

Safety, Licensing Appeals and
Standards Tribunals Ontario
Licence Appeal Tribunal

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RECONSIDERATION DECISION

Before: Linda P. Lamoureux, Executive Chair

Date: December 2, 2016

File: 16-000179/AABS

Case Name: Raho Mohamud v Old Republic Insurance Company

Written Submissions By:

For the Respondent: Garet Harper, McCague Borlack LLP

For the Applicant: Malcolm H. Zoraik, Doli Professional Corporation

Overview

1. On October 17, 2016, the Licence Appeal Tribunal (the "Tribunal") issued a Final Decision in *Raho Mohamud v. Old Republic Insurance Company*.
2. The Tribunal awarded the applicant, Ms. Mohamud, a weekly income replacement benefit (IRB) as follows:

"Ms. Mohamud is entitled to receive a weekly income replacement benefit in the amount of \$292.46 from March 25, 2016 to May 21, 2017."

3. The respondent requested a reconsideration of the Tribunal's decision on the basis that there was an error in law. Specifically, the respondent argues that the decision does not conform to the language of the *Statutory Accident Benefits Schedule* (the "Schedule") as it not only makes an award in respect of past benefits owing but also benefits owing into the future.
4. On November 16, 2016, the applicant provided her submissions in response to this request taking the position that the Tribunal's Order does comply with the Schedule.
5. For the reasons that follow, I grant the respondent's request for reconsideration and vary the adjudicator's Order.

Discussion and Reasons

6. The criteria for reconsideration are set out in Rule 18.2 of the Licence Appeal Tribunal *Rules of Practice and Procedure*, which states that the Executive Chair will not grant a request for reconsideration unless one or more of the following criteria are met:
 - a) The Tribunal acted outside its jurisdiction or violated the rules of natural justice or procedural fairness;
 - b) The Tribunal made a significant error of law or fact such that the Tribunal would likely have reached a different decision;
 - c) The Tribunal heard false or misleading evidence from a party or witness, which was discovered only after the hearing and would have affected the result; or
 - d) There is new evidence that could not have reasonably been obtained earlier and would have affected the result.

7. I have reviewed the respondent's request for reconsideration and the applicant's response. I am satisfied that the Tribunal made an error in law in awarding the applicant IRBs up to a specific date into the future.
8. In assessing the evidence, the adjudicator was presented with evidence of the applicant's past and current eligibility for IRBs. On the evidence the adjudicator decided that the applicant's IRB should be reinstated, starting at the date the applicant's benefit was stopped by the insurer. However, the adjudicator then fixed an end-date for the IRB. The May 21, 2017 end-date set by the adjudicator represents the 104-week post-accident date at which point the eligibility test for IRBs changes under the Schedule. The reinstatement is more accurately deemed to be an "ongoing" benefit as opposed to a specific and fixed date into the future. An insurer has an ongoing obligation to adjust a file, and by setting an end-date, the Order potentially fetters the insurer's ability to adjust the applicant's file. If, for example, the applicant returned to work before May 21, 2017, the Order would require the insurer to continue to pay the applicant IRBs for which they were potentially not eligible for under the Schedule.
9. The applicant takes the position that she is entitled to income replacement benefits up to the 104 week date of May 21, 2017 and that to determine otherwise would mean that the insurer would be in a position to deny income replacement benefits immediately after the date of the LAT decision because the order would only cover benefits payable up to that date. I disagree. An amended order is able to both deal with the previous error while still preserving the applicant's right to the ongoing IRB benefit until such time she is no longer eligible under the Schedule.
10. Based on the above, I therefore grant the respondent's request for reconsideration. The respondent provided proposed amendments to paragraphs 3 and 21 of the adjudicator's decision. I have modified the respondent's proposed amended language in order to make it clear that the IRB payment begins as of March 25, 2016 and not the date of the decision.
11. I vary the adjudicator's Order as follows to make the following changes to paragraphs 3 and 21 respectively:

3. I find on all of the evidence that Ms. Mohamud's weekly income replacement benefit in the amount of \$292.46 per week is hereby reinstated from March 25, 2016 and ongoing. Interest will be payable on the applicable amount of income replacement benefits owed to Ms. Mohamud from March 25, 2016 to the date of this decision in accordance

with the *Statutory Accident Benefits Schedule*. A weekly income replacement benefit in the amount of \$292.46 per week will be paid to Ms. Mohamud in accordance with the *Statutory Accident Benefits Schedule* from March 25, 2016 and ongoing until no longer owing in accordance with the applicable provisions of the *Statutory Accident Benefits Schedule*.

21. Ms. Mohamud's weekly income replacement benefit in the amount of \$292.46 per week is hereby reinstated. Interest will be payable on the applicable amount of income replacement benefits owed to Ms. Mohamud from March 25, 2016 to the date of this decision in accordance with the *Statutory Accident Benefits Schedule*. A weekly income replacement benefit in the amount of \$292.46 per week will be paid to Ms. Mohamud in accordance with the *Statutory Accident Benefits Schedule* from March 25, 2016 and ongoing until no longer owing in accordance with the applicable provisions of the *Statutory Accident Benefits Schedule*."



Linda P. Lamoureux
Executive Chair
Safety, Licensing Appeals and Standards Tribunals Ontario

Released: December 2, 2016