



Civil Resolution Tribunal

Date Issued: December 29, 2022

File: SC-2022-001584

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Askari v. Fetch Insurance Services, LLC*, 2022 BCCRT 1369

BETWEEN:

PAYAM ASKARI

APPLICANT

AND:

FETCH INSURANCE SERVICES, LLC dba FETCH BY THE DODO
and XL SPECIALTY INSURANCE COMPANY

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about insurance coverage for veterinary services. The applicant, Payam Askari, says the respondents denied him reimbursement of veterinary invoices for his dog Kaiser's dermatitis treatment. Mr. Askari claims \$609.85.
2. The respondents are Fetch Insurance Services, LLC dba Fetch by the Dodo (Fetch) and XL Specialty Insurance Company (XL). Fetch is the administrator of the pet insurance plan underwritten by XL. As discussed below, Fetch and XL say Kaiser had a pre-existing condition such that they properly denied coverage for Kaiser's dermatitis.
3. Mr. Askari is self-represented. The respondents are both represented by a director of Fetch, Courtney Algeo.

JURISDICTION AND PROCEDURE

4. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). CRTA section 2 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 the dispute's parties that will likely continue after the CRT process has ended.
5. CRTA section 39 says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Although the parties' submissions each call into question the credibility of the other party, the credibility of interested witnesses cannot be determined solely by whose demeanour appears most truthful in a courtroom or tribunal proceeding. Determining the most likely account includes assessing its harmony with the rest of the evidence. Bearing in mind the CRT's mandate that includes proportionality and a

speedy resolution of disputes, I find I can fairly hear this dispute through written submissions.

6. CRTA section 42 says 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.
7. Where permitted by section 118 of the CRTA, in resolving this dispute the CRT may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the CRT considers appropriate.
8. In the Dispute Notice, Mr. Askari says that the respondents had “ruled” his dog would not have any coverage for dermatitis for the rest of his life. While he says this is unfair and wrong, Mr. Askari claimed only \$609.85 for unpaid veterinary invoices. So, I find Mr. Askari’s claim is limited to the \$609.85. In any event, to the extent Mr. Askari seeks a declaration about entitlement to future insurance coverage, I have no jurisdiction to make such an order under section 118 of the CRTA.

ISSUE

9. The issue in this dispute is whether Mr. Askari is entitled to the claimed \$609.85 under the terms of his pet insurance policy.

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, as the applicant Mr. Askari must prove his claim on a balance of probabilities (meaning “more likely than not”). I have read the parties’ submitted documentary evidence and arguments but refer only to what I find relevant to provide context for my decision.
11. Mr. Askari’s dog Kaiser is a German Shepherd born on February 19, 2021. Mr. Askari received Kaiser from a breeder on April 17, 2021.

12. As noted, Mr. Askari bought a pet insurance plan (policy) for Kaiser, which was administered by Fetch and underwritten by XL. The policy was effective from April 21, 2021 to April 21, 2022. None of the above is disputed.
13. As a general overview, Mr. Askari says the respondents are improperly refusing to cover **all** dermatitis claims because Kaiser had itchy and rashy skin following a food allergy that Mr. Askari says resolved once Kaiser's diet changed. In other words, Mr. Askari argues he is entitled to coverage for "any new food allergy [because it] is a new case" as well as coverage for all other allergies and skin conditions. I have addressed potential future claims above and as noted confine my decision to the claimed \$609.85.
14. In contrast, the respondents say the "clinical signs" of allergies, namely recurrent dermatitis, skin rashes, and itching/pruritus, continued from the policy's 15-day waiting period through December 4, 2021. So, based on those clinical signs, the respondents say the policy excluded coverage because the claims relate to a pre-existing condition as defined in the policy, which includes conditions observed during the waiting period that ran from April 21 to May 6, 2021.
15. In this dispute, there are 3 insurance claims at issue, all of which the respondents denied because the "clinical signs" were "within or started within" the policy's waiting period. I further address the policy's defined terms below. The 3 claims listed below total the claimed \$609.85:
 - a. Claim #3132441: \$143.41, for a May 12, 2021 invoice from North Vancouver Pet Hospital.
 - b. Claim #3132449: \$343.06, for a May 25, 2021 invoice from North Vancouver Pet Hospital.
 - c. Claim #3269826: \$123.38, for a September 20, 2021 invoice from Caulfield Veterinary Hospital.

