Citation: Raman v. TD General Insurance Company, 2026 ONLAT 24-014730/AABS

Licence Appeal Tribunal File Number: 24-014730/AABS

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.

Between:

Raman Raman
(By their litigation guardian, Prince Kumar)

Applicant

and

TD General Insurance Company

Respondent

DECISION

ADJUDICATOR: **Amar Mohammed**

APPEARANCES:

For the Applicant: David Himelfarb, Counsel

For the Respondent: Suzanne Clarke, Counsel

HEARD: **By Way of Written Submissions**

OVERVIEW

[1] Raman Raman, the applicant, was involved in an automobile accident on December 1, 2023, and sought benefits pursuant to the *Statutory Accident Benefits Schedule - Effective September 1, 2010 (including amendments effective June 1, 2016)* (the "*Schedule*"). The applicant was denied benefits by the respondent, TD General Insurance Company, and applied to the Licence Appeal Tribunal - Automobile Accident Benefits Service (the "Tribunal") for resolution of the dispute.

ISSUES

[2] The issues in dispute are:

i. Is the applicant entitled to $48,282.82 for guardianship application fees, submitted on a claim form (OCF-6) dated December 4, 2024?

ii. Is the respondent liable to pay an award under s. 10 of Reg. 664 because it unreasonably withheld or delayed payments to the applicant?

iii. Is the applicant entitled to interest on any overdue payment of benefits?

RESULT

[3] Since the respondent has agreed to pay for the full amount of the OCF-6 expense, this issue is resolved.

[4] The applicant is entitled to interest in accordance with s. 51 of the *Schedule* on $48,282.82 as set out below.

[5] The respondent is liable to pay an award at 25 per cent of $9,591.00 in Attendant Care Benefits, with interest payable in accordance with s. 10 of Reg. 664 as set out below.

[6] The respondent is liable to pay an award at 18 per cent of $41,670.13 for the Guardianship Application, with interest payable in accordance with s. 10 of Reg. 664 as set out below.

ANALYSIS

History of the application

[7] By way of Case Conference Report and Order released March 21, 2025, eighteen disputed issues were to be heard by way of a videoconference hearing. These issues included catastrophic impairment determination, attendant care benefits ("ACBs"), fourteen OCF-6 expenses, interest, and award. The videoconference hearing was scheduled to commence on September 2, 2025. On August 20, 2025, the applicant filed a Notice of Motion seeking to convert the

format to a written hearing because the catastrophic impairment determination and entitlement to ACBs had been resolved. The request was on consent and was granted by this Tribunal by way of Motion Order August 21, 2025. The Motion Order provided that the remaining issues would be heard by way of written hearing, namely, fourteen OCF-6 expenses, interest, and award.

[8] The applicant's initial submissions for the written hearing withdrew thirteen out of the fourteen disputed OCF-6 expenses. Accordingly, the remaining issues in dispute to be determined at this hearing are an OCF-6 expense for Guardianship Application fees, interest, and award.

Is the applicant entitled to $48,282.82 for guardianship application fees, submitted on a claim form (OCF-6) dated December 4, 2024?

[9] Since the respondent has agreed to pay the amount in dispute, this issue is resolved.

[10] The applicant submits that, in email correspondence dated January 23, 2024, the respondent agreed that it would pay for the legal fees to appoint a legal guardian for the applicant. The respondent submits that an order of the Ontario Superior Court of Justice, dated October 17, 2024, approved the costs of the Guardianship Application in the amount of $41,670.13 inclusive of disbursements and HST.

[11] On or around December 23, 2024, an invoice dated November 18, 2024 in the sum of $48,282.82 was submitted to the respondent for payment in accordance with the prior January 23, 2024 email agreement. Based on the submissions of the parties, this invoice can be appropriately referred to as an invoice for an additional $6,612.69, in addition to the cost order reviewed above.

[12] As of October 3, 2025, by way of responding submissions, the respondent took the position that it will pay an additional $6,612.69, above and beyond the amount ordered by the Court, bringing the total sum to $48,282.82.

[13] Accordingly, the amount in dispute is resolved.

Interest

[14] The applicant is entitled to interest on the payment of $48,282.82 pursuant to s. 51 of the *Schedule.* Section 51 of the *Schedule* states that interest is calculated from the day on which the amount becomes overdue.

