



Citation: Williams v. Pembridge Insurance, 2022 ONLAT 21-005764/AABS

Licence Appeal Tribunal File Number: 21-005764/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:

Kelly Williams

Applicant

and

Pembridge Insurance

Respondent

DECISION

ADJUDICATOR: Thérèse Reilly

APPEARANCES:

For the Applicant: Kelly Williams, Applicant
Thomas Dugas, Counsel
Tina Lubman, Paralegal
Samantha Airhart- Observer for the Applicant

For the Respondent: Walia Simran, Counsel
Suzanne Clarke, Counsel
Sally Cacciotti, Senior Adjuster

Court Reporter: Prashanth Thambipillai

Heard by Videoconference: September 21, 22 and 23, 2022

BACKGROUND

- [1] The applicant was involved in an automobile accident on **April 28, 2019** and sought benefits pursuant to the Statutory Accident Benefits Schedule *Effective September 1, 2010 (including amendments effective June 1, 2016)*.
- [2] The applicant submitted a claim for an Attendant Care Benefit (ACB) and was paid some ACB. The claim also included treatment plans (OCF-18s) for medical benefits for physiotherapy, assisted devices, a service dog and the cost of an attendant care assessment. The claims were denied by the respondent on the basis of its section 44 IE assessments. The applicant submitted an application to the Licence Appeal Tribunal - Automobile Accident Benefits Service (“Tribunal”) to resolve the dispute.

Witnesses

- [3] The applicant testified. Snejana Brejneva owner of a company providing personal support services and Ms. Khramtsova, registered nurse, testified for the applicant. Ms. Mills, occupational therapist, 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 monthly attendant care benefit (ACB) for \$2126.75 from August 15, 2019 ¹ to date and ongoing?
 - b. Are the following treatment plans reasonable and necessary²?
 - i. Is the applicant entitled to \$1079.10 (\$3644.66 less \$2565.60 approved) for physiotherapy proposed by Newmarket Health and Wellness in an OCF-18 dated May 9, 2019?

¹ The case conference report and order of January 10, 2022 stated the ACB was from June 15, 2019 to date and ongoing. However, the evidence indicates the ACB was paid until August 15, 2019.

² An OCF-18 for a medical benefit for \$3709.71 for physiotherapy was listed as an issue in dispute in the case conference report and order dated January 10, 2022. The respondent advised at the hearing that this treatment plan was not in dispute as the issue was resolved. The applicant in her submissions on the award claim indicated the treatment plan was paid in full on the eve of the hearing. I find this issue is considered resolved and no longer in dispute.

- ii. Is the applicant entitled to a medical benefit for \$11302.82 for a service dog proposed by Newmarket Health and Wellness in an OCF-18 dated September 24, 2019?
 - iii. Is the applicant entitled to a medical benefit for \$2034.33 for assisted devices proposed by Newmarket Health and Wellness in an OCF-18 dated September 24, 2019?
 - iv. Is the applicant entitled to a medical benefit for \$149.63 (\$2045.88 less \$1896.25 approved) for an attendant care assessment proposed by Imperial Medical Assessments in an OCF-18 dated June 13, 2019?
- c. Is the applicant entitled to an award for unreasonably withheld or delayed payments under section 10 of Regulation 664?
 - d. Is the applicant entitled to interest on any overdue payment of benefits?

RESULT

- [5] For the reasons set out below, I find based on the totality of evidence the applicant has failed to meet her burden of proof. She has submitted insufficient evidence to establish entitlement to the ACB benefit or that the treatment plans in dispute are reasonable and necessary. As no benefits are overdue, the award claim is dismissed and no interest is payable.

