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: **18-008904/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:

R.K.

Applicant

and

RBC General Insurance Company

Respondent

DECISION

ADJUDICATOR: **Jesse A. Boyce**

APPEARANCES:

For the Applicant: Elena Steinberg

For the Respondent: Laura C. Meschino

Written Hearing: June 24, 2019

OVERVIEW

[1] The applicant, R.K., was injured in an automobile accident on September 15, 2016. R.K. sought various benefits from the respondent, RBC, pursuant to the *Statutory Accident Benefits Schedule – Effective September 1, 2010*[1] (the *"Schedule").*

[2] R.K. was taken out of the Minor Injury Guideline (MIG) by RBC on the basis of psychological impairments. He then submitted multiple treatment and assessment plans that were denied by RBC on the basis that they were not reasonable and necessary. R.K. disagreed and applied to the Licence Appeal Tribunal – Automobile Accident Benefits Service (the "Tribunal") for resolution of the dispute. A case conference was held but the parties were unable to settle the issues and dispute and, thus, proceed to this written hearing.

ISSUE

[3] The issues in dispute as outlined in the Case Conference Order dated February 28, 2019, are as follows:

i. Is the applicant entitled to a medical and rehabilitation benefit in the amount of $3,939.43 for physiotherapy treatment recommended by Complete Rehab in a treatment plan (OCF-18) submitted on October 11, 2016 and denied by the respondent on October 25, 2016?

ii. Is the applicant entitled to a medical and rehabilitation benefit in the amount of $2,399.49 for physiotherapy treatment recommended by Complete Rehab in a treatment plan (OCF-18) submitted on February 17, 2017 and denied by the respondent on March 6, 2018?

iii. Is the applicant entitled to a medical and rehabilitation benefit in the amount of $2,042.38 for physiotherapy treatment recommended by Complete Rehab in a treatment plan (OCF-18) submitted on June 20, 2017 and denied by the respondent on July 4, 2017?

iv. Is the applicant entitled to a medical and rehabilitation benefit in the amount of $1,816.74 for physiotherapy treatment recommended by Complete Rehab in a treatment plan (OCF-18) submitted on November 22, 2017 and denied by the respondent on November 30, 2017?

[1] O. Reg. 34/10.

v. Is the applicant entitled to interest on any overdue payment of benefits?

RESULT

[4] I find R.K. is not entitled to any of the treatment plans in dispute, as they are not reasonable and necessary.

ANALYSIS

R.K.'s impairments

[5] As a result of the accident, R.K. alleges he sustained physical injuries in the form of sprain and strain injuries to his cervical, thoracic and lumbar spine, his left shoulder, knee, elbow and ribs/sternum, in addition to headaches, sleep disorders and stress.[2] These injuries are in addition to the psychological factors—irritability, frustration, anxiety, poor motivation—that resulted in his removal from the MIG.

[6] Despite this being a written hearing, R.K. offered no substantive submissions on entitlement and instead relies entirely on a letter and the OCF's from Complete Rehab and an OHIP summary covering the period November 12, 2011 to October 4, 2018 to prove that the treatment plans are reasonable and necessary.[3]

Are the treatment plans in dispute reasonable and necessary?

[7] Under section 15(1) of the *Schedule*, an insurer shall pay for all reasonable and necessary medical and rehabilitation benefits incurred by an applicant as a result of an accident. The onus to prove entitlement, on a balance of probabilities, rests with the applicant. I find none of the treatment plans for physiotherapy treatment are reasonable and necessary. I find it clear on the evidence—or lack thereof—that R.K.'s physical impairments from the accident are largely sprain and strain-type injuries that fall squarely within the definition of minor under section 3(1). While a minor injury classification does not automatically mean treatment is unreasonable or unnecessary, I find that R.K. has not provided evidence to prove his burden that it is when the basis for his removal from the MIG and continuing treatment is psychological.

