



**Citation: Vaillancourt v. The Guarantee Company of North America, 2023 ONLAT
21-008125/AABS**

Licence Appeal Tribunal File Number: 21-008125/AABS

In the matter of an Application pursuant to subsection 280(2) of the *Insurance Act*, RSO 1990, c I.8., in relation to statutory accident benefits.

Between:

Darrin Vaillancourt

Applicant

and

The Guarantee Company of North America

Respondent

DECISION AND ORDER

ADJUDICATOR: Kevin Lundy

APPEARANCES:

For the Applicant: Darrin Vaillancourt, Applicant
Mark Elkin, Counsel
Kenneth Ciupka, Counsel
Brittany Stewart, Law Clerk
Stacey Kavaratzis, Law Clerk

For the Respondent: Patrick Brennan, Counsel
Christina Stanley, Law Clerk

Court Reporter: Guido Riccioni

HEARD: by Videoconference: November 2, 3, 4, 7, 8, 9, 10, 2022

REASONS FOR DECISION AND ORDER

BACKGROUND

- [1] The applicant was involved in an automobile accident on **July 26, 2017** and sought benefits pursuant to the *Statutory Accident Benefits Schedule - Effective September 1, 2010* (including amendments effective June 1, 2016; the 'Schedule'). The applicant was denied certain benefits by the respondent and submitted an application to the Licence Appeal Tribunal - Automobile Accident Benefits Service (the 'Tribunal').
- [2] On July 26, 2017, the applicant was involved in a single vehicle accident while riding his motorcycle, resulting in severe injuries. Following an assessment completed in January 2020, the respondent designated the applicant to be catastrophically impaired as a result of the accident. However, the parties contested the quantum of the benefits sought for attendant care and home modifications based upon the degree to which his functionality was impaired. The respondent took the position that the remaining benefits that it denied were neither necessary nor reasonable.
- [3] As a result of the finding in the related matter file 19-009063/AABS, the applicant was barred from applying for income replacement and housekeeping benefits. A preliminary issue with respect to exclusion under subsection 31(1(a) of the *Schedule* was also resolved prior to the present hearing.

ISSUES IN DISPUTE

- [4] The issues to be decided in the hearing were:
1. Is the applicant entitled to attendant care benefits in the amount of \$6,000.00 per month for the period of January 30, 2019 to date and ongoing?
 2. Is the applicant entitled to \$3,290.43 for other services (dietician) proposed by Hayes Dietetic Professional Corporation in a treatment plan/OCF-18 ('plan'), submitted on September 10, 2021 and denied by the respondent on September 30, 2021?
 3. Is the applicant entitled to \$3,138.00 for other services (service dog training) proposed by Fox Psychological Services in a plan submitted on September 29, 2021 and denied by the respondent on October 14, 2021?

4. Is the applicant entitled to \$124,309.00 for home modifications proposed by Rehab First in a plan submitted on October 29, 2020 and denied on November 13, 2020?
5. Is the applicant entitled to \$9,110.05 for a home modification assessment in a plan submitted on June 24, 2020 and denied on July 9, 2020?
6. Is the respondent liable to pay an award under section 10 of O. Reg. 664 because it unreasonably withheld or delayed payments to the applicant?
7. Is the applicant entitled to interest on any overdue payment of benefits?

[5] Partway through the hearing, the applicant withdrew the following issues:

- (i) Is the applicant entitled to \$344.02 for Flonase medication and hot tub chemicals, submitted on a claim form (OCF-6), submitted on January 15, 2021 and denied on January 29, 2021?
- (ii) Is the applicant entitled to \$3,200.00 for other goods and services (MRI/SPECT scan), proposed by East York Physiotherapy & Orthopaedic Rehabilitation Clinic Inc., in a plan submitted on October 8, 2020 and denied on October 26, 2020?

RESULT

[6] Pursuant to subsection 280(2) of the Act, I find that the applicant is entitled to the following:

- a. Attendant care benefits in the amount of \$6,000.00 per month for the period of January 30, 2019 to date and ongoing;
- b. Dietician services in the amount of \$3,290.43;
- c. Home modifications in the amount of \$87,809.00;
- d. A home modification assessment capped at the statutory maximum of \$2,200.00; and
- e. Interest payable to the applicant for all incurred overdue payments, in accordance with s. 51 of the *Schedule*.

[7] The applicant is not entitled to the following:

- a. Service dog training in the amount of \$3,138.00; and

- b. A special award.

PROCEDURAL ISSUES

Admission of A.H.'s Evidence

- [8] The respondent opposed the applicant's intention to call Angela Hubbard ('A.H.') as a witness on the third day of the hearing as she was only named in the applicant's amended witness list dated October 19, 2022, twelve days after the October 7, 2022 deadline in the case conference order issued October 6, 2021. Her documentary evidence was also not disclosed by the date listed in the case conference report. However, as her report was only issued days before the hearing, it was not available to the applicant to disclose and it was disclosed as soon as possible.
- [9] I allowed the applicant to rely on the disputed evidence. Although the applicant acknowledged that he disclosed this evidence late, I am not persuaded this was prejudicial to the respondent given the similarity of the evidence to that given by another witness, Tanya Purevich ('T.P.').
- [10] Rule 9.2 of the Tribunal's Common Rules of Practice and Procedure (the 'Rules') requires a party to make such evidentiary and witness disclosures to all other parties within the deadline established by the Rules or a Tribunal order. Rule 9.4 provides that a party who fails to comply with the disclosure obligation may not rely on such late-disclosed witness or evidence without the Tribunal's consent.
- [11] However, pursuant to subsection 15(1) of the *Statutory Powers Procedure Act* (the 'SPPA'), the Tribunal may admit any evidence that is relevant to the subject matter of the proceeding, which is a wider scope of admissibility compared to a court of law. Further, it is a core adjudicative function of the Tribunal to determine whether such evidence is reliable and how much weight should be attached to it. I find that it is both necessary and appropriate to consider the evidence in dispute in order to understand applicant's request for treatment and to ensure that I adjudicate this matter with all of the relevant documentation before me. As well, since A.H.'s evidence was comparatively brief and disclosed a few days before the hearing, the respondent received sufficient time to prepare its cross-examination, albeit significantly less than for the other witnesses. Given these circumstances, I assigned the appropriate probative weight to A.H.'s evidence.

