Financial Services Commission of Ontario

Commission des services financiers de l'Ontario

FSCO A10-003528

BETWEEN:

ANANTHANADARAJH THAYALAN

Applicant

and

WAWANESA MUTUAL INSURANCE COMPANY

Insurer

REASONS FOR DECISION

Before: Alec Fadel

Heard: May 31 and June 1, 2011, at the offices of the Financial Services Commission of Ontario in Toronto.

Appearances: Neritan Ciraku for Mr. Thayalan
Michael Kennedy for Wawanesa Mutual Insurance Company

Issues:

The Applicant, Ananthanadarajh Thayalan, was injured in a motor vehicle accident on October 7, 2007. He applied for and received statutory accident benefits from Wawanesa Mutual Insurance Company ("Wawanesa"), payable under the *Schedule*.[1] Wawanesa terminated weekly income replacement and housekeeping benefits on or about February 28, 2008. The parties were unable to resolve their disputes through mediation, and Mr. Thayalan 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 Mr. Thayalan entitled to receive a weekly income replacement benefit of $400 from February 29, 2008 to date and ongoing, pursuant to section 4 and 5 of the *Schedule*?

2. Is Mr. Thayalan entitled to payments of $100 weekly for housekeeping and home maintenance services from February 29, 2008 to October 7, 2009, pursuant to section 22 of the *Schedule*?

3. Is Wawanesa liable to pay a special award, pursuant to subsection 282(10) of the *Insurance Act*, because it unreasonably withheld or delayed payments to Mr. Thayalan?

4. Is Wawanesa liable to pay Mr. Thayalan's expenses in respect of the arbitration under section 282(11) of the *Insurance Act*, R.S.O. 1990, c. I.8?

5. Is Mr. Thayalan liable to pay Wawanesa's expenses in respect of the arbitration under section 282(11) of the *Insurance Act*, R.S.O. 1990, c. I.8?

6. Is Mr. Thayalan entitled to interest for the overdue payment of benefits pursuant to section 46(2) of the *Schedule*?

Result:

1. Mr. Thayalan is entitled to an income replacement benefit from February 29, 2008 to April 18, 2008 pursuant to section 4 of the *Schedule*, plus applicable interest.

2. Mr. Thayalan is entitled to further housekeeping and home maintenance benefits in the amount of $122.50 pursuant to section 22 of the *Schedule*, plus applicable interest.

3. Mr. Thayalan is not entitled to a special award.

4. The issue of expenses is left to the parties to resolve.

BACKGROUND:

The applicant was involved in a motor vehicle accident on October 7, 2007 when he was the driver of a Toyota RAV4. He was stopped at a red light waiting to make a right hand turn when

his vehicle was rear-ended. Police arrived at the scene of the accident and no ambulance was called. The applicant's vehicle was towed and damages were described at approximately $4,500.00. The applicant did not attend at the hospital although he reported immediate symptoms including feeling shock, disorientation, aches and weakness in his legs. The applicant reported going to a walk-in clinic the day following the accident, complaining of neck, shoulder and low back pain radiating into his legs. He was prescribed with medication for pain and sleep and asked to follow-up with his family doctor.

The applicant was involved in a prior motor vehicle accident in October 2006 when he was rear-ended while driving on a highway, sustaining injuries to his right knee, right shoulder, low back and neck. The applicant testified that he was fully recovered prior to the 2007 accident except for lingering knee discomfort from his right knee injury. The applicant submits that the 2007 accident exacerbated a pre-existing knee injury to a degree where he can no longer complete his pre-accident employment and housekeeping. He relies on *Athey* v. *Leonati* which states that when the "but for" test is unworkable causation can be established where the applicant shows, on a balance of probabilities, that the accident "materially contributed" to the current condition.[2]

The applicant testified that his ongoing inability to complete his pre-accident employment and housekeeping is as a result of the exacerbation of his right knee pain. Two MRIs of the applicant's right knee have been completed since the October 2006 accident. The first MRI dated January 18, 2007 described a "degenerative signal in the medial meniscus posterior horn" along with "severe chondromalacia patella, especially medially." Another MRI of the right knee was completed on October 16, 2008, and described "[m]edial meniscus posterior horn tear" and "[m]arrow edema in the patella with possible osteochondral injury or chondromalacia."
The applicant points to the tear identified in the second MRI as evidence that the 2007 accident materially contributed to his current right knee complications.

