

**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: J.Z.vs. Certas Home and Auto Insurance 2020 ONLAT 19-005337/AABS

**Released Date: 06/30/2020
File Number: 19-005337/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:

J.Z.

Applicant

and

Certas Home and Auto Insurance

Respondent

DECISION

ADJUDICATOR: Jesse A. Boyce

APPEARANCES:

For the Applicant: Neisha Moses

For the Respondent: Meredith Harper

**HEARD via written
submissions**

OVERVIEW

- [1] On January 19, 2017, J.Z., a minor seated in the backseat of his parent's vehicle, was injured in an accident, suffering a fractured left arm. He sought attendant care benefits ("ACBs") and physiotherapy treatment from the respondent, Certas, pursuant to the *Statutory Accident Benefits Schedule – Effective September 1, 2010*¹ (the "Schedule").
- [2] Following the accident and up to February 2018, Certas paid ACBs to J.Z. for in-home care. Certas then terminated the ACBs on the basis that they were no longer reasonable and necessary, as J.Z. had recovered. In a similar vein, Certas denied the physiotherapy claim on the basis that that it was not reasonable and necessary. J.Z. disagreed and applied to the Tribunal for dispute resolution.

ISSUES

- [3] The following are the issues in dispute:
- i. Is the applicant entitled to an attendant care benefit in the amount of \$1,392.64 per month from February 12, 2018 to date and ongoing, for services provided by Gateway Home Heritage, submitted on June 30, 2017 and denied by the respondent on February 12, 2018?
 - ii. Is the applicant entitled to a medical benefit in the amount of \$2,456.20 for physiotherapy services recommended by Dr. Asif Sachedina as set out in a treatment and assessment plan dated February 15, 2018 and denied by the respondent on April 25, 2018?
 - iii. Is the applicant entitled to interest on any overdue payment of benefits?

RESULT

- [4] I find that J.Z. is not entitled to ACBs for the period in dispute or payment for the physiotherapy treatment as neither are reasonable and necessary.

ANALYSIS

Attendant Care Benefits

- [5] I find that J.Z. is not entitled to ACBs for the period in dispute as they are not reasonable and necessary. Section 42(1) of the *Schedule* states that an

¹ O. Reg. 34/10, as amended.

application for ACBs must be in the form of, and contain the information required to be provided in, the version of the document entitled Assessment of Attendant Care Needs (“Form-1”). Section 19 of the *Schedule* states that an insurer shall pay for all reasonable and necessary expenses incurred by or on behalf of an insured person as a result of an accident for services provided by an aide or attendant. J.Z. bears the burden of proving entitlement to ACBs on a balance of probabilities.

- [6] On review of the medical documentation, I find there is limited to no evidence to support the contention that J.Z. needed continuing ACBs—let alone \$1,392.64 of monthly care—as a result of the January 2017 accident beyond February 12, 2018 over-and-above the usual care and assistance provided by his parents to a young boy. With great respect, I am certain that being in a car accident and sustaining a broken arm was a traumatic and difficult experience for a 7-year-old. Where it seems the entire family was involved in the accident, I accept that some care would have been required, at least initially and perhaps in the months that followed, in order to assist J.Z. and his family with day to day tasks while J.Z.’s fracture healed. However, the medical evidence, including opinions from J.Z.’s own physicians, overwhelmingly indicates that J.Z. had healed from his accident-related impairments well before February 2018.
- [7] The timeline presented by Certas provides rather compelling support for this finding. To begin, J.Z. was discharged from the fracture clinic at Sick Kids Hospital by Orthopaedic Surgeon (“O.S.”) Dr. Burns on March 16, 2017. Dr. Burns does not make any reference or recommendation for additional formal treatment or ACBs. After this date, J.Z.’s family doctor, Dr. Maragh, does not make any reference or recommendations for additional, formal treatment, assistance or ACBs in any of the visitation notes from May 26, 2017 onwards. J.Z.’s own O.S. examination by Dr. Lindsay, dated July 20, 2017, revealed a normal physical examination and states that he “has fully recovered from his humerus fracture in all physical respects. He has no residual pain, tenderness, restricted range or weakness.” Dr. Lindsay states that “the prognosis for full and complete recovery from injuries in [J.Z.’s] case is excellent.” Notably, Dr. Lindsay made no recommendations for immediate or ongoing ACBs, physiotherapy or chiropractic treatment. Further, in J.Z.’s follow-up In-Home Assessment with Form 1, completed by Ms. Stewart, his Occupational Therapist (“OT”), dated December 8, 2017, J.Z. had returned to school and to his pre-accident leisure activities.
- [8] As Certas submits, the most up-to-date medical assessments and opinions are those of Ms. Bhatnagar, O.T., dated February 2, 2018, and Dr. Dessouki, O.S.,

