



BETWEEN:

RONALD JAMES KIDDER

Applicant

and

ECONOMICAL INSURANCE COMPANY

Insurer

REASONS FOR DECISION

Before: Arbitrator Marshall Schnapp

Heard: In person at ADR Chambers on June 23, 24, 25, 26, 27, 2014, by teleconference on September 19, 2014 and by written submissions on September 24, 2014

Appearances: Ms. Georgiana Sirbu for Mr. Kidder
Mr. Nicholaus de Koning for Economical Mutual Insurance Company

Issues:

The Applicant, Ronald James Kidder, was injured in a motor vehicle accident on February 7, 2009. He applied for and received statutory accident benefits from Economical Mutual Insurance Company ("Economical"), payable under the *Schedule*.¹ After Economical denied some benefits, the parties were unable to resolve their disputes through mediation, and Mr. Kidder, through his representative, 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. Did the Applicant sustain a Catastrophic Impairment as a result of the accident, as defined in clause 2(1.2)(g) of the *Schedule*?
2. Is the Applicant entitled to medical benefits in the amount of \$5,331.62 for psychological treatment provided by Assurance Medical Services, in respect to two Treatment Plans (OCF-18) dated February 26, 2010 and May 31, 2010?
3. Is the Applicant entitled to receive expenses for cost of examinations as follows: \$1,788.32 for a Psychological Assessment dated November 26, 2009; \$1,728.61 for an In-Home Assessment dated January 18, 2010; \$1,293.71 for a Functional Abilities Evaluation dated April 15, 2010; and \$2,295.00 for an Orthopedic Assessment dated January 18, 2010?
4. Is the Applicant entitled to Attendant Care Benefits?
5. Is the Applicant entitled to payments for Housekeeping and Home Maintenance Services?
7. Is either party entitled to expenses in respect of the Arbitration?
8. Is the Applicant entitled to a Special Award?
9. Is the Applicant entitled to interest for the overdue payment of benefits?

The Applicant withdrew his claim for a weekly Income Replacement Benefit prior to the commencement of the Hearing.

Result:

1. The Applicant did not sustain a Catastrophic Impairment as a result of the accident, as defined in clause 2(1.2)(g) of the *Schedule*.
2. The Applicant is entitled to medical benefits in the amount of \$5,331.62 for psychological treatment provided by Assurance Medical Services, in respect to two Treatment Plans (OCF-18) dated February 26, 2010 and May 31, 2010.
3. The Applicant is entitled to receive expenses for the cost of examinations in the amount of \$1,788.32 for the payment of a Psychological Assessment dated November 26, 2009. The Applicant is not entitled to receive expenses for payments for the In-Home Assessment

dated January 18, 2010; Functional Abilities Evaluation dated April 15, 2010; and the Orthopedic Assessment dated January 18, 2010.

4. The Applicant is not entitled to Attendant Care Benefits.
5. The Applicant is not entitled to payments for Housekeeping and Home Maintenance services.
6. The Applicant is not entitled to a Special Award under subsection 282(10) of the *Insurance Act*, R.S.O. 1990, c.I.8, as amended.
7. The Applicant is entitled to interest on the overdue payments for medical benefits and expenses for the cost of examination.
8. If the parties are unable to resolve the issues of expenses, either party may make an appointment with me to determine the matter in accordance with Rules 75-79 of the *Dispute Resolution Practice Code*.

EVIDENCE AND ANALYSIS:

Witnesses

I heard testimony on behalf of Mr. Kidder from himself; Mrs. Rosana Kidder, the Applicant's wife; Dr. Rosenblat, a psychiatrist who completed Mr. Kidder's Catastrophic Assessment; Ilicia Simmons, a Child and Family Therapist and Psychometrist who provided treatment to Mr. Kidder; Barbara Anschuetz, a psychotherapist who provided treatment to Mr. Kidder; and Dr. Stokl, a psychiatrist who provided a Psychiatric Consultation for Mr. Kidder. Dr. Luczak, a psychiatrist who completed a Catastrophic Assessment, testified on behalf of Economical.

The Positions of the Parties

Mr. Kidder claimed to have sustained a Catastrophic Impairment from a mental and behavioural standpoint as a result of the accident. He had some psychological difficulties which pre-existed the accident. He claimed that the mental and behavioural difficulties resulting from the accident had a marked impact on his life including his work life, even though he continued to work for two

years after the accident. Mr. Kidder is also claiming medical, cost of examinations, Attendant Care, and Housekeeping Benefits as a result of the accident.

Economical takes the position that Mr. Kidder did not sustain a Catastrophic Impairment from a mental and behavioural standpoint as a result of the accident. As well, no more benefits are owed to Mr. Kidder for medical, cost of examinations, Attendant Care and Housekeeping.

The Accident

On February 7, 2009, at the time of the Accident, Mr. Kidder was working as a Flag Man. A motor vehicle approached and stopped a few feet away from him, then suddenly moved forward, hitting his left knee and sending his body over the hood of the vehicle. After the vehicle came to a stop, the driver came out and assaulted Mr. Kidder. Mr. Kidder defended himself. Another passenger in the vehicle that struck Mr. Kidder got out and tried to stop the fight between Mr. Kidder and the driver. The driver and passenger then got back into the vehicle and drove off. Mr. Kidder gave the licence plate to the police, who then subsequently arrested the driver of the vehicle. Mr. Kidder finished the remainder of his shift and drove himself home at the end of the day. According to the employment documentation admitted as evidence, Mr. Kidder did not miss any time from work as a result of the accident.

Mr. Kidder attended upon his family doctor, Dr. Joan Vant Voort, on April 15, 2009, seven weeks after the accident, and she completed a Disability Certificate (OCF-3), dated April 15, 2009. The OCF-3 described Mr. Kidder's injuries and conditions as follows: shoulder and neck strain (WAD I or II); lumbar strain; and Post-Traumatic Stress Disorder ("PTSD").

The OCF-3 also documents that Mr. Kidder was substantially unable to perform the tasks of his employment as a result of the accident. However, the doctor noted Mr. Kidder had already returned to work.

Pre-Accident History

Mr. Kidder's medical chart was provided by Dr. Vant Voort, his family doctor. A review of the chart (pre-accident) only shows one entry made on September 12, 2007, and while it is difficult to read, it does not appear to document any issues related to mental or behavioural disorders.

A Clinical Consultation Report dated November 11, 2008 from Southlake Regional Health Centre documents a focal irregularity involving the left fifth rib which may represent a displaced fracture.

