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: Habiba Mohamed vs. Aviva Insurance Company of Canada, 2020 ONLAT 19-007029/AABS

Released Date: 08/28/2020 File Number: 19-007029/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:

Habiba Mohamed

Applicant

And

Aviva Insurance Company of Canada

Respondent

DECISION

ADJUDICATOR: **Rebecca Hines**

APPEARANCES:

For the Applicant: Dharshika Pathmanathan, Counsel

For the Respondent: Patrick Baker, Counsel

HEARD: **By way of written submissions**

OVERVIEW

[1] Habiba Mohamed (the “applicant”) was involved in an automobile accident on October 23, 2016 and sought benefits from Aviva Insurance Company of Canada (the “respondent”) pursuant to the *Statutory Accident Benefits Schedule* - Effective September 1, 2010 (the "Schedule"). The applicant was denied certain benefits by the respondent and submitted an application to the Licence Appeal Tribunal - Automobile Accident Benefits Service (“Tribunal”).

[2] The parties participated in a case conference but were unable to resolve the issues in dispute. The matter proceeded to this written hearing.

ISSUES

[3] I have been asked to decide the following issues in dispute:

i) Is the applicant entitled to a medical benefit in the amount of $4,424.47 for chiropractic treatment recommended by Physio Fix and Fitness (Physio Fix), in a treatment plan (OCF-18) submitted on March 9, 2017 and denied on July 5, 2017?

ii) Is the applicant entitled to a medical benefit in the amount of $4,140.54[1] for chiropractic treatment recommended by Physio Fix, in a treatment plan (OCF-18) submitted on August 24, 2017 and denied on August 31, 2017?

iii) Is the applicant entitled to interest on any overdue payment of benefits?

RESULT

[4] After reviewing the parties’ submissions and all the evidence, I find that the applicant is not entitled to either treatment plans in dispute or interest as I do not find that the treatment plans are reasonable and necessary.

BACKGROUND

[5] On October 23, 2016, the applicant was a passenger in a vehicle which was rear-ended. She maintains that she sustained injuries to the left side of her body and felt pain in her neck, shoulder, back and ribs as well as a psychological impairment. Police and ambulance attended the scene and she was transported to the hospital where she underwent x-rays in which the results were normal.

[1] The amount was listed incorrectly as $3,717.54 in the Tribunal’s order dated February 17, 2020.

[6] Shortly following the accident, the applicant attended Physio Fix for physical treatment until September 2017.

[7] The applicant was removed from the Minor Injury Guideline as a result of a psychological impairment.

Is the applicant entitled to the chiropractic treatment plans recommended by Physio Fix?

ANALYSIS

[8] The applicant is not entitled to either of the disputed treatment plans or interest.

[9] Sections 14 and 15 of the *Schedule* provide that an insurer is only liable to pay for medical expenses that are reasonable and necessary as a result of an accident. The applicant bears the onus of proving on a balance of probabilities that any claimed medical expenses are reasonable and necessary.

[10] The first treatment plan dated February 16, 2017, authored by Dr. Tran, chiropractor, noted that the applicant had the following activity limitations: pain with bending, twisting, lifting, carrying, pushing, pulling, difficulty with overhead activity and prolonged sitting and weight bearing. The goals of the treatment plan were to decrease pain and increase strength and range of motion to return the applicant to normal activities of daily living. Dr. Tran proposed 18 sessions of physiotherapy, massage and laser, completion of reports, and recommended various assistive devices such as a heating pad and exercise equipment at a total cost of $4,424.47 over six weeks.

[11] The second treatment plan authored by Dr. Jeyapalan, chiropractor, is identical as far as the activity limitations and goals. No progress from the previous treatment plan is noted and it proposed 15 sessions of comprehensive rehab, massage, laser therapy, exercise sessions and recommended a massage seat pillow, body pillow and biofreeze for a total cost of $4,140.54 over six weeks.

[12] The applicant argues that the two treatment plans in dispute are reasonable and necessary because she still suffers from physical pain as a result of the accident. Further, her pain has interfered with her ability to carry out her activities of daily living and past treatment has been helpful in alleviating her pain. In support of her position that the treatment plans are reasonable and necessary, the applicant relies on hospital records, clinical notes and records (“CNRs”) of Dr. Patel, family doctor, and session notes and progress reports from Physio Fix. The applicant also contends that she consistently reported her ongoing physical pain and functional limitations to all assessors.

[13] The respondent submits that the evidence relied upon by the applicant does not support her position that she has any ongoing physical impairments which require further physical treatment. The respondent contends that the applicant has not submitted any objective evidence of any physical impairment beyond November 10, 2016. Further, her self-reports to assessors of ongoing pain is not based on any objective evidence. The respondent relies on the insurer examination ("IE") of Dr. Benfayed, orthopaedic surgeon, dated April 7, 2017 who determined that the applicant did not suffer from any ongoing physical impairment and opined that further treatment is not reasonable and necessary. For the reasons that follow, I agree with the respondent.

