

**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: I. A. vs. Aviva General Insurance, 2020 ONLAT 19-004068/AABS**

**Tribunal File Number: 19-004068/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:

**I. A.**

**Applicant**

and

**Aviva General Insurance**

**Respondent**

**DECISION**

**ADJUDICATOR: Brian Norris**

**APPEARANCES:**

For the Applicant: Neisha Moses

For the Respondent: Paul J. Irish

**Heard by way of written submissions**

## OVERVIEW

- [1] I. A., the applicant was injured in an automobile accident on **November 21, 2016** and sought benefits from the respondent pursuant to *Statutory Accident Benefits Schedule - Effective September 1, 2010, O. Reg. 34/10* (the “*Schedule*”). The respondent refused to pay for certain benefits and the applicant applied to the Licence Appeal Tribunal - Automobile Accident Benefits Service (the “*Tribunal*”) for resolution of this dispute.

## ISSUES

- [2] The disputed claims in this hearing are:
- (i) Is the applicant entitled to receive a medical benefit in the amount of \$2,000.00 for a psychological assessment recommended by Downsview Healthcare Inc. (“Downsview”) in a treatment plan submitted April 8, 2017 and denied on November 9, 2017?
  - (ii) Is the applicant entitled to receive a medical benefit in the amount of \$2,307.92 for chiropractic treatment recommended by Physical Therapy One Woodbridge in a treatment plan submitted June 6, 2018 and denied on June 20, 2018?
  - (iii) Is the applicant entitled to interest on any overdue payment of benefits?

## RESULT

- [3] The applicant is unsuccessful on all issues.

## BACKGROUND

- [4] The applicant was the driver of a vehicle which was hit from behind while stopped at an intersection. He did not seek medical attention at the scene of the accident and was able to drive himself home afterwards. The applicant met with his family physician, Dr. S. Ross, the day after the accident and complained of back and neck pain. Dr. Ross examined the applicant and recommended over-the-counter pain medication, heat, and massage. The applicant started to receive physiotherapy and massage treatment for his accident-related injuries at Downsview Healthcare Inc. (“Downsview”) about a week following the accident.
- [5] About four months following the accident, Downsview submitted the treatment and assessment plan dated April 8, 2017 seeking funding for a psychological assessment for the applicant. The respondent denied funding for the

psychological assessment following an insurer's examination ("IE"). Despite this, the applicant incurred the costs of a psychological assessment and now seeks payment for it.

- [6] About a year and a half following the accident, Physical Therapy One submitted the treatment and assessment plan dated June 6, 2018 for chiropractic and massage therapy. The respondent denied funding for the treatment plan following another IE. The applicant claims he incurred the costs of this treatment plan and claims entitlement to payment for it.

## **PROCEDURAL ISSUES**

- [7] After receipt of response submissions for this hearing, but before making reply submissions, the applicant filed a motion to exclude part of the respondent's submissions because the prescribed page limit was exceeded. In response, the respondent claimed that it was required in order to address evidence which the applicant produced late and contrary to the Tribunal's timelines, which were issued on consent of the parties.
- [8] Adjudicator Makhamra heard the motion. The adjudicator permitted the respondent's additional submissions and the applicant was provided additional pages for reply submissions which are equal to the number of pages the respondent was over the limit by. Further, the adjudicator permitted the applicant's documents, acknowledging the delay was related to circumstances pertaining to the emergency provisions due to COVID-19.

## **THE PSYCHOLOGICAL ASSESSMENT DATED APRIL 8, 2017**

- [9] I find that the proposed psychological assessment is not reasonable and necessary for the applicant's accident-related injuries.
- [10] The applicant presents no compelling contemporaneous medical evidence to necessitate a psychological assessment. Dr. Ross' CNRs are entirely devoid of any indication of a psychological injury or psychological symptomology. The absence of any complaints of psychological symptoms in Dr. Ross' CNRs suggests that the applicant's psychological injuries are minimal, if any. This is supported by the psychological assessment reports which state the applicant's psychometric test scores indicate minimal depression and anxiety.
- [11] I prefer the psychological assessment report of Dr. H. Waiser, dated June 27, 2017 (the "Waiser report") over Dr. A. Shaul's report dated November 4, 2017 (the "Shaul report"). The Waiser report, which is based on a clinical interview and

psychometric testing, found the applicant's condition is not of the nature or severity to warrant a diagnosis. This is consistent with the applicant's medical record. Similarly, the psychometric testing results in the Shaul report indicate minimal depression and anxiety. However, Dr. Shaul nevertheless diagnosed the applicant with an adjustment disorder with mixed anxiety and depressed mood. Dr. Shaul cited the applicant's responses in the clinical interview as the basis for the diagnosis.

