

## **WHAT'S HAPPENING AT FSCO? THE LEGATE SABS UPDATE**

For the week of January 26 to 30, 2009

**The peril of ignoring important characteristics of an insured's life and blindly relying on bald conclusions contained in medical reports.**

**David Justin Atkinson and Bertie and Clinton Mutual Insurance Company, FSCO A08-000014, January 6, 2009, Arbitrator Robert Kominar**

MVC December 27, 2005. Insured was a university student and during the summer months he worked in very heavy industry to pay for his education. Insurer denied treatment plans for various medical benefits. However, the insured believed that he needed more therapy to continue with the challenges associated with both school and work. Arbitrator concluded that the treatments were reasonable and necessary and noted that the insurer ignored or did not properly appreciate the differences between the insured's heavy summer work and his studying:

*The evidence in this case makes it clear that Mr. Atkinson was not "just a student" ... It is fundamentally important for insurers to consider the "person" the applicant is. In essence this means that there is no justification for insurers to stereotype people. In this case the evidence leads to the inference that Bertie and Clinton and subsequently its medical examiners characterized Mr. Atkinson as an undergraduate university student. From that conclusion they seem to have inferred that only treatment which would reasonably help him regain his basic ability to sit in a lecture hall, or participate in a laboratory tutorial, is all that was important. ...*

*After considering the evidence carefully in this arbitration, I find that Bertie and Clinton chose to focus on only one dimension of Mr. Atkinson's life and discounted or ignored other salient parts. Specifically, they and their medical examiners, characterized Mr. Atkinson as a sedentary undergraduate student, and ignored that, for him to continue in that educational status, he had to work in very physically demanding jobs between semesters.*

Arbitrator also took issue with the bald statements and absence of reasons supporting conclusions within the reports that were relied upon by the insurer:

*It is important to state that it is not rationally sufficient for an insurer to blindly parrot conclusions contained in independent examinations as rationales for denying accident benefit claims. Conclusions carry no rational weight apart from the data and warrants which rationally support*

*them. Although it is true that insurance adjusters need to obtain opinions from properly qualified health care professionals when there is a disagreement about whether medical benefits are payable ... that does not lead to the automatic inference that any conclusion which favours their point of view is adequate to properly deny first party benefits. An insurer representative who does not read, understand, and carefully evaluate the reasoning within reports received may, down the road, face a difficult time in supporting decisions to deny or terminate benefits.*

*It is incumbent upon insurers to take the independent assessments which they obtain and review them to determine how well the conclusions therein are supported by sound reasoning. This is necessarily a two way street and it applies equally to section 24 assessments which applicants obtain. In my view significant costs for insurers and anxieties for applicants can be eliminated in the accident benefit system if all parties take the time to evaluate the reasonableness of the reports which they obtain, rather than aggressively, and often mindlessly advocating on behalf of the conclusions that their assessors reach.*

### **Implications:**

In considering the reasonableness and necessity of proposed treatments, treatment providers and insurer examiners must provide reasons to support their ultimate conclusions. The provision of conclusions supported by sound reasoning may assist in avoiding unnecessary disputes. In addition, in determining whether proposed treatments are reasonable and necessary for a particular insured, the evaluation should not focus too narrowly on any single dimension of the insured's life.

### **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.