

**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**



Citation: A.A. vs. Certas Direct Insurance Company, 2019 ONLAT 18-008561/AABS

Tribunal File Number: 18-008561/AABS

In the matter of an Application for Dispute Resolution pursuant to subsection 280(2) of the *Insurance Act*, RSO 1990, c I.8., in relation to statutory accident benefits.

Between:

[A.A.]

Applicant

and

Certas Direct Insurance Company

Respondent

DECISION

PANEL: Robert Watt, Adjudicator

APPEARANCES:

For the Applicant: Arash Goneh-Farahani Paralegal

For the Respondent: Jonathan B. Schrieder Counsel

HEARD: In Writing on: April 23, 2019

OVERVIEW

- [1] The applicant was involved in an automobile accident on **April 7, 2017**, and sought benefits pursuant to the Statutory Accident Benefits Schedule – Effective September 1, 2010 (the "Schedule"). The applicant was denied certain benefits by the respondent and submitted an application to the Licence Appeal Tribunal - Automobile Accident Benefits Service ("Tribunal").

ISSUES IN DISPUTE

- [2] The issues in dispute were identified and agreed to as follows:
- i. Did the applicant sustain predominantly minor injuries (MIG) as defined under the *Schedule*?
 - ii. Is the applicant entitled to a medical benefit in the amount of \$1,992.81 for physiotherapy services recommended by Toronto Medical Centre in an OCF-18 submitted on September 8, 2017 and denied on September 22, 2017?
 - iii. Is the applicant entitled to the cost of a driver evaluation assessment in the amount in the amount of \$2,460.00 recommended by 101 Physio in an OCF-18 submitted on August 23, 2018 and denied on August 24, 2018?
 - iv. Is the applicant entitled to a neuropsychological assessment in the amount of \$9,026.99 recommended by 101 Physio in an OCF-18 submitted on August 27, 2018?
 - v. Is the applicant entitled to interest on any overdue payment of benefits?

RESULTS

- [3] The respondent has removed the applicant from the MIG because of psychological issues, so the applicant is no longer under the MIG guideline.
- [4] The applicant is not entitled to a medical benefit in the amount of \$1,992.81 for physiotherapy services recommended by Toronto Medical Centre in an OCF-18 submitted on September 8, 2017 and denied on September 22, 2017?
- [5] The applicant is not entitled to the cost of a driver evaluation assessment in the amount in the amount of \$2,460.00 recommended by 101 Physio in an OCF-18 submitted on August 23, 2018 and denied on August 24, 2018?

- [6] The applicant is not entitled to a neuropsychological assessment.
- [7] The applicant is not entitled to interest on any overdue payment of benefits as there were no benefits owing?

BACKGROUND

- [8] On April 7, 2017 the applicant was rear ended while she was stopped at a red light. She did not lose consciousness and did not go to the hospital. The applicant resumed her driving after the accident and went back to work
- [9] The applicant attended at Toronto Medical Centre on April 13, 2017. Dr. K O'Hare diagnosed her with Whiplash associated disorder (Wad 3) with complaint of neck pain, injury of muscle and tendon at neck level, pain in thoracic spine, sprain and strain of thoracic spine, low back pain, and strain of lumber spine.¹
- [10] Dr. Joan Tucker, psychiatrist, in her IE report dated December 4, 2017, stated that the applicant had an adjustment disorder with depressed mood. Dr. Tucker recommended that the applicant see her family doctor for antidepressant medication and to get cognitive behaviour therapy.²
- [11] Dr. M. Zarnett, orthopaedic surgeon, in his I.E report dated January 4, 2018, indicated that the applicant did not need any further formal treatment or medication, as a result of the accident. His report indicated that the applicant had suffered uncomplicated soft tissue sprains and strains.³
- [12] Dr. K. Keeling, psychologist in his report dated March 17, 2018, concluded that the applicant was suffering from Adjustment Disorder with Mixed Anxiety and Depressed Mood and Specific Phobias, situational type (driver and passenger)⁴
- [13] The applicant completed a Neuropsychology assessment with Dr. J. Gilman psychologist, on August 20, and 21, 2018. The applicant indicated to him that she had hit her head. He concluded that the applicant had a mild brain injury and recommended a psycho-emotional evaluation be completed.⁵

¹ Applicant Brief of Documents Disability Certificate Tab 2

² Applicant Brief of Documents Dr. J. Tucker Assessment Report Tab 4

³ Orthopaedic Examination by Dr. M. Zarnett dated January 4, 2018

⁴ Ibid 2 tab 3

⁵ Neuropsychological Assessment Applicant Brief of Documents Tab 7

- [14] Dr. Silvia Tenenbaum on September 11, 2018 assessed the applicant on a driving Anxiety Assessment and reported that the applicant had a specific Phobia, fear of driving; Somatic symptom disorder Mild.⁶

ANALYSIS

Did the applicant sustain predominantly minor injuries as defined under the *Schedule*?