[15] The applicant submits that he is entitled to interest on the full amount of $48,282.82, based on the invoice dated November 18, 2024 submitted to the respondent on or about December 23, 2024, when the respondent denied it.

[16] The respondent argues that the applicant is not entitled to interest because the respondent agreed to fund the court approved costs of the Guardianship Application. However, the respondent does not address when that payment was made and it does not address interest on the payment of $6,612.69 that it has agreed to pay for the first time in its submissions dated October 3, 2025.

[17] I find that the respondent had received the invoice by December 23, 2024, requesting payment based on a prior agreement between the parties. Accordingly, the expense became overdue 30 days after receipt of the invoice under s. 38(2)(c) of the *Schedule*.

[18] Interest is payable at the rate of 1 per cent per month, compounded monthly under s. 51(3) on payments made in advance of this dispute before the Tribunal. As to any amounts that remained unpaid at the time this issue was added to this application at the case conference on March 14, 2025, the calculation of interest is addressed by s. 51(4) of the *Schedule*. I also find that the respondent's written submissions are not a settlement as referred to in s. 51(4) of the *Schedule*, rather they are the respondent's position on the issue in dispute. Therefore, any interest under s. 51(4) is payable to the date of this decision.

[19] I find that the applicant is entitled to interest on the payment of $48,282.82 pursuant to s. 51 of the *Schedule* as set out above.

Award

[20] I find that the applicant is entitled to an award under s. 10 of Reg. 664.

[21] The applicant sought an award under s. 10 of Reg. 664. Under s. 10, the Tribunal may grant an award of up to 50 per cent of the total benefits payable if it finds that an insurer unreasonably withheld or delayed the payment of benefits.

[22] In determining the type of conduct for which an award is appropriate, the adopted standard is set out in the Financial Services Commission of Ontario case: *Wayne Allan Plowright v. Wellington Insurance Company*, 1993 ONICDRG 66 (CanLII) ("*Plowright*"). According to *Plowright*, unreasonable conduct can include "excessive, imprudent, stubborn, inflexible, unyielding or immoderate" behaviour.

[23] The applicant seeks an award of 50 per cent relating to the payment of the following benefits:

i. $4,795.50 representing 50 per cent of the $9,591.00 in ACBs, and

ii. $24,141.41 representing 50 per cent of the $48,282.82 invoice dated November 18, 2024 for expenses incurred on a Guardianship Application.

[24] The applicant submits that the respondent delayed a determination based on an application for a catastrophic impairment designation for over 6 months on the pretext that the OCF-19 was incomplete. The applicant argues that this is counter to its obligations under ss. 45(3) and 45(4) of the *Schedule*. Accordingly, the applicant argues, this resulted in an unreasonable withholding and delay for payments of ACBs up to $6,000.00 per month. The applicant also argues that the respondent unreasonably withheld and delayed payment for the Guardianship Application fees it previously agreed to pay, leaving the applicant vulnerable to significant debt obligations.

[25] The respondent's position is that any payments that were delayed were remitted in a timely fashion and with the applicable interest payments. Further, that its adjustment of this file was not perfect, but it adjusted the file in good faith and did not engage in unreasonable conduct for which an award is warranted.

[26] While the parties argued many aspects of this file, an award must be connected to an unreasonable withholding or delay of a payment. Therefore, my analysis below focuses on the specific withholding or delay of payments as outlined by the applicant's submissions.

Withheld or delayed ACBs

[27] The applicant was assessed by Occupational Therapist Jennifer Wickenden in January 2024. According to a Form 1 dated January 18, 2024, Ms. Wickenden recommended ACBs of $13,125.50 per month, in excess of the $3,000.00 per month limit that the applicant was subject to at that time. By correspondence dated January 25, 2024, the applicant submits that the respondent partially approved ACBs up to $3,000.00 per month. There is no alleged unreasonable withholding or delay for ACBs up to $3,000.00 per month. The January 25, 2024 correspondence states that the respondent is not required to pay an amount in excess of $3,000.00 per month until either the applicant has been determined to have a catastrophic impairment or upon receipt of a completed OCF-19, seemingly referring to its obligation under s. 45(4) of the *Schedule*.

