

**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**

Tribunal File Number: 18-003310/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. M. Z.

Applicant

and

Aviva Insurance Company

Respondent

DECISION

ADJUDICATOR: Brian Norris

APPEARANCES:

For the Applicant: Yu Jiang, Paralegal

For the Respondent: Suzanne Clarke, Counsel

HEARD: In writing on October 21, 2019

OVERVIEW

- [1] The applicant was injured in an automobile accident on September 7, 2017 and sought benefits from the respondent pursuant to the Statutory Accident Benefits Schedule – Effective September 1, 2010, O. Reg. 34/10 (the “*Schedule*”). The respondent refused to pay the amount claimed for certain medical benefits and, in response, the applicant applied to the Licence Appeal Tribunal - Automobile Accident Benefits Service (“Tribunal”) for resolution of this dispute.

ISSUES:

- [2] The issues in dispute in this hearing are:
- 1) Is the applicant entitled to \$3,381.88, less the amounts paid by the respondent, for psychological treatment she has incurred in relation to the treatment plan submitted by Somatic Assessment & Treatment on October 10, 2017 and approved by the respondent?
 - 2) Is the applicant entitled to \$3,701.88, less the amounts paid by the respondent, for psychological treatment she has incurred in relation to the treatment plan submitted by Somatic Assessment & Treatment on January 22, 2018 and approved by the respondent?
 - 3) Is the applicant entitled to interest on any overdue payments?
 - 4) Is the applicant entitled to an award under Ontario Regulation 664 on the basis that the respondent unreasonably withheld or delayed the payment of benefits?

RESULT

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

OVERVIEW

- [4] The applicant was involved in a motor vehicle accident and, as a result, suffered psychological injuries. She claimed entitlement to two psychological treatment plans, listed above in the issues in dispute and herein referred to as “the disputed treatment plans”, which the respondent approved and agreed to fund. The applicant participated in psychological treatment and the facility, Somatic Assessments & Treatment, sought payment from the respondent for the services provided. However, the respondent has refused to pay the total amounts invoiced by the treatment facility.
- [5] The respondent refused to pay for the treatment provided because it determined the services provided are different than what was proposed in the disputed treatment plans.

THE DISPUTED TREATMENT PLANS

- [6] The disputed treatment plans propose fourteen “psychological treatment” sessions to help reduce the applicant’s irritability, depression, and phobic symptoms. The disputed treatment plans also seeks to increase the applicant’s adaptive skills. The provider referenced in the disputed treatment plans is Dr. S. McDowall, psychologist.

THE POSITIONS

- [7] The applicant submits she engaged in the treatment proposed in the disputed treatment plans and claims entitlement to the full amount. She submits the services were provided by S. Hu, psychotherapist, under the supervision of Dr. S. McDowall, psychologist. Her position is Somatic Assessment & Treatment is entitled to the hourly rate of a psychologist for the services provided because they were provided under the supervision of a registered psychologist.
- [8] The respondent submits the applicant is only entitled to the unregulated professional hourly rate of \$58.19 because there is insufficient evidence to show Ms. Hu provided psychological treatment while being actively supervised by Dr. McDowall. I agree.
- [9] The rates of service providers are prescribed in the *Professional Services Guideline*¹. The maximum hourly rate for psychologists and psychological associates is \$149.62. There is no rate specifically for psychotherapists. The respondent funded the services by psychotherapist Hu at the hourly rate of \$58.19, which is consistent with unregulated providers such as counsellors and psychometrists.

THE EVIDENCE

- [10] I find the applicant has failed to provide sufficient evidence to support her claim that she received psychological treatment from psychotherapist Hu under the active supervision of Dr. McDowall.
- [11] The statutory declarations of Dr. McDowall and psychotherapist Hu are unreliable. They include unexplained contradictions which undermine their validity. For example, psychotherapist Hu declared the services were provided in-person to the applicant in Richmond Hill, whereas Dr. McDowall declared they were provided in-person in North York. Psychotherapist Hu also declared she was the only person to provide the treatment and communicated the results of the psychological assessment and diagnosis to the applicant, yet, Dr. McDowall declared she provided the treatment with Hu and was the one who communicated the assessment results and diagnosis to the applicant.

