

**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**

**Citation: Shoab Khan vs. Certas Home and Auto Insurance Company, 2020  
ONLAT 18-009813/AABS**

**Released Date: 05/19/2020 File Number: 18-009813/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:

**Shoaib Khan**

**Applicant**

and

**Certas Home and Auto Insurance Company**

**Respondent**

**DECISION**

**ADJUDICATOR: Samia Makhamra**

**APPEARANCES:**

For the Applicant: Meghan Hull, Counsel

For the Respondent: Brian Yung, Counsel

**HEARD: Via Written Submissions**

## **OVERVIEW**

- [1] The applicant was injured in an automobile accident on July 2, 2012. As a result, he sought benefits from the respondent, pursuant to the Statutory Accident Benefits Schedule - Effective September 1, 2010 (the "Schedule").
- [2] The respondent denied the claim in this application on the basis that the treatment plan is not reasonable and necessary. The applicant disagreed and applied to the Licence Application Tribunal - Automobile Accident Benefits Service ("Tribunal").
- [3] The parties participated in a case conference on February 11, 2019 but were unable to resolve their dispute.

## **ISSUES**

- [4] The following are the issues to be decided:
  - i. Is the applicant entitled to the cost of an occupational therapy functional assessment, in the amount of \$2,200.00, recommended by Galit Liffshiz & Associates, a treatment plan (OCF-18) submitted on February 28, 2018, and denied on March 8, 2018?
  - ii. Is the applicant entitled to interest on any overdue payment of benefits?
  - iii. Is the applicant entitled to costs?

## **BACKGROUND**

- [5] The applicant was involved in the accident in question when his motorcycle lost control at high speed. He sustained several injuries that required a two-week stay at Sunnybrook Hospital, followed by an in-patient rehabilitation admission to St. John's Rehabilitation, where he stayed until August 1, 2012. He sustained multiple fractures of his thoracic spine, broken ribs, a fractured scapula, a

collapsed lung, and a closed head injury<sup>1</sup>. Secondary diagnoses included physical, emotional and cognitive problems.

- [6] After discharge from St. John's Rehabilitation, the applicant received treatments such as massage therapy, acupuncture, occupational therapy, and was followed by his family physician.
- [7] Late in 2013 he moved to Yellowknife, NWT, where he was offered a job working in sales. To date, he has received treatment in both, Ontario and Yellowknife.
- [8] In October 2015 the applicant returned to Ontario. He claims that he continues to suffer from physical, emotional and cognitive impairments as a result of his injuries.

### The Treatment Plan

- [9] The treatment plan in dispute is for an occupational therapy functional assessment recommended by Galit Liffshiz. The goal of the treatment plan is to determine the applicant's level of function and help identify his rehabilitation. Under activity limitations, Ms. Liffshiz stated that the applicant is unable to return to his pre-accident activities of normal life or employment tasks, due to his injuries including chronic pain, emotional and cognitive impairments, difficulties with memory and concentration, and feelings of depression. She noted that the applicant is working in a call centre but has ongoing difficulty due to pain and cognitive issues that affect his vocational goals. Under description of the assessment, Ms. Liffshiz noted "Med/Rehab – includes initial assessments for OCF-23 and OCF-18; S.15 and S.16 benefits", and documentation.

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<sup>1</sup> Noted in the emergency record of Sunnybrook Hospital of July 3, 2012, and subsequently investigated through CT scans and brain MRI. The records are found in the clinical notes and records of Dr. Athaide.

[10] The respondent denied it on the basis that it is not reasonable and necessary, as there had been no activity in the file for two years, and no medical information on file to substantiate a reason for the assessment.

## **RESULT**

[11] I find that the treatment plan is not reasonable and necessary.

### **The submissions of the parties**

[12] The applicant provided an account of his injuries and treatment he has received until some time in 2015, when he was still employed and had extended health benefits. He also mentioned an occupational therapy functional assessment he underwent in June of 2016. He claimed he continues to suffer from chronic physical pain and cognitive issues. Regarding the treatment plan in dispute, the applicant submitted that he needs it in order to manage his pain.

[13] The respondent submitted that the applicant failed to provide evidence that the treatment plan is reasonable and necessary. Updated clinical notes and records did not show a material change in his overall health, or that he sought any treatment since 2016. In addition, the applicant has undergone a functional capacity assessment in 2016 funded by the respondent, but there is no evidence that he followed any of the recommendations of that assessment.

## **ANALYSIS**

[14] Under ss. 14 to 17 of the *Schedule*, for a benefit to be payable, the treatment plan must be reasonable and necessary. The onus is on the applicant to demonstrate, on a balance of probabilities, that the treatment plan is reasonable and necessary, as a result of injuries from the accident.

[15] I find that the treatment plan is not reasonable and necessary. The applicant stated that he continues to suffer from chronic pain and cognitive impairment but has not provided evidence to support this claim.

[16] I reviewed the medical records and did not find evidence for the treatment plan to be reasonable and necessary. The clinical notes and records are from the following treatment providers:

- i. Dr. Athaide, family physician, there are records dating as early as November 1996, to January 18, 2017;
- ii. Yellowknife Primary Care Centre and Frame Lake Community Health Clinic, from December 12, 2014 to May 17, 2019;
- iii. Dr. Mike Bokor, from December 11, 2014 to May 30, 2015; and
- iv. 4 Elements Orthopaedic Massage Clinic, from November 2014 to December 2015.

[17] Significantly, the applicant attended an occupational therapy functional assessment in June 2016 but has not submitted any evidence of receiving treatment since then or having followed any of the recommendations. A report dated June 28, 2016 listed several recommendations including occupational therapy intervention at a rate of once weekly for 15 weeks, a psychological assessment, a neuropsychological assessment, a physiatry assessment, a gym membership that includes yoga classes, and an orthopedic mattress. Yet, there is no information on whether the applicant received any of the recommended treatments or assessments.

[18] Indeed, the only evidence that the applicant saw a health professional since June 2016 is from a visit dated November 16, 2018 to Dr. Hashmat Ayoubit, with complaints of pain in his left lower rib and paraspinal muscles, for which he was advised to treat with heat and Advil and follow up as necessary. In other words, aside from this doctor's visit in November 2018, the applicant has provided no medical evidence that post dates the assessment of June 2016. Without such evidence, it is difficult to understand or accept the applicant's reasons for yet another occupational therapy assessment.

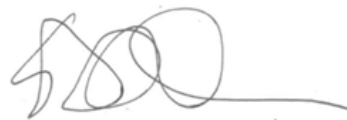
[19] It may well be that the applicant is still having difficulties from his injuries, however, he has not provided me with any evidence to find in favor of this treatment plan.

[20] The applicant's request for costs is dismissed. The Tribunal has the jurisdiction to consider costs in the *Statutory Powers and Procedures Act* and its own Rules. Specifically, Rule 19.1 provides that a party may request costs where a party believes that another party in a proceeding has acted unreasonably, frivolously, vexatiously, or in bad faith. The applicant has not directed me to any evidence of such conduct of the respondent in this proceeding.

## **CONCLUSION**

[21] The treatment plan in dispute is not reasonable and necessary. No interest is owed, as a result. Further, the applicant is not entitled to costs.

**Released: May 19, 2020**



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**Samia Makhamra, Adjudicator**