dated April 20, 2018. Both of these reports reveal that J.Z. was fully healed, had no pain, was back to his normal life, school and activities and did not require any ACBs or formal treatment as a result of the accident. Even the clinical notes and records of Canadian Active Rehab, where J.Z. was receiving treatment, reveal J.Z.'s functional abilities as of February 15, 2018, as he was noted to be climbing the agility ladder, doing chest presses, high knees, heel kicks, planks while balancing on a ball, ball slams and ball roll-outs. I find it difficult to reconcile J.Z.'s apparent need for ACBs during this period of time with his ability to do these activities and in the absence of a recommendation from a treating professional. J.Z. is clearly a resilient kid, as most 10-year olds are.

- [9] To be frank, the medical evidence J.Z.'s relies on for support is dated and is not supported by the recommendations of his own practitioners that came after and contemporaneously track his recovery. The original report of Ms. Stewart recommending ACBs is from February 2017 and the follow-up report recommending a reduction in ACBs is from June 2017. Simply put, there is no continuous or continuing medical evidence provided to speak to the ACBs being reasonable and necessary beyond February 2018 when Certas terminated the benefit on the basis of its s. 44 assessments, which are dated February 2018, being the period in dispute, and which recommended \$0 in ACBs. As it is J.Z.'s onus to prove entitlement to the period in dispute, I find he has fallen well short of that burden and I find no reason to interfere with Certas' determination.
- [10] For completion, in submissions, J.Z. argued that ACBs were reasonable and necessary because of his progress and because they were incurred. Yet, on review of the documents he provided, J.Z. has offered no substantive proof that the ACBs he claims were incurred under any of the prongs of s. 3(7)(e). There are no invoices, no promissory notes, no affidavits speaking to services provided, the level of care, the rate of care, *etc.* While there is a document from Gateway Home Healthcare evidencing three meetings with J.Z. between March and April 2017, there is no breakdown of services listed and this document cannot be characterized as an invoice for ACBs under the most generous definition. Accordingly, as it is J.Z.'s burden, the Tribunal has no basis on which to find that he received the goods or services to which the ACB expenses relate, that he has paid the ACB expenses, has promised to pay the expenses or is otherwise legally obligated to pay the expenses. Further, J.Z. has not offered analysis on why s. 3(8) may apply to deem the expenses incurred.
- [11] For these reasons, I find that J.Z. is not entitled to payment for ACBs as he has not demonstrated the benefits are reasonable and necessary for the period in dispute and has not demonstrated that services were incurred.

Is the physiotherapy treatment reasonable and necessary?

- [12] J.Z. also seeks payment in the amount of \$2,456.20 for physiotherapy services recommended by Dr. Asif Sachedina in a treatment plan dated February 15, 2018. Under s. 15 of the Schedule, an insurer shall pay for all medical and rehabilitation benefits that are reasonable and necessary as a result of the accident. J.Z. bears the burden of proving that treatment is reasonable and necessary. On the evidence, I find he has failed to meet that burden.
- [13] While I am alive to J.Z.'s submission that the physiotherapy plan submitted in March 2018 is needed to help him fully recover from his arm fracture suffered in January 2017, I find there is a lack of objective supporting medical evidence to justify this treatment and limited analysis on why it is reasonable and necessary nearly 14 months post-accident where there have been no reports of pain, there is no evidence of functional impairment and there have been no referrals from a treating professional. As Certas notes, a treatment plan, without any recommendations for that treatment from a qualified health practitioner, is insufficient to establish entitlement under the *Schedule*. On review of the treatment plan, one of the goals of the treatment plan is to return J.Z. to his activities of normal living. As noted above, and as urged by Certas, there is repeated, corroborating medical evidence that J.Z. had returned to his normal activities and fully healed well before this treatment plan was submitted. J.Z. has not provided any medical evidence to suggest that his physical condition had worsened or declined to warrant further, formal treatment where none of his treating practitioners recommended same.
- [14] For these reasons, I find the treatment plan for physiotherapy is not reasonable and necessary and not payable.

CONCLUSION

- [15] I find J.Z. is not entitled to either of the ACBs or the physiotherapy treatment as they are not reasonable and necessary. As no benefits are overdue, it follows that interest is not applicable under s. 51.

Released: June 30, 2020



Jesse A. Boyce
Adjudicator