Preliminary Issues

- [6] a. The applicant sought an order allowing Ms. Airhart, support person, to attend the hearing to provide emotional support for the applicant. The respondent objected to having Ms. Airhart attend the hearing. After hearing oral submissions and as hearings are open to the public, I allowed Ms. Airhart to attend via video conference to observe the hearing. Ms. Airhart attended during the applicant's testimony.
- b. The applicant advised that the PSW, Ms. Brailovskaia, would not be called as a witness as planned because of a medical condition. The applicant stated she was calling the PSW's supervisor, Ms. Snejana Brejneva, to testify in her place. The respondent objected on the basis that no documents were filed in respect of this witness and there were no notes filed in advance of the hearing. Based on section 15 of the Statutory Powers Procedures Act, I allowed her to testify.

c. The applicant relies on section 38(13) and objected to the respondent relying on the report of its IE assessor, Dr. Notarfonzo, psychologist on the basis that the respondent did not serve the report on the applicant within 10 days of receiving the report. The respondent advised the report was provided to the applicant prior to the case conference and the hearing. The applicant withdrew the motion to exclude this evidence during her closing submissions.

d. The respondent advised that despite the timelines set out in the case conference report and order of January 10, 2022 for the applicant to deliver particulars of her award claim, the applicant had not filed any particulars of her award claim. As the applicant was proceeding with an award claim, I ordered the applicant to serve and file particulars of the award claim by 4 pm September 22, 2022. The applicant filed advised particulars of the award claim on September 22, 2022. The respondent was provided an opportunity to reply and responded to the award claim in its closing submissions.

The Accident

[7] The applicant testified she was seriously injured in the accident in which she was a passenger when her vehicle was side swiped by another vehicle that was being pursued in a police chase. She testified that she sustained physical and psychological impairments from the accident which include post concussion syndrome, traumatic brain injury, neck, right shoulder, low back and hip pain. She stated she also sustained psychological impairment including depression, general anxiety disorder and driver phobia.

[8] The medical records indicate the applicant suffered from various medical conditions prior to the accident which include post traumatic stress syndrome (PTSD), borderline personality disorder, adult ADHD, depression, anxiety and insomnia.³ The applicant in her closing submissions indicated she suffered from trauma prior to the accident from the loss of her husband by suicide in 2012 after which she suffered a nervous breakdown Ms. Williams testified about two pre-accident work-related injuries while employed as a PSW in a group home. The first injury occurred in 2017 when she was kicked in the ribs by a resident. She was off work for six months. The second work-related injury was in July 2018 when a resident bit her right ring finger. She went off work again and was still off

³ Clinical notes, Dr. Katz, physician, dated July 20, 2022, Page 540, applicant document brief. See also the clinical notes of the applicant's family doctor records, Dr. S. Fallahian's indicate the applicant has a long standing history of depression.

work on long term disability at the time of the subject accident because of her work injury. ⁴

- [9] The applicant testified that she completed her personal care tasks independently before the accident but she now struggles with personal care tasks and needs assistance. She stated for example that she can shop for groceries with assistance from the PSW. To climb stairs she advised she held onto the railing to do so. She stated she cannot sit, stand or walk as she used to before the accident before and cannot sit or stand for long periods of time. She testified the PSW helped her with meal preparation, laundry, tidying the home and ensuring she did her exercises and took her medication. The PSW would also take her to appointments. Prior to the accident she cooked daily. Now she uses an UBER EATS service five times a week. Prior to the accident she had no mobility issues. She testified that her children now help her with personal care tasks at a rate of three times per week. Her mother also helps her with her personal care tasks.
- [10] The applicant filed a disability certificate (OCF-3) ⁵ which indicated she suffers from a complete inability to carry on a normal life and could not perform the housekeeping and home maintenance activities she performed prior to the accident. The anticipated duration is stated as more than 12 weeks. The OCF-3 lists numerous sprains and strains of the neck, thoracic spine, lumbar spine and pelvis, hip, knee, headaches, insomnia and post concussion syndrome.

Applicant's Medical Evidence

- [11] The applicant in support of her claims relies on the Attendant Care Needs Assessment and Form 1 dated June 13, 2019 by Natalya Khramtsova, registered nurse. She also relies on the psychological assessment report dated July 17, 2019 by Dr. E. W. Hewchuk, psychologist and Dr. Razumova and the neurological assessment report dated June 25, 2021 by Dr. Vincenzo Basile, physician.

Attendant Care Benefits (ACB)

- [12] The applicant received attendant care until August 15, 2019. The benefit was denied on August 8, 2019 based on the IE assessment completed by Ms. Sharon Mills, occupational therapist. The respondent had approved the initial Form 1 but denied further entitlement to the benefit on the basis of Ms. Mills conclusion that

⁴ Psychological Assessment Report, Dr. Hewchuk and Dr. Razumova dated June 17, 2019, tabs D1 and 2, applicant document brief, page 311.