According to a M.V.A. Psychological Assessment Report prepared by Ilicia Simmons, M.A., (Psychometrist and Therapist) and Shari Geller, Ph.D., C. Psych (Supervising Psychologist) and received by Economical on March 10, 2010, Mr. Kidder's pre-accident history included:

- a) The occurrence of inappropriate conduct and (possibly) repeated abuse by his barber, which Mr. Kidder suffered at the age of four – he repressed the memory of the abuse until after 2001;
- b) Several previous minor motor vehicle accidents over the years;
- c) A serious accident in 1996 in which he suffered a “broken neck and back.” He engaged in intensive rehabilitation for approximately a year and a half and made a full recovery; and
- d) Previous contact with a mental health practitioner includes some counselling in 2002 when memories of the abuse surfaced for the first time since his childhood.

Mr. Kidder's Evidence and Credibility

The Applicant's credibility came under serious question on a number of occasions during direct and cross-examination as described further below. Mr. Kidder's credibility was most undermined when he had to address the extensive surveillance evidence, and the financial and employment documentation. The Applicant's credibility also came into question during the testimony of the various medical assessors and their evidence on what Mr. Kidder reported to them as compared to what was seen in the surveillance. This is most apparent with the information Mr. Kidder provided to Dr. Rosenblat, who completed the Catastrophic Psychiatry Assessment on his behalf.

I found Mr. Kidder lacked credibility for the following reasons, which are not exhaustive, but in my view represent the most serious issues impacting his credibility:

1. The fact that he continued to drive while reporting to health care professionals that he had stopped due to anger and safety considerations;
2. He received \$18,653 in Employment Insurance in 2009 even though he was employed and understood this was inappropriate;
3. His reporting of his activity level compared to what was shown in surveillance; and
4. His reporting of his social functioning compared to what was shown in surveillance.

Extensive surveillance was admitted into evidence and described further below; surveillance of Mr. Kidder was taken over 18 days in 2012, 2013, and 2014. The surveillance comprised of reports and approximately three hours of surveillance, which I viewed. Mr. Kidder did not deny that he was the person seen on the surveillance.

The surveillance clearly shows that the Applicant drove on a regular basis, during the periods covered by the surveillance. This conflicts with both his testimony during the Hearing and with the testimony of various medical practitioners who say they were told by Mr. Kidder that he had stopped driving. When Mr. Kidder was assessed by Dr. Rosenblat in March 31, 2012, Mr. Kidder reported that he last drove in October 2011. Mr. Kidder advised Dr. Rosenblat that his difficulties were, "road rage", "dissociation", and physical pain which prevented him from driving.

At the Hearing, Mr. Kidder provided the following testimony with respect to his driving: in the summer and fall of 2010, he and his wife made a decision that he would stop driving. This decision was made prior to his licence being removed on the advice of Dr. Rosenblat to the Ministry of Transportation. Mr. Kidder explained that there were a couple of episodes in summer and fall of 2010, in which he became upset and began driving erratically and unbelievably fast at the wheel of his family van. A few weeks after that incident, Mr. Kidder had a discussion with his wife, Rosanna, who said she did not care if he drove by himself, but there was no way he was to drive with the family. Mr. Kidder agreed.

Yet, the surveillance shows Mr. Kidder driving a vehicle on a regular basis in 2012, 2013, and 2014, both by himself and with his children. He also drove with his wife as a passenger once.

During direct examination, Mr. Kidder testified that he drove in the summer of 2012 because he needed to take his children to their summer activities. He also confirmed that in April 2013, he drove to the local hockey rink to watch his son play hockey and drove his children to school. He also confirmed to his counsel that he understood that driving without a licence is a traffic offence, and, if convicted, it would remain on his driving record for three years.

When cross-examined on his driving, the Applicant responded as follows: "I have a cat (catastrophic impairment). I could do a lot of different things and unfortunately the decision that was made is I was to drive." The Applicant was never asked why he told Dr. Rosenblat that he had stopped driving in the fall of 2010, when he had not. The Applicant provided no evidence to argue that the surveillance obtained an inaccurate picture of his driving habits.

I do not accept the Applicant's explanations that he had no other choice but to drive, or that his decision to drive was a poor one but it was based on his poor decision making abilities due to his perceived medical condition. From the evidence before me, I find that the Applicant continued to drive on a regular basis after the accident as he wanted the means to run errands, and take his children to and from school and their activities, as needed. I also find that he must have felt safe enough to drive, given he drove not only by himself, but with his children in the vehicle.

Under cross-examination, Mr. Kidder confirmed that in 2009, besides receiving employment income of \$44,411, he also received \$18,653 in Employment Insurance Income Benefits, totaling about 40 weeks of Employment Insurance Benefits. He testified that “yes, I exhausted the claim in its entirety, yes.... I started it and exhausted the program.” He confirmed he did so while he was working. “That’s correct, the whole session from start to finish, I explained to them that I still required EI funds and they kept paying me.”

During re-examination, Mr. Kidder confirmed that he was aware that knowingly making a false or misleading statement is considered an offence under the *Employment Insurance Act*. He advised he made the claim while working because “I was scared, which for me is a very different emotion. And as I was working and starting to work with Kidd Fuels, I was in a state of complete confusion. I didn't know which direction I was going to go with my life. I didn't [know] how I was going to support people”. This decision to apply for and accept \$18,653 in Employment Insurance while he was working reflects very poorly on Mr. Kidder’s credibility.

Mr. Kidder also discussed his relationship with his children to Dr. Rosenblat. The doctor’s assessment notes that Mr. Kidder “keeps away from them as he has no tolerance for their childish ways...the only activity that he does with his children is walking them to school.” However Mr. Kidder’s testimony confirmed what the surveillance showed: that in addition to walking them to school, he had driven them to school and summer activities, and watched his son play hockey on numerous occasions.

Mr. Kidder also testified that prior to the accident, he completed a significant amount of household chores and renovations. “Now it’s zero,” he testified of the impact the Accident had at home. “And my wife has stopped asking. I guess she’s happy if I lift my feet while she’s vacuuming.” During Dr. Rosenblat’s catastrophic assessment of Mr. Kidder, Dr. Rosenblat noted that Mr. Kidder stated that, prior to the 2009 accident, he was involved in a variety of household chores including taking out the garbage, but that he had stopped performing them, and that he said, “I see no value”.

The surveillance evidence from July 26, 2013 shows the Applicant performing housekeeping activities; he is observed taking out the garbage.

In deciding how much importance to give the surveillance, I note that two of the three psychiatrists who testified at the Hearing commented on it. Dr. Stokl, who provided a psychiatric consultation at the request of Dr. Anschuetz, Mr. Kidder's treating psychotherapist, was only shown a small portion of the surveillance reports and none of the actual surveillance. While Dr. Stokl provided some general comments on it, he was not asked about the surveillance in terms of how it compares to Mr. Kidder's reporting that he no longer drives, his activity level, and social interactions since the accident.

