

Applicant statute-barred from pursuing a claim for Income Replacement Benefits (IRBs) to the License Appeal Tribunal (LAT) due to the limitation period requirements within section 56 of the *Schedule*

The applicant was involved in a motor vehicle accident that took place on February 1, 2012 and sought benefits pursuant to the Statutory Accident Benefits Schedule (SABS, “the Schedule”). The applicant’s claim for IRBs was denied by the respondent on March 5, 2015. Subsequently, on March 17, 2016, the applicant filed an Application for Mediation with Financial Service Commission of Ontario (FSCO). The respondent filed their Response to the Application for Mediation on April 13, 2016. A FSCO mediation was never scheduled, a Report of Mediator was never issued, nor was correspondence sent from FSCO that the mediation was deemed failed. The applicant obtained new representation and an Application by an Injured Person for Auto Insurance Dispute Resolution (“the Application”) was filed with the LAT on May 31, 2018.

The applicant submitted that he followed the appropriate dispute resolution process at the time he applied to mediate IRBs within two years of the date of the respondent’s denial and relied upon the published communication on FSCO’s website which noted that FSCO would continue to be responsible for all files remaining open as of March 31, 2016.

In her Decision, adjudicator Kimberly Parish outlined that on April 1, 2016 a new process at the Tribunal replaced the previous regime and as of that date, parties who had completed mediation at FSCO could no longer apply for a FSCO arbitration. The only option was to apply for dispute resolution at the Tribunal, which must be done within two years of the insurer’s refusal to pay the benefit claimed.

While there was no dispute regarding the Respondent’s March 5, 2015 denial letter, Adjudicator Parish found that a 90-day post-mediator’s report extension could not be granted since a FSCO mediation was never scheduled nor was a Report of Mediator issued by FSCO. Relying on the four factors set out in the Tribunal’s reconsideration *decision 16-002336 & 16-002606 v. North Blenheim*, Adjudicator Parish found that the Applicant did not have a *bona fide* intention to appeal as there were significant lapses in time which occurred since he filed an Application for Mediation on March 17, 2016 with FSCO to dispute IRBs. In accepting the Respondent’s argument, Adjudicator Parish found that the Applicant provided no explanation as to why he never followed up with FSCO regarding a mediation date and why he did not dispute the denial of his IRBs until May 31, 2018 while he had submitted an application to the Tribunal for one medical benefit on August 22, 2017.

Further, Adjudicator Parish found that the Applicant’s explanation that he was simply awaiting a response from FSCO was not reasonable in explaining the length of the delay,

especially when the issue in dispute involved IRBs. As such, Adjudicator Parish found the length of delay of 26 months to be a major determining factor in this case. Next, Adjudicator Parish found that if the Applicant was allowed to proceed with his claim, the Respondent would be prejudiced as it would be forced to rely upon old evidence, some of which may no longer be producible for a hearing that, if it were to be scheduled, would be more than four years since the IRBs were denied. Although there were merits to the Applicant's IRB appeal, Adjudicator Parish did not grant an extension of the limitation period under s.7 of the LAT Act as the Applicant did not meet three out of the four criteria granting an extension of time and was therefore statute-barred from proceeding with his claim for IRBs.

FIND THE FULL DECISION AT:

<https://www.canlii.org/en/on/onlat/doc/2019/2019canlii76982/2019canlii76982.html?autocompleteStr=18-004966&autocompletePos=1>