⁵ OCF-3 dated May 9, 2019, tab E27, applicant document brief.

the attendant care assistance was no longer needed as the applicant could perform all of her personal care activities independently.

- [13] The ACB was initially approved on the basis of the Attendant Care Needs Assessment Report and Form 1 of June 13, 2019⁶ prepared by Ms. M. Khramtsova. She outlined the symptoms reported to her by the applicant which included at that time neck pain, shoulder pain, right wrist pain, upper and low back pain and right lower limb pain, headaches and associated symptoms including dizziness, as well as “worsening of her feelings of depression and reported decreased energy levels, concussion, PTSD”. The applicant also reported to her that her sleep was impacted and she was quite nervous and anxious when using a car.
- [14] Ms. Khramtsova testified and indicated in her report, that the applicant in June 2019 required assistance with a number of personal tasks that include but are not limited to dressing and undressing, bathing, cleaning of the home and cooking. She also recommended a number of assisted devices that were required by the applicant⁷ and identified these in an OCF-18 dated June 18, 2019 in the amount of \$2,034.33.⁸ She assessed the applicant’s attendant care needs at \$2126.75 a month. The Form 1⁹ shows ACB as:
- a. Level 1 for 9.58 hours per week for assistance with dressing and undressing, shampooing and drying hair, fingernail and toe nail care, and preparing meals.
 - b. Level 2 for 8.42 hours per week for assistance cleaning the bathroom, changing bed linens and ensuring safety and comfort in the home.
 - c. Level 3 for 11.08 hours per week for assistance with an exercise and stretching program as well as transfers from the bed, bathing and drying.
- [15] Ms. Khramtsova admitted during cross examination that when she completed her report she did not review any of the medical documentation including the clinical notes from the family doctor, treating psychologist or rehabilitation clinic. She acknowledged that her report does not provide any details of the personal tasks that she observed. For example, when describing the applicant dressing and undressing, she stated in general terms that she observed physical abilities limitations that would impede her from dressing her upper body independently and the applicant needed assistance. She did not identify any details about the

⁶ Exhibit 8, Attendant Care Needs Assessment dated June 13, 2019, by Natalya Khramtsova, registered nurse.

⁷ Ibid, pages 14, and 15.

⁸ OCF-18 dated June 18, 2019, tab 12, applicant document brief.

⁹ Exhibit 7, Form 1,

task such as the applicant attempted to pull a sweater over her head using her left hand. She concurred in cross examination that her report lacked specific details about an observed task.

PSW Services

- [16] The applicant called Ms. Snejana Brejneva, owner and manager of the firm, Care for You to testify as the PSW, Ms. Brailovskaia could not testify due to a medical condition. Ms. Brejneva's role as supervisor was to assign a PSW to provide services to the applicant. Her process involves an initial interview with the applicant to assess needs based on the medical conditions. In this case she selected Ms. Brailovskaia as the PSW as she had training with brain injuries. She testified the applicant in her view had mental health issues.

ACB Invoices

- [17] Ms. Brejneva's testified there are invoices for the PSW services provided for the period from August 19, 2019 to January 20, 2020. No invoices were introduced into evidence however by the applicant or filed in the applicant's hearing brief. No explanation was provided as to why no invoices were filed at the hearing. As such, the description of PSW services are those mentioned by the applicant during her testimony and listed in general terms by the PSW. There are no documents that confirm the PSW services that were provided and any detail about these services such as the dates when service were provided, the length of time taken for these services. Ms. Brejneva did not provide details during testimony of any of the PSW services that were provided to the applicant and she was not present at any time when the ACB services were provided.
- [18] Ms. Brejneva testified initially that the services were terminated as none of the invoices for ACB were paid. She then corrected her testimony and confirmed that \$949 for ACB was paid for a period in August 2019 for two weeks.