After reviewing the whole of the surveillance, including the video, Dr. Luczak, a psychiatrist retained by Economical, noted Mr. Kidder appears to be in no obvious distress, appears to be having a good time, and driving with no restrictions.

One of the things that struck me most about viewing the video surveillance was that it showed over a number of different days, months, and years, a high level of activity and an ease in which Mr. Kidder comfortably interacted with both his family and individuals with whom he came into contact. This was in extreme contrast to the picture he portrayed to the various medical assessors, especially Dr. Rosenblat, and to a significant degree, the picture he portrayed while providing testimony at the Hearing.

Mr. Kidder's reporting on his accident-related symptoms and post-accident activity level to multiple health care practitioners is unreliable. He applied for and collected Employment Insurance while he was working and knew it was an offence to do so. Mr. Kidder appeared to be significantly more active in the surveillance footage, in direct contrast with what he told multiple health practitioners and his testimony during the Arbitration Hearing. I cannot rely on Mr. Kidder's evidence.

Mrs. Kidder's Evidence

While giving evidence during direct examination, Mrs. Kidder stated that she and Mr. Kidder had some discussions about his increasingly erratic driving. There were "some moments where I would say to him, you can't drive anymore. You are just very aggressive. You are pushy. You have no regard for other people around you and you are not safe" (pg. 517). She went on to say that, "He's lost that ability, but he knows that he can't drive. He knows he doesn't – he's not ready for it. So, it's good that he doesn't" (pg. 519). This testimony is also in conflict with the surveillance evidence.

When asked about how Mr. Kidder spends his day, she said "He doesn't do anything. He watches TV. He sleeps. Jamie's day. When I leave home, he is still in bed. He would try to get up because I would insist that he get up... If he gets up, he takes his medication, he's okay. He can just kind of observe the kids and watch them walk to school... When I come home, he is usually in bed. Sleeping. And if he's not, if he's awake, then I come home and then he goes to bed and we don't see him 'til maybe 8:00 at night, depending on how he feels. Depending on what kind of day he has... So, during the day I'm assuming he sleeps or he's on the couch sleeping" (pp 520-521). Mrs. Kidder said there was nothing that interests Mr. Kidder at the present time. When asked if he is doing any household activity she responded, "No."

Mrs. Kidder was also asked to comment on the surveillance evidence. She confirmed she was aware her husband was picking up their kids from summer camp in 2012 while his license was suspended.

She also confirmed the family went to Cardiff where her sister has a summer home. She drove and Mr. Kidder was a passenger. Surveillance shows Mr. Kidder by the water with the family. Mrs. Kidder said that he spent all of the next day in bed because he had used up all his energy the previous day. I note that the Applicant provided no evidence to corroborate this.

During Mrs. Kidder's cross-examination, she was questioned on apparent discrepancies between the Affidavits that she swore on April 18, 2014, in support of an "interim benefits" Motion. In her

Affidavit, Mrs. Kidder stated she was a single parent with a non-responsive husband, with one hundred percent responsibility for the children's well-being, schooling, sports, etc. She said that in the past two years, Jamie had been banned from their son's baseball and hockey games, practices, and all other related team functions. She said she had to take over the driving duties to practices and games, including out of town tournaments. Counsel put it to her that her Affidavit was contradicted by the surveillance evidence. Mrs. Kidder disagreed and stated "No. It shows a portion of him doing that because I'm not there, because I am the sole provider of our home." She went on to say that she was one hundred percent responsible for the children, but qualified that by saying that she doesn't mean she is one hundred percent responsible physically for them, as when Mr. Kidder is home, he can take on some of the responsibilities.

While I can appreciate the emotional toll Mr. Kidder's situation has had on his wife and their family, I found Mrs. Kidder to be an aggressive witness at times and in light of the surveillance evidence and the inaccuracies in her Affidavit, I find that Mrs. Kidder is not a credible witness.

Catastrophic (CAT) Impairment

The Applicant seeks a determination that he suffered a Catastrophic (CAT) Impairment *due to a mental or behavioural disorder* as a result of the of the motor vehicle accident on February 7, 2009.²

According to the evidence presented during the Hearing, prior to the motor vehicle accident, Mr. Kidder was functioning normally with respect to both his home and work life. According to Mr. Kidder's counsel, the accident "...was the 'straw' that broke the camel's back" and resulted in symptoms characterized by intrusive thoughts, insomnia, anger, aggression, and a re-experiencing of dormant memories of abuse as a child. Mr. Kidder testified that he experienced difficulty with anger control and was afraid of hurting others. He also testified that he began to have difficulty functioning at work and was reckless in the large vehicle he operated, reacting with rage to any perceived transgressions made by other drivers.

² Section 2(1.2)(g) of the *Schedule*.

Economical's position is that while Mr. Kidder may have some mental and behavioural impairments, those impairments are not catastrophic in nature. Economical submits that Mr. Kidder's embellishments and exaggerations led Dr. Rosenblat, who conducted the catastrophic impairment assessment for Mr. Kidder, to the wrong conclusion, i.e., that Mr. Kidder had marked impairments in various domains. Economical submitted that Dr. Rosenblat's report was based on Mr. Kidder's self-reporting, which Economical submits is not credible. Economical submitted that the report of its assessor, Dr. Luczak, should be preferred over that of Dr. Rosenblat.

The burden of proof rests with the Applicant. He must prove on a balance of probabilities that he has been catastrophically impaired as a result of the accident. After considering the whole of the evidence and for the following reasons, I find Mr. Kidder has not satisfied the burden. He did not provide reliable evidence that he sustained a Catastrophic Impairment and his testimony and that of his wife conflicted significantly with the surveillance footage. As well, the medical assessments relied upon by the Applicant to support his catastrophic injury claim were significantly compromised by the inaccuracy of the information provided by the Applicant to those assessors.

Law and Framework of Analysis

The decision by the Ontario Court of Appeal in the case of *Pastore v. Aviva Canada Inc.*³ confirmed that the assessment of Catastrophic Impairment determinations with respect to a mental or behavioural disorder under this section of the *Schedule* is carried out by reference to the American Medical Association's *Guides to the Evaluation of Permanent Impairment* ("Guides"). The Court proposed the following three-stage legal analysis in determining the question:

1. Did the accident cause the Claimant to suffer a mental or behavioural disorder?
2. If it did, what is the impact of the mental or behavioural disorder on his daily life?
3. In view of the impact, what is the level of impairment?

³ *Aviva Canada Inc v. Pastore*, 2012 ONCA 642.

If the person concerned has a marked or more severe level of impairment, they meet the definition for Catastrophic Impairment as a result of a mental or behavioural disorder.