The applicant also relies on the medical reports from the treating professionals around the time of the termination of benefits and beyond as well as reports by orthopaedic surgeons Dr. D.

[2] [1996] 3 S.C.R. 458, paras 15 and 16

Stephen and Dr. E. English, which he indicates support his entitlement to the two benefits claimed. The applicant did not call any medical experts as witnesses to the hearing.

The insurer paid an income replacement and housekeeping benefit until February 28, 2008 when they were terminated after an assessment by Dr. A. Sekyi-Otu, orthopaedic surgeon who concluded that the applicant was not substantially unable to perform these duties. The insurer submits that the evidence establishes that the applicant suffered minor soft-tissue injuries in the 2007 accident, which were resolved prior to the termination of benefits.

EVIDENCE AND ANALYSIS:

In accident benefit disputes at FSCO, the applicant bears the burden of proving entitlement to the disputed benefits. Mr. Thayalan must therefore prove on a balance of probabilities that the injuries sustained in the 2007 accident entitle him to an ongoing income replacement and the claimed housekeeping benefit. For the reasons that follow, I find that, for the most part, the applicant has not met his burden and has not shown that he is entitled to the claimed benefits.

Credibility

In many FSCO decisions it has been emphasized that credibility is key especially in circumstance where there is no objective injury or where there is a pre-existing injury, as in this instance. After hearing the testimony of the applicant and reviewing the medical reports submitted as evidence, I find that the applicant is not a credible witness. There were unexplained inconsistencies in his testimony and what he told assessors. His testimony concerning the housekeeping activity in his home prior to the accident contradicted the information he told earlier assessors with regards to his actual duties. In addition, the applicant's testimony describing the amount of hours spent on pre-accident housekeeping by both him and his spouse were excessive and given the discrepancies in his evidence, I find that most was manufactured to support his housekeeping claims.

The applicant testified that his pre-accident occupation was as a packer of aluminum tube extrusion floor products at Loxcreen Canada. This job is described as a medium level of work capacity occupation by Dr. A. Joaquin, chiropractor, who completed a vocational assessment by telephone on March 18, 2008. The applicant's description of the heavier aspects of his work duties directly contradicted the evidence of his co-worker, who testified at the hearing, as well as the information supplied by the employer. The applicant testified that he was required to lift aluminum bars that often weighed more than 10 kilograms, although the employer indicated to Dr. Joaquin that it was often less than 10 kilograms. The applicant testified that two men together would carry more like 50 to 60 kilograms of weight. He testified that it rarely was less than 10 kilograms, always more. However, Mr. Thilainathan, his co-worker, testified that they were lifting less than 10 kilograms, sometimes more. Mr. Thilainathan agreed that all materials were not the same weight, but indicated that the heaviest weight he would anticipate would be 15 kilograms, maybe a little bit more, sometimes. In cross-examination, Mr. Thilainathan stated that two workers would never carry 60 kilograms (30 kilograms each) and the very maximum would be 18 kilograms each.

There also were discrepancies with regard to the applicant's actual work duties at the time of the accident, given indication in the medical reports that he was on modified duties and his testimony that modified duties only lasted for two days. There is no instance where it is recorded that the applicant only worked two days on modified duties and in fact the applicant when describing his employment to both Drs. Stephen and English (both more than 2 years after the relevant accident) described the modified duties.

It was noted in many reports that the applicant had symptom magnification and pain focussed behaviours. A functional capacity evaluation conducted at the request of the insurer by Mr. L. Grimaldi, kinesiologist, on January 28, 2008, was inconclusive. In Mr. Grimaldi's opinion, the applicant demonstrated inconsistent effort and put forth submaximal effort. Mr. Grimaldi noted that the applicant's heart rate was taken throughout the evaluation to determine level of effort and it was found to be below expected limits for exertion throughout.

Dr. S. Kabrossi, the treating chiropractor, noted in his report of February 13, 2008 that the applicant was very pain focused which represented a barrier to recovery.

Dr. R. Luba, who completed an orthopaedic consult, noted that the applicant had pain that was out of proportion to what he expected from the applicant's pathology. He suggested trying all things but surgery first because of this exaggerated response.

Dr. Sekyi-Otu noted in his report that he observed some pain focused behaviours and functional overlay during his assessment of the applicant and listed a number of discrepancies opining that they were "due to self limiting behaviours, rather than due to true structural abnormality."

