Citation: Osbourne v. Aviva Insurance Company of Canada, 2023 ONLAT 20-012506/AABS

Licence Appeal Tribunal File Number: 20-012506/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:

Warren Osbourne

Applicant

and

Aviva Insurance Company of Canada

Respondent

DECISION

VICE-CHAIR: **Julian DiBattista**

APPEARANCES:

For the Applicant: Doina Marinescu, Paralegal

For the Respondent: Yann Grand-Clement, Counsel

HEARD: **By way of written submissions**

OVERVIEW

[1] Warren Osbourne, the applicant, was involved in an automobile accident on October 20, 2018, and sought benefits pursuant to the *Statutory Accident Benefits Schedule - Effective September 1, 2010 (including amendments effective June 1, 2016)* (the "*Schedule*"). The applicant was denied benefits by Aviva Insurance Company of Canada, the respondent, and applied to the Licence Appeal Tribunal - Automobile Accident Benefits Service (the "Tribunal") for resolution of the dispute.

ISSUES

[2] The issues in dispute are:

i. Are the applicant's injuries predominantly minor as defined in s. 3 of the *Schedule* and therefore subject to treatment within the $3,500.00 limit and in the Minor Injury Guideline (MIG)?

ii. Is the applicant entitled to $2,925.60 for chiropractic treatment proposed by Dustin Yen in a treatment plan/OCF-18 ("plan") dated February 27, 2019?

iii. Is the applicant entitled to $2,907.68 for chiropractic treatment proposed by Dustin Yen in a plan dated April 24, 2019?

iv. Is the applicant entitled to $2,925.76 for chiropractic treatment proposed by Dustin Yen in a plan dated July 9, 2019?

v. Is the applicant entitled to $1,742.56 for chiropractic treatment proposed by Dustin Yen in a plan dated October 16, 2019?

vi. Is the applicant entitled to $2,100.00 for chiropractic treatment proposed by Dustin Yen in a plan dated April 3, 2020?

vii. Is the applicant entitled to $1,804.07 for a cognitive assessment proposed by Q Medical in a plan dated October 15, 2019?

viii. Is the applicant entitled to $2,401.25 for a chronic pain assessment proposed by Q Medical in a plan dated October 15, 2019?

ix. Is the applicant entitled to interest on any overdue payment of benefits?

Minor Injury Guideline Not in Dispute

[3] While listed as an issue in dispute for this hearing in both the case conference report and order and the applicant's submissions, the respondent submits that the applicant was removed from the MIG during the case conference when treatment plans totalling $5,334.49 were approved.

[4] This approval is supported by the Tribunal's Case Conference Report and Order. I am satisfied that the MIG is not in dispute for this hearing.

RESULT

[5] I find that the applicant has not proven that the disputed treatment plans are reasonable and necessary. It follows that no interest is payable.

PROCEDURAL ISSUES

Written Submission Page Limits

[6] In a case conference held on October 27, 2021, the Tribunal ordered a 12-page limit on initial written submissions for both the applicant and respondent and a 5-page limit on the applicant's reply submissions.

[7] In their written submissions, the respondent raises an objection to the applicant not respecting the 12-page limit ordered by the Tribunal. The applicant submitted 14 pages of written submissions.

[8] The Tribunal's Order was issued on consent of both parties in the dispute. The Order also states that the hearing adjudicator may not consider submissions which exceed the page limits, leaving the application of the order in my hands.

[9] Submissions for both parties to this dispute were written by representatives licensed by the Law Society of Ontario, who ought to know the risks of disregarding an order issued by the Tribunal.

[10] As these limits were issued on consent, are reasonable and proportionate to the issues in dispute, being seven treatment plans and interest, and there being no subsequent Tribunal order varying the page limits for any party, I exercise my discretion to enforce the page limits set by the Tribunal.

[11] However, the first two-thirds of the first page of applicant submissions are taken up by cover information. This information was present on the respondent's submissions to the Tribunal and took up the entire page, which was not counted toward the page limits. I therefore will allow the applicant up to two-thirds of page 13, and will only consider submissions of the applicant made up to the conclusion of paragraph 26.

ANALYSIS

Lack of Medical Evidence

[12] To receive payment for a treatment and assessment plan under s. 15 and 16 of the *Schedule*, the applicant bears the burden of demonstrating on a balance of probabilities that the benefit is reasonable and necessary as a result of the accident. To do so, the applicant should identify the goals of treatment, how the goals would be met to a reasonable degree and that the overall costs of achieving them are reasonable.

[13] In their submissions the applicant makes the case that the treatment plans are reasonable and necessary as examinations by Dr. Dustin Yen (chiropractor) and Dr. Dan Shlepakov (chiropractor) show the continued existence of symptoms that are marginally improving with treatment.

[14] The medical evidence submitted by the applicant for this claim is limited. Clinical notes and records are limited to a single page from a visit with Dr. Riaz Shariff on November 17, 2018, which was the first post-accident visit, and are the only clinical notes and records provided to the Tribunal as evidence.

[15] While the note does recommend physio, it does not address any improvements between the date of the accident up to the note's date. Unsurprisingly, the note does not and cannot address any improvements subsequent to the date of the note. That said, the applicant did not submit any evidence about his progress up to February 28, 2019, which is the date of the first disputed treatment plan. Treatment plans themselves are not evidence that a recommended treatment is reasonable or necessary. The treatment plans must be supported by objective medical evidence. The only medical evidence submitted to the Tribunal was:

i. A section 25 psychological examination dated August 5, 2019 by Dr. Harinder Mrahar, submitted by the applicant;

ii. A section 44 orthopaedic paper review dated May 8, 2019 by Dr. Esmat Dessouki, submitted by the respondent; and

iii. A section 44 psychological examination dated September 16, 2019 from Dr. Arpita Biswas, submitted by the respondent.

[16] While Dr. Mrahar in his report recommended a course of psychological treatments, he did not address any of the disputed treatment plans. The section 44 reports support the position that the disputed treatment plans are not reasonable or necessary.

Not Entitled to Treatment Plans in Dispute

[17] Given the lack of medical evidence submitted for this hearing which relates to the specific issues in dispute, I am not convinced, on the balance of probabilities, that the applicant has demonstrated that any of the disputed treatment plans are reasonable or necessary.

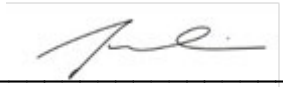
Not Entitled to Interest

[18] As no benefits are overdue, the applicant is not entitled to interest.

ORDER

[19] The applicant is not entitled to the benefits in dispute and this application is dismissed.

Released: March 27, 2023



Julian DiBattista
Vice-Chair