 2008 – Washington on business; and,
- December 11, 2008 to January 17, 2009 – India for personal reasons.⁵

Dr. C. Mahendira, who was the first health care practitioner Mr. Mohammed consulted following the accident, completed a disability certificate on Mr. Mohammed's behalf, dated March 7, 2007.⁶ In the disability certificate, Mr. Mohammed reported that he sustained a knee injury after the accident and was taken to the hospital for treatment. He further stated that he was unable to walk freely or bend his knee, and was having difficulty doing household chores. Dr. Mahendira diagnosed a sprained neck and sprained right knee and noted that Mr. Mohammed did not suffer a substantial disability to perform his housekeeping activities.

Mr. Mohammed submitted Dr. Mahendira's disability certificate with an Application for Accident Benefits, dated March 8, 2007, to Economical.⁷ In the Application Mr. Mohammed notes that his knee was injured as a result of the accident, that he was bleeding at the scene and had to go to the hospital for treatment. Contrary to what Mr. Mohammed reported to Economical, the Motor Vehicle Accident Report⁸, taken at the time of the accident, states that Mr. Mohammed refused an ambulance at the scene of the accident.

⁵ Exhibit "E" - Mr. Mohammed's correspondence to Economical confirming the dates Mr. Mohammed was outside of Canada

⁶ Exhibit 1, Tab 3, pp. 1-4, entered as Exhibit "J"

⁷ Exhibit "I"

⁸ Exhibit "G"

Mr. Mohammed gave evidence at the hearing that the police were called to the scene of the accident but that no ambulance attended. He also confirmed that he was not bleeding and did not go to the hospital. In explaining the inconsistency between actual events and what he reported to Dr. Mahendira and Economical, Mr. Mohammed stated that when he completed the Application for Accident Benefits he mistakenly referred to Dr. Mahendira as a hospital. He had no explanation for why he reported to Dr. Mahendira that he had been transported to a hospital or for why he reported that he was bleeding at the scene of the accident.

Mr. Mohammed also submitted an Activities of Normal Life form to Economical, dated March 8, 2007.⁹ In the form Mr. Mohammed reported that he can partially complete meal preparation and cooking, but requires help with dish washing. He also noted that he can partially complete all cleaning and laundry activities. Curiously, Mr. Mohammed also noted that he can complete all grass cutting, gardening and snow shovelling activities even though at the time of the accident he lived in a condominium apartment.

Dr. David Huang at Crystal Healthcare Center completed a disability certificate, dated April 19, 2007¹⁰, on Mr. Mohammed's behalf. Dr. Huang diagnosed the following: cervical, thoracic and lumbar spine sprain/strain; right hip, thigh muscle and tendon injury; right knee sprain/strain; and post traumatic headache. Dr. Huang noted that Mr. Mohammed suffered a substantial inability to perform housekeeping tasks and would require assistance for 9 to 12 weeks. He prescribed a course of massage, laser and other therapies.

Economical put Mr. Mohammed's decoded Ontario Health Insurance Plan ("OHIP") summary into evidence.¹¹ The summary spans the date range February 8, 2006 to March 17, 2009. The summary lists Dr. Howard Schiffman, among others, as a health care practitioner who provided services to Mr. Mohammed. Mr. Mohammed gave evidence that he first saw Dr. Schiffman in April 2007 when he first started experiencing symptoms after the accident. According to the

⁹ Exhibit 1, Tab 1, pp. 4-6, entered as Exhibit "N"

¹⁰ Exhibit 1, Tab 3, pp. 35-39, entered as Exhibit "Y"

¹¹ Exhibit "L"

summary, Mr. Mohammed saw Dr. Schiffman on the following dates: April 17, 2007; July 17, 2007; July 26, 2007; August 2, 2007; August 19, 2008; August 25, 2008; September 2, 2008; October 8, 2008; October 23, 2008; March 5, 2009; and March 17, 2009. Mr. Mohammed stated that Dr. Schiffman referred him to therapy to treat his accident related impairments. The summary makes no reference to Dr. Schiffman or other doctors treating Mr. Mohammed for physical impairments related to the motor vehicle accident. Neither does the summary note a referral to other practitioners. Instead it lists Mr. Mohammed's ailments as common cold, nasopharyngitis and anxiety issues.

At the time of the accident Mr. Mohammed lived with three other people in a three bedroom apartment. Mr. Mohammed and one other roommate each had their own bedroom in the apartment, with two roommates sharing the remaining room. Mr. Mohammed gave little evidence about his pre-accident housekeeping activities and stated that each person was responsible for his own meal preparation and each also took turns taking out the garbage, mopping, cleaning the hall, kitchen, bathroom and floors. Each tenant would be responsible for particular housekeeping tasks related to the common areas in a given week. Mr. Mohammed stated that he asked Mr. Bah, one of the tenants in the apartment, to assist him after the accident. He claimed that Mr. Bah cooked three to four times each week for him. Mr. Mohammed submitted housekeeping invoices for the period February 26, 2007 to June 17, 2007.¹² The invoices note 10 hours per week for housekeeping consistently throughout this period. Mr. Mohammed stated that he had no choice but to resume his housekeeping activities when Mr. Bah moved out of the apartment in August 2007. At the hearing Mr. Mohammed gave no further evidence about his pre- and post-accident housekeeping activities.

