



Ngoc My Ly v. Aviva General Insurance, 2022 ONLAT 20-012558/AABS

Licence Appeal Tribunal File Number: 20-012558/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:

Ngoc My Ly

Applicant

and

Aviva General Insurance

Respondent

DECISION

ADJUDICATOR:

Thérèse Reilly

APPEARANCES:

For the Applicant:

Ngoc My Ly, Applicant
Meghan Hull, Counsel
Christine McKeon, clerk

For the Respondent:

Natasha Vujovic, Representative
Jonathan White, Counsel

Court Reporter:

Denise Gerginova

Interpreter:

Chi Lok (Day 1) (Cantonese)
Christine Zhao (Day 2) (Cantonese)

Heard

**By Videoconference May 9, 10, 11, 12 and 13, 2022
and written closing submissions**

OVERVIEW

- [1] The applicant was injured in an accident on **October 1, 2019**, and sought various benefits from the respondent, Intact Insurance Company pursuant to the *Statutory Accident Benefits Schedule - Effective September 1, 2010*¹ ("*Schedule*"). The applicant submitted a claim for an income replacement benefit (IRB) and Attendant Care Benefit (ACB) and numerous treatment plans (OCF-18s) for treatment and cost of examinations. She claims the respondent did not properly deny the claims, failed to consider new medical evidence, and failed to comply with section 36 (7)(a) and (b) of the *Schedule*. The applicant argues her ACB is incurred or should be "deemed" incurred based on the evidence.
- [2] The respondent denied the IRB, the ACB, the medical benefits, and the cost of examinations for various assessments in dispute on the basis of its section 44 insurer assessments and video surveillance evidence. It claims no evidence was presented by the applicant to support her claim that the treatment plans are reasonable and necessary. It denies the applicant has proven entitlement to the IRB claim or that the ACB is incurred or deemed to be incurred. The applicant disagreed and submitted an application to the Tribunal for resolution of the dispute.

Witnesses

- [3] The applicant, her daughter, Diana Ly, and her psychologist, Dr. Valentin, testified on the applicant's behalf. Dr. Dharamshi, physician and Natasha Vujovic, adjuster, testified on behalf of the respondent.

ISSUES IN DISPUTE

- [4] The following issues are listed as issues in dispute:
- a. Is the applicant entitled to a weekly income replacement benefit for \$302.21² from October 8, 2019 to date and ongoing?
 - b. Is the applicant entitled to a monthly attendant care benefit for \$3000 from December 17, 2019 to date and ongoing?

¹ O. Reg. 34/10, as amended.

² Quantum is in dispute. The applicant claims the quantum is \$ 331.05 which the respondent disputes.

- c. Are the following treatment plans reasonable and necessary³?
- i. Is the applicant entitled to \$2400 for an attendant care assessment⁴ recommended by Galit Liffshiz & Associates submitted November 11, 2019, and denied January 3, 2020?
 - ii. Is the applicant entitled to a medical benefit for \$5038 for occupational therapy recommended by Galit Liffshiz & Associates submitted December 16, 2019, and denied January 9, 2020?
 - iii. Is the applicant entitled to a medical benefit for \$933.10 for assisted devices recommended by Galit Liffshiz & Associates submitted December 16, 2019, and denied January 9, 2020?
 - iv. Is the applicant entitled to a medical benefit for \$7060.57 for rehabilitation support worker recommended by Galit Liffshiz & Associates submitted December 16, 2019, and denied January 9, 2020?
 - v. Is the applicant entitled to a medical benefit for \$3698.44 after partial approval for chiropractic services recommended by North Toronto Rehabilitation and Physiotherapy submitted November 28, 2019, and denied January 27, 2020?
 - vi. Is the applicant entitled to a medical benefit for \$2480.34 after partial approval for physiotherapy recommended by North Toronto Rehabilitation and Physiotherapy submitted February 5, 2020, and denied March 28, 2020?
 - vii. Is the applicant entitled to a medical benefit for \$5845.14 for occupational therapy recommended by Functionability Rehabilitation Services submitted May 11, 2020, and denied June 15, 2020?
 - viii. Is the applicant entitled to a medical benefit for \$1295.01 (after partial approval of \$1699.88) for social work therapy recommended

³ The OCF-18s for medical benefits for \$1497.98 for chiropractic services (dated Nov. 17, 2020), for \$1272.36 for physiotherapy (dated Jan. 25, 2021), for \$963.93 for chiropractic services (dated Feb. 2, 2021) and for \$791.12 for chiropractic services (dated Feb. 17, 2021), all recommended by North Toronto Rehabilitation and Physiotherapy were withdrawn at the hearing.

⁴ The OCF-18 states the purpose of the OCF-18 is for an attendant care assessment and not an occupational therapy assessment and requests \$200 each for completion of the Form 1 and OCF-18.

by Social Work Consulting Group submitted August 25, 2020, and denied September 2, 2020?

- ix. Is the applicant entitled to a medical benefit for \$1497.98 for chiropractic services recommended by North Toronto Rehabilitation and Physiotherapy submitted July 16, 2020, and denied September 8, 2020?
 - x. Is the applicant entitled to a medical benefit for \$1192.48 for chiropractic services recommended by North Toronto Rehabilitation and Physiotherapy submitted September 8, 2020, and denied October 7, 2020?
 - xi. Is the applicant entitled to a medical benefit for \$986.74 (only \$711.84 was incurred) for chiropractic services recommended by North Toronto Rehabilitation and Physiotherapy submitted October 14, 2020, and denied October 23, 2020?
 - xii. Is the applicant entitled to a medical benefit for \$3575 for occupational therapy services recommended by Functionability Rehabilitation Services submitted January 25, 2021 and denied February 11, 2021?
- d. Is the applicant entitled to an award for unreasonably withheld or delayed payments under section 10 of Regulation 664?
 - e. Is the applicant entitled to interest on any overdue payment of benefits?

RESULT

- [5] For the reasons set out below, I find the applicant is not entitled to an IRB or the ACB as the benefit is not incurred or deemed incurred. The treatment plans are not reasonable and necessary. As no benefits are overdue, the award claim is dismissed and no interest is payable.

The Accident

- [6] The applicant claims she was injured when her vehicle in which she was a passenger was rear ended by another vehicle when stopped at a traffic light causing her vehicle to be pushed forward into the vehicle in front of her vehicle. No police or ambulance was called to the scene of the accident. The applicant testified she did not hit her head in the collision. The evidence indicates that she

did not lose consciousness and the air bags did not deploy. The vehicle was drivable from the scene of the accident.

