

**LICENCE APPEAL
TRIBUNAL**

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



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

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

Tribunal File Number: 18-005902/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:

L. N. C.

Appellant

and

Aviva General Insurance

Respondent

DECISION

PANEL: Derek Grant

APPEARANCES:

For the Appellant: Loreto Scarola, Paralegal

For the Respondent: Sonya Katrycz, Counsel

HEARD: In Writing on: March 25, 2019

OVERVIEW

- [1] The applicant (“L.N.C.”) was injured in an automobile accident (“the accident”) on January 16, 2017 and sought insurance benefits pursuant to the *Statutory Accident Benefits Schedule – Effective September 1, 2010*¹ (the “Schedule”). When her claims for benefits were denied by the respondent (“Aviva”), L.N.C. applied to the Licence Appeal Tribunal – Automobile Accident Benefits Service (the “Tribunal”).
- [2] Aviva denied L.N.C.’s claims because it determined that the proposed treatment for psychological services was only partially reasonable and necessary but not the remaining balance. In addition, that the chiropractic treatment was not reasonable and necessary. L.N.C.’s position is the opposite.

ISSUES

- [3] The issues to be determined are as follows:
- i. Is remaining balance of the treatment plan in the amount of \$1,094.55 for psychological services recommended by Pilowsky Psychology Professional Corporation, dated May 19, 2017, submitted June 13, 2017, and denied by the respondent on June 19, 2017, reasonable and necessary?
 - ii. Is the treatment plan in the amount of \$2,174.10 for chiropractic services recommended by West Queensway Health Centre in a treatment plan dated June 28, 2017, submitted July 8, 2017, and denied by the respondent on August 16, 2018, reasonable and necessary?
 - iii. Is the remaining balance of the treatment plan in the amount of \$1,382.18 for psychological services recommended by Pilowsky Psychology Professional Corporation in a treatment plan dated November 9, 2017, submitted December 1, 2017, and denied by the respondent on February 7, 2018, reasonable and necessary?
 - iv. Is the cost of examination expense in the amount of \$503.90 for psychological assessment recommended by Pilowsky Psychology Professional Corporation in a treatment plan dated March 24, 2017, submitted April 5, 2017, and denied by the respondent on June 1, 2017, reasonable and necessary?

¹ O. Reg. 34/10.

- v. Is L.N.C. entitled to interest on any overdue payment of benefit?
- vi. Is L.N.C. entitled to an award under *Ontario Regulation 664*² because Aviva unreasonably withheld or delayed payment of benefits?

FINDINGS

- [4] In her submissions, L.N.C. withdrew issue numbered iv. Therefore, I will not be making a finding regarding that issue as it is no longer in dispute. For the reasons that follow, I find:
- i. The remaining balance of the May 19, 2017 treatment plan is not reasonable and necessary.
 - ii. L.N.C. is not entitled to the June 28, 2017 treatment plan for chiropractic treatment.
 - iii. The remaining balance of the November 9, 2017 treatment plan is not reasonable and necessary.
 - iv. L.N.C. is not entitled to interest.
 - v. L.N.C. is not entitled to an award.

ANALYSIS

- [5] Sections 14 and 15 of the *Schedule* provide that an insurer is only liable to pay for reasonable and necessary medical expenses incurred as a result of the accident. The applicant bears the onus of proving on a balance of probabilities that any proposed treatment or assessment plan is reasonable and necessary.³

Issue (i) May 19, 2017 treatment plan – remaining balance not reasonable and necessary

- [6] L.N.C. is not entitled to payment of the remaining balance for psychological treatment as proposed in the treatment plan because she has failed to prove on a balance of probabilities that it is reasonable and necessary.
- [7] Aviva approved the treatment portion of the treatment plan, in the amount of \$1,795.32. Aviva contends the same treatment plan proposed 16 hours of "documentation, support activity" totalling \$770.83; 3 hours of "planning,

² s.10, Regulation 664, R.R.O. 1990, *Insurance Act*

³ *Scarlett v. Belair*, 2015 ONSC 3635 (CanLII)

service" totalling \$94.50; 3 hours of "assessment, mental health and addiction" totalling \$448.83; and educational materials at a cost of \$20.00. These services were denied on the basis that they are not reasonable and necessary.