16. I note Mr. Askari uploaded in evidence documentation related to a 4th denied claim for an April 21, 2022 invoice. This post-dated the Dispute Notice that started this CRT proceeding, so I have not considered this 4th claim. There was also another Fetch claim #3364414 for \$154.74, for a December 4, 2021 invoice from Caulfield Veterinary Hospital. Again, as noted, Mr. Askari claims only \$609.85 in this CRT dispute.
17. I also note the parties' arguments to some extent focused on when Kaiser's "First Exam" was, as defined by the policy. I find nothing turns on this, given the evidence below about the policy's waiting period and exclusions from coverage.
18. I turn then to the policy's relevant provisions. It has various exclusions, including for pre-existing conditions. The policy defines a pre-existing condition as a "medical condition" that first occurred or showed "clinical signs" before the policy's effective date, or, which occurred or showed clinical signs during the policy's 15-day waiting period (which as noted was from April 21 to May 6, 2021). "Clinical signs" are defined as changes in the pet's normal healthy state, as observed by any individual, recorded in the pet's medical record, or identified in previously performed examinations. "Medical condition" is defined as all clinical signs and symptoms "resulting from **the same diagnostic classification or disease process, regardless of the number of illnesses** or injuries or areas of the body affected" (my bold emphasis added). "Illness" is defined as any change to the pet's normal healthy state, such as a sickness, disease or medical condition (except behavioural disorders) not caused by normal activity or an accident.
19. A veterinarian undisputedly first examined Kaiser on April 16, 2021, as set out in an "International Health Certificate" that Mr. Askari submitted in evidence in this dispute. The veterinarian certified that Kaiser was "free from demonstrable, contagious or infectious disease", and among other things did not show "lesions of the skin". However, the respondents say that as the clinical signs of dermatitis were noted to have first been observed within the waiting period, the claims are still excluded from coverage under the policy's "general exclusion" clauses. In contrast, Mr. Askari seeks

to distinguish between causes of Kaiser's dermatitis, namely as between food allergies that undisputedly existed during the waiting period and other allergies or conditions.

20. I find clause V.e of the policy answers Mr. Askari's claims. Among other things, it says that the policy does not cover the cost of any treatment or diagnostic testing for a) any illness that first showed clinical signs during the waiting period, and b) any illness that has the "**same diagnosis or clinical signs**" as any illness the pet had during the waiting period (my bold emphasis added).
21. Here, the dog undisputedly had signs of dermatitis during the April 21 to May 6, 2021 waiting period: itchy skin and rashes. In particular, the veterinary records confirm Mr. Askari reported on May 12, 2021 that the dog had been having itchy rashes for 2 weeks, and the veterinarian suspected an allergy.
22. Mr. Askari submitted a June 7, 2022 statement from veterinarian Dr. Hassanzadeh as follows. Kaiser presented with symptoms "which could be related to a simple skin infection common in puppies or related to allergy like food allergy" (reproduced as written). I find the quoted observation supports my conclusion that the clinical signs for Kaiser's dermatitis were the same, regardless of the underlying cause.
23. In short, under the policy I find nothing turns on the underlying cause of the dog's various dermatitis episodes. In other words, what matters under the policy is that the clinical signs for dermatitis caused by a food allergy are undisputedly the same as clinical signs of other dermatitis. So, dermatitis is excluded under the policy given the clinical signs for it are the same and because dermatitis arose during the waiting period. Given the above, I dismiss Mr. Askari's claim for payment of the veterinary invoices.
24. Additionally, and in any event, the policy has a co-pay of 10% (meaning Mr. Askari was responsible for paying 10% of each covered claim) after which Mr. Askari is also responsible for a \$500 deductible for the policy period. The evidence before me

shows that most of the \$500 deductible remains outstanding. So, I would not have ordered reimbursement of the full \$609.85 in any event.

25. Under section 49 of the CRTA and the CRT's rules, a successful party is generally entitled to reimbursement of their CRT fees and reasonable dispute-related expenses. Mr. Askari was unsuccessful so I dismiss his claim for reimbursement of CRT fees. The respondents did not pay CRT fees and the parties did not claim dispute-related expenses.

ORDER

26. I dismiss Mr. Askari's claims and this dispute.

Shelley Lopez, Vice Chair