The Applicant's Injuries and Medical Evidence

- [7] The applicant testified she has ongoing pain in her neck, back and shoulders. She has balance issues and suffers from dizziness which she claims are caused by the accident. She testified her head feels heavy and she has issues with memory and concentration. She claims she sustained a concussion from the accident. She testified her pain is intermittent. Her memory issues, she testified, started after the accident. She testified she is tired all the time and has no energy. She testified bright lights bother her. She testified she has lost interest in doing daily activities 6 months after the accident. She feels stressed and worried about her headaches and dizziness and has concerns about falling.
- [8] She produced into evidence a Disability Certificate (OCF-3) dated October 14, 2019, and completed by her family doctor, Dr. Law, which lists her injuries as a concussion and low back pain.⁵ No other injuries are listed by the doctor and no other OCF-3 was filed into evidence by the applicant. The applicant lists her injuries when she describes the accident as including headaches, possible concussion, neck, shoulder and back pain, and stiffness and numbness in her hands. There is no mention in the OCF-3 of any psychological injuries. The OCF-3 indicates the applicant cannot work including on modified duties. The OCF-3 indicates she does not suffer a complete inability to carry on a normal life. No prior conditions are noted. The OCF-3 states the length of disability is noted for 4 weeks or more.
- [9] The applicant testified about 2 visits to the emergency department of the local hospital after the accident. On October 9, 2019, she went to the emergency department of the Markham Stouffville Hospital due to dizziness.⁶ The records indicate she had a sudden onset of dizziness with a headache. She was assessed and sent home and told to see her family doctor. On October 11, 2019, she was taken by ambulance to Scarborough General Hospital⁷ after she fainted. The ambulance call report dated October 11, 2019, indicates the applicant reported symptoms of dizziness and a headache and had been in a car accident on October 1, 2019. A CT scan of her head was normal and unremarkable. The Scarborough Hospital records indicate there was no neck pain at the time of examination and the dizziness had stopped. She had intermittent headaches and

⁵ Exhibit 18, Disability certificate (OCF-3) dated October 14, 2019, by Dr. Law, applicant document brief, tab 2a.

⁶ Exhibit 2, Markham Stouffville Hospital records, applicant document brief, tab 14.

⁷ Exhibit 3, Scarborough General Hospital, applicant document brief, tab 13.

on and off body aches since the accident. She was directed to follow up with her family doctor.

- [10] The applicant saw her family doctor regularly after the accident.⁸ These visits indicate the applicant's initial complaints on October 2, 2019 related to neck and back pain. On October 24, 2019 the doctor's notes refer to a concussion and state the applicant was fatigued, dizzy, foggy headed, and upset. She was told to rest. His notes refer to a concussion. By January 3, 2020 she is feeling better. Her speech and language have improved. The family doctor completed a medical leave form⁹ for her employer and confirmed the diagnosis was a concussion and secondary low back pain. The treatment suggested was rest and physiotherapy. He noted the prognosis was good and she was already improving. The notes of January 3, 2020 indicate a CT scan of the head on December 16, 2019 was negative. In January 2020 through 2021 it is noted she has headaches. The family doctor's notes indicate the applicant is not taking her metformin medication for diabetes. She was advised to restart her diabetes medication. On July 27, 2021 it was noted she is doing much better with some discomfort. In October 21 and November 1, 2021, dizziness and anxiety were noted. The doctor noted these could be from a concussion. He suggested a referral to a concussion clinic but the applicant did not indicate interest in going to a concussion clinic due to the COVID pandemic. He noted her diabetes is uncontrolled.
- [11] The family doctor's notes refer to a concussion diagnosis. However I question this diagnosis on the basis that 1) the only treatment suggested is rest and physiotherapy 2) the family doctor appears to diagnose a concussion but he makes no referral to a concussion clinic 3) a concussion diagnosis is usually made by a neurologist and lastly CT scans and X-rays of the applicant's spine and head were normal.
- [12] The family doctor's records indicate the applicant is not compliant with her diabetes medications. His records do not outline the impact of not being compliant with the diabetes medication. The family doctor did not note any psychological issues or concerns. He did not note any balance issues. The family doctor's records indicate that he did not provide a medical opinion on the applicant's ability to return to work.

⁸ Exhibit 1, clinical notes and records of Dr. Law, dated October 1, 2018 to March 14, 2022, tab 59, respondent document brief and from October 1, 2016 to December 20, 2019, tabs 62 and 63, respondent document brief.

⁹ Medical leave form completed by Dr. Law, January 3, 2020, page 856, respondent document brief.

Neuropsychological Assessment Report

- [13] The applicant was assessed by Dr. Valentin, psychologist specializing in neuropsychology, on October 28 and November 10, 2021, and issued a report on December 20, 2021.¹⁰ The applicant's pain complaints were noted as discomfort in her neck and lower back, fatigue, difficulty sleeping. Also noted are applicant's reporting of memory issues and nightmares. The applicant reported having a heavy head. Dr. Valentin reported that the applicant's relationship with her husband has deteriorated. The applicant had anxiety when travelling by car and unable to complete many household tasks. She presented with depression, anxiety with inefficiencies related to memory, attention, and processing speed. The doctor diagnosed the applicant with adjustment disorder with mixed anxiety and depressed mood. She stated she possibly sustained a concussion but this was not consistent with a neurocognitive disorder. The applicant's cognitive inefficiencies were likely due to her emotional problems. She concluded the applicant's prognosis is guarded due to her age and persistent physical complaints. She stated the applicant requires psychological treatment. Involvement with a vocational specialist was also recommended to determine if she can perform any work in the future. Dr. Valentine also discussed the validity of her tests and stated the applicant presents herself in a more negative way than the clinical picture suggests.¹¹
- [14] As to the applicant's ability to work, Dr. Valentin concluded her psychological condition and related cognitive inefficiencies will likely make her fatigued and she will require breaks to complete her work tasks. Further, her daily living can be negatively affected by her decreased motivation due to depression. Dr. Valentin reported that it is likely the applicant would not be able to work according to her previous experience and training (no mention is made in her testimony about the applicant's education which is part of the post 104 weeks IRB statutory test) and if she returns to work, she will require breaks and other accommodations. She concluded the applicant has sustained a loss of competitive advantage.¹² During cross examination she admitted that she did not discuss the applicant's work duties as a cashier with the applicant. She admitted in cross examination that she did not nor was she asked to assess the applicant's ability to work post 104 weeks. She also confirmed in testimony that she did not outline her opinion that the applicant could return to work if she had treatment in her report.