Other Medical Reports for the Applicant

- [19] The applicant in closing submissions referred to the July 17, 2019 psychological report completed by Dr. E.W. Hewchuk, psychologist and Dr. Razumova, psychologist¹⁰ which outlined various reports of physical and psychological conditions suffered by the applicant including daily headaches, deterioration in her vision, restrictions in most of her daily activities due to pain, driver anxiety,

¹⁰ Psychological Assessment Report, Dr. Hewchuk and Dr. Razumova dated June 17, 2019, tabs D1 and 2, applicant document brief.

frustration with pain, irritability and mood swings, depression, memory issues, lack of focus and forgetfulness.

- [20] The psychologists, Dr. Hewchuk and Dr. Razumova concluded the applicant's psychological symptoms are consistent with generalized anxiety disorder, somatic disorder with predominant pain and driver phobia. Ten sessions of psychotherapy counselling were recommended.¹¹ They reported she was functioning in average range for attention, concentration and focus. They found she had a substantial inability to carry on a normal life and perform housekeeping and home maintenance.
- [21] The applicant also referred to a neurological evaluation completed by Dr. Basile, neurologist who also has additional training in concussion and traumatic brain injury.¹² In his report he concluded her injuries were outside of the Minor Injury Guideline and that she had likely converted to a chronic pain syndrome. He also concluded that she met the criteria for post concussive syndrome which is consistent with a traumatic brain injury and that soft tissue injuries are a source of her pain in the neck and back.¹³ Dr. Basile's diagnosis of soft tissue injuries is consistent with Dr. Fallahian findings and the results of an X-ray in her clinical notes dated April 30, 2019 which state the applicant had a strain of the right shoulder and back. The X-ray dated July 27, 2022 of the hip showed the soft tissues were normal.
- [22] Dr. Basile also found the applicant suffered from chronic daily medication overuse headaches and suggested she take a 2-3 month medication holiday.¹⁴ He noted she is independent with toileting, transferring from her bed or chair, walking and climbing stairs and eating, mouth care, oral hygiene, taking medications, using the phone, driving, taking the bus, and household finances. She was independent with bathing, dressing and grooming herself, cooking and shopping but has some difficulties completing these tasks due to her cognitive condition.¹⁵

¹¹ Ibid, page 10 of the report.

¹² Neurological Evaluation Report by Dr. Basile, neurologist dated June 25, 2021, tab D5, applicant document brief.

¹³ Dr. Fallahian's clinical notes dated April 30, 2019 indicate the X-ray showed a strain the right shoulder and back. The X-ray dated July 27, 2022 of the hip showed soft tissues were normal. It was an unremarkable bilateral hip x-ray, applicant document brief page 562.

¹⁴ Ibid, footnote 11, page 12.

¹⁵ Ibid, page 10.

IE Assessments by the Respondent

- [23] The respondent assessed the applicant's physical and psychological impairments. Dr. Soric, general physician completed a physiatry examination (IE) on January 26, 2020.¹⁶ He was to assess an IRB claim (not in dispute) and whether an OCF-18 dated August 29, 2019 for physical therapy was reasonable and necessary (not in dispute). He concluded the applicant sustained soft tissue injuries and these had healed. Dr. Soric noted that the trochanteric bursitis and mild patellofemoral disease are not, in his opinion, related to the accident. Dr. Soric further opined the applicant did not require any additional assessments or examinations, further physical therapies or the recommended assistive devices.
- [24] Dr. Soric's report stated the applicant had a significant degree of pain focused behaviour. She was able to disrobe and dress herself independently, although it took some time. She had normal active range of motion of the cervical spine. Thoracic spine mobility was well preserved but the lumbar spine mobility was severely restricted. Examination of the right shoulder revealed restricted forward flexion and abduction but she did not have any symptoms suggestive of rotator cuff injury. No significant abnormal finding was noted in the right hip girdle. The applicant was exquisitely tender to pressure over the right greater trochanter and this was further aggravated by resisted abduction. Examination of both hips was normal. The right knee assessment revealed full flexion and extension. She was able to fully flex and extend the knee and had no evidence of ligamentous laxity. He stated the applicant would benefit from a self-directed exercise program. He concluded the OCF-18 by Elena Fleischman dated August 29, 2019 and in the amount of \$3197.61 was not reasonable and necessary. In his opinion the applicant did not require any further therapies.
- [25] The applicant in February 2021 submitted an OCF-18 for a medical benefit for \$3709.71 for physiotherapy. The OCF-18 was denied by the respondent on April 12, 2021 based on the report of Dr. Soric dated January 26, 2020 and his conclusion that the injuries sustained had healed and the applicant did not require further therapy. As noted earlier, this treatment is not in dispute as the respondent stated at the hearing that this claim was resolved.