Experts Questioned on Surveillance Evidence

- [12] Similarly, the applicant objected to the respondent's question to his occupational therapist witness, Rasul Kassam ('R.K. '), on whether he had viewed the respondent's surveillance recordings prior to the hearing. While the applicant had raised this issue with his own witnesses, he objected to the question from the respondent on the grounds that this evidence was outside the witness' expertise. The applicant noted that respondent could have objected to similar questions put to the applicant's witnesses, but opted not to do so. However, pursuant to subsection 15(1) of the SPPA and in light of the applicant's opportunity to cross-examine this witness, I allowed the question, admitted R.K.'s answer as relevant to R.K.'s overall assessment of the applicant's functional abilities and assigned it the appropriate probative weight given the nature of the evidence.

EVIDENCE AND ANALYSIS

- [13] Prior to the accident, the applicant had been employed as a dispatcher for ORNGE for fifteen years. He resides with his wife, Marie Vaillancourt ('M.V. '), and their two adult children. M.V. is a developmental service worker, who works part-time while she contends with her own symptoms of multiple sclerosis, a condition that limits the level of caregiver assistance she can provide to the applicant. Their daughter, Kelsey Vaillancourt ('K.V. '), is also trained as a personal support worker, and assisted the applicant in that capacity following the accident. The applicant has had diabetes for over twenty years and is dependent on insulin. Other than managing this condition, the applicant had no significant medical issues or need for support.
- [14] The applicant sustained serious, permanent and catastrophic physical and psychological injuries from the accident including traumatic brain injury, concussion, acetabulum fracture and a fractured elbow. He now experiences chronic headaches, dizziness, light headedness, balance issues, tinnitus, impaired sleep, light sensitivity, hip pain, cognitive issues, depression and anxiety.

Attendant Care Needs

- [15] Before the accident, the applicant took on the majority of the outdoor tasks including lawncare and snow blowing, as well as home maintenance. They also vacationed often with excursions to pools and motorcycle-themed holidays. They also hosted family events at their home, with the applicant preparing elaborate meals. The applicant typically cooked all meals whenever he was not at work.

- [16] The applicant has not been able to return to a level of daily activity comparable to the period before the accident. Visits to family and friends have dropped to small, isolated events and the couple rarely entertains and never prepares anything more than simple meals. M.V. estimated that her husband now assumes approximately 30% of the outside work and 40% of the household tasks overall. While the applicant has purchased a new motorcycle, his back pain has prevented use beyond a refresher training course and a test drive at the dealership. He has otherwise not ridden a motorcycle since the accident and explained that he keeps the new motorcycle more for aspiration than for any realistic plan for regular use. Although he has gone snowmobiling since the accident, he limits these outings to roughly one hour and keeps to pre-set routes so that his family can find him in the event of an emergency.
- [17] While a personal support worker, Sarah Taman ('S.T. '), now attends at the residence approximately twenty-five hours each week, M.V. has effectively served as the applicant's twenty-four hour back-up caregiver when S.T. is elsewhere. Prior to finding S.T., the applicant relied upon his daughter two to three days a week to provide much of the same basic assistance. K.V. was unable to clarify her specific duties at the hearing since her own recent motor vehicle accident prevented her attendance. However, I find that the general overview of her duties offered by the applicant and M.V. was not substantially challenged by the respondent. I also make no adverse inference with respect to K.V.'s absence at the hearing as the respondent was free to serve her with a summons but chose not to do so.
- [18] The applicant has not returned to work in any capacity since the accident. While he and M.V. manage a consulting company created years before the accident, this business addresses M.V.'s part-time PSW work. He has no involvement with the various patients she sees in the course of that work nor any involvement in its financial activities, including M.V.'s process for compensation to K.V. for her caregiving work for him. To clarify a lack of detail in documents intended to record her daughter's work hours, M.V. explained that she set off the time that K.V. served as a caregiver for her father against the cost of her lodging in her parents' house. Both the applicant and M.V. also offered uncontested evidence that their business does not involve consultation with clients navigating the accident benefits system as the respondent alleged.
- [19] The applicant explained that he is able to do many of the tasks that he used to perform before the accident albeit slower and often less in a given day. He acknowledged that now he must also take breaks and ask for assistance. However, he has been largely forced to delegate some previously routine tasks

such as lawn mowing to M.V. To that end, the respondent approved his request for a self-propelled lawn mower. However, more strenuous tasks such as snow removal and yard work cause him to experience light-headedness, dizziness, light sensitivity and force him to lie down for some period. M.V. added that when the applicant looks up or turns his head to the side suddenly, he becomes dizzy and may fall down. She estimated that she observes him become dizzy roughly five or six times each day. As he is completely incapable of cleaning the bathroom due to these symptoms, the couple pays for weekly housecleaning services.

[20] The respondent took the position that the applicant is actually fully capable of completing tasks without supervision that involve bending, endurance, lifting, independence, and organization of thought. To that end, surveillance videos recorded on various dates in 2021 show the applicant engaging in the following activities outside the residence:

- a. He drove assorted metal items to a local scrapyard in his truck for payment. While he was occasionally accompanied by M.V., he also drove to the destination by himself. Although staff at the scrapyard usually unloaded items from his truck, when they were occasionally busy with other customers, he removed some items himself.
- b. As part of a lawn repair project, he had a large load of soil delivered to his front yard and could be seen shovelling the soil into a wheelbarrow and moving it and a number of patio stones to the backyard, the latter activities not recorded in the surveillance. He explained that his family and daughter's then partner assisted him with installation of the patio stones in the backyard.
- c. He repaired the electrical system on a snowmobile trailer for his truck, disassembled and cleaned the deck for the trailer and assembled the slats used to load his snowmobile onto the trailer.
- d. He and M.V. attended a hardware store and walked about with his dog, Deeks. He and M.V. purchased a roll of plastic fencing for the side of the house. At the garden centre for the same store, he loaded sandbags into the back of his truck apparently unassisted.
- e. He walked Deeks around the neighborhood of his residence and brought him to and from the dog training facility as well as various medical appointments.