¹⁰ Exhibit 16, Neuropsychological Assessment Report, Dr. Valentin, psychologist, dated December 20, 2021, tab 33.

¹¹ Exhibit 16, at page 12 of her report.

¹² Ibid, page 14 of her report.

Social Work Assessment

[15] A social work assessment report¹³ was also completed in August 2019 by Grace Kim, registered social worker, and noted the applicant had anxiety and depression. A social worker does not have the expertise to diagnose these conditions. The report did not opine on the applicant's ability to work or attendant care needs. As such I find the report of little assistance in supporting a claim for an IRB or ACB. Further, the report refers to post-concussive syndrome, chronic pain, and post-traumatic stress symptoms. As noted below, Dr. Modell, neurologist, did not find any basis for a concussion diagnosis from a neurological perspective. Dr. Valentin opined any cognitive issues were emotionally based. Moreover, no medical evidence was presented that the applicant has chronic pain and as such, I question the conclusions advanced by the social worker based on a condition not supported by the medical evidence. Her report is questionable on this basis as well and I find that it provides minimal evidence to support the applicant's claims.

Psychological Assessment

[16] The applicant was also assessed by Dr. Ratti, psychologist. In his August 19, 2020¹⁴ psychological assessment report, Dr. Ratti diagnosed the applicant with an Adjustment Disorder with Mixed Anxiety and Depression. Dr. Ratti assessed if the applicant was within MIG. He did not assess her IRB or ACB claim. His report is significant because 1) he noted the applicant's cognitive orientation appeared intact, with no significant difficulties with memory or concentration and 2) the applicant indicated to him that she had stopped work and had not returned to work "due to physical pain". She did not report any psychological barriers preventing a return to work.¹⁵ Further, she reported being independent in her personal care, performing only light dishwashing due to physical pain, and had mild anxiety while travelling as a passenger in a vehicle. Test results suggested mild to moderate emotional/psychological distress. Dr. Ratti stated that, in his opinion, there was no evidence of psychological factors resulting in any functional limitations.¹⁶

OT Assessment by Cindy Huang

[17] The applicant's attendant care needs were assessed in November 2019 by Ms. Huang, occupational therapist, who determined the applicant's ACB need to be at

¹³ Exhibit 7, Social Work Assessment, Grace Kim, August 17, 2020, Tab 18.

¹⁴ Exhibit 17, Psychological Assessment, Dr. Ratti dated August 19, 2020, tab 21a, applicant document brief.

¹⁵ Ibid, page 554.

¹⁶ Ibid, page 555.

\$10,305 per month. I find her report is not reasonable and presents conclusions contrary to the medical evidence. For example, she states in her report that the applicant's injuries include to her left trunk, bilateral knees, middle left digit and left buttocks. These injuries are not consistent with the applicant's injuries arising from the accident as reported by the rest of the medical evidence before me. She states the applicant needs basic supervisory care 24 hours a day to ensure she is safe at home and in case of an emergency due to her cognitive and physical limitations. There is no evidence that any of the claimed injuries including a concussion resulted in a need of 24 hour supervisory care and raised issues of safety. Her findings also contradict the findings of Mr. Livadas (described below), the applicant's occupational therapist, who in August 2020 found no cognitive difficulties and found the applicant was functioning at a high level to a point where she did not need attendant care services. Overall, I prefer the report of Mr. Livadas in his report and assessment over that of Ms. Huang, who I find exaggerated and incorrectly identified the impairments of the applicant. She also indicated the applicant needed attendant care assistance with walking as she has severe balance and dizziness issues. The medical evidence does not suggest this level of attendant care was needed.

Testimony of Diana Ly, the applicant's Daughter

- [18] In addition to her own testimony, the applicant had Diana Ly, her daughter, testify on her behalf. The daughter testified her mother was very different before the accident in that she was very happy, enjoyed gardening and cooking, and was very healthy. Now, however she noted her mother has pain, dizziness, and stiffness. Her movements are slower and she has difficulty with memory, focus, and concentration. She stated the accident affected her communications with her mother. Over time her condition has improved in that she can do more but she has daily headaches. She testified her mother needs help with washing her hair (because she could not reach her back) and, that she is afraid of falling due to dizziness. She referred to Ms. Leung, recommendations noted above who suggested the applicant needs help with cleaning the tub after use, changing the bedding, toenail care, and hanging clothes. She testified her mother could not hire a service provider for attendant care as she could not afford to. I find the daughter's evidence is of minimal value in support of her mother's claim of injuries and ongoing and worsening impairments. Ms. Ly testified her mother had difficult with memory, focus and concentration but this was contradicted by the evidence of the IE assessors and Dr. Ratti. Moreover, issues of balance, dizziness and fear of falling is contradicted by the surveillance evidence of the respondent described below.

The Respondent's Evidence

Video Surveillance

- [19] The respondent relies on the surveillance videos¹⁷ taken on March 9, 2022 where the applicant is observed and able to walk, sit, and stand. She is observed entering and exiting a vehicle with no signs of distress. She is observed opening and closing the front seat passenger door of a vehicle while holding a shopping bag with no signs of distress. On the way into the house, she was able to bend at the waist, grab and carry a green recycling bin in the front of her home. She also observed shopping at a Walmart store where she is observed standing in the store looking at products under some bright lights with no signs of any distress or difficulty with bright lights. She is observed pushing a shopping cart and holding grocery bag.
- [20] The respondent maintains the video surveillance supports its claim that the applicant has overstated her injuries and symptoms. It is the respondent's position that the video surveillance does not support the applicant's reports of pain. The video is taken 2 years and 4 months after the accident at a time when the applicant claims her symptoms and pain continued. I find the surveillance helps in assessing the applicant's injuries as they relate to the level of severity and persistence claimed by the applicant. The surveillance does not support the applicant's claims of severe and ongoing impairments as a result of the accident. There is no signs of any balance issues or dizziness or difficulty walking, standing or bending.

IE Assessments by the Respondent

Dr. Dharamshi, Physician

- [21] Dr. Dharamshi, physician,¹⁸ examined the applicant on December 18, 2019, and noted the applicant reported her complaints in order of severity as follows in his report dated January 7, 2020¹⁹:

Headaches

Low back pain

¹⁷ Exhibits 15, Video Surveillance dated March 9, 2022 and Investigator Report, March 9, 2022, respondent document brief, tabs 93 and 94. The video was taken over a 4 day period in March 2022.

¹⁸ Exhibit 10, Physician Assessment, Dr. Dharamshi, January 7, 2020, tab 75, respondent document brief.

¹⁹ Explanation of Benefits dated January 8, 2020, tab 11, respondent document brief.