- [8] L.N.C. submits that the psychologist who prepared the treatment plan felt it reasonable to propose certain time allotments to prepare documentation in relation to the counselling sessions. L.N.C. claims these recommendations were based on proper training and experience.
- [9] L.N.C. further submits that Aviva has not been able to produce any past Tribunal decisions whereby the Adjudicator has deemed such treatment plans unreasonable and unnecessary based on an insurer's assertion that the time allotments proposed to complete certain components of the OCF-18 were excessive.
- [10] I disagree with L.N.C.'s position for the following reasons. The report⁴ notes that the assessment was conducted "with the assistance of a psychometrist" but does not name the psychometrist or their qualifications or specify what aspects of the assessment were conducted by that psychometrist. This report notes that Dr. Pilowsky will not be doing the treatment but rather a Sabrina Buzzanca, M.A., psychotherapist, under her direct supervision.
- [11] I find that reliance on an assessment on behalf of an insured should clearly indicate who conducted the assessment, for the purpose of clarity. It is difficult to conclude that various references or third person references can be justified as the assessor or treatment provider where there is ambiguity as to the author of the report, and/or the provider of the treatment. A signature of the supervising medical examiner is not sufficient as the author/conductor of an assessment, when the assessment was clearly conducted by a third party/supervised assessor.
- [12] The onus is on L.N.C. to establish the treatment plan, in whole or in part, is reasonable and necessary. L.N.C. has not directed me to any legislation, regulation or any other legal remedy that places the onus on the insurer to establish whether the fees listed in a treatment plan are reasonable and necessary. As such, L.N.C. has not satisfied her burden that the remaining balance is reasonable and necessary.

⁴ Dr. Pilowsky Psychology report dated May 19, 2017

Issue (ii) June 28, 2017 treatment plan – remaining balance not reasonable and necessary

- [13] For the reasons that follow, I find that the treatment plan is not reasonable and necessary. L.N.C. submitted as evidence a treatment plan completed by Dr. John Bare, Chiropractor. Part 8 details L.N.C.'s Activity Limitations. Part 9 (a) sets out the treatment goals. Part 9 also lists the possible barriers to recovery as "chronic pain now over 5 months in duration...this plan [is] to help with her chronic biomechanical joint pain that has become chronic". Part 12 lists the proposed service, frequency and costs therein.
- [14] A treating physician's mention of a chronic pain condition be it 'syndrome' or specific use of the term 'chronic pain' is not enough in establishing the impact on functionality. In order to be persuasive, medical evidence related to chronic pain should include an assessment of how the pain affects L.N.C.'s functionality or ability to perform her activities of daily living. L.N.C. has provided me with no such medical evidence that her injuries/impairments are chronic in nature or that chronic pain is the cause of her disability.
- [15] L.N.C. directed me to the clinical notes and records of Dr. Janice Ortiz-Singh, Family Physician. Dr. Ortiz-Singh attributes L.N.C.'s back pain to stress and weight. In her notes, Dr. Ortiz-Singh recommends physiotherapy on several visits between January 20, 2017 and June 22, 2017. Dr. Ortiz-Singh also recommends L.N.C. start with taking medication for pain relief. Dr. Ortiz-Singh additionally recommends "aggressive lifestyle changes and core-strengthening" as well as weight lost measures. During a July 22, 2017 visit, Dr. Ortiz-Singh attributes L.N.C.'s back pain to stress and weight. There is no mention of any accident-related symptoms.
- [16] I do not find the treatment plan is reasonable and necessary, when the recommendations from L.N.C.'s own treating health practitioner does not support chiropractic care. Outside of the disputed treatment plan, there is no recommendation for chiropractic treatment. Further, L.N.C.'s self-reporting doesn't justify that further chiropractic care would helpful for her symptoms.
- [17] A treatment plan for a medical benefit, contradicted by the insured's self-reporting⁵, and treatment provider(s) recommending different treatment modalities, is not enough to establish entitlement. In this case, L.N.C. has

⁵ Marital issues impacting mental health, dietary challenges, other non-accident related health concerns

provided a treatment plan, and no other recommendations for chiropractic treatment.

