

**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: Parkes vs. Intact Insurance Company 2020 ONLAT 19-012377/AABS**

**Released Date: 12/24/2020  
File Number: 19-012377/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:

**Stephanie Parkes**

**Applicant**

and

**Intact Insurance Company**

**Respondent**

**DECISION**

**ADJUDICATOR: Jesse A. Boyce, Vice-Chair**

**APPEARANCES:**

For the Applicant: Erin M. Murray, Counsel

For the Respondent: Melinda J. Baxter, Counsel

**HEARD: Via written submissions**

## OVERVIEW

- [1] The applicant was injured in an accident on February 10, 2012, and sought various benefits from the respondent, Intact, pursuant to the Statutory Accident Benefits Schedule - Effective September 1, 2010<sup>1</sup> ("*Schedule*"). Intact partially approved or denied the benefits in dispute on the basis that they are not reasonable and necessary under the *Schedule*. The applicant disagreed and applied to the Tribunal for resolution of the dispute. While ten issues were originally identified in the Case Conference Report as being in dispute, in submissions, the parties agree that four of those issues have been resolved.

## ISSUES IN DISPUTE

- [2] Accordingly, the following issues remain in dispute:
- i. Is the applicant entitled to funding of an OCF-18 dated August 16, 2017 in the amount of \$7,803.00 for chiropractic treatment (actually PRP injections and physiotherapy treatment)?
  - ii. Is the applicant entitled to the funding of an OCF-18 dated December 28, 2017 in the amount of \$2,486.00 for a neuropsychological assessment?
  - iii. Is the applicant entitled to the funding of an OCF-18 dated May 11, 2018 in the amount of \$499.25 pertaining to a treatment plan for an in-home assessment that was partially approved?
  - iv. Is the applicant entitled to the funding of an OCF-18 dated July 11, 2018 in the amount of \$6,694.89 for recommended assistive devices?
  - v. Is the applicant entitled to the funding of an OCF-18 dated May 6, 2019 in the amount of \$6,656.43 for psychological treatment, less partial approval of \$748.03?
  - vi. Is the applicant entitled to interest on any overdue payment of benefits?

## RESULT

- [3] The applicant is entitled to payment in the amount of \$3,118.77, plus interest under s. 51, as the OCF-18 for psychological treatment is partially reasonable and necessary.

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<sup>1</sup> O. Reg. 34/10, as amended.

- [4] The applicant is not entitled to payment for the remaining benefits in dispute as she has not met her onus to demonstrate that they are reasonable and necessary.
- [5] The applicant's claim for the neuropsychological assessment is statute-barred under s. 55 until such time that she attends the insurer's examination for same.

## **ANALYSIS**

### ***The applicant's impairments***

- [6] As a result of the 2012 accident, the applicant injured her right ankle and head and alleges that she continues to have symptoms, being cognitive deficits, depressed mood, anxiety, fatigue, migraine, post-concussive symptoms and pain in her right leg. An April 2020 report prepared by Dr. Feinstein indicates that the applicant has chronic pain and psychological difficulties, diagnosed as Major Depressive Disorder with Anxious Distress and Somatic Symptom Disorder with Predominant Pain. Under ss. 14-17 of the *Schedule*, the applicant must demonstrate that the treatment and assessments she seeks are reasonable and necessary to treat her accident-related impairments on a balance of probabilities.

### ***\$7,803.00 for chiropractic treatment (being \$5,017.64 for PRP injections)***

- [7] This OCF-18 proposes PRP injections and physiotherapy for the applicant's right ankle and knee, as recommended by sports physician, Dr. Stoddard. The applicant submits that the treatments are reasonable and necessary to combat her pain because she has quad atrophy and crepitus and the goal of the treatment is to reduce her pain, which is a reasonable goal for treatment. She relies on Dr. Stoddard's report, her own affidavit and radiological imaging of her knee and ankle to support her claim for the incurred amount of the injections totalling \$5,017.64.
- [8] In response, Intact relies on the November 2017 s. 44 report of Dr. Czok who found that the applicant exhibited full range of motion and no neurological symptoms and concluded that she sustained uncomplicated soft-tissue injuries in the accident that have gone on to resolve and that she did not exhibit any ongoing accident-related impairment. Intact submits that Dr. Czok concluded that the treatment requested was not reasonable or necessary. Further, Intact points to the records from CBI Physiotherapy and Rehabilitation Centre dated April 24, 2012 that indicate that the applicant completed her rehabilitation program and had been discharged from active therapy approximately two and a half months post-accident. It is noted that she was currently not experiencing pain or any

other type of symptom and had returned to her pre-accident employment at full duties and full-time hours without symptom reproduction. Intact also submits that there are a number of medical experts, including those referred for treatment by the applicant's family doctor, that have all concluded that there is no basis for ongoing treatment.

