



**Citation: Rodrigues vs. Aviva Insurance Company, 2021 ONLAT 20-003281/AABS**

**Released Date: 04/08/2021**

**Tribunal File Number: 20-003281/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:

**Amelia Rodrigues**

**Applicant**

and

**Aviva Insurance Company**

**Respondent**

**DECISION**

**ADJUDICATOR: Brian Norris**

**APPEARANCES:**

For the Applicant: Lisa Bishop

For the Respondent: Yann Grand-Clement

**Heard by way of written submissions**

## OVERVIEW

- [1] Amelia Rodrigues, the applicant, was injured in an automobile accident on **March 4, 2016** and sought benefits from Aviva Insurance Company, the respondent, pursuant to *Statutory Accident Benefits Schedule - Effective September 1, 2010, O. Reg. 34/10* (the “*Schedule*”). The respondent refused to pay for a treatment plan 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:
- a. Is the applicant entitled to receive a medical benefit in the amount of \$3,078.72 for physiotherapy recommended by Brampton Physiocare and Wellness, in a treatment plan dated December 4, 2019?
  - b. Is the applicant entitled to an award under Ontario Regulation 664 because the respondent unreasonably withheld or delayed the payment of benefits?
  - c. Is the applicant entitled to interest on any overdue payment of benefits?

## RESULT

- [3] The treatment plan dated December 4, 2019 is not reasonable and necessary for the applicant’s accident-related injuries. No award or interest is payable.

## BACKGROUND

- [4] The applicant was the driver of a vehicle which, while exiting a parking lot, was hit on the driver’s-side, near the front-end. She sought no medical attention on the day of the accident but went to a walk-in clinic the following day and complained of neck and back pain and headaches. There, the applicant was assessed and diagnosed with post-accident muscle inflammation and spasm. She was advised to take anti-inflammatory medication and use warm compresses. The day after that visit, the applicant met with her family physician, Dr. Sequeira, and complained of headaches, neck and right arm pain. Dr. Sequeira diagnosed the applicant with a myofascial strain and referred her to physiotherapy and massage therapy. Following this, the applicant went for treatment and assessments at Springdale Physiotherapy Services, which was later renamed Brampton Physiocare & Wellness Clinic.

- [5] The applicant's complaints of neck pain and headaches persisted. She had x-rays and an MRI of her cervical spine conducted on July 20 and October 29, 2016, respectively, showing mostly degenerative issues and no signs of acute fracture or disc herniation. The applicant also developed symptoms of a psychological injury around this time. She was eventually diagnosed with an Adjustment Disorder with Mixed Anxiety and Depressed Mood. She received counselling for her psychological injuries, which the respondent funded.
- [6] About a year later, on June 5, 2017, the applicant sought funding for a treatment plan involving chiropractic treatment, massage therapy, and physiotherapy. The respondent initially denied funding for this multidisciplinary treatment based on the opinion of Dr. I. Chaudhry, chiropractor. Dr. Chaudhry conducted an insurer's examination ("IE") on October 2, 2017 and concluded that the applicant sustained uncomplicated soft-tissue injuries and encouraged a home-based exercise program. Dr. Chaudhry's opinion changed following an addendum report dated July 12, 2018, in which he concluded that further facility-based treatment was reasonable considering the degree of the applicant's osteoarthritis in the cervical spine.
- [7] The applicant was reassessed by her chiropractor, Dr. S. Sandher, on November 26, 2018. This reassessment prompted a further 12-week multi-disciplinary treatment plan, which the respondent approved and funded. The applicant consumed the services proposed in that treatment plan over the next year and was reassessed on December 4, 2019. The reassessment prompted another treatment plan, dated December 8, 2019 (the "disputed treatment plan"), which the respondent denied funding for and is the subject of this hearing.

### **IS THE DISPUTED TREATMENT PLAN REASONABLE AND NECESSARY?**

- [8] The applicant claims entitlement to the disputed treatment plan and submits it is reasonable and necessary because she had improved with treatment and the goal of the plan was to build on those gains. Specifically, the plan seeks to reduce the applicant's pain, increase strength and endurance and return her to her activities of normal living. The respondent submits that the treatment plan is not reasonable and necessary because it fails to see any further benefit from institutional rehabilitation. It further submits that there is no objective evidence to support the applicant's subjective complaints.
- [9] I find that the disputed treatment plan is not reasonable and necessary for the applicant's accident-related injuries because the contemporaneous medical evidence fails to support on-going facility-based treatment.

- [10] The applicant's on-going pain is intermittent. Her treatment records at Physiocare and Wellness Clinic show that her pain "comes and goes" regardless of the extent of her treatment at that time and that, by March 2019, her pain was manageable with stretching and exercise, permitting her to vacation extensively in 2019. Remarkably, the treatment records from Physiocare and Wellness Clinic show that the applicant went without any treatment from April 10, 2019 until the reassessment on December 4, 2019. No other records were provided to account for this significant gap in treatment.
- [11] The applicant is not dependent on treatment to maintain functionality. I appreciate that the applicant feels better following treatment. However, unlike cases in which pain relief was accepted as a legitimate medical goal, there are significant gaps in her treatment record, yet she has maintained her employment and has travelled throughout this period. To me, this indicates that she does not require facility-based treatment to maintain or improve functionality.
- [12] The applicant reports no improvement despite receiving treatment. Dr. Chaudhry assessed the applicant and produced insurer examination reports dated October 17, 2017, July 12, 2018, January 3, 2019, and February 3, 2020. The latest report noted that the applicant experienced no improvement in symptoms since the last examination about a year prior, despite engaging in treatment. Dr. Chaudhry also opined that the mild impairment of the applicant's ability to laterally bend her cervical spine was due to the anticipation of pain. Dr. Chaudhry concluded that the applicant has reached maximum medical improvement as it was nearly four years following the onset of her soft tissue injuries, which typically heal within 6-12 weeks. Lastly, Dr. Chaudhry recommended that the applicant engage in a home-based self-motivated program that focuses on range of motion and strength training of the neck, shoulder, and core musculature. This recommendation is consistent with the applicant's treatment records which show that she can manage her ongoing pain with stretching and exercise.

## **AWARD**

- [13] The applicant claims entitlement to an award pursuant to Ontario Regulation 664 because, according to her, the respondent had enough evidence to approve the disputed treatment plan.
- [14] As exhibited by my finding that the disputed treatment plan is not reasonable and necessary, I find no evidence to show that the respondent unreasonably withheld or delayed the payment of benefits.

## **INTEREST**

- [15] Interest is only payable on overdue payments. The applicant is not entitled to the disputed treatment plan and thus she is not entitled to any interest related to the plan.

## **CONCLUSION**

- [16] The applicant sustained soft-tissue injuries imposed on her degenerative issues. She has engaged in adequate facility-based treatment and is able to manage her intermittent pain with stretching and exercise. Considering this, and for the reasons outlined above, I find that the disputed treatment plan proposing further facility-based treatment is not reasonable and necessary.
- [17] No award or interest is payable as no payments were delayed or went overdue.

**Released: April 8, 2020**



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**Brian Norris**  
**Adjudicator**