



FSCO A12-007594

**BETWEEN:**

**DAYAVATA SINGH**

**Applicant**

**and**

**STATE FARM MUTUAL AUTOMOBILE  
INSURANCE COMPANY**

**Insurer**

## **DECISION ON A MOTION**

**Before:** Eban Bayefsky

**Heard:** August 21, 2014, at the offices of the Financial Services Commission of Ontario in Toronto. Written submissions were received on August 5 and 14, 2014.

**Appearances:** Mark Vella for Ms. Singh  
Ryan Mullins for State Farm Mutual Automobile Insurance Company

**Issues:**

The Applicant, Dayavata Singh, was injured in a motor vehicle accident on May 1, 2010. She applied for and received statutory accident benefits from State Farm Mutual Automobile Insurance Company (“State Farm”), payable under the *Schedule*.<sup>1</sup> State Farm denied certain of Ms. Singh’s claims. The parties were unable to resolve their disputes through mediation, and Ms. Singh applied for arbitration at the Financial Services Commission of Ontario under the *Insurance Act*, R.S.O. 1990, c.I.8, as amended.

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<sup>1</sup>The Statutory Accident Benefits Schedule — Accidents on or after November 1, 1996, Ontario Regulation 403/96, as amended.

The Insurer brought a motion, in part, for an order declaring that the Applicant is not entitled to benefits from October 16, 2012 until she submits to an Examination Under Oath (“EUO”).

The Applicant brought a cross-motion for an order precluding the Insurer from examining the Applicant with respect to income replacement benefits (“IRBs”) and housekeeping benefits. Both parties sought their costs of the motion, in the amount of \$1,000.

The issues in this motion are:

1. Has Ms. Singh failed to attend an examination under oath, and if so, what are the consequences that flow from that?
2. Is State Farm precluded from examining Ms. Singh with respect to income replacement benefits and housekeeping benefits?
3. Is either party entitled to its expenses of the motion?

**Result:**

1. Ms. Singh failed to make herself available for an examination under oath.
2. The arbitration hearing in this matter is adjourned *sine die* to allow Ms. Singh to attend an examination under oath.
3. No benefits are payable to Ms. Singh from October 16, 2012 until she attends an examination under oath.
4. Ms. Singh shall attend an examination under oath within 90 days of the date of this decision, failing which State Farm Mutual Automobile Insurance Company may request the dismissal of the arbitration.
5. Ms. Singh’s cross-motion is dismissed.
6. Ms. Singh shall pay to State Farm Mutual Automobile Insurance Company its expenses of the motion, in the amount of \$1,000.

## EVIDENCE AND ANALYSIS:

The facts giving rise to this motion are relatively straightforward. The Applicant was injured in a motor vehicle accident on May 1, 2010. She applied for benefits on May 11, 2010. The Insurer paid the Applicant IRBs until November 1, 2011 and housekeeping benefits until January 3, 2012. On August 1, 2012, the Insurer notified the Applicant that it required her to attend an EUO. On October 16, 2012, the Applicant attended the EUO, but refused to answer questions relating to IRBs and housekeeping benefits, on the grounds that the Insurer had initially chosen to pay her these benefits, and was thereby precluded under the legislation from requiring her to attend an EUO. The Insurer maintained that, by refusing to answer relevant questions, the Applicant failed to comply with her obligation to attend an EUO. The Insurer subsequently brought this motion.

Pursuant to section 35(3) of the *Schedule*, within 10 business days of receiving an application and completed disability certificate, an insurer is required to do one of three things: pay the specified benefit, request in part that an insured submit to an EUO, “or” require that the insured undergo a medical examination. Section 33 of the *Schedule* sets out the process and parameters for conducting an EUO. The Applicant maintains that, pursuant to section 35(3), if an insurer decides to pay benefits in response to an application for benefits, it cannot **also** require the insured to submit to an EUO. The Insurer maintains that the only restrictions for conducting an EUO are found in section 33 (none of which are relevant to the present case) and that there is nothing in the language of section 35(3) precluding an insurer from requiring an insured to attend an EUO having initially paid the insured the claimed benefits.

I find the cases of *Deol and Gore Mutual Insurance Company* (FSCO A13-003801, September 3, 2013) and *Michaud, et al. and State Farm Mutual Automobile Insurance Company* (FSCO A11-004437, A11-004496 and A11-004497, March 5, 2014), both by Arbitrator Wilson, instructive. In each case, Arbitrator Wilson found that section 33 contained a simple and broad obligation on insureds to participate in EUOs. In my view, while section 35(3) of the *Schedule* requires an insurer to respond in one of three ways to the initial application for benefits, this does not restrict or diminish the insurer’s general and ongoing option of requiring an insured to attend an EUO

pursuant to section 33. In my view, section 35(3) does not preclude an insurer from requesting an EUO where it initially paid benefits in response to an application for benefits, particularly where, as here, the insurer subsequently terminated benefits and requested the EUO. In this sense, I read the word “or” in section 35(3) conjunctively, allowing an insurer to initially pay benefits and then to request an EUO at a later date, and not locking the insurer into whichever of the three options it initially chooses. To interpret the provision otherwise would lead to the absurd result that once an insurer had chosen to do one of the three options under section 35(3), it could do nothing else in relation to the claim, for example, initially requiring the insured to attend an EUO but then being precluded from paying the insured benefits. In my view, section 35(3) requires a prompt and definitive response from the insurer upon receiving an application for benefits, but allows a more involved process as the claim develops, which process, among other things, may require the insured to attend an EUO under the broader provisions of section 33.

Therefore, in the absence of any other objections to participating in the EUO, I find that, by failing to answer relevant questions at the EUO, the Applicant effectively failed to comply with her obligation under section 33 to attend the EUO.

In a manner similar to the cases of *Deol* and *Michaud*, and in light of the orders sought by the Insurer, I make the following orders:

1. The arbitration hearing in this matter is adjourned *sine die* to allow Ms. Singh to attend an examination under oath.
2. No benefits are payable to Ms. Singh from October 16, 2012 until she attends an examination under oath.
3. Ms. Singh shall attend an examination under oath within 90 days of the date of this decision, failing which State Farm Mutual Automobile Insurance Company may request the dismissal of the arbitration.
4. Ms. Singh’s cross-motion is dismissed.

**EXPENSES:**

Given State Farm's success on the motion, and the parties' respective requests for expenses, which I find to be reasonable, Ms. Singh shall pay to State Farm Mutual Automobile Insurance Company its expenses of the motion, in the amount of \$1,000.

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Eban Bayefsky  
Arbitrator

August 22, 2014  
Date

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**ARBITRATION ORDER**

Under section 282 of the *Insurance Act*, R.S.O. 1990, c.I.8, as amended, it is ordered that:

1. The arbitration hearing in this matter is adjourned *sine die* to allow Ms. Singh to attend an examination under oath.
2. No benefits are payable to Ms. Singh from October 16, 2012 until she attends an examination under oath.
3. Ms. Singh shall attend an examination under oath within 90 days of the date of this decision, failing which State Farm Mutual Automobile Insurance Company may request the dismissal of the arbitration.
4. Ms. Singh's cross-motion is dismissed.
5. Ms. Singh shall pay to State Farm Mutual Automobile Insurance Company its expenses of the motion, in the amount of \$1,000.

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Eban Bayefsky  
Arbitrator

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August 22, 2014  
Date