¹⁶ Exhibit 6, Physiatry Assessment, Dr. Soric, dated January 21, 2020, tab C7, respondent document brief, page 79.

Dr. Notarfonzo, Psychologist

[26] Dr. Notarfonzo, psychologist, ¹⁷ in her psychological assessment report of January 21, 2020¹⁸ diagnosed the applicant with an adjustment disorder, a somatic symptom disorder, vehicle phobia and sub-clinical symptoms of PTSD. Dr. Notarfonzo opined that the applicant's current level of moderate anxiety and depression did not appear to be worse than it was pre-accident. Dr. Notarfonzo also assessed the need for a therapy dog which she found was not warranted.

Occupational Therapy In-home Assessment and Form 1

[27] Ms. Sharon Mills, occupational therapist, was qualified as an expert in OT and testified as such. Her Occupational Therapy In-home Assessment dated July 29, 2019¹⁹ was introduced into evidence. She testified that she assessed the applicant's attendant care needs and concluded that given the applicant demonstrated physical and functional tolerances during the assessment, the applicant's admissions that she had resumed many personal care tasks and some housekeeping tasks, attendant care assistance was not required. In Ms. Mills opinion, there were no areas where the applicant demonstrated the need for attendant care. Based on Ms. Mills OT report, the applicant's ACB was terminated effective August 15, 2019.

[28] Ms. Mills testified that in completing her report she reviewed all the medical documentation provided to her. Her findings indicate that the applicant demonstrated reduced right shoulder range of motion but she demonstrated functional range of motion for all joints in the upper and lower extremities. The applicant was able to reach the top of her head, the back of her neck, to her lower back and toes. The applicant was observed being able to stand independently on either foot and was able to perform a ¼ crouch with reported hip and back pain.

[29] Ms. Mills testified as to her observations of the applicant as outlined in pages 18 to 23 of the OT report which includes but is not limited to the following:

a. She was able to dress and undress independently with right shoulder and right hip pain. The applicant was able to place a T-shirt over her arms and then over

¹⁷ Psychology Report, Dr. Notarfonzo, dated January 21, 2020, tab E2, respondent document brief.

¹⁸ Explanation of Benefits dated January 8, 2020, tab 11, respondent document brief.

¹⁹ Occupational Therapy In-home Report and Form 1, dated July 29, 2019, Sharon Mills, tab B1, respondent document brief.

her head independently using her left hand. She was able to manage zippers with two hands.

b. She was independent with trimming her fingernails.

c. She could prepare meals. She could access the cupboard shelves. She could carry a kettle, hold a jar and turn the lid with her left hand.

d. She was observed walking with a normal gait. The applicant had stated that she had a rollator walker but did not like using it.

e. The applicant demonstrated she could sit and stand from the sofa, a regular height chair, the toilet seat and her bed.

f. She was observed managing the stairs safely and independently.

g. She demonstrated ability to walk normally.

h. She was able to take her medications independently.

[30] During cross examination Ms. Mills was asked whether her report outlined pain complaints by the applicant of her neck, low back, hip Ms. Mills found the applicant had resumed her personal care tasks and when the applicant performed the tasks requested she never reported any pain. Had there been a report of pain when the applicant performed a task Ms. Mills testified she would have noted it in her report.

[31] Ms. Mills concluded the applicant had a high level of functioning and she was able to perform all of her personal care and attendant care tasks.

[32] Ms. Mills was also asked to assess a treatment plan dated June 18, 2019 for assisted devices. Ms. Sharon Mills opined that the treatment and assessment plan dated June 18, 2019 for \$2034.33 was not reasonable and necessary as the applicant demonstrated the functional ability to complete all personal care tasks independently.

