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**	Ontario

Released Date: 07/21/2020
File Number: 19-003335/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:

A.F.

Applicant

and

Aviva Insurance Company of Canada

Respondent

DECISION

ADJUDICATOR: **Jesse A. Boyce**

APPEARANCES:

For the Applicant: Sandra Train

For the Respondent: Margaret Louie

HEARD: **Via written submissions**

OVERVIEW

[1] A.F. was injured in an accident on January 5, 2017 and sought payment for two physiotherapy treatment plans from the respondent, Aviva, pursuant to the Statutory Accident Benefits Schedule - Effective September 1, 2010 ("*Schedule*"). Aviva denied the treatment plans on the basis of s. 44 assessments finding that further treatment was not reasonable and necessary because A.F. had achieved maximal medical recovery from facility-based treatment. A.F. disagreed and submitted an application to the Tribunal for resolution of the dispute.

ISSUES IN DISPUTE

[2] The following issues are in dispute:

i. Is the applicant entitled to a **medical benefit** in the amount of $987.01 for Physiotherapy treatment recommended by Health Partners Professionals in a treatment plan submitted on December 4, 2017, and denied by the respondent on January 29, 2018?

ii. Is the applicant entitled to a **medical benefit** in the amount of $1,890.00 for Physiotherapy treatment recommended by Health Partners Professionals in a treatment plan submitted on February 22, 2018, and denied by the respondent on May 3, 2018?

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

RESULT

[3] I find A.F. is not entitled to payment for either of the treatment plans in dispute as she has not demonstrated that they are reasonable and necessary.

ANALYSIS

Are the treatment plans reasonable and necessary?

[4] In order to receive payment for medical and rehabilitation benefits under s. 15, A.F. must demonstrate on a balance of probabilities that the treatment plans in dispute are reasonable and necessary to treat her specific accident-related impairments. On the evidence, I find that A.F. is not entitled to payment for the treatment plans in dispute as they are not reasonable and necessary.

$987.01 for physiotherapy treatment

$1,890.00 for physiotherapy treatment

[5] The OCF-18s in dispute were both submitted by A.F.'s treating chiropractor, Ms. Fitzsimmons, and are dated December 4, 2017 and February 22, 2018, respectively. The first treatment plan in the amount of $987.01 recommends 12 sessions of combined physiotherapy and massage treatment at $57.67 per session, and another $205 for completion of the OCF-18, a foam roller and exercise bands. The second treatment plan in the amount of $1,890 recommends 12 sessions each of physiotherapy acupuncture treatment totalling $840 and 12 sessions of physiotherapy concussion treatment totalling $900 as well as another $150 for completion of the OCF-18.

[6] In addition to psychological treatment, A.F. has been undergoing various physical therapies from different providers since the accident, including massage, physiotherapy, chiropractic treatment and exercise, which have been funded by both her extended care provider and by Aviva. According to the Disability Certificate ("OCF-3") dated January 17, 2017, A.F.'s accident-related impairments are identified as a concussion, whiplash, headaches, anxiety and sprain and strain to her neck and spine. Her submissions allege that her current impairments entail a concussion, a mild traumatic brain injury, a neck injury, WAD-II injury to the cervical spine, a right shoulder injury, upper and lower back injuries, headaches, fatigue, depression, anxiety, cognitive deficits and post-traumatic stress disorder. On the medical documentation, it appears her current physical impairments revolve around TMJ pain, thoracic and lumbar spine pain, hip pain, right shoulder pain and headaches. A.F. submits that she is entitled to the treatment plans in dispute due to the severity of her physical impairments and an overwhelming amount of medical evidence provided to Aviva.

[7] I find that A.F. has not satisfied her onus to demonstrate that the treatment in dispute—specifically, facility-based treatment similar to what she has undergone for quite some time post-accident—is reasonable and necessary to treat her specific accident-related physical impairments, which at this stage appear to be primarily pain issues. While it is well-settled that pain is a legitimate goal for treatment, on the evidence, I struggle to find how further facility-based treatment is reasonable and necessary where A.F. has attended at three separate clinics for various treatment modalities in the three years post-accident and only reports a 20-30% improvement as a result of treatment (and only a 10% difference in improvement with treatment according to the October 2019 letter from Ms. Fitzsimmons). Even though she self-reports a range of pain symptoms, I was not directed to a diagnosis of chronic pain or chronic pain syndrome or even evidence that her pain causes functional impairment. Indeed, by all accounts, A.F. is independent in her personal care and her daily activities, is not taking any anti-inflammatories or pain medication, continues to work at a sedentary job, is swimming and participating in yoga. Against these facts, I agree with Aviva that, at over three years post-accident, the efficacy of more physiotherapy treatment is highly questionable with respect to its therapeutic effect. I find this is especially so where A.F. continued with (extended health-provider funded) treatment in

2018 following Aviva's denial of these physiotherapy treatment plans and the diagnostic imaging reports apparently revealed no issues.