- f. He worked on various projects in his garage, used a snow blower on his driveway and moved a child seat from one vehicle to another.
 - g. He drove to a Tim Horton's restaurant, to his doctor's and chiropractor's offices, to get a haircut, attended at a large flea market with M.V. and Deeks, retrieved mail from his mailbox, as well as other routine activities.
- [21] The applicant explained that he opted not to wear his prescription sunglasses during the above outdoor projects since sweat would cause them to slide off his face. When he was not engaged in manual labour, he can often be seen on surveillance wearing his sunglasses. On other occasions, such as in lower light settings including the hardware store and an indoor flea market, he wore them over his baseball cap. The applicant noted that he could have put on the sunglasses if he needed to do so.
- [22] Similarly, the applicant explained that he did not use a cane in any of the videos because he had only needed it for the first two years following the accident, notwithstanding A.H.'s recommendation for its use. Although the applicant agreed that he is generally affected by loud sounds, none of the power tools used during the various projects observed make excessive noise that would lead to undue discomfort. In the absence of audio recordings or any other evidence to the contrary, I find that the applicant's explanation on this point remained uncontested.
- [23] On their face, the video surveillance appears to depict an able-bodied person capable of carrying out a wide range of everyday tasks with little need for assistance. However, the applicant's exertions were not without physical strain. He pointed out instances during the recorded tasks when he was visibly winded and drank from a bottle of water, as well as an instance when K.V. suggested that he take a break.
- [24] Moreover, both the applicant and M.V. explained that these videos fail to illustrate the larger context of the events recorded. The applicant noted that he is not able to go out of the house every day and that his functional abilities vary from good days to bad days, the latter consumed by headaches, dizziness and fatigue. Although he makes every effort to leave the house when able, he cannot predict which days will be good or bad.
- [25] M.V. stated that the applicant has not lost his drive to do all of the things that he was able to do before the accident and his physical strength has decreased despite his wishful thinking to the contrary. She explained that the surveillance videos confirm that he is on occasion able to do many of the tasks recorded, but

as a snapshot in time, this evidence does not reveal the invariable cost for the applicant's exertions, specifically, the night and day following each of these activities when the applicant was excessively tired, foggy, sensitive to light, irritable and experienced difficulties following a conversation. She also noted that he often expresses confusion at the causal effect between over-exertion and the subsequent headaches, pains and increased need for hot tub visits, massage and other therapy the following day.

- [26] Essentially, the applicant takes on more work than he can now reasonably accomplish, at least without suffering the consequences of severe pain and fatigue the next day. For example, after his brief enthusiastic start on the backyard renovation in August 2021, the project took weeks to complete and M.V. ultimately took over after his initial sprint of energy faded. This was not captured on the surveillance video; nor were the days when he did not leave the house due to his fatigue. Part of the issue relates to his commitment to helping her, particularly given her own medical limitations. In her view, the applicant has not fully come to terms with the full extent to which his medical condition serves to limit his functionality.
- [27] In June and July 2022, S.T. attended at the residence between three and four days each week to assist the applicant. While the insurer pays for some portion of her personal support service, the applicant and M.V. have paid her mostly out of pocket. She completes basic household tasks for the applicant, including laundry, cleaning, monitoring his blood sugar, prompts for meals, meal preparation, dish washing, groceries and attending doctor and therapy appointments with him. Whenever the applicant leaves the house, S.T. usually attends with him, usually driving to relieve him from the concentration needed to do so.
- [28] Since August 2022, S.T. increased her hours assisting the applicant to between twenty and twenty-five hours each week, typically for six and a half hours each day, three days a week. She testified that the applicant has both physical and psychological impairments that require the assistance of a personal support worker. In particular, she explained that when he is overtired, he is slow to react cognitively and if startled, for instance by a sudden noise, he takes a longer time to react than someone without his impairments. He is also slow to recover after bending over and is severely impaired when suffering from migraines.
- [29] She has observed the applicant lose his balance when carrying a laundry basket up or down the stairs and when he bends to pick something up from the floor. She noted that his balance difficulties vary from one day to the next that it was

impossible to predict what will be a bad day. She has observed his mood to be sad and depressed, but not self-pitying as he is attempting to adjust to his new limitations. He also endeavours not to let other people see his impairments, a perspective that may well account for his strong performance on physical tests by examiners and his seemingly unimpaired functionality while under surveillance.

- [30] While I agree that the evidence of the PSW services provided by K.V. was rather vague, poorly documented and potentially undermined by a quid pro quo arrangement for accommodation and other financial considerations by her parents, there were no such issues with the evidence offered by S.T. I find that she offered forthright and objective descriptions of her observations of the applicant's functionality, largely uncontradicted by the respondent.
- [31] T.P. is an experienced occupational therapist ('OT') employed by Rehab First and hired as an occupational therapist to assess the applicant's attendant care needs.¹ She described attendant care needs within the context of the *Schedule* as services that address a person's everyday personal care activities including dressing, grooming, bathing, medication administration, some light housekeeping, assistance with exercises, skin care, prosthetics and so forth. An OT assesses attendant care needs following an accident for an assessment by gathering objective and subjective information from the patient as well as collateral information such as medical documents and consultation with other members of the applicant's medical team. The assessment addresses physical, cognitive and emotional symptoms as well as physical testing, particularly in the home environment where he or she demonstrates skills related to attendant care.
- [32] Pursuant to a guideline from the Ontario Society of Occupational Therapists ('OSOT'), T.P. compared the number of minutes the applicant took to complete a given daily task between his pre-collision and post-collision function. These measurements were then used to predict the present and future needs based on predictability, consistency and reliability beyond his functional abilities observed at the time of the assessment. In this context, predictability relates to the fact that the applicant's abilities may change over time. Consistency relates to whether ability may differ from one day to the next. Reliability relates to how dependably the applicant can perform a given task in a safe and functional manner, taking into account other potential variables in his home environment. The respondent took no issue with the probative value of this guideline or the evidence offered by both T.P. and A.H. that it is generally well accepted across the OT industry. Although OSOT does not function as a regulatory body, I find

¹ T.P. was qualified as an expert in this field at the hearing.

that this guideline provided a useful method for assessing the applicant's day-to-day functionality.