ANALYSIS AND DECISION

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

Attendant Care Benefit from August 15, 2019 to date and ongoing

- [34] I find based on the totality of the evidence that the applicant has not presented evidence to establish entitlement to an ACB. She has failed to meet her burden of proof.
- [35] When comparing the OT reports of the applicant and the respondent, I prefer the report of Ms. Mills. The OT report of the applicant lacked detail as to the tasks observed. Ms. Mills in her report and testimony provided more detail of the tasks she observed as outlined in paragraph 29 above. I prefer her report which concluded based on the observations and reports from the applicant that she did not need attendant care services and as a result the applicant's ACB were terminated effective August 15, 2019.
- [36] Further, to establish entitlement to an ACB, the applicant bears the burden to prove that the ACB expenses are reasonable and necessary and 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 or her 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 person.
- [37] No evidence was presented as to the ACB provided by the professional service provider. No invoices were introduced into evidence to establish what services were provided by the PSW. There is also no evidence of the services provided by a professional service. No invoices from the Care For You firm were entered into evidence. The PSW was not called as a witness at the hearing as she had a medical condition. Her supervisor testified but could only provide general information limited to her process in assigning a PSW to provide attendant care services. The supervisor indicated a number of invoices were completed over about a six month period and she confirmed that \$949 had been paid for a period in August 2019 for two weeks. That is the extent of the evidence about a PSW and services provided.
- [38] The applicant testified that some attendant care assistance was provided by the applicant's children and mother but no details was provided about these services, Any ACB services provided by a family member is not evidence that PSW services were provided by someone in the course of their employment or occupation. To be entitled to the ACB, ACB services must have been incurred. An economic loss sustained as a result of providing goods or services to the insured person must be proven by the applicant. Services provided by a family

member who did not do so in the course of their profession or incurred any economic loss in providing these services is not proof the ACB services were incurred. The applicant has not presented any evidence to establish the ACB after August 2019 were incurred.

Are the Treatment Plans in Dispute Reasonable and Necessary?

- [39] 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 person 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 are reasonable and necessary.
- [40] 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;
 2. The treatment goals are being met to a reasonable degree; and,
 3. The overall costs of achieving these goals are reasonable.
- [41] 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 4bi, is the applicant entitled to \$1079.10 for physiotherapy

- [42] The applicant claims the treatment plan for physiotherapy is reasonable and necessary. The respondent partially approved the treatment plan leaving \$1079.10 in dispute. The respondent in its opening and closing submissions states the portion of the treatment plan that was not approved on the basis that the rate for the proposed chiropractic services exceeds the hourly rate allowed (\$112.81 for services by a chiropractor) in the Professional Fees Guideline.²⁰ The proposed goods and services in the OCF-18²¹ proposed by a chiropractor are not clear. The OCF-18 proposed therapy for multiple body sites at a cost of \$1440 and also includes \$460.92 for acupuncture, \$700 for four assessments,

²⁰ Explanation of benefit dated August 2, 2019, tab B7, applicant document brief. Professional Services Guideline, Tab 7 of the respondent's closing submissions filed September 26, 2022.

²¹ OCF-18 dated May 9, 2019, tab b, applicant document brief.

\$120 for Omega 3 and \$90 for a Biofreeze Pain Relieving Gel. The applicant did not present any evidence that addressed the needs for the proposed goods and services and did not address the respondent's arguments that the proposed treatment for chiropractic services is beyond the amount allowed in the Professional Services Guideline. Based on the evidence presented, the unapproved portion of the treatment plan is not reasonable and necessary.

