

INSURANCE LAW BULLETIN

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FAILURE TO SUBMIT DISABILITY CERTIFICATE CAN DISENTITLE CLAIMANT TO ACCIDENT BENEFITS

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On July 12, 2013, the arbitral decision of *Anthonipillai v. Security National* (FSCO A11-001168) was released. This decision underlines the importance for an insured person to submit disability certificates in order to be entitled to accident benefits. The failure to submit a disability certificate or the submission of a disability certificate that does not address certain specified benefits could result in the insured's disentanglement to those benefits. Further, the insured's failure to submit a disability certificate is not waived by the insurer in continuing to adjust the claim.

In this case, the applicant was injured in an accident on April 21, 2008. The applicant applied for accident benefits including caregiver and housekeeping and home maintenance benefits. A disability certificate was not provided to the insurer until November 11, 2011, three and a half years after the accident. The disability certificate only addressed the caregiver benefit, and did not speak to the housekeeping or home maintenance benefits. Due to this omission, Arbitrator Robert Bujold dismissed the applicant's claims for housekeeping and home maintenance benefits.

The insurer argued that the applicant was permanently disentitled to the caregiver benefit for the period before the disability certificate was submitted. It relied upon section 35(13) of the former *Statutory Accident Benefits Schedule*, O. Reg. 403/96 ("Old SABS"), which provides for permanent disentanglement to specified benefits unless a reasonable explanation is given for the delay in submitting a disability certificate. Arbitrator Bujold found that while the insurer had repeatedly asked the applicant to submit a disability certificate and had provided blank copies of the form, the insurer had not communicated to the applicant that failure to submit a disability certificate would result in the permanent disentanglement of specified benefits absent a reasonable explanation. Following subsection 32(2)(c) of the Old SABS, which establishes a duty on insurers to provide information to assist the applicant, it was found that the insurer had not properly communicated the consequences of default:

...Mrs. Anthonipillai was entitled to be promptly advised, when she was first in default, that 1) she was required to submit a completed Disability Certificate before Security National would consider paying her claims for specified benefits; and 2) specified benefits would not be payable for the period after the day Security National received her application for specified benefits and before the day Security National received a completed Disability Certificate, unless she provided a reasonable explanation for the delay. Security National did not meet its obligation to promptly communicate these consequences to Mrs. Anthonipillai.

Since the insurer could not rely on subsection 35(13), the applicant's reasonable explanation for delay was not considered.

Finally, the applicant's argument that the insurer had waived the requirement for a disability certificate by continuing to adjust the claim was rejected. The fact that the insurer continued to adjust the claim by approving treatment and requesting assessments was found to be within their obligations as a provider. Furthermore, these decisions involved separate considerations than those addressed within the context of a disability certificate. The insurer was still entitled to insist on the submission of a disability certificate despite its ongoing handling of the claim. Additionally, Arbitrator Bujold noted that the insurer only proceeded with assessments after several attempts to request a disability certificate had failed and the assessments were reasonably necessary at the time they were conducted.

Commentary

This decision confirms the importance of a disability certificate in applications for specified benefits. Failure by an insured to submit a disability certificate could result in the permanent disentanglement of benefits. Even a submitted disability certificate that does not address all specified benefits claimed could result in the disentanglement of those benefits not addressed.

In the event of a delay or failure to submit a disability certificate within the prescribed time limits, disentanglement of benefits for the period before the submission of the disability certificate may be possible if it is communicated to the insured that 1) submission of a disability certificate is required before any payment for specified benefits, and 2) failure to submit a completed disability certificate with an application for benefits will result in the permanent disentanglement of benefits for any period before the completed disability certificate is submitted absent a reasonable explanation. **It is imperative that adjusters advise the insured of both the consequences of non-compliance as well as the saving provisions (the reasonable explanation).**

Additionally, action on the part of the insurer to adjust a claim or to utilize treatment and assessment options may not constitute a waiver with respect to the requirement that the applicant submit a disability certificate with their application. Insurers can continue to meet their obligations in adjusting a claim while maintaining its right to insist on the submission of a disability certificate.

While the case cites the Old *SABS*, each provision has analogous sections in the current *Statutory Accident Benefits Schedule*, O. Reg. 34/10 ("New *SABS*"). Subsection 35(13) under the Old *SABS*, which disentangles benefits for the period before the disability certificate is received, would now operate under s. 36(3) of the New *SABS*. This section is slightly different – while the Old *SABS* disentangled benefits between the receipt of the application and the receipt of the disability certificate, the New *SABS* disentangles specified benefits for "any period before the disability certificate is submitted" (O. Reg. 34/10, s. 36(3)). This section is subject to s. 34 of the New *SABS*, which provides that a failure to comply with a time limit does not disentangle benefits if the applicant has a reasonable explanation.