

## **PUBLICATION**

### Interpreting Alberta's Section B Auto Policy: The Attending Physician vs. The Insurer's Medical Advisor

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Section B is a mandatory clause contained in all automobile insurance policies issued in Alberta. When an insured person sustains bodily injury as a result of a motor vehicle accident, that person will qualify for Section B benefits under their own automobile insurance policy regardless of who is at fault for the collision.

Section B benefits provide insurance coverage for "necessary" treatment for injuries caused by the accident including medical, surgical, chiropractic, dental, hospital, psychological, physical therapy, occupational therapy, massage therapy, acupuncture, professional nursing, and ambulance services. The coverage limit is \$50,000.00 for "reasonable" expenses incurred within two years from the date of the accident.

The insurer has the right under the Section B policy to have its medical advisor examine the insured person. The insurer will usually refer to this examination as an "independent medical examination" or "medical status examination".

In many cases, the opinion of the insurer's medical advisor will differ from that of the insured person's attending physician. For instance, although the insured person's attending physician may recommend ongoing treatment such as physiotherapy, the insurer's medical advisor may find that further treatment is not medically "essential". In such circumstances, the insurer will often deny coverage for ongoing treatment.

It does not appear that this issue has been judicially considered in Alberta. However, it is noted that the courts in New Brunswick have interpreted the Section B policy in that province, the wording of which is similar to the wording contained in Alberta's Section B policy, with respect to this very issue.

In the Court of Queen's Bench of New Brunswick's decision of *Webb v. Aviva Insurance Company*, 2011 NBQB 098, the Plaintiff successfully advanced a claim against her Section B insurer for the costs of massage therapy treatments she incurred after a motor vehicle accident. The insurer's medical advisor, a psychiatrist, conducted an independent medical examination of the Plaintiff. The insured's medical advisor concluded that further massage therapy and physiotherapy was not necessary. At or about the same time, the Plaintiff's family physician wrote prescriptions for the Plaintiff to continue massage therapy. The Plaintiff found that massage therapy gave her some relief from her headaches.

In awarding judgment in favour of the Plaintiff, the Honourable Justice William T. Grant held the following at

paragraphs 21 to 22:

“...In my view the doctor who would be in the best position to provide that opinion would be the attending physician. I therefore find that the test under sub-paragraph (a) for determining if a medical service is “necessary” is that it be deemed to be so in the opinion of the insured’s attending physician. Moreover, considering that the policy contains no parameters stating what the medical service must accomplish, I find that it need only provide some benefit to the insured in the attending physician’s opinion.

It follows then, and I find, that when a medical service has been recommended by the insured’s attending physician, as it has been in this case, it matters not what the insurer’s medical advisor says. The service is “necessary” as that term is used in sub-paragraph 1(a) of Section B of the policy and the insurer is liable to pay for it.” [our emphasis added]

The rationale for the decision in *Webb v. Aviva Insurance Company*, supra, will be persuasive to the courts in Alberta, and provides support that an insurer is liable under Alberta’s Section B policy to pay for medical, surgical, chiropractic, dental, hospital, psychological, physical therapy, occupational therapy, massage therapy, acupuncture, professional nursing, and ambulance services, as recommended by the insured person’s attending physician, notwithstanding contrary advice from the insurer’s medical advisor. This is in line with a plain language reading of Alberta’s Section B policy, which also supports such an interpretation.

A copy of the Section B policy can be found at:

<http://www.finance.alberta.ca/publications/insurance/forms.html>

For further information please contact any member of our Personal Injury Group.