- [15] This is no longer an issue as the respondent has taken the applicant out of the MIG because of the applicant's psychological symptoms.

Is the applicant entitled to a medical benefit in the amount of \$1,992.81 for physiotherapy services recommended by Toronto Medical Centre in an OCF-18 submitted on September 8, 2017, and denied on September 22, 2017?

- [16] The applicant did not submit the OCF-18 for this benefit in the correct format as required under section s 38 (8), 64(7) of the *Schedule* and the Superintendent's Guideline No.07/10. of the *Schedule*.⁷ The application (OCF-18) was not signed by the applicant. The respondent denied the benefit and asked the applicant to resubmit the application in the right format. The applicant failed to do so.
- [17] I find therefore because the applicant has not properly submitted the application for this benefit in the right format, that she is not entitled to this benefit.

Is the applicant entitled to the cost of a driver evaluation assessment in the amount in the amount of \$2,460.00 recommended by 101 Physio in an OCF-18 submitted on August 23, 2018 and denied on August 24, 2018?

- [18] Section 15 of the *Schedule* requires all medical benefits to be reasonable and necessary before they are required to be paid. The applicant has had two psychological assessments and a psychological pre-screen conducted with the proposed assessment⁸. (Dr. Joan Tucker, psychiatrist, on December 4, 2017 and Dr. Sylvia Antal, orthopaedic surgeon. on March 12, 2018.) The applicant saw Dr. Silvia Tenebaum on September 11, 2018, who diagnosed the applicant with mild driving and passenger anxiety.⁹ A report from the North York General Hospital dated June 18, 2018 indicates that the applicant "is driving currently and that she

⁶ Driving Evaluation assessment Report Applicant Brief of Documents tab 6

⁷ Respondent's Brief of Documents Tab 4

⁸ Ibid Tab 6

⁹ Ibid tab 7

says she is a more careful driver”. There is no mention in the report of any driving anxiety.¹⁰

- [19] I find since the applicant is back driving and that she already has been assessed, that it is not reasonable and necessary for another assessment to be conducted.

Is the applicant entitled to a neuropsychological assessment in the amount of \$9,026.99 recommended by 101 Physio in an OCF-18 submitted on August 27, 2018?

- [20] There is mixed evidence of whether the applicant struck her head in the accident. The applicant reported striking her head on the headrest to Dr. Majl on a section 25 Neurology Assessment.¹¹ The North York General Hospital Mental Health Assessment Report indicates that the applicant was “unsure if she hit her head.”¹² This report makes no recommendations for a neuropsychological assessment. Dr. Hui, the applicant’s family doctor did not mention in his records that the applicant suffered a concussion or post-concussion symptoms.¹³ There are no hospital records indicating a brain injury occurred. The applicant indicated to Dr. Zarnett that she did not hit her head.¹⁴ There was no mention of any head injury in the Psychiatry Assessment Report dated January 4, 2018, by Dr. J. Tucker.
- [21] The applicant has had already a section 44 psychiatric assessment with Dr. J. Tucker, a Neurology Assessment Evaluation with Dr. Majl and a Neuropsychology assessment with Dr. J. Gilman
- [22] I find that there is not enough evidence before me that would suggest that a further neuropsychological assessment would be reasonable and necessary and will have a rehabilitation purpose leading to a reduction of pain.¹⁵ I therefore find that a further neuropsychological assessment would not be reasonable and necessary.

Interest

- [23] I find that no interest on any overdue payment of benefits as there are no benefits owing.

CONCLUSION

¹⁰ Ibid Tab 16

¹¹ Neurological Assessment Report Dr. L. Majl Applicant’s Brief of Documents Tab 5

¹² Ibid tab 19

¹³ Ibid tab 18

¹⁴ Orthopaedic Examination by Dr. M. Zarnett dated January 4, 2018

¹⁵ AK. V Aviva Canada Inc. 2017 CanLII 93460 (LAT)

[24] For the reasons outlined above, the application is dismissed

Released: December 9, 2019

**Robert Watt
Adjudicator**