Dr. G. Ruhr, chiropractor, who conducted an insurer's examination in April 2008, noted that throughout his examination, the applicant showed signs of pain amplification.

Because of the inconsistencies between the applicant's evidence and that of his co-worker as well as the inconsistencies in his testimony and what he told assessors, I do not place great weight on the applicant's testimony. Instead, I prefer to rely on the reports of the medical professionals and the testimony of Dr. Sekyi-Otu who had the opportunity to examine the applicant at the relevant time and who testified in a professional and straightforward manner and whose evidence is supported by key medical reports the applicant attempts to rely upon.

The Right Knee

To support his claims of ongoing right knee disability, the applicant relies on the reports of two orthopaedic surgeons, Dr. Stephen who conducted an assessment at the request of the applicant and Dr. English who conducted an assessment at the request of the tort insurer. Both doctors had the opportunity to review the two MRIs before writing their reports.

Dr. Stephen, in his report of August 12, 2010, concluded that as a result of his right knee, the applicant remained symptomatic with limitations of activities of daily living and vocation and that the applicant would have permanent limitations with regard to prolonged standing, walking

and climbing. Dr. Stephen opined that the applicant was able to carry on his current occupation in jewellery sales but that he should avoid a heavy labour-type occupation.[3]

Dr. English, in his initial report of August 10, 2010, concluded that the applicant suffered an impairment related to the right knee as a result of the 2007 motor vehicle accident and noted that if he wanted to return to his pre-accident employment, he would have to do modified light work permanently.

I do not find that the reports of either Dr. English or Stephen support that the 2007 accident materially contributed to the applicant's ongoing right knee pain. It is important to note that the applicant reported to both doctors that he had no right knee pain prior to the 2007 accident. In fact, Dr. English noted in his initial report that his opinion was based on this assumption. Dr. Stephen noted that the applicant reported a re-aggravation of the right knee problem and although he acknowledged the x-ray evidence of pre-existing right knee arthritis, he noted that the applicant was asymptomatic prior to the 2007 accident.

Dr. English noted in his initial report that the applicant had "an impairment in the right knee, medial compartment, with recurrent effusions in the knee joint, periodic catching of the knee, and medial compartment pain, with limited ability to squat." He stated that if the applicant did not have any pre-accident knee symptoms then it would appear the accident caused his symptoms, but noted that if he did have a pre-existing condition that this would mitigate his accident-related injuries.

In fact, in an addendum report dated September 8, 2010, Dr. English commented on the right knee pain after seeing evidence that there were still pre-accident complications. Dr. English noted that he had been given copies of Dr. Murthy's notes from April 16, 2004 to December 27, 2006. He noted that on three occasions -- January 31, 2005, November 23, 2006 and December 1, 2006 -- the applicant attended in order to deal with right knee pain. His family doctor's diagnosis on two of those occasions was "patellofemoral syndrome." On the third visit he

[3]Discussed further at p. 10 of this decision, the applicant worked for four months in jewellery sales starting in May 2010.

diagnosed “knee pain.” Dr. English noted that at the time of his assessment he inquired about any pre-existing knee conditions as both accidents were “not specific for knee injuries that would lead to osteoarthritis, even if there was a small tear in the cartilage at the time of the accident.”

Dr. English stated that with the added information, it was his feeling that the applicant had a pre-existing condition, and that the 2007 accident resulted in a “flare-up of any retropatellar symptoms that he had in the patellofemoral compartment.” Dr. English confirmed that his initial conclusions of prognosis and future care were correct, but after reviewing Dr. Murthy’s notes he confirmed that “[t]he etiology of his symptoms was a flare-up of a pre-existing condition of chondromalacia of the patella which was well documented in Dr. Murthy’s notes.” Dr. English concluded that the applicant’s right knee symptoms “were under control at the time of the first motor vehicle accident but had already started to be a problem and the accident caused the problem in his knee symptoms and signs to become overt and limit his function.” There is no further comment with regard to the effects of the second accident (2007 accident) on the knee except that there was a flare-up of a prior injury.

