

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



Citation: Shevanie Pundit vs. Aviva Insurance Canada, 2020 ONLAT 19-005786/AABS

Released Date: 09/25/2020
File Number: 19-005786/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.P.

Applicant

and

Aviva Insurance Canada

Respondent

DECISION

ADJUDICATOR: Robert Watt

APPEARANCES:

For the Applicant: Shevanie Pundit, Applicant
Marc Golding, Counsel

For the Respondent: Chantalle Youkhana, Counsel

Heard by way of written submissions

OVERVIEW

- [1] The applicant was injured in an automobile accident on April 11, 2017 and sought benefits from the respondent pursuant to the *Statutory Accident Benefits Schedule - Effective September 1, 2010* (“*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.

ISSUES IN DISPUTE

- [3] The issues in dispute were identified and agreed to as follows:
 - (i) Did the applicant sustain predominantly minor injuries as defined under the *Schedule*?
 - (ii) Is the applicant entitled to a medical benefit for treatment recommended by Inline Rehabilitation Centre Inc. for the following:
 - (a) \$3,948.91 for physiotherapy services as set out in a treatment plan submitted on July 19, 2017, and denied by the respondent on July 31, 2017?
 - (b) \$3,191.25 for physiotherapy services as set out in a treatment plan submitted on September 27, 2017, and denied by the respondent on October 9, 2017?
 - (c) \$3,416.68 for psychological services as set out in a treatment plan submitted on September 27, 2017, and denied by the respondent on October 9, 2017?
 - (iii) Is the applicant entitled to payment for the cost of an examination in the amount of \$1,920.53 for a psychological assessment, recommended by Inline Rehabilitation Centre Inc., in a treatment plan submitted on July 24, 2017, and denied by the respondent on August 2, 2017?
 - (iv) Is the applicant entitled to interest on any overdue payment of benefits?

RESULTS

- [4] The applicant sustained predominantly minor injuries as defined under the *Schedule*?

- [5] The applicant is not entitled to medical benefits for physiotherapy and psychological treatments recommended by Inline Rehabilitation Centre Inc.
- [6] The applicant is not entitled to payment for the cost of an examination in the amount of \$1,920.53 for a psychological assessment
- [7] The applicant is not entitled to interest on any overdue payment of benefits.

BACKGROUND

- [8] The applicant was involved in a motor vehicle accident on April 11, 2017, where she was rear ended. She did not attend the hospital, after the accident. The applicant attended her family doctor, Dr. Sidhu on April 15, 2017. Her doctor diagnosed her with minor injuries, and prescribed Tylenol and physiotherapy.¹
- [9] She attended her family doctor in August 2017, and in April 2018. The applicant had no serious pre-accident health issues. She began attending at Inline Rehabilitation on April 27, 2017. An OCF-3 dated May 1, 2017 prepared by Dr. Nana Barnes Chiropractor, listed the injuries as a result of the accident as: sprain and strain of the cervical, thoracic and lumbar spine; sacroiliac joint and shoulder joint, rotator cuff capsule, headache, malaise and fatigue, symptomatology of post-traumatic stress disorder.²
- [10] Dr. Valery Kleiman, psychologist, on a psychological assessment of the applicant on July 31, 2017 reported that the applicant presented with “symptoms of psychological stress, disrupted sleep, reduced energy and motivation, and increases irritability.³ The applicant was diagnosed with Adjustment Disorder with Mixed Anxiety and Depressed Mood in partial remission.
- [11] Dr. S. Moshiri, psychologist, on an insurer’s examination, reported on January 2, 2018, that the applicant denied having any depression, anger, or anxiety. Dr. Moshiri opined that that the applicant did not sustain an impairment as a result of the accident and did not have a diagnosable psychological condition.⁴
- [12] On July 12, 2018, the applicant saw D. S. Shahzad complaining of back pain. She was diagnosed with mechanical back pain and advised to attend for

¹ Tab 7 Clinical Notes and Records of Dr. Sidhu dated April 15, 2017

² Tab 12 OCF-3 prepared by D. N Barnes dated May 1, 2017

³ Tab 7-Applicant Brief -Dr. Valerie Kleiman’s Psychological Report dated September 21, 2017

⁴ Tab 10-s. 44 Psychological Insurer’s examination report Dr. s. Moshiri dated January 2, 2018

massage or physiotherapy.⁵ This pain was not diagnosed as connected to the accident.

- [13] A Physiatry Assessment on an Insurer's Examination was completed on the applicant and a report issued by Dr. Zabieliauskas on January 2, 2018. Dr. Zabieliauskas opined that the applicant suffered a cervical strain WAD 11, bilateral shoulder strain and a thoracolumbar strain. He determined that the applicant suffered a minor injury and that the applicant had made a full recovery from the soft tissue injuries sustained in the accident.⁶

ANALYSIS

Did the applicant sustain predominantly minor injuries as defined under the *Schedule*?

- [14] I find that the applicant's injuries fall within the MIG for the reasons set out below.