The *Guides*' approach to assessing a concerned person's function in his daily life is to examine the concerned person's abilities within four different areas of life:

1. Activities of Daily Living (ADLs);
2. Social Functioning;
3. Concentration, Persistence and Pace; and
4. Adaptation - Deterioration or Decompensation in Work or Work-Like Settings.

The *Guides* also assist in quantifying or otherwise rating the severity or degree of impairment of function within those general areas. According to the Court in *Pastore*, a finding of marked impairment in one of the four areas of function delineated in the *Guides* is sufficient to qualify as a Catastrophic Impairment under clause (g) of the *Schedule*.

1. Did the accident cause Mr. Kidder to suffer a mental or behavioural disorder?

The medical evidence indicates that Mr. Kidder was diagnosed with various mental or behavioural disorders after the accident by numerous medical assessors, including some retained by Economical. A review of Dr. Vant Voort's medical chart for Mr. Kidder shows that on his first visit after the accident on March 27, 2009, Mr. Kidder complained of the following: anxiety, anger, and feelings of being upset and down. The doctor noted that Mr. Kidder was tearful in her office, and complained of issues such as difficulty sleeping and loss of appetite. The doctor noted the accident brought back issues from Mr. Kidder's military time, and that her patient felt debilitated. In an entry dated April 13, 2009, approximately two months after the accident, the doctor diagnosed Mr. Kidder with Post-Traumatic Stress Disorder.

According to the Disability Certificate OCF-3 dated April 15, 2009 from Dr. Vant Voort, the accident caused the following injuries and conditions: shoulder/neck strain, lumbar strain, and Post-Traumatic Stress Disorder.

Economical had a psychological assessment completed by Dr. Gerry Dancyger, Psychologist. His report dated September 3, 2009 reads, on page 8, that the assault of Mr. Kidder on February 7, 2009, by the driver of the motor vehicle that hit him, “triggered a multitude of underlying emotions that Mr. Kidder had been attempting to control or subvert most of his life.” Dr. Dancyger wrote that while Mr. Kidder’s current emotional state is not likely a direct result of the accident and assault that followed on February 7, 2009, the accident likely exacerbated or released underlying emotions that have been present for most of his life and that he has likely struggled to contain for many years.

Mr. Kidder obtained psychotherapy services from Ms. Ilicia Simmons, M.A., who also testified at the Hearing. She obtained her Master’s degree in counselling psychology in or around 2006 and then started working at Andrew Shaul Psychology Professional Corporation where she psychologically assessed individuals, mainly those who had been in motor vehicle accidents, and then provided counselling of those individuals and their families. Counsel for Mr. Kidder did not qualify Ms. Simmons as an expert witness. Thus Ms. Simmons’ evidence will be considered as “fact evidence” only; that is, material to the symptoms described by Mr. Kidder and the course of his treatment with Ms. Simmons.

Ms. Simmons completed an MVA Psychological Assessment Report dated February 2, 2010, which is less than one year after the accident. On February 2, 2010, when Mr. Kidder was interviewed for the assessment, he reported feelings of shock following the collision. He also stated that while his physical issues gradually improved, approximately one month after the accident, he began to experience nightmares, symptoms of anxiety such as frequent panic attacks, and constant headaches.

There was another psychological assessment report completed by Ilicia Simmons, M.A., (Psychometrist and Therapist) and Shari Geller, Ph.D., C. Psych (Supervising Psychologist) received by Economical on March 10, 2010. This report found Mr. Kidder’s presentation consistent with DSM-IV criteria for a diagnosis of Post-Traumatic Stress Disorder (Chronic) resulting from the motor vehicle accident. This report highlights the fact that although Mr. Kidder

disclosed pre-existing psychological distress originating from his childhood abuse, he had felt these issues had been resolved. Mr. Kidder's reported condition immediately prior to the accident was good, and there was no reported history of emotional or psychological difficulties of the level he was currently experiencing. The report noted that his pre-existing difficulties may have made him susceptible to psychological troubles in the future, but that the accident likely hurt his coping skills and emotional stability. This conclusion is consistent with Dr. Dancyger's findings, in his report dated September 3, 2009.

Economical conducted another psychological assessment and had Mr. Kidder assessed by Dr. Syed on June 29, 2010. In the report, Mr. Kidder was found to meet the DSM-IV-TR diagnosis for Post-Traumatic Stress Disorder based on subjective and objective tests. Dr. Syed found that it was quite possible that Mr. Kidder's pre-existing traumatic symptoms related to his early childhood sexual abuse were re-activated due to the accident.

The Insurer obtained a Psychiatric Evaluation from Dr. Wilkins who saw Mr. Kidder on May 7, 2012. Dr. Wilkins made the following findings: subjective reporting is inconsistent and unreliable; lack of objective documentation to indicate any significant trauma experienced due to the subject incident; and the existence of several more immediate psychosocial stressors occurring at the time of his complaints to his family doctor. Based on her findings, Dr. Wilkins was of the opinion that any psychiatric symptomatology or needed treatment had nothing to do with the accident, but related to Mr. Kidder's chronic psychiatric and psychological issues and more immediate psychosocial stressors.

Dr. Rosenblat's Catastrophic Assessment dated May 7, 2012 reported that Mr. Kidder said he was functioning normally from a social, occupational, and recreational point of view immediately prior to the accident on February 7, 2009. After the accident, Mr. Kidder reported experiencing emotions required for a diagnosis of Post-Traumatic Stress Disorder and he sought out medical treatment 4-6 weeks post-accident for emotional difficulties. Dr. Rosenblat reported that Mr. Kidder was predisposed to the psychiatric effects of the accident because he had been sexually abused as a child. Dr. Rosenblat found that the diagnosis under Axis I of the DSM-IV-TR – post-traumatic stress disorder, major depressive episode, pain disorder associated with both

psychological factors and a general medical condition, and marijuana abuse – are reasonable sequelae to the accident. Dr. Rosenblat found no other stressors to account for these diagnoses. He concluded they must have been caused by the accident on February 7, 2009.

Under cross-examination, Dr. Rosenblat agreed that he was provided with relatively thin medical documentation to review, did not have collateral interviews with any other family members or other knowledgeable persons, and to reach his conclusions he had to exercise his clinical judgment, which was based on the information provided by Mr. Kidder.

Dr. Anschuetz also gave evidence at the Hearing. She has a doctorate degree in counselling psychology from the University of Toronto and specializes in trauma, in particular post-traumatic stress disorder. Mr. Kidder was treated by Dr. Anschuetz starting in July 2012. As with Ms. Simmons, counsel for Mr. Kidder did not qualify Dr. Anschuetz as an expert witness and thus her evidence is considered as fact evidence only; that is, only material to the symptoms described by Mr. Kidder and the course of his treatment with Dr. Anschuetz. When Dr. Anschuetz started to see Mr. Kidder, she was working from Dr. Rosenblat's diagnosis of Post-Traumatic Stress Disorder, major depression, and some pain and substance abuse disorder. She saw Mr. Kidder on a weekly basis over the first year and in bi-weekly sessions afterwards. She testified that on August 25, 2013, Mr. Kidder still complained of strong feelings in relation to the accident when he thought about it.

