



Civil Resolution Tribunal

Date Issued: March 6, 2020

File: VI-2019-009338

Type: Motor Vehicle Injury

Civil Resolution Tribunal

Indexed as: *Mu v. ICBC*, 2020 BCCRT 267

BETWEEN:

SUJUAN MU

APPLICANT

AND:

INSURANCE CORPORATION OF BRITISH COLUMBIA

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Andrea Ritchie, Vice Chair

INTRODUCTION

1. This is a preliminary decision of the Civil Resolution Tribunal (tribunal) about whether an applicant can file a “placeholder” or “bare bones” Dispute Notice to preserve a limitation period.

2. The applicant, Sujuan Mu, was involved in a motor vehicle accident on April 8, 2019, and filed a Dispute Notice with the tribunal to preserve the limitation period for her entitlement to accident benefits under Part 7 of the *Insurance (Vehicle) Regulation* (IVR). The respondent, Insurance Corporation of British Columbia (ICBC), is an insurer that administers accident benefits under Part 7.
3. In the Dispute Notice, Ms. Mu asks the tribunal to “make a decision” about her entitlement to medical benefits, homemaker benefits, and income replacement benefits. However, Ms. Mu does not seek any specific benefits. Rather, she says the intent of the Dispute Notice is to preserve the limitation period under section 103 of the IVR. In response, ICBC says Ms. Mu has received medical benefits, but did not make a claim for homemaker or income replacement benefits within the prescribed time period, so is no longer entitled to those benefits. ICBC also says it is inconsistent with the tribunal’s mandate to allow “placeholder” Dispute Notices to preserve limitation periods.
4. In this preliminary decision, I will address only the parties’ submissions about “placeholder” Dispute Notices. The issue of whether Ms. Mu is entitled to accident benefits or is out of time to claim such benefits may be dealt with in a future final decision on the merits.
5. Ms. Mu is represented by Martin Bauer, legal counsel. ICBC is represented by an employee.

JURISDICTION AND PROCEDURE

6. These are the formal written reasons of the tribunal. The tribunal has jurisdiction over motor vehicle injury disputes, or “accident claims”, brought under section 133 of the *Civil Resolution Tribunal Act* (CRTA). Section 133(1)(a) of the CRTA gives the tribunal jurisdiction over the determination of entitlement to accident benefits. Section 2 of the CRTA states that the tribunal’s mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal must apply principles of law and fairness, and

recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.

7. Section 39 of the CRTA says that the tribunal has discretion to decide the format of a hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the tribunal's mandate that includes proportionality and the speedy resolution of disputes, I find an oral hearing is not necessary in the interests of justice.
8. Section 42 of the CRTA says that the tribunal may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law. The tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
9. Under section 61 of the CRTA, the tribunal may make any order or give any direction in relation to a tribunal proceeding it thinks necessary to achieve the objects of the tribunal in accordance with its mandate. In particular, the tribunal may make such an order on its own initiative, on request by a party, or on recommendation by a case manager.

ISSUE

10. The issue in this dispute is whether a Dispute Notice may be filed only as a "placeholder" to preserve a limitation period. More specifically, the issue is whether Ms. Mu must specify and quantify her entitlement to specific benefits in the Dispute Notice.

EVIDENCE AND ANALYSIS

11. On April 8, 2019, Ms. Mu was involved in a motor vehicle accident in Surrey, British Columbia. The details of the accident are not relevant to the narrow issue before me in this preliminary decision.

12. On November 8, 2019, Ms. Mu filed a Dispute Notice with the tribunal, seeking a determination of her entitlement to accident benefits under Part 7 of the IVR. In particular, Ms. Mu is seeking a determination of her entitlement to medical benefits, homemaker benefits, and income replacement benefits. As noted above, Ms. Mu did not describe or quantify the specific benefits she is seeking.
13. In its Dispute Response, ICBC says Ms. Mu has received some medical benefits (13 acupuncture treatments), and that no claim was made for homemaker or income replacement benefits within the time prescribed in the IVR, so Ms. Mu is not entitled to any such benefits. As noted above, the merits of Ms. Mu's ultimate claim for benefits, and ICBC's defences to this claim, are not part of this preliminary decision.
14. Ms. Mu says she is not seeking specific benefits at this time, but rather filed the Dispute Notice to preserve her right to pursue an accident benefits claim in the future.
15. Section 103(3) of the IVR says an insured may give ICBC written notice of their intention to commence an action for accident benefits if their claim for benefits has been denied by ICBC, or if ICBC has not made a payment within the time limits prescribed in section 101.
16. Section 103(1)(b)(i) says that, if written notice was given to ICBC under section 103(3), an insured may commence an action for accident benefits within 3 months of the date of ICBC's response to the written notice, within 2 years of the date of the accident, or within 2 years after the date the last benefit was paid, whichever is later.
17. Section 103(1)(b)(iii) says that, if written notice was **not** given to ICBC under section 103(3), an insured may commence an action for accident benefits within 2 years of the date of the accident or within 2 years after the date the last benefit was paid, whichever is later.