- [15] Section 3(2) of the *Schedule* describes a minor injury as one or more of a strain, whiplash associated disorder, contusion, abrasion, laceration, or subluxation and includes any clinically associated sequelae to such an injury. Section 18 of the *Schedule* limits the benefits to \$3,500.00, unless the insured person had a pre-existing medical condition that was documented by a health practitioner before the accident, and that will prevent the insured person from receiving maximum recovery from the minor injury if the insured person is subject to the \$3,500.00.

- [16] The Minor Injury Guideline makes it clear that a pre-existing condition is not automatic grounds for exclusion from MIG;

“Only in extremely limited instances, where compelling evidence provided by a health practitioner satisfactorily demonstrates that a pre-existing condition that was documented by a health practitioner before the accident, and that will prevent a person from achieving maximal recovery from the minor injury for the reasons described above, is the person's impairment to be determined not to come within this Guideline. Exclusion of a person from this Guideline based on reasons, or evidence falling short of this requirement, is inconsistent with the intent of the SABS and this Guideline.”⁷

- [17] The onus is on the applicant to show entitlement to medical benefits in excess of the \$3 500.00 limit under the MIG.⁸

⁵ Ta 14 Clinical notes and records of d. s. Shahzad dated July 12, 2018 to March 23, 2019

⁶ Tab 11-s44 Physiatry Insurer's Examination Report-Dr. R. Zabieliauskas dated January 2, 2018 p.5

⁷ SABS Guideline

⁸ *Scarlett v. Belair Insurance* 2015 ONSC 3635 (CanLII)

- [18] The applicant had no pre-existing medical condition that was documented by a health practitioner before the accident, and that would prevent the insured person from receiving maximum recovery from the minor injury if the insured person is subject to the \$3,500.00.
- [19] The applicant's own family doctor, Dr. Sidhu diagnosed her with minor injuries. The applicant reported to Dr. Moshiri that she had no depression, anger or anxiety. Dr. Moshiri diagnosed her with no psychological condition. Dr. Zabieliauskas diagnosed the applicant with minor injuries and that the applicant had made full recovery. The back pain that the applicant complained of was not shown to be connected to the accident. Dr. Kleiman reported that the applicant was recovering from her adjustment disorder of mixed anxiety and depressed mood.

Is the applicant entitled to medical benefits for physiotherapy and psychological treatment recommended by Inline Rehabilitation Centre Inc.?

- [20] I find that the treatment plans are not reasonable and necessary, for the reasons set out below.
- [21] Section 15 of the *Schedule* requires all medical and rehabilitation expenses to be paid by an insurer, if they are reasonable and necessary.
- [22] In order to establish that goods and services are reasonable and necessary, an insured person has to show that the goods and services requested will have a rehabilitative purpose or at a minimum, lead to a reduction of pain. This is proven through primary care records from a family doctor as an example or on the recommendation of a medical expert qualified for that purpose.^{9 10} The treatment plan must identify goals that are reasonable; the goals are being met to a reasonable degree and the overall cost (not just financial but also investment of time, etc.) of achieving these goals is reasonable taking into consideration both the degree of success and the availability of other treatment alternatives.¹¹
- [23] Section 15 of the *Schedule* requires all expenses to be incurred, except where section 3(8) applies.

⁹ Tab 30 D.J. v Aviva Insurance Canada 2016 CanLII 93136 (ON LAT) at para 34-36

¹⁰ Tab 31 A.K. v. Aviva Canada 2017 CanLII 93460 (ON LAT) at para 16-18

¹¹ 16---1732 v Wawanesa Mutual Insurance Company, 2017 CanLII 81594 (ONT LAT) at para 21 Tab R

- [24] The applicant has not set out any submissions relating to the treatment goals, whether they are being met, or the costs of the plans considering the success of this treatment, and whether the expense has been incurred.
- [25] The applicant never complained of any psychological issues to her family doctor, who could have referred her to a specialist for psychiatrist issues. I accept the reports of Dr. S. Moshiri and dr. Dr. Zabieliauskas over that of Dr. Dr. Valery Kleiman because their reports confirm what the applicant reported to Dr. Moshiri that she had no depression, anger or anxiety. Dr. Kleiman did note however that the applicant was recovering from her adjustment disorder of mixed anxiety and depressed mood.
- [26] It is also clear from the reports of Dr. Sidhu and from Dr. Zabieliauskas, that the injuries suffered were minor injuries.

Is the applicant entitled to payment for the cost of an examination in the amount of \$1,920.53 for a psychological assessment, recommended by Inline Rehabilitation Centre Inc., in a treatment plan submitted on July 24, 2017, and denied by the respondent on August 2, 2017?

- [27] I find that the treatment plan is not reasonable and necessary.
- [28] I rely on my reasons set out in paragraphs [22] to [26].

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

- [29] As no benefits are owing, I find that there is no interest owing.

CONCLUSION

- [30] The applicant's application is dismissed

Released: September 25, 2020



**Robert Watt
Adjudicator**