Referencing her notes from their October 16, 2013 session, Dr. Anschuetz testified that Mr. Kidder complained about his sense of loss around his inability to drive. Dr. Anschuetz testified during cross-examination that during their session on May 5, 2014, Mr. Kidder disclosed that he had driven a vehicle to run errands. Dr. Anschuetz said she referred Mr. Kidder to Dr. Stokl in December of 2013, because she felt he still had a lot of rage, was still very depressed, and was failing to move forward in the other areas of treatment.

Mr. Kidder was also assessed by Dr. Stokl, Chief of Psychiatry at Southlake Regional Health Centre, at the request of Dr. Anschuetz. Dr. Stokl wrote a Consultation Note dated December 15, 2013. Based on the reports he reviewed, his clinical examination and assessment, and history

provided by Mr. Kidder, he testified that he was of the opinion that Mr. Kidder's symptoms surfaced significantly after the accident in February 2009.

The Insurer also had a Psychiatric Catastrophic Assessment completed by Dr. Luczak dated May 25, 2014. It was Dr. Luczak's opinion, based on his interview with Mr. Kidder and review of his medical file, that Mr. Kidder did not suffer from mental and behavioural impairments as a direct result of subject motor vehicle accident. This conclusion was based on several findings, including that Mr. Kidder's behaviour immediately following the accident differed from the reaction of someone who has just gone through a horrific event, which is the gate keeping criteria for Post-Traumatic Stress Disorder. The doctor also testified that usually PTSD symptoms are most acute after the trauma and subside with time. But he noted in Mr. Kidder's case, his PTSD symptoms seemed to develop several weeks after the accident. Mr. Kidder was able to work for over two years after the accident and it was only when Mr. Kidder became unemployed, that he reported he was emotionally unable to continue working. Dr. Luczak believed that the symptoms related to the PTSD may be related to Mr. Kidder's past history of childhood abuse and/or a cumulative effect of being victimized by others during confrontations.

Dr. Luczak's testimony also put into question the validity of Mr. Kidder's self-reporting symptoms that formed the basis for many of the medical practitioners' diagnoses. He noted that Dr. Dancyger's Psychological Assessment dated September 3, 2009 showed significant symptom magnification yielding invalid results. He also questioned the diagnosis of a Major Depressive Episode. Dr. Luczak noted if the accident was the cause of Mr. Kidder's depression, the most serious symptoms should have been evident immediately following the event and should have gradually improved. Dr. Luczak also noted that Mr. Kidder's complaints did not stop him from working after the accident and he worked for more than two years after the accident.

Dr. Luczak was also the only assessor who had the opportunity to review the surveillance conducted by Economical. His opinion was that it "shows Mr. Kidder in no obvious distress appearing to have a good time and driving with no apparent restrictions." During cross-examination, Dr. Luczak advised that in his opinion it was "very, very improbable that there'd be any connection between the accident and Mr. Kidder's symptomology." While Dr. Luczak

concluded that Mr. Kidder does not suffer from mental and behavioural impairments as a direct result of the Accident, he agreed during cross-examination that it is possible for dormant PTSD symptoms to be triggered by a specific traumatic event.

When all the evidence is considered in its entirety, I find on a balance of probabilities, the accident caused Mr. Kidder to suffer a mental or behavioural disorder but not to such a degree that it amounts to a Catastrophic Impairment. It should be noted that this was a difficult conclusion to reach, given serious conflicts between what Mr. Kidder reported to medical health practitioners, some of his testimony, his improper EI claim, and the surveillance footage.

In arriving at this finding, I note the evidence showed that prior to the accident, Mr. Kidder had no documented complaints of a mental or behavioural nature. On his first medical visit after the accident to Dr. Vant Voort, his medical chart shows that he reported being upset, anxious, angry, feeling down, and that he was having issues with sleeping and a loss of appetite. The doctor also noted Mr. Kidder was tearful in the office. The doctor's next note dated April 13, 2009 diagnosed Mr. Kidder with PTSD due to the accident.

Following the accident, Mr. Kidder sought treatment from June Davies and then from Ms. Simmons, beginning in February 2010, while he was still working until October 2012. He then transferred to Dr. Anschuetz in 2012 and continues to receive treatment from her. The regular treatment Mr. Kidder has undertaken after the accident helps to document that the accident was likely responsible for his symptoms.

In coming to the conclusion that the accident caused Mr. Kidder to suffer mental and behavioural disorders, he had a pre-existing history and psychological condition which made him vulnerable to further injury in a thin skull sense. Prior to the accident, Mr. Kidder was asymptomatic for the most part despite his significant pre-accident history and psychological character. That evidently changed as a result of the motor vehicle accident. Even though I found Mr. Kidder to be not very credible, there is sufficient medical evidence to support this finding outside of his testimony and self-reporting. Specifically, I am relying upon his family doctor and treating therapists' charts in making this finding.

In terms of the specific disorder caused by the accident, it appears from the medical evidence overall, to be either PTSD or some type of anxiety related disorder that comprises some of the symptoms present in PTSD and depression. I am not making a finding that Mr. Kidder is suffering from severe depression. While I recognize that several doctors have made this diagnosis, they have done so based upon Mr. Kidder's self-reporting, which for the most part has not proved credible.

2. What is the impact of the mental or behavioural disorder on his daily life?

Only Mr. and Mrs. Kidder gave first-hand testimony on Mr. Kidder's daily activities. This is problematic given my findings that neither witness was particularly credible for the reasons stated earlier. It is apparent that Mr. Kidder provided false information to both his treating medical practitioners and assessment practitioners. It is difficult to rely on their clinical notes and reports given that a significant amount of the information they are based on was inaccurate.

According to Dr. Rosenblat's Catastrophic Psychiatry Assessment, Mr. Kidder had difficulty functioning in daily life because of pain, decreased focus, impaired concentration, and frustration. In a typical day, he reported awaking at 7:30 a.m., walking his children to school about 300 metres away, and then returning home to bed or to lounge on the couch. He might spend some time watching television or on the computer.

