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Section F - Expense Regulation

Excerpt from Regulation 664, R.R.O. 1990, Made Under the Insurance Act, as amended.

12.
1. The expenses set out in the Schedule are prescribed for the purpose of subsection 282(11) of the Act.

2. An arbitrator shall, under subsection 282 (11) of the Act, consider only the following criteria for the purposes of awarding all or part of the expenses incurred in respect of an arbitration proceeding:

1. Each party's degree of success in the outcome of the proceeding.

2. Any written offers to settle made in accordance with subsection (3).

3. Whether novel issues are raised in the proceeding.

4. The conduct of a party or a party's representative that tended to prolong, obstruct or hinder the proceeding, including a failure to comply with undertakings and orders.

5. Whether any aspect of the proceeding was improper, vexatious or unnecessary.

6. Whether the insured person refused or failed to submit to an examination as required under section 42 of Ontario Regulation 403/96 (Statutory Accident Benefits Schedule — Accidents on or after November 1, 1996) made under the Act or refused or failed to provide any material required to be provided by subsection 42 (10) of that regulation.

7. Whether the insured person refused or failed to submit to an examination as required under section 44 of Ontario Regulation 34/10 (Statutory Accident Benefits Schedule — Effective September 1, 2010), made under the Act, or refused or failed to provide any material required to be provided under subsection 44 (9) of that regulation.

3. Upon the request of the insurer or the insured person, the arbitrator shall, for the purposes of awarding expenses, take into account all written offers to settle, if any,

(a) that were made after the conclusion of mediation and before the conclusion of the arbitration; and

(b) that were made in accordance with the rules of practice and procedure applicable to the proceeding.

4. If the arbitrator is requested to take into account a written offer under subsection (3), the arbitrator shall have regard to the terms of the offer, the timing of the offer, the response to the offer and the result of the proceeding.
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- ## SCHEDULE
- <http://www.fSCO.gov.on.ca/en/drs/DRP-Code/Pages/section-f.aspx#excerpt>[19/01/2012 1:49:19 PM]

DISPUTE RESOLUTION EXPENSES
(Subsection 282 (11) of the Act)

1. The filing fees paid by the insured person when applying for arbitration may be awarded to the insured person.
2. The filing fees paid by the insured person or the insurer when appealing the order of an arbitrator or applying to vary or revoke an order may be awarded.
3. (1) The legal fees payable by the insured person or the insurer for the following matters may be awarded:
 1. For all services performed before an arbitration, appeal, variation or revocation hearing.
 2. For the preparation for an arbitration, appeal, variation or revocation hearing.
 3. For attendance at an arbitration, appeal, variation or revocation hearing.
 4. For services subsequent to an arbitration, appeal, variation or revocation hearing.

(2) The number of hours for which legal fees may be awarded shall be determined by the arbitrator, having regard to the criteria set out in subsection 12 (2) of this Regulation.

(3) The maximum amount that may be awarded for legal fees is the amount calculated using the hourly rates set out in the Dispute Resolution Practice Code published by the Ontario Insurance Commission or Financial Services Commission of Ontario, as it may be amended from time to time.

3.1

1. The agent's fees payable by the insured person or the insurer for the following matters may be awarded:
 1. For the preparation for an arbitration, appeal, variation or revocation hearing.
 2. For attendance at an arbitration, appeal, variation or revocation hearing.
 3. For services subsequent to an arbitration, appeal, variation or revocation hearing.
2. The maximum amount that may be awarded for agent's fees is the amount calculated using the hourly rates set out in the Dispute Resolution Practice Code published by the Ontario Insurance Commission or Financial Services Commission of Ontario, as it may be amended from time to time.
4. The amount of the following disbursements made by or on behalf of the insured person or the insurer may be awarded:
 1. For long distance telephone, facsimile and other telecommunication charges.
 2. For typing, printing and reproducing copies of documents.
 3. For the delivery, by mail or courier, of items relating to the arbitration, appeal, variation or revocation hearing.
 4. For other out-of-pocket expenses incurred in furtherance of the arbitration, appeal, variation or revocation hearing.
 5. Any applicable taxes paid in respect of the expenses referred to in this section.
5.
 1. The amount of the following witness fees paid by or on behalf of the insured person or the insurer may be awarded:
 1. For the attendance of witnesses, in accordance with subsection (2).
 2. For the attendance of an expert witness who gives opinion evidence at the arbitration or hearing or whose attendance is necessary, in accordance with subsection (3).
 3. For a report prepared by an expert, provided to the other parties to the

arbitration or hearing and necessary for the conduct of the arbitration or hearing, in accordance with subsection (4).

2. The maximum amount that may be awarded for the attendance of a witness is the amount of the attendance allowance for the witness that may be allowed under Rule 58.05 of the rules of court as a disbursement.
 3. The maximum amount that may be awarded for the attendance of an expert witness is \$200 per hour of attendance, up to a maximum of \$1,600 per day.
 4. The amount of the expenses paid by or on behalf of the insured person or the insurer to an expert witness for preparation for a hearing at which the witness testifies may be awarded, to a maximum of \$500.
 5. The amount of the expenses paid by or on behalf of the insured person or the insurer to an expert for the preparation of a report may be awarded, to a maximum of \$1,500.
 6. Despite subsection (5), the maximum amount that may be awarded in respect of expenses paid by or on behalf of the insured person or the insurer to a member of a designated body within the meaning of the Public Accounting Act, 2004 for the preparation of a report in connection with a claim for income replacement benefits is \$2,500.
- 6.
1. The amount of the following expenses paid by or on behalf of the insured person, the insured person's lawyer or agent, the insured person's attendant, if one is required, or the insurer's lawyer or agent may be awarded:
 1. For travelling expenses, in accordance with subsection (2).
 2. For overnight accommodation and meals, in accordance with subsection (3).
 2. The maximum amount of travelling expenses that may be awarded for a person,
 - (a) for an arbitration or a hearing that takes place in the municipality in which the person resides is the amount incurred by the person for each day of his or her necessary attendance at the arbitration or hearing;
 - (b) for an arbitration or a hearing that takes place outside the municipality in which the person resides and within 300 kilometres of his or her residence is the lesser of,
 - (i) 30 cents per kilometre for one return trip between the person's residence and the place in which the arbitration or hearing takes place, or
 - (ii) the amount incurred by the person
 - (c) for an arbitration or a hearing that takes place 300 or more kilometres from the person's residence is the lesser of,
 - (i) the amount of the return economy airfare for the person plus 30 cents per kilometre for one return trip between his or her residence and the airport and for one return trip between the airport and the place of the arbitration or hearing, or
 - (ii) the amount incurred by the person.
 3. The maximum amount that may be awarded for overnight expenses and meals is \$150 per night for each overnight stay required for the person.

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