Left hand pain

Neck pain

The applicant reported to Dr. Dharamshi that she had stopped working as a cashier and has not returned to work since the accident. She reported she is independent with her self-care activities and does some housekeeping.

- [22] In his report he noted the applicant walked into the assessment room with a shuffled gait, with her arms flexed at the elbows and her fingers extended in an animated and robotic manner. He noted she did not demonstrate any discomfort or any abnormality while sitting through the 40-minute interview. She made poor eye contact, was gazing up at the ceiling, and looking from side-to-side throughout most of the interview. He stated she was a poor historian and needed constant re-questioning and redirection. His examination revealed no abnormalities of the shoulders, lumbar spine nor with the cervical spine although there was some tenderness and reduced range of motion in the cervical spine.
- [23] He diagnosed the applicant with the following:
- 1) Post-traumatic headache with a possible concussion,
 - 2) Lumbosacral musculoligamentous strain,
 - 3) Whiplash-associated disorder grade II, and
 - 4) Left 3rd digit strain/continued pain (unlikely motor vehicle collision related).
- [24] Dr. Dharamshi was retained to assess the applicant's IRB claim. He identified employment duties typical of a cashier include standing, scanning, carrying, transferring grocery items and packing grocery bags. From a muscular perspective, he concluded the applicant was capable of performing all of these duties. Dr. Dharamshi determined that the applicant from a musculoskeletal perspective could perform standing, scanning, carrying, transferring and packing groceries as part of her employment duties as a cashier. Dr. Dharamshi concluded that the applicant did not suffer a substantial inability to perform the essential tasks of her pre-accident employment as a direct result of this motor vehicle accident. The IRB claim was denied based on the findings of Dr. Dharamshi in his report dated January 7, 2020.²⁰
- [25] Dr. Dharamshi during his testimony noted his January 2020 report did not refer

²⁰ Explanation of Benefits dated January 8, 2020, tab 11, respondent document brief.

to the applicant's family doctor's pre-accident clinical notes, an X-ray, and a CT scan, which were not available at the time of his examination and which he testified would have been helpful in his assessment. The evidence indicates the respondent made a request under section 33 of the *Schedule* on January 7, 2020 for the pre-accident clinical notes and records of the applicant's family doctor, and the X-ray and a CT images of the applicant's head. The respondent indicated an addendum would be requested but not completed.

- [26] Dr. Dharamshi did complete a second assessment of the applicant on July 22, 2020 and prepared a report dated August 31, 2020²¹ to assess the applicant's ACB claim, whether the applicant's injuries were within MIG (which is not an issue in dispute in this hearing), the reasonableness and necessity of 6 treatment plans (\$2400 issue Ci, \$5038 issue Cii, \$993.10 issue Ciii, \$7060.57 issue Civ, \$ 5845.14 issue Cvii and \$3698.44 issue Cvi). Dr. Dharamshi noted that the applicant had ceased attending rehabilitation treatment in mid-March 2020 due to the COVID pandemic but then began attending again in July 2020. The applicant reported that her complaints were low back pain which increased her pain with prolonged sitting, bilateral neck pain, and headaches that occur on the top of her head. She stated the headaches decreased with rest and Tylenol.
- [27] The August 31 assessment report indicates the doctor in July 2020 did review the pre-accident clinical notes of the family doctor, a CT scan and X-rays. A CT scan of the applicant's head dated October 9, 2019 was normal. Lumbar spine X-rays conducted on October 8, 2019 showed no evidence of trauma. X-rays of the cervical spine conducted on October 3, 2019 showed cervical and thoracic vertebral bodies are of normal height. No fractures or dislocations were apparent.
- [28] Dr. Dharamshi's concluded there was no accident-related musculoskeletal impairment. He diagnosed the applicant with 1) post-traumatic/tension headaches 2) a whiplash-associated disorder, grade 2 and 3) a lumbosacral musculoligamentous strain. There was no longer a reference to a concussion. The applicant's injuries were minor and she had reached maximum medical improvement. Her injuries could be treated within the MIG. As to the treatment plans, he found these were not reasonable nor necessary. There was no residual accident-related impairment identified or any functional limitations that would require any of the services or devices in the above-noted outlined OCF-18s.

²¹ Exhibit 11, Physician Assessment, Dr. Dharamshi, dated August 31, 2020, tab 76, respondent document brief.

Dr. Garry Modell, neurologist

- [29] Dr. Garry Modell, neurologist²², assessed the applicant on March 9, 2020 and on May 6, 2020.²³ He assessed whether her injuries were within the MIG and if the OCF-18s for \$2480.34 (issue Cvi) and for \$3698.44 (issue Cv) were reasonable and necessary. The applicant was attending physiotherapy and massage 2 or 3 times a week. She reported the massage was helpful but physiotherapy increased her discomfort. She was taking 2 or 3 Tylenol a day for pain. She was also taking medication for her diabetes. Since the accident, she stated she had diffuse pressure-like headaches. She often had difficulty concentrating and felt dizzy and unsteady on her feet. She stated her headaches were slightly better but she continued to have significant neck, shoulder, and back pain. Any type of activity increased her discomfort. She stated despite treatment there had been no improvement in her condition. He concluded the applicant did not suffer a diagnosable neurological impairment and that she sustained a predominantly minor injury. Her neurological examination was normal. Her headaches were tension headaches and due to medication rebound. Her dizziness, light headedness, neck, shoulder, and back pain were muscular in nature. He found no evidence of any neurological impairment from the accident.
- [30] He opined that from a neurological point of view, the proposed treatment plans were not reasonable and necessary and that the applicant did not require any passive or facility-based treatment. The assessor recommended that the applicant reduce the amount of medication she was taking.
- [31] Dr. Modell's opinion in the May 6, 2020 report is unchanged. He concluded the applicant did not suffer any neurological impairment as a result of the accident. He noted she did not need any further treatment or assessment. He noted her headaches are tension type in nature with a component of medication rebound. She was to reduce the amount of analgesias she was taking.

Occupational Therapy In-home Assessment

- [32] Mr. Livadas, occupational therapist, assessed the applicant's attendant care needs and concluded that given the applicant demonstrated physical and functional tolerances during the assessment, her admissions that she had resumed many personal care tasks and some housekeeping tasks, attendant care assistance was not required. In his Occupational Therapy In-home

²² Exhibit 12, Neurology Assessment by Dr. G. Modell, Neurologist, dated March 25, 2020.

²³ Exhibit 13, Neurology Assessment by Dr. G. Modell, Neurologist, dated May 6, 2020.