- [9] I agree with Intact. I find the majority of the medical documentation and professional opinions in evidence suggest that the injections and treatment are not reasonable and necessary.
- [10] First, the applicant does not make submissions on why over \$5,000 worth of injections and treatments was a reasonable expense to incur five years post-accident where several practitioners, including several of her own, did not recommend ongoing treatment. Second, I afford Dr. Czok's report more weight than Dr. Stoddard's, as the objective physical testing conducted revealed full-range of motion and largely soft-tissue injuries that had resolved, which is consistent with the medical documentation. Third, while I am alive to the applicant's complaints of quad atrophy and crepitus, I am not convinced that these relatively minor symptoms required significant ongoing treatment and injections at this point in the applicant's recovery timeline and especially so where Dr. Stoddard, who stood to benefit from the treatment, was really the only practitioner recommending this type of treatment at the time.
- [11] While I agree with the applicant that pain is a legitimate goal for treatment, the applicant has not demonstrated that the treatments she incurred had lasting or even beneficial effects at five years post-accident and where several practitioners found no objective basis for continued treatment. Her 29-page affidavit indicates she incurred over \$5,000 worth of injections "in hopes of getting some relief from my ongoing pain" but does not actually indicate that the injections helped improve her function or reduced her pain. While self-reporting would not necessarily have been determinative, at minimum, I find it would have been helpful to the applicant's case to explain how or if the injections were effective.
- [12] In any event, I find the objective medical documentation in evidence undermines the applicant's claims. As noted, the CBI Physiotherapy and Rehabilitation Centre records indicate that the applicant completed her rehabilitation program and had been discharged from active therapy approximately two and a half months post-accident and state she was not experiencing pain or any other type of symptom. The April 2014 report of Dr. Casses notes that there were no problems with limitations on range of motion and no need for any type of treatment as there was no weakness and no signs of major stiffness of the joints.

Additionally, Dr. Casses concluded that the treatment being requested at the time, namely physiotherapy treatment, was not reasonable and necessary. On review of the MRI imaging of her ankle and knee in November 2016, Dr. Lapp found no pathology to explain the applicant's ongoing pain. A November 2016 referral from Dr. Branigan to Dr. Heller, orthopaedic surgeon, on the basis of the applicant's pain complaints, was refused by Dr. Heller on the basis that the leg injury had already been thoroughly investigated. Cumulatively, I find these opinions, combined with Dr. Czok's report, outweigh the applicant's argument that the incurred portions of the OCF-18 were reasonable and necessary.

- [13] On the evidence, I find that the applicant has not established the effectiveness of the ongoing treatment suggested in the OCF-18 despite it being incurred. The Tribunal would have benefitted from a more thorough analysis and medical support to explain how the goals are reasonable to achieve at the cost proposed and how the treatment goals were being met to a beneficial degree five years post-accident. Accordingly, I find the applicant is not entitled to payment for this treatment plan as she has not demonstrated that it is reasonable and necessary.

***\$2,486.00 for a neuropsychological assessment***

- [14] This OCF-18 is for the incurred cost of a neuropsychological assessment with Dr. Hallman, as recommended by Dr. McGregor, to explore the applicant's cognitive difficulties. The applicant asserts that she never received a response from Intact after submitting the treatment plan, and since it was incurred, that it is payable under s. 38(11) of the *Schedule*.
- [15] In response, Intact submits that correspondence dated January 12, 2018 indicates that funding of the treatment plan was denied as there was no basis in the medical records to suggest that there is any basis for a neuropsychological assessment. It made a request for further documentation pursuant to s. 33 of the *Schedule*. Intact submits the requested documentation was not received until the applicant retained her current counsel and the file had been reviewed. Correspondence dated May 6, 2020 confirms receipt of an updated OHIP summary and clinical notes and records and indicates that the medical evidence does not support a neuropsychological evaluation and that an insurer examination ("IE") would be arranged to determine the reasonableness and necessity of it. A Notice of Assessment, also dated May 6, 2020, was attached to this correspondence indicating that an IE had been arranged for July 16, 2020.
- [16] Complicating the matter is the fact that the applicant submitted an OCF-19 in 2019 and catastrophic ("CAT") IEs were being arranged. Applicant's counsel allegedly requested that the IE scheduled for July 16, 2020 be cancelled and re-

scheduled to occur in conjunction with the CAT IEs, which Intact consented to. According to submissions, the CAT IEs have not yet been completed.

