



DEFINING ATTENDANT CARE

- Assessment of Attendant Care now defined:
 - "Shall be in the form of" Form 1;
 - "<u>Shall</u> contain the information required" in the Form 1.



3



DEFINING ATTENDANT CARE

- Section 16 of the SABS Attendant Care Benefit means:
 - "reasonable and necessary expenses incurred...for services"
 - "aid or attendant"; and
 - "services from nursing home, home for aged chronic care hospital".





DEFINING ATTENDANT CARE

- For the most part we must look to the Form 1 determine what is Attendant Care.
- Form 1 preamble = instructions to user
- "Use this form to report the future needs..."
 needs = to require
 future = immediate future

see 43(13) of SABS



5



DEFINING ATTENDANT CARE

Preamble: ... "as a result of an automobile accident"

Result = outcome

Result does not = caused by

"Result" is less strict than "caused by"





DEFINING ATTENDANT CARE

What the Form 1 says is important;

What the Form 1 preamble <u>does not say</u> is just as important.

Form 1 preamble does not say

"use this form to report the net future needs"
Form 1 preamble does not say

"use this form to report the needs that are not being met..."

Defining Attendant Care See example on page 4 of paper





DEFINING ATTENDANT CARE Preamble

"Users of the Form 1 should review other accident benefits..."

Willie Handler writes:

"this statement is not intended to imply that any amounts be deducted from the overall attendant care benefit calculations."





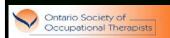
COMPENSATION OF ATTENDANT CARE PROVIDER

Compensation of Attendant Care Provider

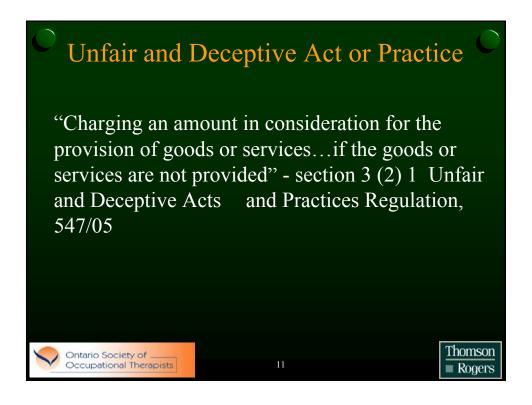
39 (4) Insurer pay within 10 days of receiving Form 1 and

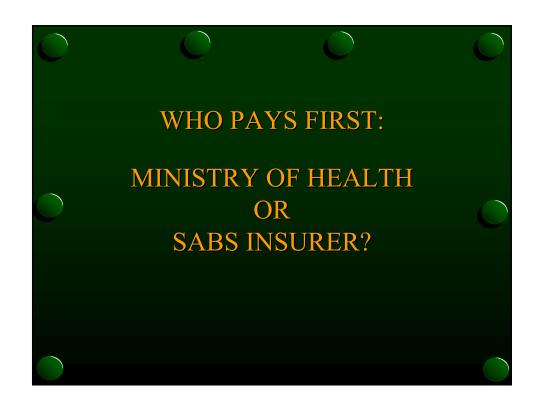
Section 33 (1) says that the person applying for a benefit shall...provide the insurer with

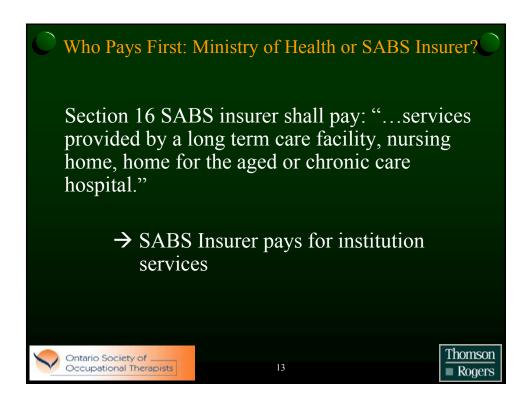
"any information reasonably required to assist the insurer in determining the person's entitlement to a benefit".