[14] I find the hospital records and the CNRs of Dr. Patel do not support that the applicant suffers from any ongoing physical impairment that requires chiropractic treatment. The hospital records confirm that she attended the hospital on the day of the accident and returned again a few days later complaining of pain on her left side including her neck, back, shoulder and headaches. The hospital recommended that she follow up with her family doctor. Dr. Patel's CNRs confirm that she attended on three occasions on October 25, and November 1, and 10, 2016. On these dates she complained of pain in her head, left arm, ribs, hip and lower back. On the last visit, Dr. Patel recommended that she take Tylenol and continue with physiotherapy. I find the applicant's last visit to her family doctor in which she complains of ongoing pain pre-dates the submission of the first treatment plan in dispute by four months. What I found lacking from the applicant's evidence was an updated CNR from the applicant's family doctor recommending that she continue with physical therapy or chiropractic treatment.

[15] As highlighted by the respondent, the applicant did not submit any CNRs from her family doctor or OHIP records beyond November 2016. In the psychological assessment of Karon Bernstein, counsellor (supervised by Dr. Bodnar, psychologist) dated May 26, 2017, the applicant reported that she has continued to see Dr. Patel about her accident-related complaints every three to six weeks. However, these records were not submitted for this hearing. The applicant submitted an OCF-3 signed by Dr. Patel dated October 18, 2018 in support of her position that she still suffers from an ongoing physical impairment. The OCF-3 notes "whiplash injury" under accident related sequalae. The form attaches a CNR dated October 25, 2016 to support that the applicant suffers from an ongoing physical impairment. I agree with the respondent that this stale dated CNR is not persuasive evidence that the applicant has any ongoing physical impairment that requires chiropractic treatment. Further, no explanation was provided by the applicant for the two-year gap between her last visit to her family doctor on November 10, 2016 and the submission of the disability certificate.

[16] I did not find the session notes of Physio Fix helpful in assessing whether the treatment plans are reasonable or necessary. Most of the notes are not legible and while the attendance records confirm that the applicant attended treatment there is no indication that past treatment resulted in any improvement to her strength or range of motion ("ROM"). Some of the notes state that the applicant felt better after treatment. However, I found this inconsistent with the applicant's statement to IE psychological assessor, Dr. Day as the report dated June 6, 2017 indicates that the applicant "continues to attend physiotherapy treatment but… she sometimes misses these sessions, as her lack of improvement in response to this intervention has left her discouraged and unmotivated to participate." In my view, the applicant's statement to Dr. Day contradicted her argument that further physical treatment is needed or that the goals of the treatment plan would be achieved.

[17] The applicant submitted two progress reports dated February 16, 2017 and July 22, 2017 authored by Dr. Tran and Dr. Jeyapalan, chiropractors with Physio Fix, as well as self-evaluation forms completed by the applicant. I did not find these reports helpful as, with the exception of a few minor edits, the reports are practically identical and did not support that the applicant had made any gains or improvements in between the dates the reports were authored. Both chiropractors recommend the therapy outlined in the treatment plans but do not explain how the therapy will meet its stated objectives or outline progress made from past treatment.

[18] It is well established law that for an insured to prove that a medical benefit is reasonable or necessary the proposed treatment will have a therapeutic, restorative, or pain reductive impact to improve function. In my view, the applicant did not submit persuasive evidence to establish that the multiple modalities proposed will alleviate her pain, increase her ROM or lead to any functional improvement. Further, the applicant did not address the cost of each of the disputed treatment plans. I find both treatment plans excessive, and I am not satisfied that the proposed treatment will meet its stated objectives based on the evidence before me.

[19] By contrast, the respondent relied on the IE report of Dr. Benfayed orthopaedic surgeon dated April 7, 2017 who determined that the soft tissue injuries sustained by the applicant had resolved as of the date of the assessment. Dr. Benfayed's physical examination revealed that the applicant had full range of motion. Dr. Benfayed opined that further physical treatment was not reasonable or necessary. I accept Dr. Benfayed's opinion as it is more consistent with the evidence before me.

[20] The applicant has not met her onus in proving on a balance of probabilities that the treatment plans in dispute are reasonable and necessary. No interest is payable as I have not determined that any benefits are overdue.

ORDER

[21] For all of the above reasons, I find as follows:

i) the applicant is not entitled to either treatment plans in dispute or interest; and

ii) the application is dismissed.

Released: August 28, 2020

Rebecca Hines
Adjudicator