

Wednesday, January 29, 2014

## **More Attendant Care Changes to Ontario's Accident Benefits System**

When you are hurt in a car accident in Ontario, some accident benefits available to you potentially is attendant care benefits, which is a monthly payment to assist you with your daily activities while you are hurt. This may include getting ready in the morning, preparing your meals, etc.

There were big changes (i.e. reductions in attendant care benefits payable) in September 2010, including the limitation as to who could provide you with attendant care and be paid for their service. If your attendant caregiver was not previously employed in the business of providing attendant care (i.e. a personal support worker - PSW, general practitioner nurse, registered nurse - RN, etc), then that person had to suffer an 'economic loss' in order to qualify to receive payment of those attendant care benefits.

In other words, if you were hurt, then your spouse or adult son or grandparent or friend, who was not formally qualified and never had been previously employed to take care of people, could not qualify for the potential \$3,000/month attendant care payments.

Naturally, the term 'economic loss' has been challenged and its definition has been explored by the plaintiff's' Bar.

Well, now the government has acceded to the further lobbying of the insurance companies and has restricted the ability of people who are not formally qualified to care for others (i.e. PSW, RN etc as above) to be paid attendant care benefits.

Now, the caregiver can only be paid up to the amount that they would have earned in their ordinary occupation if they were not caring for the injured person. So, if your spouse earned \$2,000/month at their job before your accident, s/he would be unable to collect more than \$2,000/month in attendance care benefits (i.e. even if you are seriously hurt and are assessed as requiring \$3,000/month or more of attendant care help).

This is yet another step towards downsizing the accident benefits available to Ontario car accident participants.

Here are the amendments coming into force **February 1, 2014** (Ontario Regulation 347/13), which affects the following sections of Ontario Regulation 34/10 (in red):

***Monetary limits re medical and rehabilitation benefits***

18 **(2)** *Despite subsection (1), the \$3,500 limit in that subsection does not apply to an insured person if his or her health practitioner determines and provides compelling evidence that the insured person has a pre-existing medical condition that **was documented by a health practitioner before the accident and** will prevent the insured person from achieving maximal recovery from the minor injury if the insured person is subject to the \$3,500 limit or is limited to the goods and services authorized under the Minor Injury Guideline. O. Reg. 34/10, s. 18 (2).*

***Attendant care benefit***

19 **(3)** *The amount of the attendant care benefit payable in respect of an insured person shall not exceed the amount determined under the following rules:*

1. *If the optional medical, rehabilitation and attendant care benefit referred to in paragraph 5 of subsection 28 (1) has not been purchased and does not apply to the insured person, the amount of the attendant care benefit payable in respect of the insured person shall not exceed,*
  - i. *\$3,000 per month, if the insured person did not sustain a catastrophic impairment as a result of the accident, or*
  - ii. *\$6,000 per month, if the insured person sustained a catastrophic impairment as a result of the accident.*
  
2. *Unless increased by any optional benefits available to the insured person in accordance with paragraph 4 or 5 of subsection 28 (1), the amount of the attendant care benefits paid in respect of the insured person shall not exceed, for any one accident,*
  - i. *\$1,000,000, if the insured person sustained a catastrophic impairment as a result of the accident, or*
  - ii. *\$36,000 in any other case.*

3. *If the optional medical, rehabilitation and attendant care benefit referred to in paragraph 5 of subsection 28 (1) has been purchased and applies to the insured person, the amount of the attendant care benefit payable in respect of the insured person shall not exceed the monthly limit under subsection 28 (6). O. Reg. 34/10, s. 19 (3).*
4. *Despite paragraphs 1, 2 and 3, if a person who provided attendant care services (the “attendant care provider”) to or for the insured person did not do so in the course of the employment, occupation or profession in which the attendant care provider would ordinarily have been engaged for remuneration, but for the accident, the amount of the attendant care benefit payable in respect of that attendant care shall not exceed the amount of the economic loss sustained by the attendant care provider during the period while, and as a direct result of, providing the attendant care.*

**Election of income replacement, non-earner or caregiver benefit**

35 **(3)** *The applicant’s election under subsection (1) is final, **regardless of any change in circumstances**, and can be subsequently changed only if permitted under subsection (2). O. Reg. 34/10, s. 35 (3).*

**Claims for medical and rehabilitation benefits and for approval of assessments, etc.**

38 **(3)** *A treatment and assessment plan must,*

- (a) *be signed by the insured person unless the insurer waives that requirement;*
- (b) *be completed and signed by a regulated health professional; and*
- (c) *include a statement by a health practitioner approving the treatment and assessment plan and stating that he or she is of the opinion that the goods, services, assessments and examinations described in the treatment and assessment plan and their proposed costs are reasonable and necessary for the insured person’s treatment or rehabilitation and,*

- (i) *stating, if the treatment and assessment plan is in respect of an accident that occurred on or after September 1, 2010,*
- (A) *that the insured person's impairment is not predominantly a minor injury, or*
  - (B) *that the insured person's impairment is predominantly a minor injury but, based on compelling evidence provided by the health practitioner, the insured person does not come within the Minor Injury Guideline because the insured person has a pre-existing medical condition **that was documented by a health practitioner before the accident and** that will prevent the insured person from achieving maximal recovery from the minor injury if the insured person is subject to the \$3,500 limit or is limited to the goods and services authorized under the Minor Injury Guideline, or*
- (ii) *stating, if the treatment and assessment plan is in respect of an accident that occurred before September 1, 2010,*
- (A) *that the expenses contemplated by the treatment and assessment plan are reasonable and necessary for the insured person's treatment or rehabilitation, and*
  - (B) *that the impairment sustained by the insured person does not come within a Pre-approved Framework Guideline referred to in the Old Regulation. O. Reg. 34/10, s. 38 (3).*

For more background information on changes to the Accident Benefits system in 2010, you can review our past blogs on this topic:

[2010-10-08 Auto Insurance Changes in Ontario – Part 9](#)

[2010-10-06 Buying More Insurance Protection > Accident Benefit Changes in Ontario – Part 8](#)

[2010-10-04 Income Replacement Benefits and the Minor Injury Guideline > Accident Benefit Changes in Ontario – Part 7](#)

[2010-10-01 Pre-Existing Conditions and the Minor Injury Guideline > Accident Benefits – Part 6](#)

[2010-09-29 Minor Injury Guideline > Accident Benefit Changes in Ontario – Part 5](#)

[2010-09-03 Ontario’s Accident Benefits System Changes Now in Effect - Part 4](#)

[2010-09-07 Transitional Issues Affecting Statutory Accident Benefits Claims in Ontario - Part 3](#)

[2010-03-12 Housekeeping - Ontario’s New Statutory Accident Benefits Schedule \(SABS\) - Part 2](#)

[2010-03-09 Changes to Ontario’s Statutory Accident Benefits Schedule \(SABS\) - Part 1](#)

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