- [33] T.P. met with the applicant and his family in person and assessed a wide array of everyday tasks, rating his need for assistance to complete each task in terms of minutes required per week. The three parts of the assessment related to routine personal care, basic supervisory functions and lastly, complex health/care and hygiene functions. The total weekly minutes for each category were then multiplied by pre-set rates resulting in a total monthly recommended attendant care cost of \$10,069.24. The pre-set rates are not reflective of actual market value and the recommended total is derived based upon actual projected needs, independent of the \$6,000.00 limit in the *Schedule*.
- [34] While OTs encourage their clients to test their abilities, T.P. noted that the applicant had difficulty terminating a given activity and occasionally ignored cues to stop as he does not always acknowledge his limitations. To that end, he is dependent on family members and potentially other caregivers to prevent him from overexertion if otherwise left on his own.
- [35] With respect to the applicant's activities on the surveillance videos, she explained that these recordings captured only moments in time and were not reflective of his functionality before and after the recorded events. The recordings also depicted activities undertaken sporadically but did not reflect the time the applicant may have taken for breaks or to recover from fatigue and pain. A surveillance recording is an observation devoid of context and therefore not an assessment.
- [36] A.H. met with the applicant in person on eight occasions in 2022 to determine whether he still required the same assistance as he did upon his last contact with Rehab First in October, 2021.² She issued her report on his attendant care needs on October 27, 2022 and largely supported all of T.P.'s earlier recommendations with respect to the level of assistance required related to safety, accessibility within the residence and fall prevention. Like T.P., she speculated that the respondent's examiners may have focussed solely on the applicant's performance during their assessments and concluded that he required only basic supervisory care. Such an interpretation would reflect neither reliability nor the applicant's ability to react safely during an emergency.
- [37] In her analysis of his ability to react in an emergency situation, A.H. stated that one must consider not only the physical attributes of the applicant's injury but

² A.H. was qualified as an expert in occupational therapy.

also his emotional, mental and cognitive state in light of his diagnosis of a traumatic brain injury and depression. As a result, her analysis considered how those diagnoses related to the applicant's functional ability to perform predictably, consistently and reliably. Once this information has been obtained through observation and testing, she stated that it is then necessary to make an inference on the negative impact of these diagnoses on his functionality based upon the worst case rather than the best case scenario with respect to safety issues. As a result of her assessment of the applicant's abilities, she confirmed T.P.'s findings regarding his needs for assistance and concluded that he requires twenty-four hour supervision.

[38] The respondent suggested that A.H.'s inference based upon a worst case scenario combined with her statement that she could not be "100% certain" that the applicant would be safe in a 24-hour period logically leads to an inevitable conclusion that 24-hour supervisory care would be warranted in every case, no matter the injuries, disabilities, or other concerns. However, I find that this criticism of a foregone conclusion is undermined by numerous instances in her October 27, 2022 report in which she found that he required less care than determined by T.P. and no care in other areas. As a result, I find that A.H.'s assessment conducted one year after T.P.'s assessment directly addressed the issue of predictability and confirmed Rehab First's determination that the applicant needs substantial attendant care assistance.

[39] By contrast, R.K. assessed the applicant at a single interview on May 30, 2022.³ His assessment included a review of the medical documents, the applicant's subjective pain descriptions and consideration of the applicant's post-accident activities as well as objective and subjective testing similar to that conducted by the other O.T.s. Unlike T.P. and A.H., he found that the applicant needed substantially less assistance and that he was able to demonstrate functionality for various tasks independently. While he acknowledged that the applicant required some attendant care, notably for grooming and some housework, for the vast majority of tasks assessed, he found that the applicant possessed the physical capability to perform tasks in a safe and independent manner and therefore recommended no assistance.

[40] He noted that the surveillance recordings indicated that the applicant was able to perform various functional tasks, including driving and noted that had he viewed this evidence prior to composing his report, it would have reduced his assessment of the applicant's attendant care needs to virtually zero.

³ R.K. was qualified as an expert in occupational therapy.

- [41] However, R.K. had little recollection of the details of his interview with the applicant and could not recall if he spoke with M.V. or whether she provided any information of her own contributions to her husband's care beyond his notation that she assisted with his nail care. He also did not know how the applicant had spent the day before their meeting at 5:00 p.m. nor could state whether his functionality would have been consistent throughout the day. While he observed some cognitive difficulties during the interview, including decision-making, and agreed that a patient may have good and bad days, he assumed that the applicant's performance on the functional tests would be consistent throughout a given week. He generally evaded questions about whether his assessment would have changed if he accounted for the applicant's function varying over time. He also did not assess whether the applicant had accepted the limitations imposed by his injuries and discounted the applicant's disclosure of balance issues in favour of strong performances at the time of testing this issue. He also could not recall if he asked the applicant whether he experienced mental fatigue.
- [42] Dr. Chris Hope ('C.H.') is a neuropsychologist with a PhD in clinical neuropsychology who rendered five reports for the respondent with respect to the applicant's attendant care needs as well as the necessity of the proposed service dog and dietician.⁴ On April 11, 2022, C.H. conducted a battery of standard tests to generate a neuropsychological assessment of the applicant. These tests included assessments of the applicant's spelling, reading, math skills, memory, visual reproduction, attention and concentration, processing speed, ability to repeat items in a list, response to visual stimuli, executive function and ability to list items in a category.
- [43] The applicant performed below the expected range on a test requiring him to name as many animals as possible in a set period and performed within the questionable range for a number of other tests. However, in the majority of the tests, he performed in the average range or slightly below average range. C.H. explained that it is normal to receive some results below the expected range and concluded that the applicant "likely suffered maximally a mild traumatic brain injury and possibly no traumatic brain injury."
- [44] However, C.H. appeared to discount any explanation for the applicant's symptoms that did not fall within an expected category presumed by those same tests and disregarded any extrinsic variables as invalid if they did not fit his intended conclusion that the treatment plans are not necessary or reasonable.

⁴ C.H. was qualified as an expert in the field of neuropsychology.

To that end, I find that there were some significant problems with the reliability of his evidence.

- [45] For instance, he agreed that the applicant exhibited evidence of post-concussive disorder but suggested that it was unlikely that the applicant could have received a concussion. He also inexplicably claimed that he is better qualified to diagnose a concussion than a medical doctor despite his lack of medical training or experience. Although he stated that medical doctors misdiagnose traumatic brain injuries by focusing on symptoms, he offered no authority to support his alternative methodology.
- [46] He also found no evidence of psychological impairment and opined that the applicant had overreported various symptoms, not with an objective to deceive but due to preoccupation with somatic symptoms. However, he could not offer a single example to support this assertion when pressed under cross-examination. He also found the applicant exhibited adjustment disorder and depressed mood, both due to his reduced functionality. However, C.H. determined that the applicant did not suffer from a major depressive disorder at least at the time of testing and found no indication of difficulties with self-care though his psychological condition could affect his motivation and increase fatigue.
- [47] He did not consider any other factors other than the results of his tests and the medical reports and deemed any information on the applicant's pre-accident functioning "not useful" to his process. This assertion appears logically incompatible with his speculation that the applicant may falsely believe that he has cognitive deficits because someone has convinced him that this is possible.
- [48] Ultimately, I find that C.H.'s opinion appeared more driven by policy than objective evidence. Specifically, he stated that attendant care should be used sparingly as excessive support could lead to iatrogenesis, where the support discourages patients from attempting to perform tasks themselves and causes them to assume that they cannot perform actions themselves and must rely upon others for assistance. He also denied any safety issues despite the possibility of brain fog.
- [49] In light of these issues, I assigned C.H.'s evidence substantially reduced probative weight.
- [50] Subsection 19(1)(a) of the *Schedule* governs entitlement to attendant care benefits as follows:

Attendant care benefits shall pay for all reasonable and necessary expenses...that are incurred by or on behalf of the insured person as a result of the accident for services provided by an aide or attendant or by a long-term care facility, including a long-term care home under the *Fixing Long-Term Care Act, 2021* or a chronic care hospital [...].

- [51] As noted above, the applicant's initial entitlement to this benefit is not at issue as R.K. acknowledged that he is entitled to 8.35 hours of attendant care per week, resulting in \$532.49 care monthly. By contrast, T.P. assessed his attendant care needs at \$10,069.24 per month. Largely echoing T.P.'s assessment, A.H. determined that he required 169 hours of attendant care per week, which translates to a monthly assessment of attendant care needs totaling \$9,503.00.
- [52] The disparity lies in the differing methodologies utilized by the parties' OT assessors. As the Ontario Superior Court stated in *Roy v. Primmum Insurance Co.*, "an assessment of an applicant's entitlement to attendant care benefits is fact specific and based on the evidence of the applicant's functional abilities at any given time."⁵ Where an assessor relies on incomplete and inaccurate information in conducting their assessment of attendant care needs, the weight given to those assessments ought to be discounted.⁶ I find *Roy* to be persuasive in my analysis.
- [53] S.T.'s testimony that the applicant's functionality varied from day to day aligned closely with the testimony of the occupational therapists, T.P. and A.H. as well as his wife, M.V. Both T.P. and A.H. emphasized that in evaluating the applicant's attendant care needs, they would give significant consideration to predictability, consistency and reliability in order to assess present and future needs.
- [54] The respondent's assessor, R.K., did not apply these same guidelines and conceded that he was unaware of the applicant's level of function or impairment at other times and that he could have good and bad days. As a result, his assessment is founded upon an unrealistic presumption that the applicant would function at the same level as observed on the date of his assessment, despite an acknowledgement that on a bad day, his symptoms would result in greater limitations. That the applicant has bad days of decreased functionality was overwhelmingly confirmed by M.V. and S.T., who routinely observe his varying levels of functionality and impairment on a daily basis.

⁵ 2020 ONSC 3886 at para. 245 ('*Roy*').

⁶ *Ibid.* at para. 249.

[55] As a result, I find in assessing the applicant's attendant care needs, R.K. relied on incomplete and inaccurate information that prevented him from properly assessing the applicant's needs at any given time, following the analysis in *Roy*. Consequently, I find that on the balance of probabilities, the evidence of T.P. and A.H. represents the more accurate assessment of the applicant's attendant care needs.

Home Modifications

[56] The applicant's house is a two storey "bungalow" with a loft area above the garage and yards in the front and the back. There is a finished basement and a bathroom on both of the main levels. The applicant described difficulty getting up and down the stairs to the master bedroom and occasionally sleeps on the lower level. He also experiences difficulty carrying laundry up the stairs and requires assistance with this task. While installed railings have assisted, use of the stairs remains a challenge. In the kitchen, he noted some difficulty accessing items stored underneath or above the preparation surface that would require him to bend over or reach upward and risk dizziness.

[57] In the backyard, a hot tub is located in a free standing gazebo in the far corner of the lot. While the applicant described its positive effects on his symptoms, he finds it extremely difficult to access the hot tub in the winter as he must shovel snow to clear a path to the appliance, thereby incurring dizziness. M.V. is unable to assist him with this task due to her own symptoms.

[58] Megan Lewis ('M.L.') took notes during the applicant's initial assessment with O.T. Tayenda Austin ('T.A.') then served as his assigned OT from February 2019 to March 2021 when the file was transferred to T.P.⁷ She did not conduct any functionality tests on the applicant herself but instead relied upon the applicant's self-reporting of his limitations as well as T.A.'s assessment. During this period, she met with him five times and remained in contact with him via telephone and email.

[59] Having interviewed the applicant and his descriptions of significant falls and other safety issues in the residence, M.L. recommended that a housing accessibility assessment and report to determine appropriate home modifications and changes to increase his safety and facilitate safe functional participation in daily activities. At the time that the respondent denied the home modifications, the applicant had not yet been designated catastrophically impaired. She was

⁷ M.L. was qualified as an expert in occupational therapy.

unaware of any reason for the denial apart from the applicant's dwindling funds then capped at the \$65,000.00 limit.

- [60] Despite the respondent's denial of coverage, she consulted with Jeffrey Baum ('J.B.') at adapt-able design group ('adapt-able') for a home modification report to design a more accessible dwelling. She submitted the OCF-18 dated June 24, 2020 in relation to adapt-able's \$9,110.05 fees for the cost of the report, but had nothing to do with the calculation of this fee or the costing of the proposed modifications, but instead described the applicant's needs to J.B. and consulted with him on the details of the modifications. She confirmed that she agreed with the modifications recommended in J.B.'s report. No evidence was submitted to indicate that the cost of the assessment or the pricing for the modifications themselves were inflated or otherwise unreasonable.
- [61] J.B. met with the applicant for approximately three hours on July 21, 2020 before preparing his report. He toured the house, discussed the applicant's pre-accident abilities with him and coordinated with M.L. with respect to the applicant's housing requirements.⁸ To that end, he relied more on medical reports than the applicant's self-reporting to determine that his functional needs had not changed substantially from the period immediately following the accident, though noted that they may change over the next two years. As a result, J.B. proposed the following modifications to the residence based upon M.L.'s recommendations with estimated costs:
- a. Automated chair lift system: This would provide an alternative to physically negotiating interior stairs. The three stair lift units would provide the applicant with access between the foyer on the main floor and the loft hallway and the foyer on the main floor and the basement landing (\$12,000.00 including electrical modifications).
 - b. Functional ensuite bathroom with a grab bar and a toilet transfer. The existing shower would be eliminated and a new larger walk-in shower would be created complete with an integrated bench that would allow the applicant to remain seated while completing his shower routine. The shower would slightly expand within the master bedroom walk-in closet to accommodate the larger shower.
 - c. Functional kitchen: While the kitchen need not be enlarged, new appliances would include a side by side refrigerator and freezer to

⁸ J.B. was qualified as an expert in home modifications and related costing. He conducted no functional tests on the applicant as he has no medical expertise and therefore deferred to the occupational therapists, specifically M.L.

eliminate the need for him to bend and reach to retrieve items (\$4,000.00 including laundry appliances). Space below the sink and countertop would allow the applicant to be seated while preparing light meals or tending to dishes in the sink. Lower cabinets and a pantry with pull-out features would ensure items are within his functional reach. Due to his memory limitations, a stove guard would be installed at the existing range for fire safety purposes (\$800.00).

