

**LICENCE APPEAL
TRIBUNAL**

**Safety, Licensing Appeals and
Standards Tribunals Ontario**

**TRIBUNAL D'APPEL EN MATIÈRE
DE PERMIS**

**Tribunaux de la sécurité, des appels en
matière de permis et des normes Ontario**



Tribunal File Number: 17-002689/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:

S. M.

Applicant

and

Aviva Insurance Canada

Respondent

DECISION

ADJUDICATOR: Derek Grant

APPEARANCES:

For the Applicant: Aida Davari

For the Respondent: Patrick Baker

Heard by way of a written hearing: September 14, 2017

Overview

- [1] The applicant ("S.M.") was injured in an automobile accident on May 29, 2014 and sought benefits pursuant to the *Statutory Accident Benefits Schedule - Effective September 1, 2010* (the "*Schedule*") from the respondent ("Aviva").
- [2] S.M. made a claim for a medical benefit for chiropractic treatment. Aviva denied the benefit on the basis of an insurer's examination ("IE") which found that S.M.'s injuries were minor and therefore subject to the \$3,500 treatment limit under the Minor Injury Guideline ("MIG")¹
- [3] Aviva has since acknowledged that S.M. is no longer under the Minor Injury Guideline ('MIG') designation based on a second IE which determined that the applicant suffered from depression, anxiety and cognitive impairment as a result of the accident, to the extent that her injuries do not fall within the definition of a 'minor injury' under the MIG.²
- [4] The issue of whether or not S.M. is subject to the MIG is therefore no longer in dispute, so I do not need to address it.
- [5] As a result of the accident, S.M. sustained injuries to her neck, left shoulder/arm, left hip/leg and full back. S.M. suffered similar injuries when she was struck by a car as a pedestrian on January 10, 2013, ten months previously. S.M. submits she still requires chiropractic treatment for her more recent accident injuries because her recovery from these injuries has been prolonged by her pre-existing injuries. S.M. also claims she has chronic pain syndrome from the January 10, 2013 accident, which was exacerbated by the subject accident.
- [6] The onus is on S.M., based on a balance of probabilities, to prove that she is entitled to the benefit in dispute on the basis that the treatment is reasonable and necessary as a result of the accident.
- [7] I find that S.M. has not provided persuasive evidence to support her position that the medical treatment she claims in this application is reasonable and necessary.

Issues in Dispute

- (i) Is S.M. entitled to receive a medical benefit in the amount \$4,124.88 for chiropractic services, recommended by Kingsbury Family Chiropractic as detailed in a treatment plan dated March 19, 2015?
- (ii) Is S.M. entitled to interest on any overdue payment of benefits?

¹ Dr. Sekyi-Otu, Orthopaedic Surgeon, report dated April 30, 2015 and addendum report dated June 15, 2017.

² Dr. Amena Syed, Psychologist diagnosed S.M. with Adjustment Disorder with Mixed Anxiety and Depressed Mood, report dated July 27, 2017.

- (iii) Is S.M. entitled to costs due to unreasonable, frivolous, vexatious or bad faith actions on the part of Aviva?

Result

- (i) S.M. is not entitled to the treatment plan in dispute.
- (ii) S.M. is not entitled to interest.
- (iii) S.M. is not entitled to costs.

Analysis and Reasons

Is the treatment for chiropractic services reasonable and necessary?

[8] I find that S.M. is not entitled to chiropractic services.

[9] Given that S.M.'s injuries are not predominantly minor; she is eligible for treatment up to \$50,000.00 in medical and rehabilitation benefits.

[10] Under section 15 of the *Schedule*, the test is whether the treatment plan is reasonable and necessary.

[11] S.M. argues that the treatment plan is reasonable and necessary due to injuries she sustained in a previous accident and chronic pain syndrome. As a result of her pre-accident injuries, S.M. submits that recovery from her injuries have been slowed down requiring continued chiropractic treatment, which has reduced her pain.

[12] Aviva submits the treatment plan is not reasonable and necessary because, in the opinion of its medical assessor, S.M. has reached maximum medical recovery for her accident-related injuries and any further facility-based treatment for chiropractic treatment will not improve her condition. Aviva further submits that "S.M. has not identified a single recommendation from any health practitioner to suggest that additional chiropractic treatment is warranted."

[13] In the treatment plan in dispute, Dr. Zoran Zivkovic, Chiropractor indicates "pain reduction, increase in strength, increased range of motion, return to activities of normal living" as the main goals. However, there is no objective medical evidence, such as a report of an assessment of the applicant by Dr. Zivkovic, to support these recommendations. Furthermore, S.M. has not provided additional objective evidence to support the need for further chiropractic treatment.

[14] In her affidavit, S.M. provides statements regarding recommendations from Dr. Nabi, Family Physician (January 14, 2015 and March 27, 2015 visits) and Dr. Boktor, Pain Specialist (March 4, 2016 visit) for physiotherapy. Neither of these two doctors recommends chiropractic treatment. I cannot establish further chiropractic

treatment is reasonable and necessary, when the recommendations from S.M.'s own treating health practitioners do not support chiropractic treatment.

[15] The presence of objective supporting evidence to justify further chiropractic treatment is key in determining whether the medical benefit in dispute is reasonable and necessary. A treatment plan for a medical benefit, without more, is not enough to establish entitlement. In this case, S.M. has only provided a treatment plan, and no other recommendations for chiropractic treatment.

[16] As a result, I cannot decide in favour of S.M. that she is entitled to the medical benefit in dispute. I find S.M. has not met her onus in explaining how this treatment plan meets the test of being reasonable and necessary. Consequently, I do not find the treatment plan reasonable and necessary.

Costs

[17] S.M. seeks costs on the basis that she spent time and effort in preparing submissions about why she should be taken out of the MIG on psychological grounds, when Aviva had already decided to remove S.M. from the MIG based on a psychological IE. S.M. submits that she did not receive the psychological assessment report from Aviva prior to the August 14, 2017 deadline for submissions in this hearing.

[18] S.M. submits that Aviva acted unreasonably and in bad faith, with respect to removing S.M. from the MIG after the submissions deadline in this hearing.

[19] Aviva submits it was unreasonable for S.M. to expect Aviva to communicate the results of the IE before it was released on August 15, 2017. I agree. Aviva provided the findings to S.M. on August 23, 2017.

[20] I do not find Aviva's actions unreasonable, vexatious, frivolous or in bad faith, pursuant to Rule 19.1. As such, S.M. is not entitled to costs.

Conclusion:

[21] S.M. is not entitled to receive a medical benefit in the amount \$4,124.88 for chiropractic services, recommended by Kingsbury Family Chiropractic, as detailed in a treatment plan dated March 19, 2015;

[22] S.M. is not entitled to interest on any overdue payment of benefits; and

[23]S.M. is not entitled to costs.

Date of Release: January 8, 2018

A handwritten signature in black ink, appearing to read 'Derek Grant', with a long horizontal stroke extending to the right.

Derek Grant, Adjudicator