[28] The respondent acknowledges that it received an OCF-19 dated September 23, 2024, on October 3, 2024. The respondent submits that the OCF-19 indicated that the applicant satisfied criteria 4 and 6 for catastrophic impairment. The respondent's correspondence dated October 16, 2024 indicates that the respondent is unable to make a catastrophic impairment determination because the OCF-19 is incomplete for not including two pieces of information, i. the Etobicoke General Hospital records to date, ii. The Glasgow Outcome Scale ("GOS-E"). Further, correspondence dated April 22, 2025 reiterates that the respondent is unable to make a determination specifically referring to criterion 4, because the OCF-19 is incomplete for not including the GOS-E.

[29] The applicant's position is that the OCF-19 was not incomplete and, as a result, the respondent did not satisfy the requirements of either ss. 45(3) or 45(4) of the *Schedule*. Upon receipt of an OCF-19, s. 45(3) requires the respondent to, within 10 business days, either accept catastrophic impairment or deny catastrophic impairment and advise the applicant of a s. 44 assessment, if required. Further, upon receipt of an OCF-19, s. 45(4) obligates the respondent to continue paying ACBs under the assumption that the enhanced $6,000.00 per month limit is available to the applicant.

[30] My review of the OCF-19 indicates that the form does not require the two pieces of information asserted by the respondent in order to be considered a completed application. The respondent has not provided a foundation for its position that the OCF-19 was incomplete and has not referred me to where the OCF-19 requires the information the respondent alleges was missing. Accordingly, it has not established that the OCF-19 was incomplete or that the obligation to assume a catastrophic impairment and pay enhanced ACBs did not apply when the OCF-19 was received on October 3, 2024.

[31] I find that the respondent's October 16, 2024 correspondence does not meet the requirements of s. 45(3) of the *Schedule*, because it did not take any of the two positions available to it under this section, as reviewed above. Further, I find that the respondent did not satisfy its obligation under s. 45(4) to continue paying ACBs up to $6,000.00 after receipt of the OCF-19. Instead, it continued to apply the $3,000.00 limit between October 3, 2024 and March 18, 2025.

[32] For example, by correspondence dated December 4, 2024, the respondent partially paid an invoice for incurred ACBs on the basis that the applicant was entitled to the non-catastrophic limit of $3,000.00 per month. I find that continuing to apply the $3,000.00 limit during the period between October 3, 2024 and eventual payments on March 18-19, 2025, constitutes an unreasonable withholding or delay of payments for ACBs up to $6,000.00, which is the limit that the applicant had available during this period under s. 45(4). I find that the respondent maintaining that the lower limit applied to the applicant for approximately 6 months, until just a few days after a case conference was held on March 14, 2025 is, at minimum, imprudent behaviour leading to the withholding and delay of enhanced ACBs. The respondent's March 18 and March 19, 2025 correspondence acknowledges that it received an OCF-19 on October 3, 2024 and that it is required to pay ACBs under the assumption of enhanced entitlement. The March 18, 2025 correspondence confirms a payment by cheque in the amount of $609.24 and the March 19, 2025 correspondence confirms an electronic fund transfer of $9,181.39, both are inclusive of interest.

[33] Without interest, $9,591.00 is the amount of the ACBs unreasonably delayed.

Withheld or delayed expenses for the Guardianship Application

[34] The applicant submits that in an email exchange dated January 23, 2024, the respondent confirmed to the applicant's former counsel that the respondent would pay for the legal fees to appoint a legal guardian for the applicant. The applicant argues that the respondent's agreement to fund the Guardianship Application did not stipulate a maximum fee it would pay, nor in any way limit or qualify its agreement to pay the fees.

[35] The respondent does not dispute that it advised it would fund the applicant's fees for the Guardianship Application so that the applicant's brother could seek appointment. The respondent also does not dispute the applicant's assertion that the agreement did not stipulate any limits or conditions on payment. The respondent submits that an order of the Ontario Superior Court of Justice, dated October 17, 2024, approved the costs of the Guardianship Application in the amount of $41,670.13 inclusive of disbursements and HST. The respondent's position is essentially that, in the face of the court order establishing all inclusive costs, the applicant must establish any further payment is reasonable for the Guardianship Application. The respondent argues that the invoice dated November 18, 2024 in the sum of $48,282.82 does not provide any documentation or explanation as to why the additional amount of $6,612.69 was reasonably required for the Guardianship Application.

[36] The question before me is whether the respondent unreasonably withheld or delayed the payment of the Guardianship Application fees. It appears that the parties disagree as to whether their email agreement applies to the costs order dated October 17, 2024 or the subsequent invoice dated November 18, 2024.