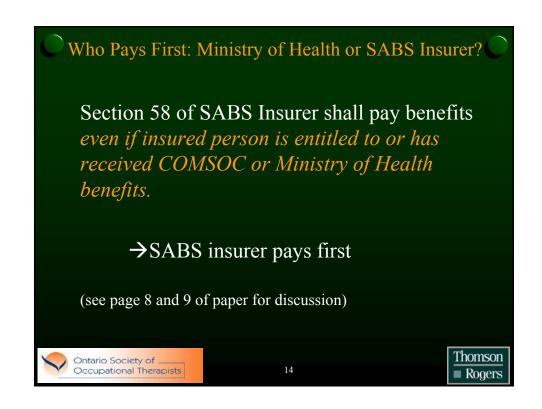














Section 60 "Other collateral benefits" NOTE:

SECTION 60 HAS NOTHING TO DO WITH THE PROTOCOL TO BE USED IN ASSESSING ATTENDANT CARE OR HOW A FORM 1 IS TO BE COMPLETED.

 \rightarrow s60(2) Only to do with payment





Who Pays First: Ministry of Health or SABS Insurer?

Section 60 (2): "payment not required "for the portion of the expense for which payment is reasonably available to the insured person under any insurance plan or any other plan or law."

Key Language in 60 (2) "for which payment is reasonably available "to the insured person"

No payment available to insured person for personal support worker under *Long Term Care Act*.





W

Who Pays First: Ministry of Health or SABS Insurer?



What About Attendant Care in Hospital?

Is Attendant Care Provided in Hospital?

Answer: Ministry of Health: Anne Utley – No

Not an insured service under *Health Insurance Act* – Section 7 *Health Insurance Act* - See MOH letter at back of paper: whereas CCAC and some retirement homes provide personal support worker under *Long Term Care Act*, no personal support worker as an insured service for hospital under *Health Insurance Act*.





Who Pays First: Ministry of Health or SABS Insurer? Attendant Care in Hospital

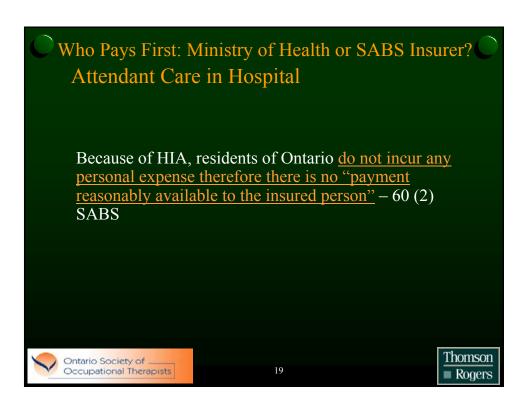
Section 60 (2) and the Health Insurance Act (HIA) Under HIA person entitled to "Insured services". Insured services do not include personal support worker or attendant care or private duty nurse.

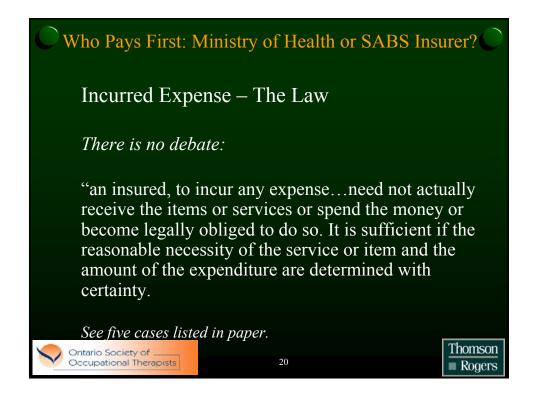
- HIA is not a plan or law for which payment is available to insured person for attendant care.
- Since no attendant care in hospital
- \rightarrow section 60(2) doesn't apply

Because of HIA, residents of Ontario <u>do not incur any</u> personal expense therefore there is no "payment reasonably available to the insured person" – 60 (2) SABS











McMichael and Belair



- Other experts at Arbitration supported need
- There is no evidence to the contrary
- Insurer did not request particulars for services provided
- McMichael completely decompensated for 6 years with no attendant care (helps to prove need was real)





McMichael and Belair

Because no payment was provided, no services could be provided

Belair said no services = insurer no pay

Rejected by Arbitrator and

Rejected on Appeal

If the order wasn't made, Director noted it would cause resistance of claims:

Insurer could say no because injured people can't afford to get the benefit without funding

Insurer could go to Arbitration and say we don't have to pay for that which we denied because insured person did not get it after we denied.

...and the Director's Delegate said...