Mr. Bah has been a credit analyst for a financial services firm since July 2005 and he gave evidence on behalf of Mr. Mohammed. Mr. Bah lived with Mr. Mohammed at the time of the accident until August 2007. Mr. Mohammed put housekeeping invoices into evidence that he claimed represented Mr. Bah's housekeeping activities. Mr. Bah stated that he did not complete

¹² Exhibit 1, Tab 4, pp. 1-4, entered as Exhibit "W"

the housekeeping invoices and had never seen them before they were presented to him at the hearing.

Mr. Bah stated that Mr. Mohammed asked him for assistance after the motor vehicle accident but did not give him any specific details about the accident. Mr. Bah stated that the landlord, who was never identified and did not give evidence, would email the cleaning schedule to the tenants and each tenant was responsible for cleaning the common areas for one week every three to four weeks. Mr. Bah gave evidence that he would cook once per week, usually on weekends, eat the food throughout the week and would, on occasion, offer some food to Mr. Mohammed. After the accident he cleaned Mr. Mohammed's bedroom and the bathroom when it was Mr. Mohammed's turn. He did not keep track of the time he spent cleaning. Mr. Bah stated that Mr. Mohammed wanted to compensate him for the housekeeping assistance but he refused as he never expected any financial compensation.

Ms. Inna Dainov completed an in-home assessment of Mr. Mohammed on October 3, 2007¹³ and she gave evidence on Economical's behalf. Ms. Dainov stated that Mr. Mohammed's range of motion was lower than average but that he was fully functional. She also reported that Mr. Mohammed put forth less than maximum effort during the testing. Her report states that injuries such as those Mr. Mohammed sustained typically resolve in 9 to 12 weeks and that Mr. Mohammed demonstrated the ability to vacuum, sweep, mop and reported independence for laundry, linen changing and ironing.

At the hearing, Ms. Dainov was presented with the disability certificate that Dr. Huang had prepared. She admitted that she had not seen it prior to assessing Mr. Mohammed and therefore had not considered it when she assessed him. She noted that all medical information is helpful when completing assessments. I find that Ms. Dainov's review of Dr. Huang's disability certificate would not have significantly impacted the conclusions in her report.

¹³ Exhibit 4, Tab 43d, entered as Exhibit "Q"

Economical put into evidence an Independent Orthopaedic Assessment Completed by Dr. R.J.F. Saplys, dated October 1, 2007.¹⁴ Dr. Saplys noted in the report that Mr. Mohammed stated that since the motor vehicle accident he has been unable to do the cooking or laundry, and has had his roommates do these tasks for him.

Findings on Housekeeping

I find that Mr. Mohammed is not entitled to housekeeping benefits from February 8, 2007 to February 8, 2009.

Based on the inconsistencies in the evidence I find that I am unable to compare Mr. Mohammed's pre- and post-accident housekeeping activities for the purpose of calculating his entitlement to housekeeping benefits. I find that Mr. Bah provided help to Mr. Mohammed simply because he was asked and not because Mr. Mohammed suffered a substantial inability to perform his housekeeping activities.

I find that Mr. Mohammed was not truthful when giving evidence about his pre- and post-accident housekeeping activities. Mr. Bah was more complete and direct in his evidence when he noted that the landlord emailed the cleaning schedule and that each person was responsible for cleaning the common areas. In the invoices submitted to Economical, that Mr. Bah admittedly did not prepare, Mr. Mohammed lists 16 consecutive weeks of Mr. Bah performing housekeeping at 10 hours per week. This directly contradicts Mr. Bah's evidence that each tenant would clean common areas approximately one week per month. Mr. Mohammed also stated that Mr. Bah would cook three to four times each week for him. Again this is contradicted by Mr. Bah's evidence that he cooked once per week and, on occasion, shared the meals with Mr. Mohammed. The Activities of Normal Life form completed by Mr. Mohammed also seemed to have been completed in haste and without regard for accuracy in reporting Mr. Mohammed's true condition. Mr. Mohammed listed doing yard and outside work even though he lived in a condominium.

¹⁴ Exhibit 4, Tab 43c, entered as Exhibit "P"

Mr. Mohammed also stated in the Activities of Normal Life form that he could partially do cooking and laundry. He did not state that he needed help with these activities. However, when reporting his condition to Dr. Saplys in October 2007, Mr. Mohammed stated that after the accident he could not do meal preparation or laundry and had his roommates complete these tasks for him.

I also find that, even if Mr. Mohammed did receive housekeeping assistance, he is not entitled to housekeeping benefits because he was not substantially disabled from performing his housekeeping tasks.