Dr. English’s view of the impact of the 2007 accident on the applicant’s right knee was clarified in his addendum report. I do not agree that it supports that the applicant had ongoing difficulties arising from or materially caused by the 2007 motor vehicle accident. Dr. Stephen appears to draw his conclusion based on the erroneous assumption that the applicant was asymptomatic prior to the 2007 accident. Unlike Dr. English, Dr. Stephen has not had the opportunity to clarify his opinion with further information on his pre-accident right knee pain and he was not called to testify. Without clarification from Dr. Stephen, I am not prepared to accept his opinion as evidence that the applicant cannot return to his pre-accident employment pursuant to s. 4 and 5 of the *Schedule*.

The medical evidence supports that the applicant had a pre-existing right knee problem in the way of severe arthritis. I am convinced by the testimony of Dr. Sekyi-Otu and the addendum report of Dr. English that this pre-existing right knee arthritis is the cause of his current complaints and if anything, the accident of 2007 exacerbated an already existing condition. Dr. Sekyi-Otu stated that the location of the applicant’s right knee symptoms at the time of his

assessment suggested an aggravation of pre-existing patellofemoral arthritis which when exacerbated typically resolves back to pre-accident levels within 6 to 12 weeks. Dr. Sekyi-Otu confirmed that the MRI of January 18, 2007 confirmed that the applicant had chondromalacia patella of the highest severity.

Dr. Sekyi-Otu had the opportunity to review the two MRIs and the subsequent reports of Drs. English and Stephen. He confirmed in an addendum report dated March 9, 2011, and in his testimony, that his opinion was unchanged.[4] He indicated that the documentation he reviewed confirmed a pre-existing history of osteoarthritis involving the patellofemoral region. He stated that the location of the symptoms did not correlate with the MRI findings, and that the reported generation of the medial meniscus in the first MRI and the reported torn meniscus in the subsequent MRI were irrelevant. In addition, it was Dr. Sekyi-Otu's view that the mechanism of injury in the motor vehicle accident of 2007 was inconsistent with a torn meniscus.

Income Replacement Benefit

Paragraph 1 of section 4 of the *Schedule* states that the applicant is entitled to an income replacement benefit if he "was employed at the time of the accident and, as a result of and within 104 weeks after the accident, suffers a substantial inability to perform the essential tasks of that employment."

Section 5(2)(b) of the *Schedule* states that for any period longer than 104 weeks of disability, the applicant is no longer entitled to an income replacement benefit unless, as a result of the accident, he suffers "a complete inability to engage in any employment for which he or she is reasonably suited by education, training or experience."

The applicant has not returned to his pre-accident employment. He testified that following his accident in 2006, he returned to Loxcreen in July 2007 on modified duties for two days before being moved back to his regular employment where he was working when he had the October 7,

[4]The applicant objected to the addendum report being admitted as evidence but did not provide reasons for this objection.

2007 accident. He claims that following the 2007 accident, there was no opportunity to return to Loxcreen with modified duties.

The applicant worked in jewellery sales at a kiosk in a mall for about four months starting in May 2010. He testified that the main reasons he was terminated from this employment were his inability to speak English well and his inability to stand for too long. In cross-examination, the applicant further explained that the employer did not like him and when the store moved he was not asked to continue working there. He testified that he was able to do another job where he could sit and though he indicated he was looking for employment, he testified that he had not applied anywhere else. He is claiming an ongoing income replacement benefit until he has been retrained pursuant to sections 4 and 5 of the *Schedule*.

In his report of February 14, 2008, Dr. Sekyi-Otu noted the applicant's history of right knee pain since 2006 and his reporting that this injury was exacerbated in the 2007 accident. At the time of the assessment, the applicant reported anterior knee pain at the kneecap which was constant and signified to Dr. Sekyi-Otu that the symptoms stemmed from arthritis which was already documented on the file as pre-existing to the 2007 accident.

Dr. Sekyi-Otu concluded that the applicant's injuries from the 2007 accident were consistent with an uncomplicated myofascial strain of the lumbar and cervical spines, the right shoulder, elbow and a possible re-exacerbation of a pre-exiting right knee-injury. Dr. Sekyi-Otu referred to the inconsistencies in the applicant's reporting of pain compared to his presentation, and concluded that the applicant's symptoms were consistent with the mechanism of injury, however the severity was not.

While the objective evidence apparent in the second MRI shows a meniscal tear, it is the overwhelming opinion of the experts that this is not the source of the applicant's right knee complaints. However, it is apparent from the medical information on file that the applicant had a exacerbation of his right knee arthritis which was indicated should be resolved in up to 12 weeks.

