

AVOID THE DELAY!

DECISIONS UNDER SECTION 279(4.1) OF THE *INSURANCE ACT*: HOW TO OBTAIN BENEFITS ON AN URGENT BASIS

We all know of instances where an insurer will not approve benefits urgently required. There is a tendency to assume that once a requested benefit is in dispute, it will take a significant period of time to resolve, leaving accident victims without the care, treatment and benefits they urgently require. This is not the case.

Section 279(4.1) of the *Insurance Act* together with Section 65 of the Dispute Resolution Practice Code (3rd) specifically allows for urgently required benefits to be paid immediately pending a full determination of the merits at arbitration. It is possible, in certain instances, to use this process to obtain an arbitrator's order that the insurer pay the required benefits within one month of the insurer's denial.

This process can be invaluable where catastrophically injured patients are about to be discharged from hospital and no home care plan or home modifications have even been approved, let alone, completed.

Where patients suffering from an acquired brain injury are not receiving the rehabilitation therapy they desperately need post-trauma while some "dispute" drags on interminably through the normal FSCO arbitration process, a motion for interim benefits is the answer.

HOW IS IT DONE?

The key to obtaining the order quickly is to communicate repeatedly with the staff at FSCO. You must still apply for mediation before even an interim order can be obtained. If you let FSCO staff know how urgent your client's needs are, it is possible to obtain a telephone mediation, pre-hearing and arbitration all within one month.

THE TEST

To obtain an order that an insurer pay a disputed benefit before a full hearing on the merits has occurred, you must:

1. **Prove that there is urgency connected to the receipt of the benefits.**

To satisfy these criteria, proper affidavit evidence must be obtained from qualified health care providers stating that any delay in the immediate provision of the benefits will, or could harm the person.

2. **Prove that the benefit sought is provided for in the SABS and that the treatment and cost is reasonable and necessary.** A great deal of time has been spent by the arbitrators determining if the burden of proof to satisfy the criteria above is “prima facie” or the more onerous test of “very probable”. A review of the decisions suggests that the “urgency” criteria appears to govern in most instances.

EXAMPLES OF INTERIM ORDERS BEING GRANTED

1. *Brown v. Allstate Insurance Co. of Canada* [1997] O.I.C.D. No. 144.

The arbitrator ordered the insurer to pay all equipment costs, case manager fees, attendant care fees and numerous other amounts in order that Mr.

Brown, an incomplete quadriplegic, could be discharged from hospital and return to his home. This interim order was made notwithstanding the fact that the insurer in this instance was not simply denying the benefit but denying that there was even a policy of insurance with Mr. Brown.

2. *Federow v. Kingsway General Insurance Co.* [2000] O.F.S.C.I.D. No.

188

In this matter, the arbitrator ordered that the insurer pay \$526.37 per day for

Mr. Federow to attend at the Anagram Treatment Centre as a result of him urgently requiring rehabilitation. This order based on urgency was made 2 years and 3 months after Mr. Federow's car accident.

3. *Singh v. Coseco Insurance* [2002] O.F.S.C.I.D. No. 33

In this matter, the arbitrator stated that additional grounds for an interim order could be the "blatant disregard by the insurer of the requirements of the Schedule". The arbitrator stated that urgency does not mean that the person must be in desperate or extreme circumstances before being given assistance. In fact, in this arbitration, the arbitrator made an interim order that Mr. Singh's income replacement benefits be paid notwithstanding a dispute by the insurer in stating that "the loss of a well-paying position would create a financial emergency in most families".

The application for an interim order for benefits is under utilized. It is there for a reason and can efficiently avoid the "institutional delay" where benefits are urgently needed notwithstanding a dispute