- [18] As a result, I find L.N.C. 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.

Issue (iii) November 9, 2017 treatment plan – remaining balance not reasonable and necessary

- [19] L.N.C. is not entitled to payment of the remaining balance for psychological treatment as proposed in the treatment plan because she has failed to prove on a balance of probabilities that it is reasonable and necessary.
- [20] As with the May 2017 treatment plan, Aviva partially approved treatment for L.N.C. This treatment plan proposed 12 one-hour sessions of psychotherapy at a total cost of \$1,795.32. The same OCF-18 also proposed 14 hours of "documentation, support activity" totalling \$471.61; 3 hours of "planning, service" totalling \$94.50; 3 hours of "assessment, mental health and addiction" totalling \$448.83; and educational materials at a cost of \$20.00. The remaining amounts, represent what Aviva denied funding for, taking the position that the remaining balance was not reasonable and necessary.
- [21] L.N.C. contends that "the billings submitted by Dr. Pilowsky's office represented approved treatment that was rendered to the Applicant". I am not directed to any persuasive evidence from L.N.C. that establishes the remaining balance is reasonable and necessary. Neither Dr. Pilowsky or Ms. Buzzanca provide a breakdown or explanation of the fees or why the services/fees are required in addition to the recommended treatment.
- [22] Aviva partially approved the treatment plan for the treatment portion. I agree that the treatment portion is reasonable and necessary, based on Dr. Pilowsky's conclusion that L.N.C. suffers from Post-Traumatic Stress Disorder, and Aviva's assessor, Dr. Lee, Psychologist, who also concluded that L.N.C. suffered from "Adjustment Disorder with Mixed Anxiety and Depressed Mood". Despite this, L.N.C. does not provide me with convincing evidence regarding her entitlement to the remaining balance. As such, I do not find the remaining to be reasonable and necessary.

Issue (iv) L.N.C. is not entitled to an award

- [23] Section 10 of Regulation 664 permits the Tribunal to award a lump sum of up to 50% of the amount to which the insured person (i.e. L.N.C.) was entitled at the time of the award together with interest on all amounts then owing (including unpaid interest) if it finds that that an insurer (i.e. Aviva) has “unreasonably” withheld or delayed payments.
- [24] In a letter dated January 31, 2018, Dr. Pilowsky advised L.N.C. and Aviva, that they were immediately suspending treatment services due to an outstanding balance in the amount of \$818.05. According to the letter, “The PPC⁶ can no longer afford to continue working without the requisite approval and/ or payment(s) from your insurer and that is why the PPC is severing the relationship immediately”. L.N.C. submits the “responsibility of her not able to achieve a significant level of recovery lies squarely on the shoulder of the Respondent”.
- [25] Aviva argues that it was in fact prejudiced on the basis that it had not received Dr. Pilowsky’s records. In reply, L.N.C. provides evidence of requests for documents/records with the subsequent compliance dates and documents provided. I find that Aviva’s requests for documents were complied with.
- [26] L.N.C. contends that Aviva agreed to the professional services rate of \$149.61 per hour, in a letter from Dr. Pilowsky dated March 5, 2018. As such, L.N.C contends the remaining balances should be paid. L.N.C. submits the remaining balance fees for services charged by Sabrina Buzzanca whom, Dr. Pilowsky noted, holds the qualifying credentials to charge this rate. Aviva made no submissions on the issue of its agreement to the professional services rate.
- [27] Despite this, I find that the balance of the psychological treatment plans are not reasonable and necessary. L.N.C. has not provided me with convincing evidence that the fees are reasonable or necessary.
- [28] There is no evidence before me that Aviva has established the threshold behavior required to justify an award claim under section 10. As a result, I find that Aviva has not unreasonably withheld or delayed payment for any benefit; therefore L.N.C. is not entitled to an award.

⁶ Pilowsky Psychology Professional Corporation

CONCLUSION

[29] L.N.C. is not entitled to payment for the treatment plans claimed in this application. L.N.C. is not entitled to an award. Her application is dismissed.

Released: August 29, 2019

A handwritten signature in black ink, appearing to read 'Derek Grant', is written over a horizontal line.

**Derek Grant
Adjudicator**