[8] While I am alive to A.F.'s submission that she has regularly attended for treatment when funding is available to her, it does not follow that treatment incurred previously was actually beneficial or that continued treatment is therefore also reasonable and necessary. The Tribunal would have benefitted from a more substantive and tailored discussion of the OCF-18s to demonstrate why the cost is reasonable and why the treatment is necessary. A.F.'s submissions were light on analysis as to why continued facility-based care is reasonable and necessary where there is limited evidence of improvement three years post-accident, where A.F. reports significant function and where Aviva has offered s. 44 orthopaedic and neurology reports finding that A.F. has achieved maximal medical recovery from a physical perspective.

[9] While A.F. takes issue with the findings of the reports, there was limited contemporaneous evidence provided by A.F. to rebut these opinions. The s. 44 report and addendum of Dr. Safir, orthopaedic surgeon, found good range of motion, no objective evidence of a musculoskeletal impairment that would justify further facility-based treatment and recommended at-home exercise for conditioning. The report of Dr. Yahmad, neurologist, found the proposed physiotherapy to not be reasonable or necessary from a neurological perspective, as there was no neurological impairment that was detected as a result of the accident. The only report provided by A.F. to speak to her physical impairments was a physiatry medical legal assessment from Dr. Kekosz. While the report is comprehensive in the sense that it rehashes much of the medical information and A.F.'s self-reporting contained elsewhere, I assign it limited weight because the report was not authored until March 2019, over one year after the submission of the two OCF-18s in dispute and the recommendations are seemingly only based on A.F.'s self-reporting and a physical examination. Notably, Dr. Kekosz does not offer a specific diagnosis and does not provide an opinion on whether the OCF-18s in dispute here are reasonable and necessary.

[10] A.F. submitted quite a bit of medical evidence that is not entirely relevant to the issues in dispute and yet despite the volume, there are no referrals for physiotherapy from her family physician or follow-up visits with same to discuss the efficacy of the treatment she was receiving or to assess her progress post-accident. While family physician records are only one part of the larger medical picture, I disagree with A.F.'s submissions that they are trumped by voluminous clinic attendance records or, specifically, that the volume of A.F.'s clinical records should be weighed more favourably over the lack of physician or specialist referrals. In my view, visits or consultations with a family physician or specialist provide valuable and objective contemporaneous insight into progress, prognosis and diagnoses. The OCF-18's or Ms. Fitzsimmons' letter from October 2019 recommending A.F. return to physiotherapy does not provide this.

[11] Even if I were to put all of this aside, A.F.'s submissions do not speak to why the treatment plans themselves are reasonable and necessary, which is her burden. There is no discussion analyzing why, for example, 12 sessions of physiotherapy are necessary instead of 10 or six. There is no discussion explaining what "physiotherapy concussion treatment" entails or how $900 worth of it is reasonable and necessary to assist A.F. in her recovery. There is no discussion explaining why further facility-based treatment is reasonable and necessary with the same provider A.F. has been receiving treatment from since September 2017 even though she continues to have pain despite treatment at this facility.

[12] Accordingly, where there is limited analysis on the treatment plans, where there is limited evidence that treatment is helping, where A.F. self-reports normal function in her daily activities three years post-accident, where there are two s. 44 reports finding further facility-based treatment is not needed and where there is no evidence of an objective referral for treatment, I find, on a balance of probabilities, that the treatment in dispute is not reasonable and necessary.

CONCLUSION

[13] A.F. is not entitled to the physiotherapy treatment plans in dispute as she has not demonstrated that they are reasonable and necessary. As no benefits are overdue, it follows that no interest is payable pursuant to s. 51.

Released: July 21, 2020

Jesse A. Boyce
Adjudicator