

WHAT'S HAPPENING AT FSCO? THE LEGATE SABS UPDATE

For the week of October 27 to 31, 2008

Housekeeping Benefits and the Insurer's Request for the Personal Information of the Service Provider

Merani v. Wawanesa Mutual Insurance Company, FSCO A06-000704, October 8, 2008, Arbitrator Ashby

MVC June 28, 2005. Insurer denied a number of benefits claimed by insured including housekeeping benefits. In the OCF-9 explanation of benefits, insurer advised insured that the Disability Certificate indicated that she was "eligible for housekeeping benefits". However, the insurer declined to pay the benefit until insured provided the name, address and telephone number of the service provider. Insurer argued at arbitration that the insured failed to comply with the provisions of section 33 of the SABS by not providing this information and so was not entitled to the housekeeping benefit.

Arbitrator explained that in order to be entitled to a housekeeping benefit, the insured must establish that she incurred housekeeping expenses as a result of an accident-related impairment that substantially disabled her from performing her pre-accident housekeeping tasks. Arbitrator found that the insurer's Consultant erred in determining that the personal information of the housekeeper was a condition precedent to the insured's entitlement to housekeeping benefit.

Arbitrator explained that the insurer had the medical opinion that insured was substantially disabled from performing her pre-accident housekeeping tasks. Further, the application for expenses set out the tasks which were undertaken by the housekeeper and those tasks were consistent with the impairments described in the disability certificate. Arbitrator found that the insured was entitled to the housekeeping benefit and further stated:

...The Consultant asks for the private information of the housekeeper without providing an explanation of how the information might be relevant to Ms. Merani's claim. He does not express concern that the housekeeping services received are inconsistent with the injuries described in the Disability Certificate. The Consultant does not request further particulars of the services provided on the basis that the description given in the Application for Expenses was too vague. He does not explain what he intended to do with the information once given.

The request for the personal information of the housekeeper suggests that the Consultant doubted Ms. Merani's bona fides. Consequently, he intended to contact the housekeeper to obtain information that would

establish the expenses had been incurred. However, he failed to communicate this to Ms. Merani. Wawanesa has an obligation to deal with its insured in good faith. Unless there are inconsistencies which might reasonably lead to further investigation Wawanesa should accept Ms. Merani's statement that the expenses were incurred. ...

Implications:

The insurer's request for information under section 33 must be reasonable and the basis for the information must be explained to the insured to allow the insured to understand where a failure to provide the information would be unreasonable and thus where it would compromise payment of the housekeeping benefit. In light of the insurer's obligation to deal with the insured in good faith, the insurer should accept the insured's statement that housekeeping expenses have been incurred unless there are inconsistencies which might reasonably lead to further investigation.

Accessing Arbitration Decisions

If you would like to read the arbitration decisions for yourself, they can be found at <http://www.fSCO.ca/english/insurance/auto/drs/decisions/default.asp>. Please contact FSCO at 1-800-517-2332 ext. 7202 to obtain a password to gain access to the site.