Mr. Kidder reported the following specific issues and problems to Dr. Rosenblat:

1. difficulty standing for more than 10 minutes;
2. problems sitting for more than 20 minutes;
3. pain and intrusive thoughts when he lies down;
4. only able to lift about 20 pounds;
5. difficulty negotiating the stairs, and therefore holds onto the railing;
6. no longer involved in any exercise activities;
7. no longer driving and the last time he drove was in October 2011;

8. no longer performing any household chores;
9. difficulty with concentrating and multitasking, poor ability to follow instructions and directions, and difficulty keeping a routine;
10. when under stress he will leave the situation or smoke marijuana;
11. has not done any travelling since the accident;
12. pre-accident had approximately 10 friends and now has only one; he lost his friends because he says he “pissed” them off;
13. avoids going to the store because of the busy atmosphere and he tries to have nothing to do with people who work in the stores;
14. only activity that he does with his children is walking them to school; and
15. unemployed and not looking for work now for several reasons: does not believe it is safe to drive, afraid of losing temper while working in a construction job, and a previous psychiatric assessment and Homewood documented that he is not “employable”.

I find from my review of the surveillance evidence, the surveillance having been conducted over three years, that the following complaints and history provided to Dr. Rosenblat, and which formed part of the basis for his report, were inaccurate: Items 2, 7, 8, 11, 13, 14, and 15.

I will briefly describe the inconsistencies between what Mr. Kidder told Dr. Rosenblat and what the surveillance shows:

- #2 – Mr. Kidder is able to sit significantly longer than 20 minutes while watching his son play hockey.
- #7 – Mr. Kidder is driving his children to and from activities, summer camp, and school. He is also shown driving in a parking lot and driving himself to Tim Horton’s and the bank.
- #8 – Mr. Kidder is taking out the garbage and/or recycling.
- #11 – Mr. Kidder attended with his wife and children at his sister-in law’s cottage in Cardiff, Ontario during the last weekend of June 2012.
- #13 – Mr. Kidder was observed going into the store, The Bargain Shop, on June 29,

2012. Other surveillance documents him attending Tim Horton's and Petro Canada to purchase coffee.

- #14 and #15 – see #7; it is apparent from my watching the surveillance that Mr. Kidder is involved far more with his children than what he had advised Dr. Rosenblat. He has also been driving extensively since the accident. In the surveillance footage, Mr. Kidder comes across as engaged and sometimes smiling when interacting with his children. Surveillance taken on June 29, 2012 also shows Mr. Kidder spending a few hours in the afternoon at North Bay Beach where he was interacting with three other individuals and his children. Several days of surveillance taken in the summer of 2013 show him taking his children to various activities. Additional surveillance was conducted in April of 2014 – on the 12th, he drove his son to play hockey, watched his son play, and interacted with several men; on the 15th, Mr. Kidder drove his children to school; and on the 21st he drove Mrs. Kidder and their son to the Aurora GO station. After dropping them off, he drove to Tim Horton's and then returned home.

It should be noted that the surveillance brief also documents several occasions when surveillance was attempted but Mr. Kidder was not seen leaving the house. The family van also remained in the driveway. From the surveillance evidence, it appears that most of his driving revolved around short trips like taking his children to activities or school, excluding some excursions to buy coffee and other errands.

In relation to the difficulties in functioning described in Item 1 through 6, no testimony was provided during the five-day Hearing from any of the witnesses, including Mr. and Mrs. Kidder.

With respect to Item 9, this was not discussed at any great length if at all by Ms. Simmons, Dr. Anschuetz, or Mrs. Kidder. During his testimony, Dr. Stokl did not refer to any complaints made by Mr. Kidder around concentration and memory issues, and made no findings in his consultation note dated December 13, 2013 with respect to concentration and memory issues.

However, Dr. Luczak's report dated May 25, 2014 had specific findings on this issue which are contradictory to Mr. Kidder's complaints. When he assessed Mr. Kidder on April 23, 2014, Dr.

Luczak found Mr. Kidder to be alert and well-oriented. Dr. Luczak found no cognitive deficits during the assessment even though Mr. Kidder complained of problems with concentration and memory.

During the examination of Dr. Luczak by Mr. Kidder's counsel, it was put to Dr. Luczak that in his report he found Mr. Kidder appeared to be alert and well oriented during the assessment but had complaints of concentration and memory problems. Dr. Luczak testified when he assessed Mr. Kidder that he was trying to ascertain whether there were any cognitive deficits and found no slowed thinking, memory difficulties, or the inability to recall dates and events. The doctor said Mr. Kidder gave his history without difficulty and without hesitation.

With respect to Item 10, Mr. Kidder claimed that he uses marijuana to relieve stress. None of the other witness's testimony touched on this issue. It also does not seem to be a medical concern based on review of the clinical notes and records of the treating practitioners. It appears Dr. Rosenblat's diagnosis of marijuana abuse was based on his interview with Mr. Kidder.

With respect to Item 12, dealing with the loss of friends, Mr. and Mrs. Kidder were the only individuals who provided evidence. There was no corroborating evidence, either from other witnesses' testimony or Affidavits from former friends or individuals who had contact with Mr. Kidder pre-accident.

I also find that the note from Ms. Simmons pertaining to her session with Mr. Kidder on March 20, 2011 which reads as follows: "differences seen – social (made new friends) – involvement (son's sporting, kids' activities)", contradicts the picture of his ability to interact socially that Mr. Kidder provided to Dr. Rosenblat. Given Mr. Kidder's serious credibility issues as well as other evidence, Dr. Rosenblat's findings that Mr. Kidder has lost all his friends except one cannot be confirmed.

To Item 15; his inability to drive being given as one of the reasons for his unemployment, the evidence clearly documents that Mr. Kidder was comfortable driving his children on a regular

basis to school and to their extra-curricular activities. He also drove on his own on a regular basis, running errands.

According to Dr. Stokl's report and testimony, Mr. Kidder believes he cannot return to work due to his temper. The report shows that Mr. Kidder said he wanted to change his job altogether to accommodate the problems he was having after the accident, i.e., "his strong dislike for all people." Again, this self-report of having a "strong dislike for all people" is inconsistent with the level of interpersonal interactions that can be observed in the surveillance. It also conflicts with the fact that Mr. Kidder has participated in coaching hockey since the accident and seems at ease when talking to and being around other hockey parents.

It is also important to note that neither anger issues nor a strong dislike for all people came up during Ms. Simmons' testimony. Even though Mr. Kidder was working during this time, Ms. Simmons did not report any issues with his temper or anger as having a detrimental impact on his performance at work.

Dr. Anschuetz did testify about Mr. Kidder's anger and in the beginning of her testimony she referred to behaviours that she had seen in Mr. Kidder: "His mood swings, his incredible anger". There were a few other mentions of anger, one in relation to issues surrounding his inability to attend his son's hockey game, and a May 5, 2014 entry where the doctor read part of her note, "Can notice anger, but can remove himself and that's an improvement." There was no discussion about issues of anger interfering with his employment.