[2] The injuries are documented in an OCF-3 dated September 19, 2016, prepared by Complete Rehab.
[3] Indeed, R.K.'s substantive submissions consisted of the following statements: "The Applicant relies on the Report of Complete Rehab Centre, dated April 23, 2019 (Tab 1.A). The Report addresses all the Issues in Dispute."

[8] Aside from the report of Complete Rehab—addressed below—there is no evidence of any accident-related hospital or doctor visits nearly three years post-accident because none were provided. Similarly, there were no corroborating clinical notes and records provided to speak to R.K.'s alleged physical impairments, diagnoses or prognoses for recovery. The relevant portions of the OHIP summary provided indicate a visit for sprain and strain-type injuries around the time of the accident but are silent thereafter. Further, R.K. was able to return to his pre-accident employment on a full-time basis following the accident, complete all of his personal care and household tasks and there is no objective medical evidence indicating that he had any functional limitations in doing so. Again, while these facts are not determinative, and I accept that treatment may have helped him achieve this level of function, R.K. has not provided the evidence to prove that it did, and that further physical treatment is reasonable and necessary.

[9] The Complete Rehab letter dated April 23, 2019 indicates that R.K. attended the clinic on September 19, 2016 for injuries he sustained in the accident. His initial complaints allegedly mirrored those documented in the OCF-3 prepared by Dr. Jessa, chiropractor. The letter says that R.K. last attended for facility-based treatment on November 17, 2018, however, as noted, R.K. did not provide clinical notes and records to substantiate the type of treatment he received, the frequency of the treatment or the duration of his sessions. The letter indicates that R.K. stopped attending due to RBC's denial, despite the fact he was taken out of the MIG for psychological impairments. The letter suggests that the physical therapies recommended—identified as exercise/stretching, passive modalities, acupuncture and massage as well as some medical devices—are necessary compliments to R.K.'s psychological treatment in order for him to achieve maximal recovery. The letter also states that facility-based care was provided to R.K. on a good faith basis due to the "nature, number and severity of his injuries." Again, no records of this treatment were provided, and the services are largely duplicative.

[10] The onus to prove that each of the treatment plans in dispute are reasonable and necessary lies with the applicant. R.K. made unhelpful substantive submissions on his entitlement and in its letter Complete Rehab seems to rely on the fact that R.K. was removed from the MIG for psychological reasons as evidence of default entitlement to all treatment, in this case: physiotherapy. I disagree. Even though R.K. was removed from the MIG for psychological impairments—a determination which I do not dispute here based on the assessment and progress report of Dr. Mills—that does not make the proposed physical treatment automatically reasonable and necessary, let

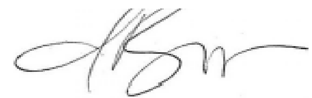
alone payable. R.K. must still provide objective medical or some supportive evidence to justify why further treatment is reasonable and necessary. R.K. provided nothing of the sort and, in the absence of this type of evidence, I find the strategy fatal in proving his entitlement to the treatment plans in dispute.

[11] Where R.K. failed to provide medical evidence, RBC filled in the gap, providing a section 44 report by Dr. Kruger, physician, dated June 12, 2017. The report indicates that R.K. sustained soft-tissue injuries as a result of the accident, listed as cervical strain, lumbar strain/sprain and right knee sprain. From a musculoskeletal perspective, R.K.'s injuries were determined to be minor. In addition, given the lack of evidence of neurological or radicular findings, Dr. Kruger determined that it was likely R.K. had achieved maximum medical recovery from a physical perspective and any further facility-based treatment was not reasonable or necessary. RBC based its denials on this report. Considering the physical injuries identified by Dr. Kruger are the same as those identified by Complete Rehab in the OCF's and, in the absence of compelling evidence suggesting otherwise, I see no reason to depart from RBC's determination that the treatment plans for physiotherapy are not reasonable and necessary.

CONCLUSION

[12] I find R.K. is not entitled to any of the treatment plans in dispute, as they are not reasonable and necessary. Accordingly, no interest is payable.

Released: September 9, 2019



Jesse A. Boyce
Adjudicator