23



McMichael and Belair

On Appeal, Director's Delegate:

"Belair's position would mean that an Arbitrator has no authority to order payment of benefits to which the claimant has proven entitlement, unless the claimant has obtained the services without the insurer's approval. This is an absurd result that would render the Dispute Resolution Process meaningless."





McMichael and Belair

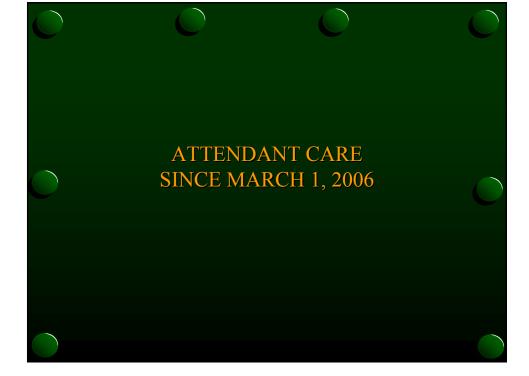
McMichael stands for the following proposition:

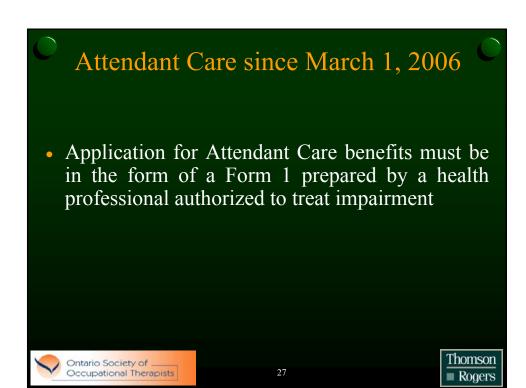
- 1. If a Form 1 is submitted which identifies need for attendant care; and
- 2. The Insured chooses to ignore a claim for attendant care; or
- 3. Refrains from obtaining assessments to address the need which has been identified for attendant care; or
- 4. Refrains from requesting information to support the need for services for attendant care; THEN

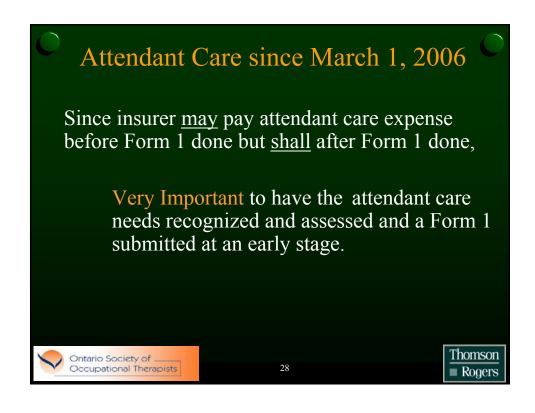
The insurer is at risk of having an Arbitrator or Judge make an Order for payment of past benefits even if services have not been provided because there was no funding for them.