¹ Financial Services Commission of Ontario – Professional Services Guideline, Superintendent’s Guideline no. 03/14, September 2014

- [12] The clinical supervision record reports (“CSRRs”) contradict the statutory declarations. There are five CSRRs spanning from December 15, 2017 to November 10, 2018. All the CSRRs occurred on a Friday, but for the last one, which occurred on a Saturday. Yet, Dr. McDowall declared her office hours, with respect to the services provided to the applicant, occurred only on Tuesdays and Thursdays. Further, the CSRRs are unresponsive of the applicant’s claim that Dr. McDowall actively supervised psychotherapist Hu. The CSRRs are devoid of any information on the frequency of the supervision provided as well as how the supervision was provided, such as in-person or otherwise.

APPLICANT RECEIVED SERVICES FROM AN UNREGULATED PROFESSIONAL

- [13] The applicant submits the services were provided by psychotherapist Hu, while actively supervised by Dr. McDowall. She claims this situation is like 18-007991/AABS² (“*JV v Intact*”), where the adjudicator found a psychotherapist is entitled to the hourly rate of a psychologist. The respondent submits psychotherapist Hu provided supportive counselling without any supervision.
- [14] I find no evidence to confirm psychotherapist Hu is a psychological associate and, therefore, she is not entitled to the hourly rate for psychologists and psychological associates. Psychotherapist Hu’s resumé lists her present work as “associate therapist”, not as a psychological associate. It also notes she holds a Master of Divinity in Clinical Counselling, not a master’s degree in Psychology as is required for psychological associates. Similarly, she is a member of the College of Psychotherapists of Ontario, not a member of College of Psychologists of Ontario.
- [15] I find no compelling evidence which shows Dr. McDowall actively supervised psychotherapist Hu’s work. As noted above, the CSRRs are absent any information on the frequency or method of supervision. Likewise, the statutory declarations are unreliable due to the unexplained contradictions between them.
- [16] Even if my analysis of the evidence is wrong, and Dr. McDowall actively supervised psychotherapist Hu’s work, I fail to see how this entitles the applicant to the hourly rate of a psychologist. The applicant provides no legislative authority for this position. The only authority provided is *JV v Intact*, which is addressed below.
- [17] The disputed treatment plans note only Dr. McDowall as the service provider and are absent of any information indicating the services may be provided by an associate or anyone other than Dr. McDowall. No additional notes were provided with the treatment plans to indicate psychotherapist Hu would be administering the treatment under Dr. McDowall’s supervision.

² 2019 CanLII 76995 (ON LAT)

- [18] The absence of any reference to psychotherapist Hu in the disputed treatment plans, or any indication the services will be provided by someone under Dr. McDowall's supervision, is what distinguishes the applicant's care from *JV v Intact*. In *JV v Intact*, the treatment plan in dispute was prepared by a psychotherapist and proposed cognitive behaviour therapy by the same psychotherapist. The adjudicator found the psychotherapist was providing specialized treatment based on the psychotherapist's distinct education, experience, academic credentials, and licensed status. Here, the disputed treatment plans propose "psychological treatment" performed by Dr. McDowell and no one else. The disputed treatment plans propose only "psychological treatment" and not anything distinct such as cognitive behaviour therapy. Further, the applicant leads no submissions or evidence to show psychotherapist Hu has any distinct training or credentials which warrant a rate which is higher than a psychometrist, as was the case in *JV v Intact*.
- [19] The treatment provider has effectively misled the respondent by substituting psychological treatment by a psychologist for that of a psychotherapist. Considering this and the reasons outlined above, I find the applicant is only entitled to the hourly rate for an unregulated professional, which is \$58.19 per hour.

INTEREST AND AN AWARD

- [20] Pursuant to section 51 of the *Schedule*, interest is payable if the respondent failed to pay a benefit within the timelines provided. The applicant is not entitled to interest because the respondent paid the benefits in accordance with the *Schedule*.
- [21] Pursuant to section 10 of O. Reg. 664, the applicant is only entitled to an award if the respondent unreasonably withheld or delayed payment of a benefit. The applicant is not entitled to an award because there is no evidence the respondent withheld or delayed payment of a benefit, or, failed to pay within the timelines provided by the *Schedule*. It paid the benefit in accordance with the amount prescribed for unregulated professionals and did so according to the timelines provided by the *Schedule*.

CONCLUSION

- [22] The applicant was approved for treatment by a psychologist but, instead, used the services of a psychotherapist, who is an unregulated professional according to the *Professional Services Guideline*. As a result, the applicant is not entitled to the unpaid balance of the disputed psychological treatment plans.
- [23] No interest or award is payable.

Released: April 3, 2020



**Brian Norris
Adjudicator**