- [17] Intact submits that a request was made for the applicant to withdraw this issue on the basis that it was premature, but the request was denied by the applicant. As such, Intact submits that pursuant to s. 55 of the *Schedule*, the applicant is precluded from proceeding with this issue as part of her application, as she has not complied with the notice requiring her attendance at the s. 44 IE with respect to this benefit.
- [18] On the evidence, I agree with Intact. I find the explanation of benefits letter dated January 12, 2018 indicates that the OCF-18 was received on December 28, 2017 and was being denied, which the log notes confirm. I find this correspondence was sent within the 10-day period required by s. 38, contrary to the applicant's submissions. I also find that Intact requested clinical notes and records and an OHIP summary, as submitted, and that there was verbal communication between the provider and Intact during this time to confirm this. I find the next correspondence related to the fulfilment of the s. 33 request is the May 6, 2020 letter Intact points to. In submissions, while the applicant asserts that she never received the letter, she did not challenge Intact's position on reply and, given Intact's un rebutted assertion that the applicant proposed to have the IE associated with this OCF-18 re-scheduled to occur in conjunction with her CAT IEs, I find it difficult to refute Intact's timeline of events. An email from applicant's counsel dated July 14, 2020 seems to confirm this arrangement.
- [19] Accordingly, since Intact was within its rights under the *Schedule* to request further documentation on an otherwise dormant file that was not provided until May 2020 and where it properly scheduled an IE to determine whether the OCF-18 was reasonable and necessary (which the applicant proposed be re-scheduled) and where the applicant has yet to attend for said IE, I ultimately agree that the applicant's claim for this benefit is statute-barred under s. 55 until such time that she attends the IE.

***\$499.25 pertaining to a treatment plan for an in-home assessment***

- [20] The remaining \$499.25 in this partially approved OCF-18 for occupational therapy ("OT") relates to an item described as "documentation and support activity" that was denied by Intact. The applicant's submissions on this item is that Intact's denial was unclear, that it is not an expert on how much time OT activities take and, in her affidavit, the applicant submits that she incurred this amount because she underwent the assessment and promised to pay the OT for his support and advice, which was invaluable to her.

[21] In response, Intact directs the Tribunal to correspondence dated May 25, 2018 confirming receipt of the OCF-18 in the amount of \$1,596.50 for an in-home assessment based upon 13 hours at CAT hourly rates, plus \$200.00 for the completion of the OCF-18. Intact submits that the applicant was advised that the OCF-18 would be partially funded in the amount of \$1,097.25, in accordance with the FSCO Guidelines, leaving \$499.25 outstanding. More specifically, Intact submits that while there was also reference to concerns about the allotted time for documentation and support activity, the main concern was that the hourly rate used for the assessor, as an OT, should be in accordance with the FSCO Guidelines, as required by s. 25 of the *Schedule*. In this case, Intact submits that rate should be \$99.75 per hour and submits that an insurer is not required to pay for expenses related to professional services rendered to an insured person to conduct a s. 25(1) assessment that exceed the maximum rate under the Guidelines. As the maximum hourly rate for an OT is \$99.75 per hour for non-CAT claimants, Intact submits that it has funded this treatment plan, as required, in accordance with the FSCO Guidelines.

[22] Again, I agree with Intact that the maximum hourly rate it is required to fund for an OT of a non-CAT insured is \$99.75 and that the unapproved balance of this OCF-18 represents the difference proposed for the documentation and support activity item at the non-CAT rate. In any event, putting the mandatory Guideline requirements aside, the applicant's submissions fall well-short of meeting her burden of demonstrating why the unapproved amount of the OCF-18 is a reasonable expense, as her submissions do not speak to why the item was reasonable at the cost proposed. It is not the legal test she must meet nor is it sufficient evidence that the applicant promised to pay her OT the amounts that Intact refused to on the basis that the OT's support and advice were invaluable to her. As a result, I find that she has not demonstrated that the unapproved item of the OCF-18 is reasonable or payable.

***\$6,694.89 for recommended assistive devices (being \$999 for a Dyson cordless vacuum and riding lawn mower)***

[23] This OCF-18 prepared by Mr. Glenney, OT, recommended a light-weight vacuum cleaner, a ride-on lawn mower and books on brain injuries as well as chiropractic treatment. The applicant submits that these items are reasonable and necessary to help relieve the pain from her ankle and knee and her fatigue from her psychological and cognitive injuries and to contribute to her household. The books were recommended to educate the applicant on different techniques to maximize her function. The applicant submits that she incurred two of these

items after her OT recommended them, with the Dyson vacuum costing \$399 and the law mower totalling \$600.