Assessment dated August 31, 2020²⁴ he noted the assessment, the applicant demonstrated the following physical tolerances:

functional strength in all areas and muscle groups; decreased range of motion in the left third finger (this is not MVA related); functional range of motion in the neck, shoulders, trunk, upper extremities below the shoulders (excluding the left third finger), and lower extremities; and functional mobility for sitting, transferring, dynamic standing, static standing, stair climbing, squatting, and kneeling. Regarding cognition, the applicant he noted did not demonstrate any issues related to executive functioning, memory, attention, and concentration.

- [33] Mr. Livadas concluded the applicant had a high level of functioning and she was able to perform all of her personal care and attendant care tasks. The applicant had stated she required assistance with toenail care, meal preparation, taking medication, accessing clothes, tidying, bathroom hygiene, linen changes, and had resumed the performance of all other personal care tasks. In his opinion she underestimated her present abilities which prevented her from resuming all of her pre-accident personal care activities. The applicant also had declined to participate in some types of functional testing. In Mr. Livadas' opinion, the assessment revealed symptom magnification. It was his opinion that the applicant possesses the physical capability of performing all personal care or attendant care tasks to pre-accident levels of safety and independence. Therefore, Mr. Livadas concluded that attendant care assistance was not reasonable or necessary.
- [34] Mr. Livadas also assessed the reasonableness and necessity of 6 treatment plans (\$2400 issue Ci, \$5038 issue Cii, \$993.10 issue Ciii, \$7060.57 issue Civ, \$ 5845.14 issue Cvii, and \$3698.44 issue Cvi). Based on his assessment and findings relating to the applicant's functional capabilities, Mr. Livadas found the treatment plans were not reasonable and necessary. He found no functional limitations that would require any of the services or devices in the OCF-18s.

ANALYSIS

- [35] I find based on the totality of evidence presented and discussion above the applicant has failed to meet her burden of proof. She has submitted insufficient evidence to establish entitlement to an IRB or and ACB benefit or that the treatment plans in dispute are reasonable and necessary.

²⁴ Occupational Therapy In-home Assessment, dated August 31, 2020, Nicholas Livadas.

- [36] I find the applicant did not present any evidence or reports or testimony that spoke to either the IRB or the ACB tests. The applicant presented some unpersuasive medical evidence but none of it actually spoke to the applicable legal test for an IRB or ACB.

Income Replacement Benefit – Pre 104 weeks and Post 104 weeks IRB

- [37] There are two statutory tests to meet to be entitled to an IRB, each one for a different claim period. The applicant claims she meets both statutory tests. For the period being sought by the applicant in the pre-104 week period from October 8, 2019 to September 30, 2021 (the pre-104 week IRB), section 5(1) of the *Schedule* requires the applicant to establish that 1) she was employed or self-employed at the time of the accident and 2) during the 104 week period after the accident she suffered a substantial inability to perform the essential tasks of her pre-accident employment.
- [38] The statutory test for an IRB post-104 weeks is set out in Section 6 (1) of the *Schedule* which provides that for the period after the first 104 weeks of disability, the applicant must demonstrate that he or she suffers a complete inability to engage in any employment or self-employment for which he or she is reasonably suited by education, training or experience. The applicant claims the IRB in the post-104 week IRB period from October 1, 2021 to date and ongoing.
- [39] The applicant submitted an OCF-2²⁵ dated October 30, 2019, which is an employer confirmation form that outlines weekly income earned in the 4 weeks prior to the accident. This is stated as \$170.88 in week 1, \$377 in week 2, \$381.28 in week 3 and \$558.07 in week 4 with earnings in the prior 52 weeks of \$22570.32. The applicant testified at the hearing that she had only returned to work for one day since the accident and could not continue due to her pain. The OCF-2 indicates she returned to work on October 3, 4 and 6 with October 6, being her last day of work.
- [40] Based on the totality of the evidence, the applicant has not adduced sufficient evidence to support her claim that she has a substantial inability to complete the essential tasks of her pre-accident employment, as a cashier. She has also not presented evidence to establish she suffers a complete inability to engage in any employment or self-employment for which he or she is reasonably suited by education, training or experience warranting the post-104 week IRB claim.
- [41] I find the evidence to support a pre-104 weeks IRB claim is minimal. The

²⁵ Employer Confirmation Form, OCF-2, dated October 30, 2019, Exhibit 20, tab 3, applicant document brief.

applicant's family doctor's records do not provide any opinion on her ability to return to work. The applicant refers to the evidence from Dr. Ratti which I find is not supportive of her claim as she reported to him that her inability to return to work and work is due to physical complaints not psychological. I find the evidence from herself and her daughter does not establish she cannot work as a cashier. The applicant's evidence is also contradicted by the video surveillance evidence, where she is observed walking, standing, bending, lifting with no signs of any physical distress or dizziness or balance issues in the surveillance evidence.

- [42] Moreover, the applicant relies on the testimony of Dr. Valentin and her report. However, Dr. Valentin was not asked to, nor did she assess the applicant's ability to work post-104 weeks. Moreover, as to pre-104 weeks employment, she admitted she did not discuss the duties of a cashier with the applicant nor her ability to do these tasks. She confirmed in her report that the applicant could go to work but would have to take breaks and be accommodated. This is not sufficient to meet the statutory test for a pre-104 weeks IRB claim. The psychologist clarified in cross examination that in her view the applicant could return to work if she had treatment. She also acknowledged that her report did not say such. I find Dr. Valentin's evidence does not support the applicant's IRB claim.
- [43] I also find the reports of the Dr. Dharamshi compelling in that he did assess her ability to work. His findings were supported by the findings of Mr. Livadas in his OT report.
- [44] The applicant in her closing submissions submits the respondent improperly denied the IRB claim in that it did not consider all of the medical evidence available to it. She argues Dr. Dharamshi in his first report did not refer to the pre-accident clinical notes of the family doctor, and a CT scan and X-ray. She claims Dr. Dharamshi based his opinion "having no contemporaneous medical records whatsoever."²⁶ The stoppage of the IRB was thus contrary to section 36 (7) (a) and (b). This argument I find is not reasonable. The evidence indicates Dr. Dharamshi reviewed these notes and digital imaging for his second report.²⁷ Moreover, Dr. Dharamshi is a physician and he completed a medical examination of the applicant and based on his medical expertise arrived at certain findings. To state he made a finding having no contemporaneous medical records is not correct nor reasonable.

²⁶ Closing submissions of the applicant, paragraphs 5, 7 and 8.

²⁷ Closing submissions of the respondent, paragraph 3.

