

WHAT'S HAPPENING AT FSCO? THE LEGATE SABS UPDATE

For decisions released the week of July 21-25, 2008

The importance of supporting retraining with expert opinions

Rehsi v. Dominion of Canada General Insurance Company, FSCO A0-002468, June 30, 2008 – Arbitrator Kominar

MVCs February 6, 1998, September 6, 1999 and July 5, 2004. Insured worked as a hairdresser initially but after the first collision was unable to continue in this occupation. In 2001 she retrained as an aesthetician. After the 2004 collision she stated she unable to continue as an aesthetician and retrained as a massage therapist. The issue was whether the retraining was a reasonable expense under s. 15 of the SABS.

Insurer denied payment of tuition for massage therapy course on the basis that it was not a reasonable and necessary measure, given that the physical requirements needed to perform massage were more demanding than those needed as an aesthetician. In added, insurer argued that if insured was able to do massage therapy work she was not disabled from doing the work of an aesthetician. Insured testified that with massage she could use her non-injured arm and did not have to bend over clients as she would with aesthetics. However, she also testified that she initially took the massage course as a way to “learn more about herself”. She had not consulted a medical practitioner or career consultant prior to embarking on the retraining.

Arbitrator held that the massage therapy program was not a reasonable and necessary measure to reintegrate insured into society.

Implications:

This case shows the importance of laying the groundwork prior to submitting expenses. Expert opinions on prognosis, the ability of the insured to perform the proposed career and a psychovocational report may have supported retraining for the insured, and perhaps in a career more suited to her level of disability.



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