Mr. Kidder testified about incidents where he lost his temper and exhibited road rage, however there was no objective supporting evidence offered to substantiate these incidents and I find there is not enough sufficient evidence to validate his assertion that he was unable to work because of his anger.

Based on the evidence before me and inconsistencies in Mr. Kidder's testimony, I do not find there has been an impact on his daily life as a result of a mental or behavioural disorder caused by the accident.

3. In view of the impact, what is the level of impairment?

I will comment on Mr. Kidder's level of impairment even though I have found that any mental and behavioural disorders resulting from the accident have not had a significant impact on his daily life.

To qualify as being catastrophically impaired under section 2(1.2)(g) of the *Schedule*, Mr. Kidder must demonstrate a level or degree of impairment that is marked. According to the *Guides*, an assessment of the level or severity of a mental or behavioural impairment is undertaken by examining four areas of function in daily life:

1. activities of daily living (ADLs);
2. social functioning;
3. concentration, persistence and pace; and
4. deterioration or decompensation in work or work-like settings.⁴

The Applicant provided Dr. Rosenblat's Catastrophic Assessment report dated May 7, 2012 in support of a determination that he suffered a Catastrophic Impairment as a result of the accident. Dr. Rosenblat gave his evidence in a straightforward and credible manner. However, and due to no fault of Dr. Rosenblat, I am unable to give his assessment any weight due to a number of reasons. First, he says he was only provided with a "tiny" amount of documentation for review by Mr. Kidder's former counsel. He was also provided with no employment documentation to review, which would have shown that Mr. Kidder had been employed for more than two years following the accident. There was also no documentation corroborating the various work-related anger challenges put forth by Mr. Kidder. Perhaps, most importantly, the report lacked validity because of the fact it was primarily based on information provided by Mr. Kidder, which I have found to be exaggerated or inaccurate.

⁴ Chapter 14 of the *Guides*, pages 293-295.

I also note that counsel for Mr. Kidder did not provide Dr. Rosenblat with all the surveillance materials to review prior to calling him as a witness. Dr. Stokl was provided with a small portion of the written reports and not the actual surveillance video to review prior to his testimony. Had Dr. Rosenblat been provided with the video and commented on it in relation to his initial findings, I may have been able to give his evidence more weight.

In his assessment, Dr. Rosenblat based his impairment ratings on the diagnoses of Major Depressive Episode, PTSD, marijuana abuse, and pain disorder associated with both psychological factors and a general medical condition. Based on the evidence before me, I have found that only a diagnosis of PTSD can be supported.

Dr. Rosenblat found only moderate impairments for activities of daily living and concentration, persistence, and pace. I find insufficient evidence that any mental and behavioural disorders resulting from the accident have had a significant impact on the Applicant's daily life.

Dr. Rosenblat found marked impairments in two areas of function of Mr. Kidder's daily life. The first was his social functioning. Given the inconsistencies discussed above in the evidence before me, I find insufficient evidence that Mr. Kidder has a marked impairment in his social functioning. Rather it is my finding based on the testimony and evidence that Mr. Kidder has no impairment in relation to the domain of his social functioning.

Dr. Rosenblat also found a marked impairment with respect to Work Adaptation, which is referred to in the *Guides* as deterioration or decompensation in work or work-like settings. Dr. Rosenblat supported his finding by referring to numerous complaints and problems told to him by Mr. Kidder. As I have found Mr. Kidder's evidence to be not credible as discussed, and since there is a lack of corroborating evidence, Mr. Kidder has not met the onus to support a finding of a marked impairment related to Work Adaptation.

Given the evidence before me, it may be that Mr. Kidder's PTSD or anxiety related symptoms have resulted in a mild impairment related to Work Adaptation. It is worth noting again that Mr. Kidder continued to work for more than two years after the accident. And while I agree that an

individual with PTSD may be able to work, there is little, if any evidence, to demonstrate deterioration or decompensation in work or work-like settings. It appears that Mr. Kidder complained more about his medical condition worsening after he lost his job at R Kidd Fuels Corp in 2011.

The employment files produced and admitted into evidence provide some objective evidence on how Mr. Kidder was performing at work more than two years after the accident. The file has no documentation whatsoever to corroborate Mr. Kidder's explanation for leaving his employment, or that the company was aware of the issues and mutually agreed that Mr. Kidder could not work during the day. I rely on a letter dated September 17, 2012 from Ms. Jadoonanan, Controller, R Kidd Fuels Corp., to Mr. Kidder's former counsel which noted the following:

- Mr. Kidder's employment was terminated due to a shortage of work;
- The contract Mr. Kidder was hired for had come to an end and we were not able to re-assign him. The contract in question was specifically for evening and/or night fuel delivery; and
- According to our records, we have no prior knowledge of any motor vehicle accidents or his fragile psychological state post-accident.

Based on the evidence before me, I cannot find on a balance of probabilities, that Mr. Kidder has suffered even a mild impairment related to Work Adaptation. It may be that his PTSD, anxiety, and depression contributed to issues surrounding his inability to obtain employment after he was laid off from R Kidd Fuels Corp., but the evidence does not support a marked impairment with respect to Work Adaptation.

Medical Benefits

There are two treatment plans in dispute. One is for \$2,664.11, dated February 26, 2010, and the other is for \$2,664.11, dated May 31, 2010. Both were for treatment Mr. Kidder was receiving from Ms. Simmons, who provided testimony that none of the treatment plans submitted for Mr. Kidder were approved and that nothing had been paid on them. As I have found Mr. Kidder

suffered from either PTSD or anxiety as a result of the accident, I believe this psychological treatment was reasonable and necessary. Ms. Simmons' testimony outlining the treatment she provided Mr. Kidder and her notes on that treatment support this finding.

While I also recognize that there were some administrative irregularities with respect to the submission of these treatment plans brought out during Ms. Simmons' cross-examination, I still believe these treatments were reasonable and necessary. It appears they were helpful to Mr. Kidder in dealing with his PTSD symptoms and/or anxiety that he attributes to the accident.

Cost of Examinations

There was no testimony provided pertaining to the four assessments being claimed by Mr. Kidder. Counsel for Mr. Kidder also did not address this issue in her closing submissions.

With respect to the psychological assessment, counsel for Economical submits there was no basis for it as an Insurer's Examination had already been completed in 2009 and any further assessment would be redundant. I note the psychological assessment completed by Dr. Dancyger on September 3, 2009 found Mr. Kidder had some symptoms of PTSD, but that his symptoms do not meet all of the DSM-IV criteria for diagnosis. The report found that while the accident and assault likely exacerbated his feelings, they are not the cause of his reactions. With respect to treatment, the report noted that Mr. Kidder would benefit from involvement in long-term, publicly-funded psychotherapy with a therapist skilled in the treatment of childhood sexual abuse but that his issues are in no way related to the accident.