[37] I find that the applicant has not established that disagreeing on the application of the agreement in this manner amounts to unreasonable conduct for which an award is warranted. The agreement did not stipulate an amount or to particulars as to how the fees would be determined, and I do not find it to be unreasonable that the respondent interpreted the Court's order as being the amount to be paid. That it subsequently agreed to pay the additional $6,612.69 claimed by the applicant does not mean that it was unreasonably withheld or delayed.

[38] Turning to the Court's order of $41,670.13, I find that this amount was unreasonably withheld or delayed by the respondent.

[39] By correspondence dated December 23, 2024, the respondent denied the full expense of $48,282.82, advising the applicant that the *Schedule* does not provide coverage for fees associated with appointing a guardian. The respondent's correspondence does not consider the respondent's prior email agreement to fund the Guardianship Application. The applicant's submissions indicate that there have been no payments toward the outstanding Guardianship Application fees at the time of submissions. Since there is no evidence of any such payment, I find that, as of the date of the respondent's submissions dated October 3, 2025, it had not made payment towards this expense despite having agreed to pay for it on January 23, 2024. The respondent did not provide any explanation as to the reason for non-payment up to that point.

[40] Accordingly, I find that the respondent withheld and delayed payment of the Court order for guardianship application fees in the amount of $41,670.13. Considering there was an agreement to pay, that it is not disputed that the agreement applies to this payment, and that it is a court approved cost order, I find that the withholding and delay of the payment is unreasonable.

[41] Therefore, I find that the applicant is entitled to an award with respect to the $41,670.13 unreasonably withheld or delayed for guardianship application fees.

Quantum

[42] In deciding the quantum of the award, under section 10 of Regulation 664, I have discretion to award a lump sum of up to 50 per cent of the amount to which the person was entitled at the time of the award together with interest on all amounts then owing to the insured (including unpaid interest) at the rate of 2 per cent per month, compounded monthly, from the time the benefits first became payable under the *Schedule*.

[43] I agree with the applicant that, based on Tribunal case law the following factors should guide an analysis as to quantum: the overall length of the delay, the blameworthiness of the insurer's conduct, the vulnerability of the insured person, the need for deterrence, and the advantage wrongly gained by the insurer from the misconduct. I find that the unreasonable withholding or delay of the enhanced ACBs is more aggravating than that of the Guardianship Application expense.

The overall length of the delay

[44] I find that the delay relating to the payment of enhanced ACBs was approximately 6 months, from October 3, 2024 until eventual payments were made March 18-19, 2025. The Guardianship Application expense was established by a Court order dated October 17, 2024 and the respondent agreed to pay it on October 3, 2025. The applicant begins his calculation of the delay from approximately December 23, 2024 on the basis that the applicant had submitted the related Guardianship Application invoice to the respondent by then and therefore, the delay is approximately 10 months from that point to the

eventual acceptance by the respondent that it will be paid. The applicant submits he is accruing interest at a rate of 12 per cent per annum on the legal account of Blaney McMurtry LLP. The overall length of delay is not on its own egregious and for reasons that follow, the delay of payment relating to the ACBs is more aggravating than the delay in payment towards the OCF-6 expense.

The blameworthiness of the insurer's conduct

[45] I find that the respondent is responsible for delays resulting from a failure to comply with the *Schedule* and its prior agreement with the applicant. The respondent is a sophisticated party. The delayed ACBs were paid, as required by the *Schedule*, beginning approximately 6 months after the OCF-19 was received by the respondent. As to the expenses for the Guardianship Application, the respondent accepted it will pay the amount for the first time in its submissions, and no prior payment had been made towards the expense. The Tribunal has considered failure to comply with procedural obligations under the *Schedule* in the context of an award analysis. The respondent did not comply with the *Schedule* upon receipt of the OCF-19 in two respects. First, its notice was not compliant, and second, it did not accept its obligation to pay enhanced ACBs, as reviewed earlier in this decision. The respondent had opportunities to reverse its decision during the delay, as it continued to adjust ACBs upon receipt of incurred ACB expenses beyond the basic $3,000.00 per month limit. The respondent chose not to reverse its decision until after a case conference was held. In the context of the applicant’s injuries, impairments, and need for attendant care that was established, this is an aggravating factor. For these reasons, I find that the ACBs attract a 10 per cent higher quantum than the OCF-6, which is incorporated into the calculation as a 10 per cent reduction in the OCF-6 award.