- [24] In response, Intact relies on the November 2018 report of Ms. Beacock, OT, who found that the applicant demonstrated range of motion within normal limits and that she reported returning to the majority of daily activities including employment, personal care, caregiving and housekeeping. Additionally, the report notes that prior to the accident, the applicant had been residing in an apartment where lawn maintenance was not one of her responsibilities. Ms. Beacock concluded that based upon the medical documentation reviewed, the results of the examination, the nature of the injuries sustained and the length of time since the accident, the OCF-18 was not reasonable or necessary. To this end, Intact argues that the applicant was living in an apartment at the time of the accident and was not required to perform lawn care, so the provision of a riding lawn mower would not be supportive of returning the applicant to her pre-accident level of function. With respect to the request for a Dyson vacuum, Intact submits that this is a want of the applicant, as opposed to a device that would return her to her pre-accident level of functioning, as the report of Ms. Beacock establishes that she is capable of vacuuming with her current vacuum.
- [25] I agree with Intact. It is well-settled that the goal of all medical treatment, including assistive devices, is to restore pre-accident levels of function or wellness, to the extent possible. The insurer is not required to fund treatment or assistive devices based on the applicant's wants to improve pre-accident functioning. While participating in home activities is a valuable goal, I agree that large scale property maintenance was not part of the applicant's pre-accident activities and, in any event, a lawn mower is an item that would be required for a property owner regardless of whether they were involved in an accident. While I find the price to be quite reasonable for a riding mower, I disagree that Intact should be required to fund this item simply because the applicant moved to a larger property from an apartment six years post-accident.
- [26] In a similar vein, I agree that the purchase of a cordless Dyson vacuum was a want and not necessarily a functional need of the applicant. While I am alive to the applicant's affidavit that states her existing vacuum was too heavy and Mr. Glenney's 2020 report supporting his recommendations, I find the report from Ms. Beacock suggests that the applicant was capable of vacuuming without the need for a \$399 cordless vacuum. I find the recommendations for these items, and the fact they were so quickly incurred, to be somewhat gratuitous at over six years post-accident. I find there is limited indication that these items are reasonable and necessary to aid in the applicant's accident recovery or to return



her to her pre-accident function, which in 2012 did not include lawn maintenance. Finally, the applicant's submissions do not indicate whether the books were purchased so I cannot find them payable.

***\$6,656.43 for psychological treatment, less partial approval of \$748.03***

- [27] This OCF-18 is a comprehensive treatment plan composed of sessions with a psychologist, a rehabilitation counsellor and a social worker, with other items for brokerage fees, documentation, support, progress reports, preparation, materials and transportation. It was submitted in May 2019 by the same provider, Brainworks Corporation, that has treated the applicant since 2018 and who also submitted a largely identical OCF-18 treatment plan in January 2019 that was approved by Intact and incurred by the applicant. Here, Intact only partially approved the OCF-18 in the amount of \$748.03 based on the s. 44 report of Dr. Syed, psychologist, who found no diagnosis but determined that ten 30-minute psychological treatment sessions would be reasonable and necessary at the rate of \$74.80 per session.
- [28] The applicant submits the plan is reasonable and necessary in its entirety because the treatment provides her with weekly access to tailored social work and rehabilitation counselling in addition to her mental health and psychological counselling, which is all overseen by her treating psychologist, Dr. McGregor. The applicant asserts the treatment is helpful in increasing her functionality because it provides her with strategies to combat her fatigue and cognitive deficits. In addition to the clinical notes from her treatment with Brainworks, she points to the report of Dr. Feinstein, who recommended that she participate in interdisciplinary treatment based on a "constellation of mood-related symptoms." In her affidavit, the applicant indicates she "experienced some relief from her symptoms" and that Dr. McGregor believes that she still meets the definition of Major Depressive Disorder and that a second eight-week intensive structured therapy program would be beneficial. Notably, the applicant incurred the treatment and her outstanding account at Brainworks is over \$11,000.00.
- [29] In response, Intact relies on the report of Dr. Syed but also offers a causation argument. First, Intact submits that Dr. Syed opined that she was confident that the applicant was not presenting accurately and that there was no compelling evidence to support a diagnosable condition. Dr. Syed concluded that she was unable to provide a psychological diagnosis or a need for treatment based upon the applicant's presentation, however, recommended the 30-minute treatment sessions "to err on the side of caution." Second, with respect to causation, Intact submits that the applicant's complaints about increased psychological symptoms

and migraines only started to occur several years post-accident in 2015. Intact argues that was in or about this time that the applicant's life changed significantly in that she moved in with her common law spouse, assisted in caring for her two stepchildren and soon after was responsible for caring for a newborn. Intact submits that it is the significant changes in the applicant's life and the impact on her ability to cope with the increased stress that resulted in the worsening of her migraines and development of psychological symptoms, as opposed to any effects of the subject accident. It argues that the applicant has not proven that the accident is the direct cause of her current psychological impairments or that the OCF-18 is reasonable and necessary.