Although I have difficulties with the applicant's evidence, it is apparent that around the time of cut-off of his income replacement benefit, he was reporting that he was 30% improved to Dr. Sekyi-Otu. Dr. Sekyi-Otu was of the view that the applicant could return to his pre-accident employment as he could not identify "any objective signs of impairment that would prolong or perpetuate his reported symptoms." In his opinion, there were no musculoskeletal contraindications that would prevent the applicant "from at least attempting to resume his pre-accident tasks and housekeeping activities."

The applicant was working prior to the 2007 accident in some capacity be it on modified duties or in his regular job. However, subsequent to the 2007 accident, he testified that he stopped working altogether until his employment at the jewellery kiosk. He reported right knee pain to Dr. Sekyi-Otu at an intensity of 7 out of 10 at the time of the assessment and referred to his pre-accident right knee pain as 2 to 3 out of 10. Despite Dr. Sekyi-Otu's concerns with the applicant's subjective reporting and attributing the discrepancies in his examination to the applicant's self-limiting behaviours, I find that I cannot rely on his report to support the termination of income replacement and housekeeping benefits. In my view, Dr. Sekyi-Otu was equivocal in his opinion suggesting that the applicant should at least attempt a return to his employment and housekeeping duties.

Although Dr. Sekyi-Otu indicated that the exacerbation of his right knee problem should typically resolve in 6 to 12 weeks, the applicant continued to complain of an increase in the pain intensity post-accident, compared to pre-accident. While it is sometimes troublesome to rely on subjective pain scale measurements, I find in this instance they are the most helpful indicators to measure the applicant's own reported knee symptoms. In a report dated April 28, 2008, Dr. Ruhr noted that the applicant reported his right knee pain intensity as 5 out of 10. In a report dated June 25, 2008, Dr. Holland, chiropractor, noted subjective reporting of a knee pain on the pain scale as 6 out of 10. Further, in a report dated November 3, 2008, Ms. Z. Lee, who conducted a physiotherapy assessment at the request of the insurer, recorded under past medical history that the applicant reported his pre-accident right knee pain as 6 out of 10 and also reported at the time of Ms. Lee's assessment that his right knee pain was 6 out of 10.

Following his assessment, Dr. Ruhr concluded that the applicant's lumbar sprain/strain, cervical-thoracic sprain/strain and right knee sprain had resolved. This confirmed the earlier view of Dr. Sekyi-Otu and I therefore accept that by the time of the assessment with Dr. Ruhr the applicant had resolution from these symptoms and was not substantially unable to perform the essential tasks of his pre-accident employment as an aluminum packer as a result of the motor vehicle accident of October 7, 2007.

The medical experts agree that if anything, there was an exacerbation of the applicant's right knee condition in the 2007 motor vehicle accident. Based on the medical reports in the file, I find that based on the applicant's own reporting the first clear evidence of improvement to the right knee to pre-accident levels is the report of Dr. Ruhr. Despite a lack of comparison with the pre-accident right knee pain, Dr. Ruhr recorded that the applicant subjectively reported his pain at 5 out of 10 on the pain scale and he consistently reported his pain in that range thereafter. Further, in Ms. Lee's report, it was confirmed that the applicant's pre-accident right knee pain was rated as 6 out of 10. I therefore find that by the time of the assessment with Dr. Ruhr, being April 18, 2008, the applicant was no longer experiencing an exacerbation of his right knee injury from the 2007 accident. He is therefore entitled to an income replacement benefit until April 18, 2008. The applicant is not entitled to further income replacement benefits beyond April 18, 2008 pursuant to either sections 4 or 5 of the *Schedule*.

Housekeeping and Home Maintenance Benefit

The applicant is claiming a housekeeping benefit up to two years from the date of the accident, at the rate of $100.00 per week which is the maximum entitlement for non-catastrophic claims under the *Schedule*. Pursuant to section 22 of the relevant *Schedule*, the insurer shall pay for any reasonable and necessary additional expenses incurred by the applicant "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."

I find the applicant's evidence surrounding this claim to be particularly troublesome. The applicant was not consistent in his reporting to the various professionals what his actual housekeeping duties were prior to the 2007 accident. The applicant told Ms. S. Chawla, occupational therapist, who completed a report on his behalf, that he did not do any dusting or mopping, documented in her report of November 14, 2007. The applicant told Mr. Tran that he did not clean the kitchen, sweep, dust, mop or make beds. The applicant testified that he and his wife shared equally in all of the domestic chores except he did not assist with laundry. Not only is this inconsistent with what he told Mr. Tran in January 2008, but the number of hours that he testified he and his wife each completed, being 46 to 51 hours per week per person, seems excessive and lends to the suggestion that the applicant is falsely inflating the numbers to support his claim for the benefit.