- d. Functional loft level laundry appliances: Due to the applicant's limitations with carrying items between levels, M.L. recommended providing laundry appliances within the loft to allow the applicant to safely participate in this task. Therefore, a laundry closet would be created within the loft hallway with front-loading washer and dryer. The appliances would be placed on a pedestal, raised to an appropriate height to allow the applicant access without having to bend or reach.
- e. Enclosed hot tub room: The applicant reported multiple falls in the snow to M.L. caused by attempts to access the hot tub in winter. While J.B.'s report contained no photographs showing the gazebo, witnesses agreed that it is located at the far back corner of the lot, approximately 15' from the house. As a result, an enclosed room would allow him to use the hot tub throughout the year without having to ambulate outdoors. A hot tub room addition would therefore be constructed at the rear of the home.
- f. Intercom system: An intercom system with call stations located at the front door and throughout the dwelling would allow the applicant to screen visitors at the front door and communicate with his family throughout the house (\$1,500.00).
- g. Dimmer switches on all interior lights and light-darkening blinds: M.L. recommended providing glare-free lighting on dimmer switches in all areas of the home inhabited by the applicant. Light-darkening blinds would also be installed on windows throughout the house to allow him to sleep better and limit fatigue. J.B. clarified that the darkening blinds were a recommendation only and not part of the applicant's claim.
- h. Closet organizers with appropriate height storage: Closet organizers with dual height clothes rods and adjustable height shelves would allow the applicant to access clothing with a minimal amount of reaching.
- i. Bilateral handrails on all exterior staircases: Bilateral handrails would be installed on the wood deck staircase in the backyard and the front

staircase to provide the applicant with additional safety and support while ascending and descending the stairs due to his fatigue and balance limitations.

- j. Safe access down to grade level in the backyard: The existing rear entrance sliding glass door would remain. However, in order to provide the applicant with safer access down to grade level in the backyard, the existing wood risers would be eliminated and a wood deck would be constructed. The deck would contain a staircase with bilateral handrails for additional safety (\$6,000.00).

[62] Significantly, J.B. also did not perform any functional tests on the applicant as he lacks the qualifications to conduct these tests and therefore leaves such assessments to the OTs. As a result, he relied upon M.L.'s assessment of the applicant's needs.

[63] J.B. described the resulting preliminary budget of \$132,245.00 as a comparatively minor cost given the minimal modifications required. The largest portion of this figure relates to \$65,000.00 projected costs of labour and materials for the interior modifications including the ensuite bathroom, laundry closet, kitchen and enclosed hot tub room. The total would be roughly allocated as \$35,000.00 for the hot tub addition, \$20,000.00 for the ensuite bathroom, \$3,000.00 for the laundry facilities, \$2,000.00 for the kitchen, \$2,000.00 for electrical modifications and \$3,000.00 (actual cost \$2,995.00) for the air conditioning system, the last of which was approved by the respondent and already installed.

[64] As the estimates were prepared in October 2020 and materials costs have increased substantially following the supply issues associated with the COVID-19 pandemic, he estimated that costs will have increased by 20% to 25%.

[65] Danielle Wilson ('D.W.') is an O.T. trained in task analysis; she assessed the applicant with respect to the proposed home modifications and their estimated costs.⁹ She had also completed the catastrophic impairment assessment with respect to the applicant.

[66] Unlike M.L. and J.B., D.W. conducted various tests of the applicant's functionality at a home assessment on March 23, 2021, including a test of his balance and observations of his routine daily tasks. She testified that she observed no loss of balance or mental processing, but agreed that he displayed dizziness and vertigo

⁹ D.W. was qualified as an expert occupational therapist.

during the assessment and reported a prior loss of balance. She ultimately rejected all of the above recommendations for home modification as unnecessary with the exception of a grab bar in the shower and in the hot tub, as well as an additional railing at the secondary entrance to the residence. Instead, she proposed adaptive strategies such as rolling laundry bags down the stairs rather than modifications to the laundry facilities and a perching chair in place of new appliances and other modifications to the kitchen. While she agreed that the hot tub should be relocated closer to the house, she did not view the enclosed addition as necessary.

- [67] She acknowledged that the three hours and twenty minutes that she interviewed the applicant represented a small window of his total daily life and that she opted not to inquire into his functioning outside of that period, but conceded that this information may have been relevant to the assessment. She also agreed that patients may have good and bad days, but did not ask the applicant if he was experiencing a better or worse day than others. She also did not consider the potential effect of the applicant's seventeen medicines on his functionality, balance or cognition or whether he was taking any of them at the time of testing. She acknowledged that an O.T. who observed him over multiple visits may be able to offer better information with respect to his symptomology and functionality. As well, unlike C.H., she agreed that a multidisciplinary approach to home modification needs would be advantageous.
- [68] Subsection 16(3)(i) of the *Schedule* indicates that reasonable and necessary rehabilitation benefits include home modifications and home devices, including communication aids, to accommodate the needs of the insured person. In *16-001732 v. Wawanesa Mutual Insurance Company*, the Tribunal held that to demonstrate that the medical and rehabilitation benefits sought are reasonable and necessary, an applicant must establish, on the balance of probabilities, that the identified treatment goals are reasonable; the goals are being met to a reasonable degree, and the overall cost of achieving the goals is reasonable taking into consideration both the degrees of success and the availability of other treatment.¹⁰ I find this analysis persuasive and apply it to the present facts.
- [69] To accurately determine how the effects of the applicant's post-accident disability could be reduced or eliminated from a home modifications perspective, an analysis of his home was required. The respondent denied the assessment plan for such an analysis on the basis that the applicant's medical and rehabilitation funds were nearly exhausted, as he was then not found to have then sustained a

¹⁰ 2017 CarswellOnt 19210 at para. 21 ('*Wawanesa*').

catastrophic impairment. However, the respondent did not reconsider its position despite the subsequent determination that the applicant is catastrophically impaired. In light of all of the circumstances, I find that the applicant is entitled to the home modification, albeit capped at the statutory maximum of \$2,200.00 pursuant to subsection 25(5)(a) of the *Schedule*.