- [45] I find the applicant has failed to provide sufficient evidence that she meets either the pre- or post-104 weeks test and is therefore not entitled to an IRB.

Attendant Care Benefit from December 17, 2019 to date and ongoing

- [46] In order to be entitled to an ACB the applicant must establish that the ACB are reasonable and necessary expenses that are incurred pursuant to section 19(1) of the *Schedule*. Under section 3 (7)(e)(iii) an expense is not considered incurred unless the person who provides a service did so in the course of his employment, occupation or employment in which he or she would ordinarily have been engaged but for the accident or sustained an economic loss as a result of providing the goods or services to the insured.
- [47] The evidence indicates any attendant care assistance that was provided to the applicant was provided by the applicant's family being her daughter, son and spouse. No evidence was advanced that they provided this service did so in the course of their employment or occupation. As such to be entitled to the ACB, an economic loss must be proven by the applicant. In this matter, there is no proof of economic loss. The applicant admitted this in her submissions.²⁸ The applicant in her submissions states the service providers did not suffer an economic loss in providing these services.²⁹
- [48] The applicant in her closing submissions summarized various activities and provided specific details about the time spent on these activities by her daughter, son, and spouse.³⁰ However as these services were provided by a family member who did not suffer an economic loss, I find the applicant has not presented any evidence to establish entitlement to any ACB.
- [49] The applicant submits the respondent failed to send the attendant care needs form, to its IE assessors for their consideration until August 2020 and thus failed to meet the requirements of section 42 (6) of the *Schedule*. As such it was required to begin payment of the attendant care benefit within ten days of it having received the Form 1. The respondent maintains it properly responded to the ACB claim on January 3, 2020 within the required 10 day period and provided notice that it required an IE assessment.
- [50] The respondent also states it made a number of section 33 requests in December 2019 and January 2020. As a number of medical records were not

²⁸ Written submissions of the applicant, paragraph 28.

²⁹ Written submissions of the applicant paragraph 27.

³⁰ Written submissions of the applicant paragraph 27.

submitted to it 5 days in advance of the IE it had to reschedule the IE.³¹ The adjuster at the hearing testified that due to the COVID pandemic, the IEs were also rescheduled several times and ultimately not completed until August 2020. I find there is insufficient evidence that the respondent did not properly respond to the Form 1. The applicant argues this forced the applicant to pay for ACB services. I find the inability to pay for a service is not a relevant consideration to assess whether an applicant is entitled to a benefit.³²

Were the ACBs Deemed Incurred?

- [51] Alternatively, the applicant claims the ACB are deemed incurred. The applicant maintains the respondent unreasonably withheld or delayed payment of the attendant care benefit.³³ She refers to section 3(8) of the Schedule that provides:

“If in a dispute described in subsection 280 (1) of the Act, the Licence Appeal Tribunal finds that an expense was not incurred because the insurer unreasonably withheld or delayed payment of a benefit in respect of the expense, the Licence Appeal Tribunal may, for the purpose of determining an insured person’s entitlement to the benefit, deem the expense to have been incurred.”

- [52] For an ACB to be deemed incurred, the applicant must establish that 1) the benefit is payable and 2) the respondent unreasonably withheld or delayed payment.³⁴ The respondent maintains its properly responded to the Form 1 and scheduled an IE assessment to determine entitlement. It states it properly denied the ACB. It issued an initial denial on January 3, 2020.
- [53] The applicant in her closing submissions states that the IEs were initially scheduled for February 5 and 20, 2020 but did not proceed until July and August 2020. She states further requested medical records were received by the respondent in January 2020. She states at that time, the adjuster testified that the respondent was waiting for an ambulance call report. The applicant maintains rescheduling the IE while it was waiting for the ambulance call report was not justified and caused delay,

³¹ Written submissions of the respondent paragraph 15.

³² *Robinson v. AIG Insurance*, 2022 CanLII 35796 (Ont LAT), paragraph 13, respondent closing submissions.

³³ Written closing submissions of the applicant, paragraph 30.

³⁴ *Pucci and Wawanesa Mutual Insurance Company*, 2020 ONCA 265 CanLII.

uncertainty and hardship to the applicant.³⁵

- [54] The adjuster testified the IE assessments were delayed until August 2020 due to varying circumstances including waiting for requested medical records and the COVID pandemic. The ACB was denied on the basis of Mr. Livadas's OT report. Mr. Livadas assessed the applicant's attendant care needs and concluded that given the applicant demonstrated physical and functional tolerances during the assessment, her admissions that she had resumed many personal care tasks and some housekeeping tasks, that attendant care assistance was not required. He concluded the applicant was able to perform all of her personal care or attendant care tasks.
- [55] The respondent advised the applicant in its explanation of benefit dated September 1, 2020, that it would not consider the ACB beyond August 31, 2020, and further advised that this decision was based on the findings of the section 44 report completed by Nicholas Livadas, Occupational Therapist. His report included a new Form 1 dated August 12, 2020 for \$0.00 based on his opinion that the applicant did not require attendant care services.
- [56] I find there is no basis to deem the ACB incurred. I find there is no evidence the applicant is entitled to the benefit and the ACB was unreasonably withheld or delayed. The adjuster testified the IE's were delayed for several reasons including waiting for requested medical records and the COVID pandemic. OT report indicated the applicant had returned to many of her activities including personal care and functioning.

Are the Treatment Plans in Dispute Reasonable and Necessary?

- [57] Sections 14, 15 and 16 of the *Schedule* provide that an insurer is only liable to pay for medical and rehabilitation benefits, subject to section 18, that are reasonable and necessary expenses incurred by or on behalf of an insured as a result of the accident. The applicant has the onus of proving on a balance of probabilities that the medical benefits and the cost of the assessment in dispute that she seeks are reasonable and necessary.
- [58] To assess if a treatment plan is reasonable and necessary, the Tribunal requires an analysis of whether:

1. The treatment goals, as identified, are reasonable;

³⁵ Written closing submissions of the applicant, paragraph 31.

2. The treatment goals are being met to a reasonable degree; and,
3. The overall costs of achieving these goals are reasonable.

[59] The applicant's arguments that the treatment plans are reasonable and necessary and those that are incurred are payable. Those that are not incurred are deemed incurred. I find based on the totality of evidence, including the results of the IE assessors who assessed whether the treatment plans were reasonable and necessary, that the OCF-18s in dispute are not payable as they are not reasonable and necessary.