Mr. Mohammed's evidence was contradictory on the sequence of events after the accident. Mr. Mohammed is a sophisticated Applicant who has a great deal of responsibility at work for the accuracy of his clients' financial reporting. Yet, when completing forms for medical assessors and Economical, Mr. Mohammed stated that he was bleeding at the time of the accident and had to be transported to a hospital. Mr. Mohammed admitted in evidence that this was not the case, and the accident report confirms no ambulance was requested at the scene. I find that Mr. Mohammed exaggerated the extent of his injuries in order to bolster his claim.

Dr. Mahendira reported that Mr. Mohammed was not in need of housekeeping assistance and Dr. Schiffman did not note any accident related impairments. The OHIP summary does not indicate that Dr. Schiffman referred Mr. Mohammed to treatment. Mr. Mohammed explained this by stating that he remembers that Dr. Schiffman mentioned therapy in a casual manner and might not have recorded the referral. The only health care practitioner who recommended that Mr. Mohammed receive housekeeping assistance was Dr. Huang, whom Mr. Mohammed saw after Dr. Mahendira had already noted that no assistance was necessary. Dr. Huang's disability certificate and recommendations would have been based, at least in part, on Mr. Mohammed's subjective report. Since Mr. Mohammed evidenced a propensity to exaggerate to bolster his claim, I give little weight to Dr. Huang's disability certificate, as it is partially based on Mr. Mohammed's subjective report.

I also draw an adverse inference from Mr. Mohammed's failure to produce the employment related documents ordered by Arbitrator Kowalski. Mr. Mohammed claimed that he had to delegate work to his colleagues because of his pain, that he could not sit for long periods of time and that he could not work overtime during his employer's peak season. However, Mr. Mohammed returned to work the day following the accident and travelled extensively, for business and for pleasure, from the date of the accident to January 2009. Mr. Mohammed's failure to produce the work related documents suggests an attempt to conceal evidence which may have been damaging to his case.

I find Mr. Mohammed's evidence to be unreliable and inconsistent. Mr. Mohammed returned to work the day following the accident, appears to have resumed his normal activities, and presented very little convincing evidence to demonstrate that he was unable to perform his pre-accident housekeeping activities. For all the above reasons, I find that Mr. Mohammed has not established that he suffered a substantial inability to perform his pre-accident housekeeping activities, that he incurred the housekeeping expenses that he claimed or that any housekeeping expenses he incurred were reasonable and necessary.

Cost of Examinations

The Applicable Law

Section 24 of the *Schedule* states the following:

- (1) The insurer shall pay the following expenses incurred by or on behalf of an insured person: ...
- (11) Reasonable fees, other than fees referred to in any of paragraphs 1 to 10, that are charged by a member of a health profession or a social worker for conducting an assessment or examination and preparing a report if the assessment or examination is reasonably required in connection with a benefit that is claimed or in connection with the preparation of a treatment plan, disability certificate, assessment of attendant care needs or application for the determination of a catastrophic impairment, and...

ii. the insured person applied for approval of the assessment or examination either in a treatment plan submitted under section 38 or by way of a separate application submitted under section 38.2...

The test for entitlement to the cost of examinations involves two questions. The first question involves a determination of whether it is reasonable to conduct the assessment. The second question asks whether the cost of the assessment is reasonable.¹⁵

Reasonableness of the Assessment

I find the request for payment for the follow-up in-home examination, dated October 1, 2007, to be not reasonable because it amounts to a duplication of services. Mr. Mohammed presented no evidence on what purpose the report would have served given that he was to have an in-home assessment within two days of his request for the same service. Mr. Mohammed had ample time, between Economical's first request for assessment and when the assessments were completed, to have an assessment done to determine his entitlement to benefits. Both Mr. Mohammed and Economical noted that the in-home assessment, that is the subject of this dispute, had been performed. However Mr. Mohammed did not present the completed report as evidence. My only conclusion is that Mr. Mohammed was of the opinion that the report would not have been helpful.

Accordingly, I am not satisfied that the in-home assessment to be performed by Century was reasonable.

Cost of the Assessment

Since I have already determined that the assessment was not reasonable, I do not have to decide this issue.

¹⁵ *Aviva Canada Inc. and Mauro Tarantino* (FSCO P06-00026, December 12, 2007) Appeal and *Smith and Citadel General Assurance Company* (FSCO A00-000984, June 27, 2001)

EXPENSES:

The parties made no submissions on expenses. They are encouraged to resolve the issue. If they are unable to do so, they may schedule an expense hearing before me according to the provisions of Rule 79 of the *Dispute Resolution Practice Code*.

Lloyd (J.R.) Richards
Arbitrator

March 19, 2010

Date



FSCO A08-001796

BETWEEN:

HAMID MOHAMMED

Applicant

and

ECONOMICAL MUTUAL 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. Pursuant to section 22 of the *Schedule*, Mr. Mohammed is not entitled to receive payments for housekeeping and home maintenance services from February 8, 2007 to February 8, 2009 at the rate of \$100.00 per week.
2. Pursuant to section 24 of the *Schedule*, Mr. Mohammed is not entitled to the cost of examinations in the amount of \$771.54 for a follow-up in-home assessment performed by Century Diagnostic and Assessment Centre, dated November 6, 2007.

Lloyd (J.R.) Richards
Arbitrator

March 19, 2010

Date