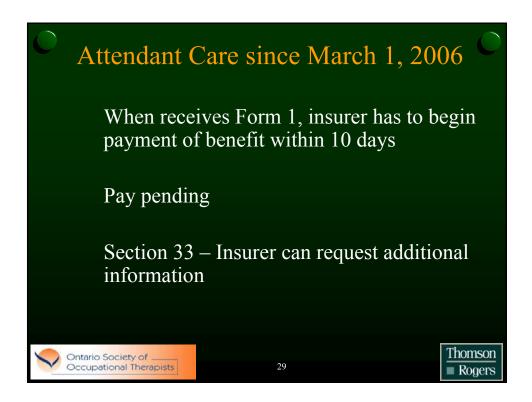


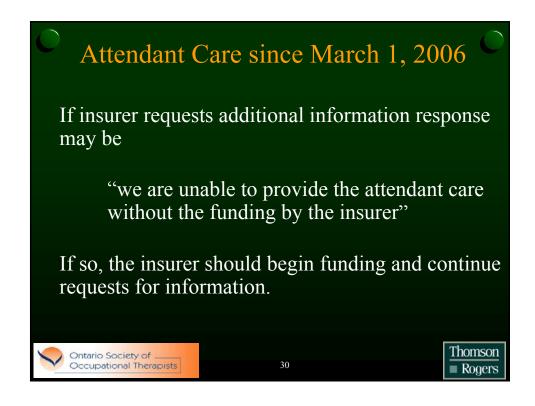


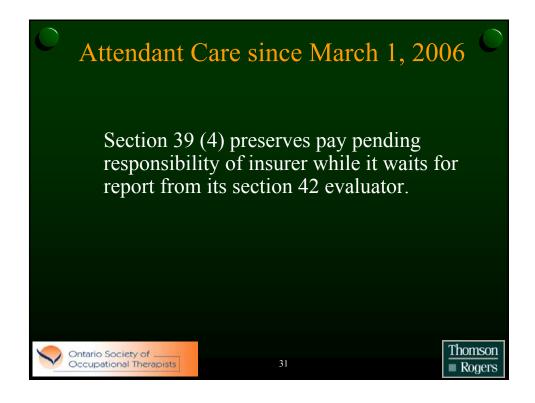


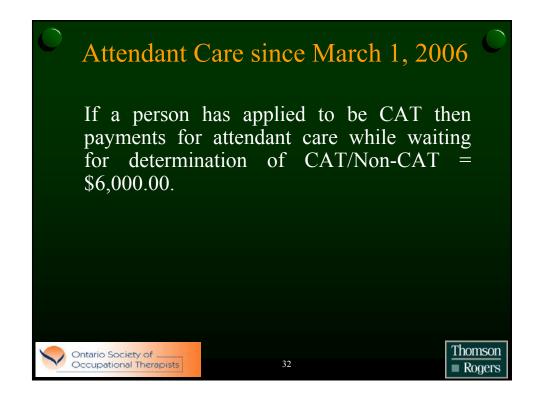


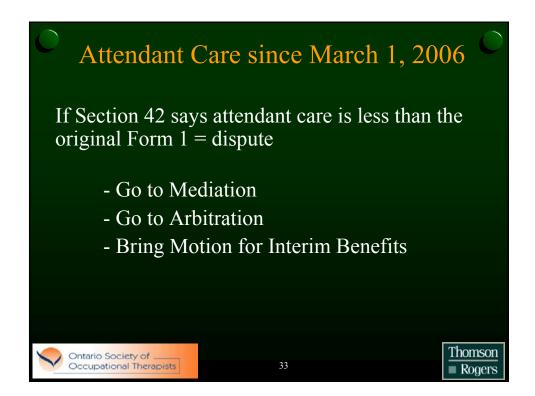


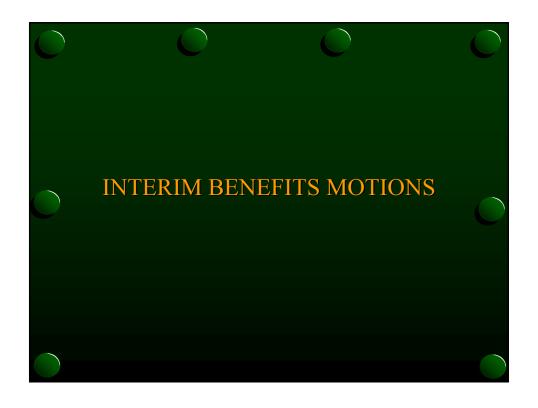


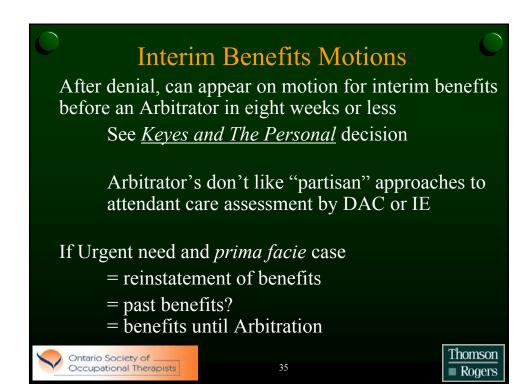














Rebuttal Reports

Insurer obliged to pay for only one in every 12 months.

Original provider must do rebuttal unless, section 42 was not same profession

Original provider must use same information as Section 42 evaluator

Payment = \$450.00 unless two assessors did Section 42.



Thomson Rogers

Rebuttal Reports

Counsel for insured should pay additional costs for rebuttals

Include comments on whether Section 42 evaluator complied with OSOT guidelines rebuttal reports

Helpful for interim benefits motion







