

Entitlement to Medical Cannabis in an Accident Benefits Context: *P.A. v. TD General Insurance Company*

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A recent decision of the Licence Appeal Tribunal (“LAT”), *P.A. v. TD General Insurance Company*, 2020 ONLAT 19-001349/AABS, considered an applicant’s entitlement to medical cannabis to treat psychological impairments resulting from a motor vehicle accident involving his family.

Facts

The applicant’s spouse and children were injured in a motor vehicle accident. The applicant claimed to have suffered from psychological impairments as a result of the accident.

Medical doctors prescribed medical cannabis, for which the applicant’s accident benefits insurer, TD General Insurance Company (“TD”), paid for a period of time. TD then denied medical cannabis expenses on the basis that the medication was not reasonable and necessary.

The applicant brought a LAT application to dispute the denial of over \$20,000 worth of medical cannabis expenses. He also sought a special award.

Applicant’s Position

The applicant claimed that the medical cannabis was a prescription drug prescribed by regulated health professionals and that, since the medical cannabis had treated and relieved his symptoms from his accident-related injuries, the expenses were reasonable and necessary.

Respondent's Position

TD denied that the medical cannabis was reasonable and necessary, arguing that it was being used to treat pre-existing conditions, that the applicant was a long-time cannabis user, and that the expenses were for recreational purposes. TD also argued that the applicant's issues started and stemmed from the loss of his job in October 2016.

TD further submitted that the applicant had not established that the medical cannabis was being used to treat his accident-related injuries.

Decision

Adjudicator Reilly found that the applicant was entitled to \$20,067.67 for medical cannabis (the full amount in dispute), and interest. He was not entitled to a special award.

She reasoned that the applicant met the onus of proving that the accident caused his psychological impairments and that the prescribed medical cannabis was reasonable and necessary. Adjudicator Reilly added that a treatment plan under section 38 of the SABS is not required for payment of a prescription medication expense.

Adjudicator Reilly considered the applicant's evidence that the medical cannabis was used to treat his psychological impairments; that he had not used cannabis for many years before the accident, but had used it during his university years; and that since the accident, he had been the caregiver to his injured wife and children.

She also considered that the applicant had consulted a number of medical doctors for his psychological issues following the accident, and that he was diagnosed with post-traumatic stress disorder, anxiety and depression. She acknowledged that he was dealing with post-traumatic stress type issues prior to the accident.

She also examined the documentary evidence of the applicant's medical doctors with respect to his medical cannabis use and its purpose and effects.

Adjudicator Reilly agreed with the applicant that overall, he began using medical cannabis after consulting with doctors and that it was prescribed to deal with his psychological issues which arose from the accident. She did not find that he was using the medical cannabis for recreational purposes.

She added that, while the medical cannabis had been recommended to treat some of the applicant's pre-existing conditions, there was enough evidence to support a need for it because of his accident-related injuries.

Conclusion

This decision acts as a reminder that, when assessing the reasonableness and necessity of medical cannabis, prior use of cannabis (recreationally or otherwise) may not be a basis for denying the expense.

The key issue is whether the accident caused an impairment which, based on medical evidence, necessitates cannabis medication. The fact that cannabis may also treat a pre-existing condition is not, in and of itself, sufficient to deny the expense.