Issue 4 (Ci) Treatment Plan for \$2400 for an ACB Assessment

[60] The treatment plan dated November 1, 2019 recommends an attendant care needs assessment for the applicant. The injuries listed include a concussion, emotional states and cognitive issues as well as suffering nightmares and dizziness. The goals are stated to determine the applicant's current level of function and attendant care needs of the applicant, and to assist the applicant to return to activities of normal living. The goals are to return normal activities of daily life, assess her current functioning and attendant care needs. The applicant states the treatment plan is reasonable and necessary if there is a possibility that she has the condition the assessment would investigate.³⁶

[61] I find based on the evidence presented I find the treatment plan for \$2400 for an attendant care assessment is not reasonable or necessary for several reasons. As indicated above there is no evidence to support the presence of a concussion. The family doctor's notes refer to a concussion but no treatment is recommended for this condition and there is no referral to a concussion clinic. A referral was not suggested until October 2021. The applicant was to let her family doctor know if she wanted to attend. She never did. Dr. Dharamshi initially referred in his report to a possible concussion but did not find the applicant had a concussion. The evidence indicates that applicant at the scene of the accident did not lose consciousness. As outlined above I also question the OT assessment completed by Cindy Huang.

[62] Mr. Livadas, as also noted above, in his OT assessment, found the applicant demonstrated functional strength in all areas and muscle groups and she had functional range of motion in the neck and shoulders and functional mobility for sitting, transferring, dynamic standing, static standing, stair-climbing, squatting, and kneeling. She did not demonstrate any issues related to executive

³⁶ Written closing submissions of the applicant, paragraph 16.

functioning, memory, attention, and concentration. Given her high level of functioning, it was his opinion that as the applicant could perform her attendant care tasks, a formal assessment was not necessary. I concur. The treatment plan is not reasonable or necessary.

Issues 4 (Cii) Treatment Plan for occupational therapy for \$5038, 4 (Ciii) for \$933.10 for assisted devices and issue 4 (Civ) for \$7060.57 for a rehabilitation support worker

- [63] All three treatment plans were recommended by Cindy Huang, the occupational therapist and are dated December 16, 2019. They list similar injuries which includes a concussion, emotional states and cognitive issues as well as suffering nightmares and dizziness and lists (other than the treatment plan for assisted devices) a return to employment as an injury. The additional comments in all three treatment plans refer to the December 13, 2019 OT assessment by Cindy Huang.
- [64] The treatment goals for the treatment plan for occupational therapy states the treatment plan is to increase the applicant's independence with self care, housekeeping, cognitive issues and a return to activities of daily living. The proposed treatment includes \$1047.41 for training, a further \$1197.04 for therapy, cognition and travel time for the provider for \$1496.25.
- [65] The treatment goals for the treatment plan for the rehabilitation support worker is to promote an exercise program to help increase stamina and a return to activities of normal living. The proposed goods includes \$3491.40 for therapy for motor and living skills, \$1745.70 for travel time and additional \$270 for mileage costs.
- [66] The applicant maintains these treatment plans are reasonable and necessary and were generated after the OT assessment and Form 1 was generated by Cindy Huang.
- [67] Dr. Dhamarshi and Mr. Livadas based on the IE assessments, noted above, assessed the treatment plans and concluded they were not reasonable and necessary. Dr. Dhamarshi opined the applicant had attained maximum medical improvement and her injuries could be managed within MIG. He found no residual accident-related impairment identified or any functional limitations that would require any of the services or devices in the above-noted outlined OCF-18s. I find there is no evidence to contradict this evidence. Mr. Livadas indicated the applicant demonstrated functional strength in all areas and muscle groups and she had functional range of motion in the neck and shoulders and functional

mobility for sitting, transferring, dynamic standing, static standing, stair-climbing, squatting, and kneeling. Mr. Livadas, in his report, also noted the applicant reported that she leaves the home for enjoyment, that she and her husband go to the park, bring chairs and sit and enjoy the outing. It was his opinion that the OCF-18 is not reasonable nor necessary. I concur.

[68] I find the treatment plans are not reasonable and necessary for several reasons. As indicated above, there is no evidence to support the presence of a concussion. As outlined above I also question the OT assessment completed by Cindy Huang and question her findings as they are not supported by the medical evidence. I also find the proposed goods for travel time and mileage is unreasonable and excessive.

[69] The treatment plan for assisted devices included the need for a raised toilet seat, bathtub seat, bathroom grab bars, inner bathmat, hand-held shower head/hose, body pillow, egg timer, stool, Obus Forme back support, Obus Forme seat cushion, and long-handled reacher. The documented goals and rationale for these services was to increase safety and assist the claimant to return to activities of normal living. As noted above, the OCF-3 did not indicate a return to normal activities was an issue and no evidence was led that safety is an issue. Moreover, the applicant reported being independent with showering and using the toilet. As such, there is no need for the proposed raised toilet seat, tub seat, bathroom grab bar, inner bathmat, and handheld shower head/hose. There is also no evidence of the need for a body pillow and Dr. Dharamshi did not find any need for an Obus Forme back support or seat cushion.

[70] In addition to the above, the treatment plan for \$5038 was also not incurred as required under sections 14, 15 and 16 of the *Schedule*. The applicant requests the Tribunal find the treatment plan be deemed incurred but offered no evidence or case law to support that finding. There is no basis to deem the treatment plan incurred.

Issues 4 (Cv) Treatment Plan for \$3698.44 for chiropractic services and Issue 4 (Cvi) Treatment Plan for physiotherapy for \$2480.34

[71] Both of these treatment plans refer to an expanded and extensive lists of injuries that are not documented in or supported by the medical evidence. This includes symptoms and signs involving cognitive functions and awareness (Dr. Valentine found any cognitive issues were emotionally based), shoulder lesions, dislocation of the joints and ligaments of the knee, gluteal tendinitis, sprain and strain of the fingers, phobic anxiety disorders and more. The

treatment goals are stated as a reduction of pain, increase strength and return of range of motion as well as a return to activities of normal living and pre accident work activities. The barriers to recovery note a concussion that provoked dizziness and refers to abnormal results on her neurological assessment.