Issue 4bii, is the applicant entitled to \$11,302.82 for a service dog

- [43] The OCF-18 dated August 29, 2019 submitted by Dr. E. Silverman, chiropractor states: "A service dog could be of assistance. A service dog can assist the patient for her visual issues, stability, reminders to take her pills as well as for her mental illnesses." The OCF-18 proposed a dog at a cost of \$800 and weekly dog sessions for \$10,000. The OCF-18 states the goals are to reduce pain, increase strength, increase range of motion and help the patient emotionally and physically in her daily life.
- [44] Evidence presented with respect to vision issues is the reference in the applicant's closing submissions to her eye examination with Dr. Cheung, optometrist, in June 2019.²² The applicant at this appointment complained that the accident made her vision worse. In his report, Dr. Cheung noted she had had two surgeries on her eyes as a child. His examination found she likely had post trauma vision syndrome (PTVS) which can affect focus and balance after a traumatic brain injury. Dr. Cheung also stated that it was difficult to conclude that the accident made her vision worse. He prescribed single vision distance glasses and suggested she see another optometrist to treat PTVS. No evidence was advanced that the applicant saw another optometrist as suggested. I find this is not evidence establishing the need for a service dog on the basis of vision issues.
- [45] The evidence establishes the applicant spoke to her family doctor, Dr. Fallahian about the need for a service dog. Dr. Fallahian in her clinical notes indicated that Dr. Katz, physician, psychiatry, had written a support note for the applicant. The date of the support note is unclear as it is dated 8/5/19 which could mean May 8, 2019 or August 5, 2019²³ and states Ms. Williams suffers from PTSD and requires a service animal. A further clinical note from the family doctor indicated the applicant stated her lawyer had asked if the doctor could also write a letter so

²² Eye Examination Report dated June 17, 2019, Dr. Cheung, Optometrist, tabs E 21 and 22, applicant document brief.

²³ Exhibit 1, Prescription note from Dr. Katz, Tab E 12, applicant document brief, page 807 The index to the applicant's document brief lists the note as dated August 5, 2019.

they can apply for a service dog. The letter was to be addressed to her lawyer and states: “the dog will help with her post traumatic concussion and vision syndrome; the dog will help with memory and dizziness as well”.²⁴ A further clinical note states that the applicant was given a letter but the Town of Newmarket did not let her get a 4th dog.²⁵ This letter evidence indicates the applicant already had three dogs in her care.

- [46] The respondent assessed the need for the applicant to have the service dog. Dr. Notarfonzo opined in her psychological assessment that the applicant’s current level of moderate anxiety and depression did not appear to be worse than it was pre-accident and did not warrant the need for a therapy dog.
- [47] In Dr. Notarfonzo’s opinion the Treatment and Assessment Plan, dated September 24, 2019, proposing a therapy dog was not reasonable and necessary. While she stated there is evidence of some initial exacerbation of the applicant’s mood impairment post accident, her current level of depression and anxiety was moderate and did not appear to be worse than it was pre-accident. Dr. Natarfonzo agreed there was some exacerbation of pre-existing trauma symptoms as a result of the subject accident but she did not think this constitutes a compelling reason to require a therapy dog.
- [48] Ms. Mills completed a paper review of the treatment plan in April 22, 2020. She testified and noted in the paper review that Dr. Katz had prescribed a service animal for the applicant’s PTSD. However this diagnosis was pre-accident and not due to the accident. Ms. Mills found the treatment plan was, in her opinion, not reasonable and necessary. The applicant was informed that based on s.44 reports and medical information available, the OCF-18 dated September 24, 2019 proposing a service dog and training sessions in the amount of \$11,302.82 was not reasonable and necessary.²⁶
- [49] Based on a review of the medical evidence and IE assessments, I find insufficient evidence to support the need for a service dog. Dr. Katz stated it was needed for PTSD which the evidence indicates existed prior to the accident. I find no evidence was presented that a service dog will help with memory and dizziness. Nor is there evidence a service dog will help with vision issues. Dr. Cheung could not conclude the accident made the applicant’s vision worse. Lastly, as outlined by the respondent in closing submissions, the Town would not let the applicant

²⁴ Exhibit 4, Dr. Fallahian clinical notes and records dated August 20, 2019, page 681, applicant document brief.

²⁵ Exhibit 3, Ibid, page 572.

²⁶ Explanation of Benefits dated July 30, 2020, tab E14, respondent document brief.

have a fourth dog when she already had three dogs. There is no expert evidence that leads me to a conclusion the service dog was reasonable and necessary.

Issue 4biii is the applicant entitled to a medical benefit for \$2034.33 for assisted devices in an OCF-18 dated June 18, 2019?