The applicant submits that Mr. Tran's report indicated he was entitled to 1.75 hours of housekeeping for six weeks, at which time he should be re-evaluated, and the insurer's failure to do so entitled him to the benefit as claimed. I reject this submission. The court of appeal in *Stranges vs. Allstate Insurance Company of Canada*[5] makes clear that even in the face of an insurer's inadequate refusal notice, it is still up to the applicant to prove entitlement to the claimed benefit based on the merits of the claim.

The applicant relies on a rebuttal report of Dr. S. Kabrossi, chiropractor, dated February 20, 2008 to support his claim for housekeeping benefits. Dr. Kabrossi recommended additional housekeeping above the 75 minutes recommended by Mr. Tran and called for an in-home assessment. Dr. Kabrossi was of the view that Mr. Tran's suggestion that the applicant employ his non-dominant hand and resume many of his household tasks was not realistic. Dr. Kabrossi himself stated just one week prior to his rebuttal, in a report of February 13, 2008, that the applicant's pain focus was a barrier to recovery, though there is no mention of this in his rebuttal report of February 20, 2008.

[5]2010 ONCA 457

I find it troublesome that the applicant was assessed by two insurer assessors (Grimaldi and Sekyi-Otu) with conclusions of symptom magnification. I note that it was shortly after the accident that Ms. Chawla wrote in November 2007, that the applicant needed education on hurt vs. harm yet by the end of February 2008, pain magnification and pain focussed behaviours are still a theme. Given the issues I have with the applicant's credibility, I find that he has not proven that he is entitled to a housekeeping and home maintenance benefit beyond what was already paid to him up to February 28, 2008.

For the same reasons that I find limited entitlement to an income replacement benefit, I also find the applicant entitled to a housekeeping benefit up until the assessment of Dr. Ruhr, being April 18, 2008. By this point the exacerbation of the right knee injury had resolved to pre-accident levels and Dr. Ruhr's diagnosis was that the lumbar sprain/strain, cervical-thoracic sprain/strain and right knee sprain had resolved. The applicant is therefore entitled to 1.75 hours per week of housekeeping assistance from February 29 to April 18, 2008 (7 weeks). According to an explanation of benefits payable of May 29, 2008, the insurer paid this benefit at an hourly rate of $8.75. The expense forms submitted by the applicant do not record an hourly rate and instead show a weekly rate of $100.00, however the applicant testified that he received 10 hours of housekeeping per week. Given that no submissions were made with regard to the hourly quantum of the housekeeping, I accept that the $10.00 per hour as a reasonable rate and allow same for the disputed period. The applicant is therefore entitled to further housekeeping and home maintenance benefit in the amount of $122.50, plus applicable interest.

Special Award

Although the applicant was partially successful in proving his claim to an income replacement benefit, I do not find that the insurer unreasonably withheld this benefit. There are numerous inconsistencies in the assessments based on information provided to the assessors by the applicant. There are also numerous indications that the applicant was exaggerating his symptoms which likely gave the insurer concern when adjusting the file. In the face of these inconsistencies, their termination was not unreasonable.

EXPENSES

If the parties are unable to reach an agreement on expenses, they may request an appointment before me in accordance with Rule 79 of the *Dispute Resolution Practice Code*.

Alec Fadel Arbitrator	February 28, 2012 Date

Financial Services Commission of Ontario

Commission des services financiers de l'Ontario

Ontario

FSCO A10-003528

BETWEEN:

ANANTHANADARAJH THAYALAN

Applicant

and

WAWANESA 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. Mr. Thayalan is entitled to an income replacement benefit from February 29, 2008 to April 18, 2008 pursuant to section 4 of the *Schedule*, plus applicable interest.

2. Mr. Thayalan is entitled to further housekeeping and home maintenance benefits in the amount of $107.19 pursuant to section 22 of the *Schedule*, plus applicable interest.

3. Mr. Thayalan is not entitled to a special award.

4. The issue of expenses is left to the parties to resolve.

Alec Fadel
Arbitrator

February 28, 2012
Date