- [72] The applicant maintains these treatment plans are reasonable and necessary but offers I find no evidence to support that position. The applicant in her closing submissions states she participated in therapy and “protected the accounts”³⁷ It not explained what “protected the accounts” means.
- [73] Dr. Dhamarshi based on his IE assessment noted above, assessed the treatment plan for chiropractic treatment and concluded the treatment plan was not reasonable and necessary. Dr. Dhamarshi opined the applicant had attained maximum medical improvement and her injuries could be managed within MIG. He found no residual accident-related impairment identified or any functional limitations that would require any of the services in the OCF-18. I find there is no evidence to contradict this evidence.
- [74] Dr. Moddel in his assessment of the treatment plan for physiotherapy did not find the treatment plan was reasonable and necessary on the basis of his finding that the neurological examination was normal. The applicant’s headaches were of a tension type consistent with medication rebound. Her dizziness and light headedness, neck, shoulder, and back pain, were muscular in nature. From a neurological point of view, the OCF-18 was not reasonable or necessary as there is no evidence of any neurological impairment from the accident.
- [75] I find it is unclear how chiropractic and physiotherapy treatment would address any cognitive injury. The treatment plans are not accurate in their description of the injuries as there is no evidence of any dislocation of the joints and ligaments of the knee, gluteal tendinitis, sprain and strain of the fingers as a result of this accident. The treatment plans also lists psychological symptoms as including phobic anxiety disorders and cervicalgia. It is not clear how chiropractic or physiotherapy treatment would assist with the listed psychological injuries. The treatment plans are not reasonable and necessary.

³⁷ Closing written submissions, paragraph 18.

Issue 4 (Cvii) Treatment Plan for Occupational Therapy for \$5845.14 ³⁸

[76] There are two different versions of the treatment plan for occupational therapy completed by Julia Wong occupational therapist. Both treatment plans refer to a concussion as the sole injury and are dated May 11, 2020. The version of the treatment plan in the respondent's brief states the goals are to reduce pain, increase strength and range of motion and facilitate a return to the activities of daily living. Both documents have additional comments which appear similar and provide the following:

She continues to experience pain in her upper and lower limb. Low back and has dizziness and headaches. One goal is to improve independence with personal care, mobility and increase home safety and falls.

[77] The closing submissions of the applicant refer to the OCF-18 but does not outline the reasons the treatment plan is reasonable and necessary.

[78] Dr. Dhamarshi and Mr. Livadas based on the IE assessments, noted above, assessed the treatment plans and concluded they were not reasonable and necessary. Dr. Dhamarshi opined the applicant had attained maximum medical improvement and her injuries could be managed within MIG. He found no residual accident-related impairment identified or any functional limitations that would require any of the services outlined OCF-18s. Mr. Livadas indicated the applicant demonstrated functional strength in all areas and muscle groups and she had functional range of motion in the neck and shoulders and functional mobility for sitting, transferring, dynamic standing, static standing, stair-climbing, squatting, and kneeling. Mr. Livadas found no functional limitations that would require any of the services set out in the treatment plan. Based on the totality of the evidence, I concur with his opinion that the OCF-18 is not reasonable nor necessary.

Issue 4 (Cviii) Treatment plan for Social Worker Therapy for \$1295.01

[79] The treatment plan is dated August 25, 2020 for social worker therapy for \$1295.01 (being the balance after partial approval of a treatment plan of up to \$1,699.88). The approval was based on the maximum hourly rate for social work sessions of \$100 for 6 sessions. The proposed goods and services as stated includes \$1215 for mental health counselling. The additional comments

³⁸ There are two different versions of the treatment plan. The first version is at Tab 47, applicant closing written submissions. The second version is found at tab 47 of the respondent document brief.

indicate one of the stated goals is to help the applicant avoid re-injury, isolation, and deterioration of mental health and overall function.

- [80] I find no evidence was presented to find the treatment plan is reasonable and necessary beyond the amount already approved. The injury listed is a concussion which has not been established by the evidence. Further based on my discussion above about the findings by Dr. Ratti, the applicant's psychologist, he found no evidence of any psychological factors resulting in any functional limitations. She had also reported to Dr. Ratti that she was independent with her personal care and he concluded she had only mild emotional/psychological distress.

Issues 4 (Cix) Treatment Plan for \$ 1497.98, Issue 4(Cx) for \$1192.48 and Issue 4(Cxi) for \$ 986.74 for chiropractic services

- [81] The applicant submits these treatment plans are reasonable and necessary. The treatment plan for \$1497 is dated July 15, 2020. The applicant states the family doctor records indicate that in mid and late 2020 the applicant continued to have pain that had increased due to lack of treatment. The August 27, 2020 clinical notes however indicate her condition was improving. The records of the North Toronto Rehabilitation also indicate her condition was improving at this time.
- [82] The treatment plans for \$ 1497.98, \$1192.48 and \$ 986.74 were denied on the basis of the previous IE assessments. Dr. Dharamshi had determined that the applicant did not suffer an accident-related musculoskeletal impairment. The OCF-18 for \$1497.98 states the applicant has ongoing pain in her right arm that wakes her up at night. There is no mention of any injury to the right arm sustained from the accident.
- [83] Dr. Moddel in his assessments discussed above did not find the treatment plans reasonable and necessary on the basis of his finding that the neurological examination was normal. Her headaches were of a tension type consistent with medication rebound. Her dizziness and light headedness, neck, shoulder, and back pain, were muscular in nature. From a neurological point of view, the OCF-18 was not reasonable or necessary as there is no evidence of any neurological impairment from the accident.
- [84] Based on the totality of the medical evidence the treatment plans are not reasonable and necessary.

The Treatment Plan for Occupational Therapy Services for \$ 3575

[85] The Treatment Plan for \$ 3575 includes “counselling, mental health and addictions” for a cost of \$1620 and \$810 for provider travel time. The OCF-18 lists a concussion as the only injury. It indicates the applicant has been unable to work due to chronic pain. The OCF-18 is not correct in several aspects. First there is no diagnosis of any chronic pain, occupational therapy would not include mental health counselling and addictions and it is not clear how occupational therapy would be appropriate treatment for a concussion. The treatment plan is not reasonable nor necessary.

Claim for an Award

[86] A motion was filed in advance of the hearing by the respondent to not allow the applicant to proceed with an award claim or alternatively to provide particulars of the award claim. The applicant objected to the motion. After reviewing the written motion materials and hearing oral submissions, I declined to order the award claim be dismissed. An applicant can raise the issue of an award at a hearing. There is no prejudice to the respondent in allowing the award claim to proceed. The applicant bears the burden to establish any entitlement to an award.

[87] The applicant seeks an award as benefits were unreasonably withheld by the respondent. As I find no benefits were unreasonably withheld or delayed, there is no basis for an award.

INTEREST

[88] The claim for interest is dismissed as there are no overdue payment of benefits.

CONCLUSION

[89] The applicant’s claim is dismissed. I find the applicant is not entitled to an income replacement benefit or an attendant care claim which is not incurred nor deemed incurred. The treatment plans are not payable as they are not reasonable and necessary. The claims for an award and for interest are dismissed.

Released: September 9, 2022



**Thérèse Reilly
Adjudicator**