In response to the Insurer's psychological assessment which denied psychological treatment, Mr. Kidder obtained his own assessment, which supported treatment. Based on my previous findings that Mr. Kidder suffered from PTSD or anxiety, or some psychological issues as a result of the accident, I find that the \$1,788.32 for a Psychological Assessment dated November 26, 2009 is reasonable and necessary.

Turning to the other three assessments (in-home assessment, functional abilities evaluation and

orthopedic), I find that due to the lack of testimony and evidence presented on these three assessments, Mr. Kidder has not proved on a balance of probabilities that they were reasonable and necessary.

Attendant Care

The issue of Attendant Care was not listed as an issue in dispute in the Report of Mediator, dated January 16, 2013. It was listed as an issue in Mr. Kidder's Application for Arbitration. In the application, Mr. Kidder is seeking \$400.60 per month from February 8, 2009 to present. The issue was also listed as an issue in Arbitrator Arbus' Pre-Hearing Letter dated October 2, 2013, but no amount or duration was documented in the Pre-Hearing Letter.

Mr. Kidder's closing submissions asserted that because of his Catastrophic Impairment, he cannot handle life stressors and that his capacity to function safely in an environment is dependent on him taking his medication. Counsel submitted that Mr. Kidder would benefit from Attendant Care that provided a Case Manager or a Personal Assistant. Counsel argued that Mr. Kidder should be under qualified attendant care supervision as documented by the recommendations made in the most recent Form 1, prepared by Ms. Sharon Woolf of Function Ability Rehabilitation Services. The Form 1 indicated that Mr. Kidder would require \$12,448.66 per month for Attendant Care.

Economical's submissions were that Attendant Care Benefits are payable if the insured "incurs expenses" for reasonable and necessary "services provided by an aide or attendant." No testimony was provided during the five-day Arbitration Hearing on this issue.

I find that Mr. Kidder has not met the burden of proof for entitlement to Attendant Care Benefits given no actual testimony was provided with respect to Attendant Care Benefits, and in accordance with Arbitrator Skinner's decision in *McKnight v. Guarantee Co.*, which was relied on by Economical, where it was found that a Form 1 standing alone, as identification of the need for Attendant Care, is not sufficient to establish an entitlement to the benefit.⁵

⁵ *McKnight and Guarantee Company of North America* (FSCO A02-000299, October 28, 2003).

Housekeeping and Home Maintenance Services

In closing submissions, counsel for Mr. Kidder took the following positions. The benefits should not have been denied two months after being approved. The denials were not based on objective medical information. These services would be helpful to Mr. Kidder and provide for a safe and maintained home.

Counsel for Economical takes the position that during the Arbitration Hearing, there was very little evidence directed towards these claims besides the fact that Mr. Kidder and Mrs. Kidder stated that he does no housekeeping. Counsel also noted that Housekeeping and Home Maintenance Benefits were stopped by way of OCF-9 Explanation of Benefits, dated September 30, 2009. In addition, Economical notes Mr. Kidder's Application for Mediation for Housekeeping and Home Maintenance was not filed with FSCO until November 25, 2011, which was more than two years later and therefore; the claim is statute-barred because of the expired limitation period.

Based on my review of the OCF-9 Explanation of Benefits dated September 30, 2009; the surveillance evidence, including video showing Mr. Kidder taking out the garbage on July 26, 2013; and the lack of weight I am able to give to the testimony of both Mr. and Mrs. Kidder, I find that Mr. Kidder has not met the burden of proof for entitlement to Housekeeping and Home Maintenance Benefits.

Special Award

Mr. Kidder claims that Economical should pay him a Special Award in addition to the medical benefits granted in this proceeding. Special Awards are made to an insured person under subsection 282(10) of the *Insurance Act* where an Insurer unreasonably denies or delays payment of benefits.

I note that counsel for Mr. Kidder did not cross-examine anyone from Economical on this issue or

refer to any documentation admitted into evidence in support of the claim for a Special Award.

The only benefits awarded to Mr. Kidder have been for the two treatment plans for psychological treatment in the amount of \$5,331.62, and for the psychological assessment in the amount of \$1,788.32. While I found these medical benefits and assessment were reasonable and necessary based on the evidence presented in this five-day Arbitration Hearing, it does not appear from the evidence that Economical unreasonably withheld or delayed payments for these benefits, which is the test for a Special Award. Economical's denial was based on Dr. Dancyger's assessment completed on September 3, 2009. Mr. Kidder's medical condition is complex based on his pre-accident history, his initial reaction to the accident, and the course of his symptomology and activity level post-accident. I therefore find that Mr. Kidder is not entitled to a Special Award under subsection 282(10) of the *Insurance Act*.

Interest

I find that Mr. Kidder is entitled to interest on the overdue medical payments and assessment at the rate prescribed by the *SABS*.

EXPENSES:

The parties made no submissions on expenses. They are encouraged to resolve this issue together. If they are unable to do so, they may schedule an expense hearing before me according to the provisions of Rules 75-79 of the *Dispute Resolution Practice Code*.

Marshall Schnapp
Arbitrator

December 19, 2014

Date

Financial Services
Commission
of Ontario

Commission des
services financiers
de l'Ontario



FSCO A12-006704

BETWEEN:

RONALD JAMES KIDDER

Applicant

and

ECONOMICAL 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. The Applicant did not sustain a Catastrophic Impairment as a result of the accident, as defined in clause 2(1.2)(g) of the *Schedule*.
2. The Applicant is entitled to medical benefits in the amount of \$5,331.62 for psychological treatment provided by Assurance Medical Services, in respect to two Treatment Plans (OCF-18) dated February 26, 2010 and May 31, 2010.
3. The Applicant is entitled to receive expenses for the cost of examinations in the amount of \$1,788.32 for the payment of a Psychological Assessment dated November 26, 2009. The Applicant is not entitled to receive expenses for payments for the In-Home Assessment dated January 18, 2010; Functional Abilities Evaluation dated April 15, 2010; and the Orthopedic Assessment dated January 18, 2010.
4. The Applicant is not entitled to Attendant Care Benefits.
5. The Applicant is not entitled to payments for Housekeeping and Home Maintenance Services.

6. The Applicant is not entitled to a Special Award under subsection 282(10) of the *Insurance Act*, R.S.O. 1990, c.I.8, as amended.
7. The Applicant is entitled to interest on the overdue payments for medical benefits and expenses for the cost of examination.
8. If the parties are unable to resolve the issues of expenses, either party may make an appointment with me to determine the matter in accordance with Rules 75-79 of the *Dispute Resolution Practice Code*.

Marshall Schnapp
Arbitrator

December 19, 2014

Date