- [12] The Shaul report, when viewed together with the other evidence before me, overstates the severity of the applicant's psychological condition. The report finds that the applicant's psychological condition prevents him from performing his activities of daily living but there is no evidence to support this finding. The applicant is independent with his self care and continues to work full-time and has not stopped driving. Overall, the clinical interview summary in the report fails to identify any activities which the applicant is prevented from doing as a result of a psychological impairment.

#### **THE CHIROPRACTIC TREATMENT PLAN DATED JUNE 6, 2018**

- [13] I find that the applicant has failed to prove that, on a balance, the chiropractic treatment plan is reasonable and necessary for his accident-related injuries.
- [14] The disputed treatment plan proposes chiropractic manipulation and massage therapy to reduce the applicant's pain and increase his range of motion and return him to his pre-accident work and normal living activities. The onus is on the applicant to establish on a balance of probabilities that the disputed treatment plan is reasonable and necessary for his accident-related injuries.
- [15] The applicant submits that he requires the ongoing treatment to address exacerbated back pain and physical limitations as it relates to his functioning. However, as submitted by the respondent, the applicant has failed to meet his burden to prove that the treatment plan is reasonable and necessary for his accident-related injuries.
- [16] While it is possible that the applicant has ongoing back pain or that his pre-existing back pain was exacerbated by the accident, I find no contemporaneous evidence to support these claims. For example, the applicant provides no clinical notes and records from any of the treatment facilities he has attended or claims to have attended, such as Downsview and Physical Therapy One. As a result, his claim that he has engaged in similar treatment and found it beneficial to his recovery is without proof and, as a result, holds no weight.

[17] Dr. Ross's CNR's fall short of supporting entitlement to the disputed treatment plans. The records show no visits between March 3, 2017, when the applicant complained of back soreness, soreness when bending back or forward, and an inability to play hockey, and October 22, 2018. During the October visit, the applicant sought a referral for an ergonomic assessment because he had recently moved offices, complained of mid back pain, but confirmed he had increased activity, specifically swimming. Dr. Ross referred the applicant to an MRI and the resulting report dated October 28, 2018 found a tiny posterior disc protrusion with no significant canal or foraminal stenosis and concluded that the applicant had minimal degenerative changes. The findings in the MRI report are similar to those in the radiograph report dated October 22, 2018, which concluded that the examination was unremarkable. Dr. Ross' records note that the applicant had returned to playing hockey by November 5, 2018. The records also include a consultation note from Dr. A. Davenport, physiatrist, dated December 12, 2018. Dr. Davenport opined that the applicant's symptoms were as a result of inflamed soft tissue and it was unlikely that the disc bulge is causing all the symptoms. Importantly, Dr. Davenport made no referral and no recommendation for further treatment as a result of the findings.

[18] The IE reports provide no support for the disputed chiropractic treatment plan. The report from Dr. Belfon, physician, dated January 25, 2017, while favourable for the applicant, is from about a year and a half before this treatment plan was submitted and, therefore, holds little relevance. The report of Dr. C. Sandhu, physician, dated August 9, 2018 is timely with respect to the disputed chiropractic treatment plan. Dr. Sandhu examined the applicant and found remarkably normal results – the applicant's motor exam was normal, and he presented with a full range of motion in the cervical and lumbar spine as well as both shoulders. Dr. Sandhu concluded that the disputed chiropractic treatment plan was not reasonable and necessary because applicant has achieved functional restoration and encouraged him to engage in an exercise program.

## **INTEREST**

[19] Pursuant to section 51 of the *Schedule*, interest is only payable on overdue payments. No interest is payable because there are no overdue payments.

## **CONCLUSION**

[20] The psychological assessment and the chiropractic treatment plan are not reasonable and necessary because there is no compelling contemporaneous evidence in support of these treatment and assessment plans.

[21] No interest is payable as no payments went overdue.

**Released: August 12, 2020**



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**Brian Norris  
Adjudicator**