The vulnerability of the insured person

[46] I find that this is an aggravating factor. The subject matter of this Tribunal, comprising statutory accident benefits, inherently involves addressing claims from vulnerable injured parties. The applicant has established that the applicant’s injuries and impairments that were immediately known, specifically, being found unconscious, GCS score of 3, open skull fracture, extensive multicompartmental intercranial hemorrhage, and a severe traumatic brain injury, puts the applicant in a severely vulnerable position with increased reliance on the respondent’s duty to prudently and fairly adjust his file. I find that as a catastrophically impaired person in need of a guardian and enhanced attendant care benefits; the applicant was extremely vulnerable.

The harm or potential harm directed at the insured person

[47] The applicant argues that the delayed payments were litigation strategy to correct the respondent's legal position. However, there is no direct evidence that the respondent directed harm at the applicant. I accept the respondent's submissions that "insurance adjusters are not medical professionals, and they should not be held to that standard." Further, that the respondent is "not to be held to a standard of perfection." Further, the delay of payment of the Guardianship Application expense did not contribute to any harm to the applicant, except that, applicable interest continued to accrue during the delay. Further, I am not in receipt of any evidence establishing that the delay of payment of the incurred enhanced ACBs ultimately resulted in any barrier to the applicant in accessing enhanced ACBs through his service provider. I find that this is not an aggravating factor.

The need for deterrence

[48] The respondent had an obligation to prudently and fairly adjust his file and did not do so. I find that his conduct needs to be deterred, especially for the most vulnerable category of insureds. I note that the Tribunal has considered that the quantum should not be larger than necessary to further the goal of deterrence.

The advantage wrongfully gained by the insurer from the misconduct

[49] There is no evidence of any advantage gained by the respondent in this case by delaying payments.

Mitigating factors

[50] In applying the following mitigating factors, the quantum of the award is further decreased. The applicant was not prejudiced in accessing enhanced ACBs or having a Guardian appointed, despite the respondent's unreasonable delay. Accordingly, an overall reduction of 20 per cent is warranted.

[51] The respondent corrected itself in relation to ACBs just a few days after the case conference and well in advance of this hearing. Accordingly, a reduction of 5 per cent is warranted in relation to an award attached to ACBs.

[52] The respondent agreed to pay the amount ordered by the Court and the additional expense claimed by way of an invoice. However, the applicant was required to argue its position in initial submissions as the respondent's position was set out in its responding submissions. Nonetheless, this application did not ultimately require a substantive decision on the benefits claimed. Accordingly, a reduction of 2 per cent is warranted in relation to an award attached to the OCF-6 expense, in addition to the reduction of 10 percent as reviewed under the factor of blameworthiness.

[53] For the reasons above, a 50 per cent award sought for all of these benefits is reduced as follows. For $9,591.00 in ACBs, it is reduced to 25 percent, and for $41,670.13 in Guardianship Application expenses, it is reduced to 18 per cent.

[54] Therefore, the respondent is liable to pay an award of 25 per cent as follows, expressed in an equation, the formula is: 25 per cent x (A + B + C). Where “A” is the amount of benefits unreasonably withheld or delayed, which is $9,591.00 in ACBs; “B” is the interest on these benefits pursuant to section 51 of the *Schedule*; and “C” is the compound interest under s. 10 of Regulation 664.

[55] Further, the respondent is liable to pay an award of 18 per cent as follows, expressed in an equation, the formula is: 18 per cent x (A + B + C). Where “A” is the amount of benefits unreasonably withheld or delayed, which is $41,670.13 for the Guardianship Application costs order; “B” is the interest on these benefits pursuant to section 51 of the *Schedule*; and “C” is the compound interest under s. 10 of Regulation 664.

ORDER

[56] For the reasons above, I make the following orders:

i. Since the respondent has agreed to pay for the full amount of the OCF-6 expense, this issue is resolved.

ii. The applicant is entitled to interest in accordance with s. 51 of the *Schedule* on $48,282.82 as set out above.

iii. The respondent is liable to pay an award at 25 per cent of $9,591.00 in ACBs, with interest payable in accordance with s. 10 of Reg. 664 as set out above.

iv. The respondent is liable to pay an award at 18 per cent of $41,670.13 for the Guardianship Application, with interest payable in accordance with s. 10 of Reg. 664 as set out above.

Released: April 29, 2026



Amar Mohammed
Adjudicator