[30] On review of the medical documentation, the OCF-18 and the reports supporting same, I find the treatment to be partially reasonable and necessary. While I am alive to Intact's submissions on causation, I find it to be somewhat tenuous on the basis that it chose to approve a nearly identical treatment plan from the same provider five months earlier without seemingly raising any causation issues. In a similar vein, I find Dr. Syed's report and refusal to make a diagnosis of any kind to be somewhat disingenuous where she also recommended ten sessions of treatment and where there is considerable evidence that the applicant has been reporting her symptoms and participating in treatment for several years.

[31] However, I find the applicant's statement in her affidavit that she only experienced some relief from her symptoms as a result of the initial comprehensive treatment plan approved in January 2019 to be concerning. The cost of the plan proposed in this OCF-18 (not to mention the nearly \$6,366 approved by Intact just five months earlier) is a rather significant expense for only marginal relief to the applicant's symptoms seven years post-accident. Indeed, nearly \$2,800 of the OCF-18 is earmarked for items like transportation (\$465.52), brokerage services (\$792.02), documentation, support activity (\$1,024.00!), preparation (\$299.22) and more educational materials (\$200) and not for actual treatment. Some of the items described in the additional comments section only indicate that they "may" be required. With the exception of potential provider transportation, I query why these expenses are needed for an existing client and find that these proposed costs are rather gratuitous items that are unnecessarily inflating the total amount of the OCF-18.

[32] Putting this aside, I question how reasonable, necessary and effective the treatment plan proposed by Brainworks truly is where the applicant had just recently completed a nearly identical plan with the clinic. Where Intact funded the initial plan and where the applicant self-reported only deriving "some relief" from her symptoms, I query how beneficial doing the exact same thing with the exact

same providers will be for her in meeting her goals or whether they are being properly addressed. One would presume that after a comprehensive slate of treatment over several months, that there would be a gradual ramping down of the treatment proposed if it were indeed effective. In this case, the treating clinic is proposing more of the same at, in my view, an inflated cost.

[33] And yet, I find the applicant has provided enough evidence to make continuing psychological treatment with social support at a lesser cost a reasonable expense on a balance of probabilities. Indeed, I find her complaints are continuous and contemporaneous with the OCF-18 and find support in the report of Dr. Feinstein, but I also find that if progress is not being achieved or if the applicant is not deriving benefit from such a comprehensive plan, that the cost would not be reasonable under s. 16.

[34] Accordingly, I find the treatment plan to be partially payable in the amount of \$3,666.80 plus \$200.00 for OCF fees, less the \$748.03 already approved by Intact, resulting in a total amount payable of \$3,118.77. This figure represents the proposed costs of all of the items classified as therapy and counselling in the OCF-18, plus transportation, which I find are reasonable expenses to incur at this stage in the applicant's recovery and following a comprehensive program from the same provider. As the applicant's submissions do not specifically address any of the other items in the OCF-18, I do not find the remaining items to be reasonable or necessary and therefore they are not payable.

### ***Interest and s. 3(8)***

[35] As benefits are overdue, it follows that interest is payable pursuant to s. 51.

[36] Lastly, in submissions, the applicant oddly asked the Tribunal to "deem" any expenses not incurred by the applicant as incurred under s. 3(8) of the *Schedule* if it determined that Intact unreasonably withheld or delayed the payment of benefits. I find no indication in the Case Conference Order that the applicant was seeking an award under s. 10 of O. Reg. 664 that would invite the Tribunal to consider Intact's adjusting practice and the applicant failed to make submissions on same. In any event, I find no evidence to suggest that Intact unreasonably withheld or delayed the payment of benefits to deem any expenses incurred.

### **CONCLUSION**

[37] The applicant is entitled to payment in the amount of \$3,118.77, plus interest under s. 51, as the treatment plan for psychological treatment is partially reasonable and necessary and incurred.

[38] The applicant is not entitled to payment for the remaining benefits in dispute as she has not met her onus to demonstrate that they are reasonable and necessary.

[39] The applicant's claim for the neuropsychological assessment is statute-barred under s. 55 until such time that she attends the IE for same.

**Released: December 24, 2020**



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**Jesse A. Boyce**  
**Vice Chair**