

November 25, 2021

A CONSUMER PROTECTION ISSUE FOR YOUR URGENT ATTENTION

Attendant (PSW) Care is the secure foundation on which rehabilitation for serious and catastrophically injured claimants is built. When it is denied, delayed or removed they are left without basic personal care, at heightened risk of falls and injuries and too many other negative impacts to list here. This is true even for a short interruption of service.

The emergent trend of insurers using the Divisional Court ruling of Malitiskiy vs. Unica to essentially deny attendant care benefits is having immediate and dramatic consequences. At this time of an ongoing public health crisis and strained resources, these injured and insured consumers will end up in emergency rooms and in ALC hospital beds awaiting placement in long term care when they could have safely been at home.

We ask FSRA to:

1. Promptly issue Guidance to insurers reinforcing the applicability of FSCO's April 14 2018 Bulletin and the Revised Attendant Hourly Rate Guideline to accidents claims from that date forward, as articulated in this [article](#).

Namely, the attendant benefit paid to the claimant is based on the full and final quantum calculated by the Assessment of Attendant Care Needs (Form 1) to permit claimants to access care at market value. For example, if the final AC amount is \$2100 and the market value for service from a trained PSW is \$30/hour, the individual can receive 70 hours of care per month (or 16.3 hrs/week). Notably, this has been the historic collective understanding and practice in the sector.

2. Included in the Guidance FSRA should remind insurers that they have a good faith duty of care to their injured consumers and urge them to act accordingly with respect to claims that pre-date the 2018 Bulletin.

We have attached examples from TD (regarding a new claimant applying for the AC benefit) and Aviva (regarding an existing claimant receiving AC) illustrating how this decision has changed insurer behaviour. TD has referred to the 01/18 FSCO bulletin instead of the updated 04/18 bulletin which clarifies the 01/18 one; Aviva refers to the SABS. HSPs would like to understand if this insurer behavior is considered a UDAP.

We thank you for your prompt attention to this important matter and offer our ongoing assistance.

Sincerely yours,



Karen Rucas, OSOT Government Lead/Auto Sector



Laurie Davis, Executive Director