- [50] The OCF-18 is recommended by Andrea Nalli, chiropractor. The treatment goals for the treatment plan for assisted devices is to reduce pain, increase strength, increase range of motion, promote a return to activities of normal living and pre accident work activities and modified work activities. The assisted devices are to minimize injury aggravation and promote independence with pre accident activities of daily living. The injuries listed includes a number of physical impairments including sprains and strains and psychological impairments including depressive episode, generalized anxiety disorder, and sleep disorders.
- [51] I find the injuries listed that are of a psychological impairment are beyond the expertise of a chiropractor. Further it is not clear how the assisted devices such as a raised toilet seat would assist with the applicant's stated psychological impairments.
- [52] Further, one of the goals of the treatment plan is to assist the applicant with a return to work or modified work activities. The applicant however was not working at the time of the accident and was on long term disability due to work related injury. No evidence was presented how these assisted devices would help her return to work.
- [53] The treatment plan for assisted devices includes a Biofreeze pain gel, a pain relief cream, a heat pad, a hot and cold gel pack, cervical pillow, long handled bath scrubber, non-slip bath mat, a raised toilet seat, grab bars, hand-held shower head/hose, cervical pillow, a walker, long handled reacher, pails and mops, a wheeled grocery cart and laundry basket and vitamins for a total cost of \$2034.33. As noted above the applicant reported to Ms. Mills as being independent with showering and using the toilet. As such, there is no need for the proposed raised toilet seat, bathroom grab bars, non-slip bathmat, and handheld shower head/hose. There is also no evidence of the need for a cervical pillow.
- [54] The applicant maintains this treatment plan is reasonable and necessary. However she did not testify about the need for any these devices. The applicant did indicate with respect to the walker that she was not using it and had given it to her father.

[55] Ms. Mills reviewed the treatment plan for assisted devices and found the assisted devices were not reasonable and necessary. She testified that most of these devices based on her assessment and observations of the applicant had already been obtained or were not needed. The devices such as the walker, which the applicant testified she had purchased, was not used by her. As such Ms. Mills did not find it reasonable and necessary to have a walker as she was not using it. Another example is a scrub brush for the tub. The applicant was able to bath independently. Grab bars was another item not needed as the townhome where the applicant lives had provided these. Ms. Mills found that the applicant demonstrated functional ability to complete all her personal care tasks independently. The assisted devices are not reasonable and necessary.²⁷

Issue 4biv, is the applicant entitled to \$149.63 (\$2045.88 less \$1896.25 approved) for an ACB assessment in an OCF-18 dated June 13, 2019?

[56] The treatment plan recommends an attendant care needs assessment for the applicant. The treatment plan was approved except for 1.5 hours of travel time that was found to be excessive. The respondent denied it on the basis that the center for treatment was 5.5 kilometres from the applicant's home. The treatment plan claimed 2.5 hours of travel. The respondent approved one hour for the assessor's travel time.²⁸ The applicant was advised that the proposed travel time appeared to be excessive. After partial approval only \$149.63 remains in dispute. The applicant presented no evidence to contest the position of the respondent. I find the proposed travel time of 2.5 hours is unreasonable and excessive. The balance of the treatment plan that is unapproved is not reasonable and necessary.

Claim for an Award

[57] The applicant seeks an award on the basis that benefits were unreasonably withheld by the respondent. She states in her submissions on the award that the respondent acted in bad faith. For example, the respondent approved the treatment plan for \$3709.71 on the eve of the hearing and should have been approved earlier. She claims Dr. Notarfonzo stated in her report support for the need for the therapy dog, I disagree. Dr. Notarfonzo did not, as outlined above, indicate that a therapy dog was reasonable or required.

²⁷ Explanation of Benefits dated October 25, 2019, tab F16, respondent document brief.

²⁸ Explanation of Benefits dated July 12, 2019, tab B16, applicant document brief.

[58] The respondent submits there is no evidence of bad faith and the treatment plans were denied on the basis of proper IE assessments. An insurer is not held to a standard of perfection.

[59] I find there is no evidence of bad faith to support the claim that benefits were unreasonably withheld or delayed.

INTEREST

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

CONCLUSION AND ORDER

[61] I find based on the totality of evidence the applicant has failed to meet her burden of proof. She has submitted insufficient evidence to establish entitlement to the ACB benefit or that the treatment plans in dispute are reasonable and necessary. The claims for an award and for interest are dismissed.

Released: November 8, 2022



Thérèse Reilly, Adjudicator