



# Civil Resolution Tribunal

Date Issued: December 2, 2020

File: VI-2020-001773

Type: Motor Vehicle Injury

Civil Resolution Tribunal

Indexed as: *Smith v. ICBC*, 2020 BCCRT 1365

B E T W E E N :

GREGORY GEORGE SMITH

**APPLICANT**

A N D :

INSURANCE CORPORATION OF BRITISH COLUMBIA

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Kristin Gardner

## INTRODUCTION

1. This dispute is about entitlement to accident benefits under Part 7 of the *Insurance (Vehicle) Regulation* (IVR). The applicant, Gregory George Smith, was involved in a

motor vehicle accident that took place on October 1, 2019 in New Westminster, British Columbia. Mr. Smith says he was injured in the accident and asks the Civil Resolution Tribunal (CRT) to make a decision about his entitlement to medical benefits. He claims \$12,000 for treatment for alleged persistent pain, stiffness, discomfort, and stress since the accident.

2. The respondent, Insurance Corporation of British Columbia (ICBC), is an insurer that administers accident and medical benefits under Part 7 of the IVR (also known as Part 7 benefits). ICBC says that it has funded all treatment recommended by Mr. Smith's family doctor that is covered by Part 7 benefits, and that Mr. Smith has not sought any additional treatment. ICBC says there is no basis to support Mr. Smith's claim for a \$12,000 lump sum payment for Part 7 benefits and asks that his claim be dismissed.
3. Mr. Smith is self-represented. ICBC is represented by an employee.

## **JURISDICTION AND PROCEDURE**

4. These are the CRT's formal written reasons. The CRT 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 CRT jurisdiction over the determination of entitlement to accident benefits.
5. Section 2 of the CRTA states that the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT 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.
6. Section 39 of the CRTA says that the CRT has discretion to decide the format of the 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 CRT's mandate

that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary in the interests of justice.

7. Section 42 of the CRTA says that the CRT 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 CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.

## **ISSUE**

8. The issue in this dispute is whether Mr. Smith is entitled to a \$12,000 lump sum payment for Part 7 benefits.

## **BACKGROUND, EVIDENCE AND ANALYSIS**

9. In a civil claim such as this, Mr. Smith as the applicant, bears the burden of proof on a balance of probabilities. While I have read all of the parties' evidence and submissions, I have only addressed the evidence and arguments to the extent necessary to explain my decision.
10. It is undisputed that Mr. Smith was injured in a motor vehicle accident on October 1, 2019. Mr. Smith also asks the CRT to determine liability for the accident and to assess his resulting damages (dispute VI-2020-001834), which is the subject of a separate, but related, decision.
11. In this dispute, Mr. Smith says that he suffers from a sore left shoulder and constant neck pain from the accident. He says that he has also experienced stress from being accused of causing the accident. Mr. Smith says his injuries have resulted in difficulty with sleeping, household chores, and some physical activities, preventing him from going to the gym, and he says he wants physiotherapy treatment.
12. Mr. Smith submitted a July 23, 2020 referral note from his family doctor, which recommended a trial of 4 to 6 weeks of physiotherapy for soft tissue injuries related to the October 1, 2019 motor vehicle accident.

13. Section 88(1)(a) of the IVR says that if an insured is injured in an accident for which Part 7 benefits are payable, ICBC must pay as benefits all reasonable expenses incurred by the insured as a result of the injury for necessary health care services. These health care services include, among other things, acupuncture, chiropractic, counselling, kinesiology, massage therapy, physiotherapy, and psychology.
14. Section 88(1.01) of the IVR says that treatment provided more than 12 weeks after the accident date is not a “necessary health care service” unless the insured’s doctor certifies in writing that the treatment is necessary.
15. ICBC does not dispute that Mr. Smith is entitled to Part 7 benefits. It says that it received Mr. Smith’s physiotherapy referral and, as of October 8, 2020, it has funded 16 physiotherapy treatments and 8 visits with his family doctor under Part 7 benefits. ICBC says Mr. Smith has not provided it with any other receipts or evidence of expenses incurred that Mr. Smith claims should be covered as Part 7 benefits.
16. I understand that ICBC has been funding Mr. Smith’s physiotherapy treatment directly through the provider. There is no evidence before me that that Mr. Smith’s health care practitioners have recommended additional physiotherapy or any other Part 7 benefits, which ICBC has refused to fund, that would require me to decide Mr. Smith’s benefit entitlement.
17. While section 102 of the IVR provides that ICBC may make a lump sum payment of benefits, I find whether to do so is within ICBC’s discretion. Here, ICBC argues that it is paying Mr. Smith’s Part 7 benefits as they are incurred and there is no need for a lump sum payment. I agree. Mr. Smith has not made any submissions about why a lump sum payout is necessary, reasonable, or otherwise to his benefit. He has also not proven that he is entitled to more health care benefits at this time. Therefore, I dismiss Mr. Smith’s claim for a payout of Part 7 benefits.
18. To be clear, Mr. Smith’s entitlement to Part 7 medical benefits remains ongoing, subject to the conditions set out in the IVR. I make no findings in this decision about Mr. Smith’s future entitlement to Part 7 benefits. Should ICBC deny Part 7 benefit

coverage to Mr. Smith in the future, he may bring a new CRT dispute to determine his entitlement to any future benefit.

## **CRT FEES AND EXPENSES**

19. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. As Mr. Smith was not successful, I find he is not entitled to reimbursement of his CRT fees. He did not claim any dispute-related expenses.
20. While ICBC was the successful party, it did not pay any CRT fees for this dispute (as its paid fees were applied to dispute VI-2020-001834, where ICBC is also a named respondent). ICBC also did not claim any dispute-related expenses, so I make no order.

## **ORDER**

21. I order Mr. Smith's claims, and this dispute, dismissed.

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Kristin Gardner, Tribunal Member