18. In this case, it is undisputed that Ms. Mu has not given ICBC written notice under section 103(3). Ms. Mu submits she does not meet the requirements of section 103(3). I take this to mean that ICBC has not denied any benefits sought by Ms. Mu, and has not failed to make payment for any benefits within the prescribed time limits. It is also undisputed that Ms. Mu filed her Dispute Notice within the applicable limitation period.
19. The issue before me is to determine whether Ms. Mu's Dispute Notice can stand as a "placeholder" to preserve her limitation period for making a claim for accident benefits, given no specific claims or remedies are requested at this time. It is trite law that generally, in the absence of specific rules laid down by statute or regulations, administrative tribunals control their own procedures, subject to the rules of fairness and natural justice (see: *Prasad v. Canada (Minister of Employment & Immigration)*, [1989] 1 SCR 560). I find there is no statutory direction on this point, and therefore, the tribunal must develop procedures and timelines which are consistent with its mandate, including deciding whether or not to allow "placeholder" claims.
20. Ms. Mu submits that, prior to April 1, 2019, before the CRT had exclusive jurisdiction over Part 7 accident benefit claims, the proper course was to file a "pro forma" claim in court in order to preserve a limitation period and protect an applicant's right to claim for accident benefits. Ms. Mu submits that because the limitation period for accident benefits under the tribunal's accident claims jurisdiction is the same as pre-April 1, 2019 claims for Part 7 benefits with the court (that is, 2 years), it follows that filing a pro forma Dispute Notice is within the tribunal's mandate.
21. I find an applicant, such as Ms. Mu, is entitled to file a Dispute Notice seeking accident benefits at any time, subject to the prescribed limitation period. Additionally, an applicant can include as much or as little detail in their Dispute Notice as they see fit, with the obvious risk that insufficient detail may mean they are unable to prove their claims. However, the tribunal's mandate is to provide

dispute resolution services accessibly, quickly, economically, informally, and flexibly.

22. Once a Dispute Notice is filed, the dispute resolution process is started, and is not paused unless so ordered by the tribunal, on request by a party, and pursuant to tribunal rule 1.15. A request to pause a tribunal proceeding is not granted as of right.
23. Tribunal rule 1.15 says that in considering a request to pause the tribunal process, the tribunal may consider:
 - a. The reason the party is requesting that the tribunal process be paused,
 - b. Whether all parties consent to pausing the tribunal process,
 - c. Any prejudice to the other parties if the tribunal process is paused,
 - d. Whether there have been previous delays, and the reason for those delays,
 - e. Whether the tribunal's mandate supports a pause,
 - f. Any other legislation that may apply to the dispute or the request to pause,
 - g. Whether it is in the interests of justice and fairness to pause the tribunal process, and
 - h. Any other factors the tribunal considers appropriate.
24. In considering whether a dispute should be paused, the tribunal may determine that indefinitely pausing a proceeding, such as to allow a placeholder Dispute Notice filed to preserve a limitation period to sit dormant, is inconsistent with the tribunal's mandate or with section 103 of the IVR. However, this issue is not before me, and would be determined by the tribunal if a party makes a request to pause the dispute.
25. Here, I find Ms. Mu's Dispute Notice was properly filed within the limitation period and its subject-matter is within the tribunal's jurisdiction. Therefore, the dispute resolution process has begun. In accordance with the tribunal's mandate, the

tribunal moves disputes through the dispute resolution process in a timely manner, subject to any requests to pause the process granted by a tribunal member. An applicant who files an application for dispute resolution must be prepared for the tribunal to resolve their dispute in a timely manner, consistent with the tribunal's mandate.

26. As such, I find Ms. Mu's claim for entitlement to accident benefits may continue as filed, and it will be up to the tribunal to decide any requests by the parties to pause the dispute resolution process, considering the factors in tribunal rule 1.15, discussed above.

Andrea Ritchie, Vice Chair