[70] The applicant relied upon *S.M. v. Unica Insurance Inc.*, in which the Tribunal held that home modifications that provide safe access to key areas of the home and allow an insured person to access areas of the home for ordinary living will be considered reasonable and necessary.¹¹

[71] As the respondent noted, M.L. used descriptors other than “reasonable and necessary” in her testimony on the proposed modifications, such as “ideal” and “optimal” and suggested that she had adopted a more lenient standard for the appropriateness of the modifications than the standard mandated by subsection 16(1) of the *Schedule*. However, J.B. also emphasized that he had reviewed all of the medical reports, including the applicant’s previous attendant care assessment, conducted an interview with the applicant, attended at the applicant’s home, then analyzed and discussed proposed modifications with M.L. to ensure their respective expertise was applied and presented appropriate accessibility solutions.

[72] I find that the functional assessments performed by the OTs, particularly T.P. and A.H., provided a medical basis for all but two of J.B.’s recommendations for home modifications in compliance with subsection 16(1) of the *Schedule* that are reasonable and necessary for the purpose of reducing or eliminating the effects of his disabilities resulting from the accident and following the objectives set out in *Wawanesa*.

[73] However, with respect to the proposed enclosure for the hot tub, I find that the applicant failed to demonstrate that the construction of the enclosure is necessary or reasonable, only that closer proximity to the existing structure would prevent or reduce the risk of falls or other injuries. On this issue, I prefer the evidence of D.W., who advocated for the less costly but reasonable solution of simply moving the hot tub closer to the house to avoid hazardous walks across the yard in rain and snow.

[74] I also find that the evidence related to the installation of an intercom system was overly vague and did not establish that this modification represents the most reasonable and necessary means for the applicant to communicate with visitors

¹¹ 2020 CarswellOnt 2287 at paras 38 and 49.

or with others within the residence. As a result, I find that the applicant met his evidentiary onus to demonstrate that the home modification assessment and \$87,809.00 (the total claim of \$124,309.00 less \$36,500.00) of the home modifications themselves are necessary and reasonable.

Service Dog

- [75] Although the family had two smaller dogs, in early 2021, the applicant adopted a larger dog, Deeks, originally to serve as a companion to him particularly when M.V. was working at her part-time employment. Deeks helps the applicant stay active, walking him about the neighbourhood. The applicant applied for funding in the amount of \$3,138.00 from the respondent for service dog training. As of the date of the hearing, Deeks was already enrolled in the training at the applicant's personal expense. Upon completion of the program, the applicant expects Deeks to be certified as a service dog.
- [76] Prior to the accident, the applicant's diabetes was steady and well maintained. However, he had an adverse reaction to one of the medications initially prescribed following the accident when this medication caused his blood sugar to drop dangerously low during the night. After Deeks woke him several times during these events, he suspected that Deeks may be able to sense the change in his body chemistry. He contacted a trainer and was advised that some dogs are able to sense diabetes by scent. He realized that in addition to his value as a companion, Deeks could make an excellent therapy dog. He described the training that Deeks would need to complete to become certified as a service dog and noted that he was presently about six months away from meeting that goal. The applicant and M.V. have paid for related training and certification fees out of pocket as the respondent would not approve the expenses. He noted that all of his healthcare providers are positive about Deeks' involvement in his life and he brings the dog to all of his appointments. He is able to take on more activities when Deeks is with him and explained that he feels more comfortable engaging with others in public as the conversational focus is shifted to Deeks, a trend also observed by S.T. S.T. noted that this allows the applicant to relax and thereby boosts his confidence in social settings.
- [77] S.T. testified that she has observed Deeks' benefit to the applicant and emphasized that they interact well together and that Deeks is responsive to the applicant. Deeks serves as a constant companion to the applicant and provides him with a sense of fulfillment. As well, both T.P. and A.H. supported the applicant's use of Deeks as a service dog, noting that Deeks has assisted with the improvement of the applicant's post-accident symptomology. For example,

T.P. noted that Deeks' presence assists the applicant in getting out of bed and into the community, managing anxiety and reducing his depression and sleep issues. A.H. noted that at the very least, the applicant is motivated to get out of bed to feed and walk Deeks, thereby compelling him to go out into the community.

[78] C.H. opposed this benefit largely as he claimed that there is a general lack of support for this type of intervention. He could not however offer any authority for this generalization. He agreed however that Deeks is helpful to the applicant but denied any indication that further training would be necessary or psychologically beneficial to the applicant. He provided no reasoning for this position beyond his apparent conclusion that others had yet to endorse the benefit.

[79] The applicant submitted that pursuant to the test in *Wawanesa*, the treatment goals for Deeks' use as a service dog are reasonable; the goals of Deeks' use are being met; and the cost of achieving these goals is reasonable.

[80] However, in *Roberts v. Gore Mutual Insurance Co.*, the Financial Services Commission of Ontario ('FSCO') preferred the evidence of an expert called by the respondent who expressed a similar apprehension over the use of service dogs, stating that:

I agree with the opinion of Dr. Altrows, who stated that at present, the use of such animals in this form of treatment remains in the early stages and is only supported by anecdotal evidence.

I thus find that the use of such animals is still experimental in nature.¹²

[81] In the present case, I agree with the respondent that the applicant submitted no objective or scientifically reliable evidence that the applicant's dog is able to sense changes in his blood sugar or that even if this were demonstrably the case, the subsequent enrollment in service dog training would enhance this unproven capability. As well, the detection of blood sugar changes would relate to an impairment unrelated to the accident and therefore not necessary or reasonable under the *Schedule*. It is also worth noting that neither T.P. nor A.H. could comment on whether it was reasonable or necessary for the dog to undergo service dog training.

[82] As well, the primary benefits to the applicant of social interaction and the motivation to attend to the needs of another being relate to the experience of

¹² 2014 CarswellOnt 5218, at paras. 153-154.

owning a pet independent of Deeks' service dog training. While the role of Deeks in the applicant's life is undeniably positive, I find it falls short of the standard of necessary and reasonable as a treatment plan.

Dietician

- [83] Both the applicant and M.V. testified that prior to the accident, the applicant loved to cook and enjoyed preparing elaborate meals. He explained that after the accident, his medication had an adverse effect on his blood sugar, requiring guidance on better regulate his food intake and manage the interaction between food and his medication. He described the assistance of the dietician, Amy Hayes ('A.Hy.') as instrumental in assisting him in this regard. A.Hy. developed a plan and checks on his progress approximately every two weeks. He paid for the resulting costs himself.
- [84] While M.V. called her husband a "foodie" before the accident, now he rarely prepares food at all as he can no longer follow a recipe. More concerning, he has lost the ability to know when to eat in that his body no longer tells him that he should be hungry, or when delayed consumption has decreased his blood sugar. As a result, his weight has fluctuated since the accident and as M.V. noted, his muscle tone has significantly decreased. How this side effect of the accident may be complicated by his diabetes is unknown.
- [85] In addition, M.V. explained that the applicant has difficulty scheduling events and may enter various future tasks into a schedule incorrectly. Similarly, he must accomplish a given task immediately or he may simply assume that he has completed the task. This would be relevant to scheduling meals and ensuring that he takes a specific medication at a scheduled time. Furthermore, given that the applicant's cognitive impairments have largely eliminated his ability to cook, both he and M.V. indicated that the meals that he eats are nutritionally deficient.
- [86] S.T. explained that due to his injury, the applicant's brain does not relay hunger signals to his body and as a result, he is unaware of when he should eat. This presents a challenge since without assistance, the applicant may not consume sufficient calories. To assist in this regard, S.T. asks him pointed questions and offers to access foods for the applicant based upon the time of day and offers schedules for meals. She also encourages him to consume from a choice of various foods placed in front of him. When his dietary difficulties are combined with his potential for confusion and slower response times, the applicant should not be left alone for extended periods as his safety would be jeopardized. T.P. noted that a dietician would assist the applicant with food choices and nutritional intake that would otherwise be adversely affected by his lost appetite. It is

significant to note that S.T. was not qualified to offer medical evidence on the causal relationship between the accident and the applicant's subsequent loss of appetite.

- [87] C.H. took the position that the applicant does not require the services of a dietician as his testing did not detect evidence of cognitive impairments that would necessitate this benefit. He acknowledged that while the applicant may have cognitive impairments, they were not detectable via testing, but emphasized that the tests would reveal any such deficits. He ultimately found that the applicant demonstrated a capacity to plan out meals and related tasks.
- [88] C.H. did not accept that the applicant's loss of appetite was caused by his traumatic brain injury on the basis that such an effect would be unusual in his opinion. He acknowledged that he is not an expert in appetite. When asked if attendant care would assist the applicant given the potential effects of being left alone with no appetite, C.H. merely laughed and declined to answer. He also evaded the issue of whether a dietician would assist with the side effect of medication on the applicant's blood sugar and acknowledged a lack of expertise with dieticians both generally and with respect to diabetes.
- [89] Essentially, given the critical gaps in C.H.'s expertise in this area and S.T.'s apparent lack of medical qualifications, I am left with the testimony of the applicant, M.V. and S.T.'s lay observations with respect to the changes to the applicant's appetite and nutrition following the accident.
- [90] The respondent takes the position that the applicant's diabetes was not well managed contrary to his position at the hearing on the basis that he had been under the care of an endocrinologist even before the accident and requested changes to his work schedule to better manage his blood sugar. However, these measures would seem to represent responsible steps taken to manage a potentially dangerous health condition. There was no evidence to indicate that the applicant's actions in this regard proved ineffective.
- [91] However, the evidence also clearly indicated that after the accident, the applicant experienced significant difficulties managing his blood sugar, in part due to side effects of medication and his reduced cognitive ability to manage meal planning. That the respondent's expert witness was unwilling or incapable of diagnosing the biological basis for this change does not undermine the uncontested evidence that it has indeed occurred.
- [92] In light of all of the evidence, I find that, following the analysis in *Wawanesa*, the treatment plan is necessary and reasonable as its goals are reasonable; the

goals are being met to a reasonable degree; and the overall cost of achieving the goals is reasonable taking into consideration both the degrees of success and the availability of other treatment.

Interest

[93] Having found that the applicant has met his onus on the benefits that I have indicated above, the applicant is entitled to interest in accordance with section 51 of the *Schedule*.

Special Award

[94] The applicant seeks a special award pursuant to section 10 of O. Reg. 664. The test for an award is that the respondent has “unreasonably withheld or delayed payments.” If the respondent has unreasonably withheld or delayed payments then an award is payable up to 50% of the amounts outstanding plus interest on all amounts outstanding at the rate of 2% per month compounded monthly. However, I do not find that the applicant has demonstrated that the respondent acted unreasonably to warrant an award.

[95] For the purposes of an award, the Tribunal has consistently interpreted unreasonableness to mean an insurer’s conduct that is inflexible, immoderate, imprudent, unyielding or stubborn. Although the respondent refused to pay for the proposed treatment plans, it did not do so wilfully as it had triable concerns over whether many of the plans were necessary and reasonable and exercised its right to put the applicant to his case. Throughout the period between the application and the hearing, the respondent continued to fund other treatment plans and cover benefits not the subject of the present litigation and agreed that the applicant was eligible for attendant care and some home modifications, albeit not to the valuations sought by the applicant.

[96] Consequently, I do not find the respondent unreasonably withheld or delayed payments, and accordingly, there is no ground for an award.

ORDER

[97] Pursuant to subsection 280(2) of the Act, I find that the applicant is entitled to the following:

- a. Attendant care benefits in the amount of \$6,000.00 per month for the period of January 30, 2019 to date and ongoing;
- b. Dietician services in the amount of \$3,290.43;

- c. Home modifications in the amount of \$87,809.00;
- d. A home modification assessment capped at the statutory maximum of \$2,200.00; and
- e. Interest payable to the applicant for all incurred overdue payments, in accordance with s. 51 of the *Schedule*.

[98] The applicant is not entitled to the following:

- a. Service dog training in the amount of \$3,138.00; and
- b. A special award.

Released: February 8, 2023



Kevin Lundy
Adjudicator