



**Citation: Gnanalingam v. Certas Home and Auto Insurance Company, 2023
ONLAT 21-004972/AABS**

Licence Appeal Tribunal File Number: 21-004972/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:

Sarojinidevi Gnanalingam

Applicant

and

Certas Home and Auto Insurance Company

Respondent

DECISION

ADJUDICATOR: Teresa Walsh

APPEARANCES:

For the Applicant: Taylor Hamilton, Paralegal

For the Respondent: Yann Grand-Clement, Counsel

HEARD: By Way of Written Submissions

OVERVIEW

- [1] The applicant was involved in an accident on November 20, 2019. She sought benefits for four treatment plans, two for chiropractic services and two for assessments, pursuant to the *Statutory Accident Benefits Schedule - Effective September 1, 2010 (including amendments effective June 1, 2016)* (the “Schedule”).
- [2] The respondent denied the treatment plans on the basis they were not reasonable and necessary. The applicant disagreed and applied to the Tribunal for a resolution of the dispute.

ISSUES

- [3] The issues in dispute are:
- i. Is the applicant entitled to \$3,328.32 for chiropractic and other services proposed by HealthMax Physiotherapy Clinics in a treatment plan denied on February 6, 2021?
 - ii. Is the applicant entitled to \$3,729.22 for chiropractic services (bilateral knee braces) proposed by HealthMax Physiotherapy Clinics in a treatment plan denied on January 15, 2021?
 - iii. Is the applicant entitled to \$2,200.00 for the cost of a psychological assessment proposed by HealthMax Physiotherapy Clinics in a treatment plan denied on June 8, 2021?
 - iv. Is the applicant entitled to \$2,460.00 for the cost of a chronic pain assessment proposed by HealthMax Physiotherapy Clinics in a treatment plan denied on September 28, 2021?
 - v. Is the applicant entitled to interest on any overdue payment of benefits?
 - vi. Is the applicant entitled to an award under s. 10 of Regulation 664?

RESULT

- [4] The applicant has not established that any of the disputed treatment plans are reasonable and necessary. As there are no benefits owing, no interest nor award is payable. The application is dismissed
- [5] In her submissions, the applicant also sought costs of the hearing from the respondent. As the application is dismissed, I deny the applicant’s cost request.

ANALYSIS

Applicant's onus to establish a treatment plan is reasonable and necessary

- [6] To receive payment from an insurer for a medical benefit sought under sections 14 and 15 of the *Schedule*, an applicant must establish on a balance of probabilities that she has suffered an impairment from the accident and that the medical benefit is a reasonable and necessary expense as a result of the accident.
- [7] There must be objective medical evidence demonstrating a causal connection between the accident and injuries giving rise to a claim for benefits. A treatment plan on its own does not prove that the benefits sought are reasonable and necessary.
- [8] In demonstrating the reasonableness and necessity of a benefit sought, 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 the goals are reasonable.

Chiropractic services treatment plans are not reasonable and necessary

- [9] The applicant has not established that these two treatment plans – the first for chiropractic and other therapies, and the second for knee braces – are reasonable and necessary.
- [10] Goals of both treatment plans include pain reduction, increasing range of motion and [allowing] a return to activities of normal living. Goals of the second treatment plan also include improving stability of the knee joint and reducing load on the “joint plate”.
- [11] The applicant argues that her pre-existing neck, back and bilateral knee problems were significantly exacerbated by the accident and have led to other problems, including headaches and psychological issues. She relies on records from HealthMax Physiotherapy Clinics (“HealthMax”) in support of this argument. The applicant states that her accident-related injuries have benefitted from chiropractic, physiotherapy and other services provided through the facility. Based on records produced, it appears that HealthMax provided these services to the applicant on approximately forty occasions, starting a week after the accident to at least March 15, 2021.
- [12] In support of the second chiropractic treatment plan for knee braces, HealthMax provided the respondent with a January 7, 2021 letter describing the applicant’s

reported difficulties with household chores, personal care tasks and social activities. Reference is made to recent falls at home and the applicant's inability to sit, stand or walk longer than 10 minutes due to knee pain, worse on the right side, resulting in an antalgic (abnormal/limping) gait. The knee braces are proposed so the applicant can perform activities of daily living with reduced pain and discomfort and improve her prognosis.

- [13] The applicant also notes that the respondent accepted her accident-related injuries as being non-minor, and therefore she is not subject to treatment within the *Schedule's* \$3,500.00 Minor Injury Guideline limit.
- [14] The respondent argues that the HealthMax records, from the same facility recommending all treatment plans, provide little objective evidence that the applicant's accident-related injuries are ongoing.
- [15] The minor nature of the accident, evidenced by limited damage to the vehicle's rear bumper only, is emphasized by the respondent. The respondent states it is unlikely the applicant continued to suffer from accident-related pain more than a year later when the chiropractic treatment plans were submitted.
- [16] The respondent points out that apart from the applicant's two visits to her family doctor (Dr. Issar) within a week of the accident, the doctor's records contain few mentions of the accident or ongoing injuries until 20 months post-accident. Most treatment provided by Dr. Issar in 2020 and 2021 is for hypothyroidism and Type 2 diabetes, conditions unrelated to and pre-dating the accident.
- [17] Specifically regarding the applicant's purported knee problems, including instability and falls, the respondent notes that shortly after the HealthMax letter providing support for knee braces was sent, Dr. Issar saw the applicant for an in-depth appointment. Dr. Issar counselled the applicant on lifestyle changes to control her Type 2 diabetes, including a recommendation to engage in mild to moderate exercise five days a week, such as "brisk walking". The respondent contends it is unlikely Dr. Issar would have recommended this exercise if the applicant needed knee braces.
- [18] Finally, the respondent relies on 2021 reports by orthopedic surgeon Dr. Auguste, prepared under s. 44 of the *Schedule*. After conducting various clinical tests as part of an in-person assessment, Dr. Auguste found that the applicant was pain-focused and put forward suboptimal effort on all strength testing. Dr. Auguste also found the applicant demonstrated no abnormalities or restrictions in range of motion of her neck, shoulders or legs. From an orthopedic perspective, and supported by pre- and post-accident x-rays, Dr. Auguste found no

substantive impairments that she could causally link to the accident of nearly 16 months earlier. Dr. Auguste added that the applicant's reported complaints did not correlate with objective findings.

[19] Based on both the in-person assessment and a subsequent paper review, Dr. Auguste concluded that the applicant did not need any further formal facility-based treatments, investigations or assessments for accident-related injuries. In Dr. Auguste's view, the chiropractic treatment plans are not reasonable and necessary.

[20] I agree with the respondent that there is insufficient objective evidence establishing that the applicant continues to suffer from physical accident-related injuries. My finding is based in particular on:

- i. the lack of supportive, detailed, objective clinical testing results for the applicant in the HealthMax records;
- ii. the contrasting detailed, objective test results for the applicant in Dr. Auguste's in-person assessment, demonstrating that the applicant does not have ongoing accident-related injuries and thus does not need the services proposed in the chiropractic treatment plans;
- iii. x-rays taken 5 weeks before and 10 months after the accident, both showing mild osteoarthritic changes to the applicant's knees;
- iv. Dr. Issar's records for the 20-month period following the accident, which contain few references to accident-related complaints;
- v. neck, back and knee complaints documented in Dr. Issar's records, which are similar pre- and post-accident, undermining the applicant's arguments of injury exacerbation due to the accident; and
- vi. limited improvement of the applicant's pain complaints noted after approximately 40 chiropractic, physiotherapy, massage therapy and active treatments by HealthMax.

[21] Therefore, I find that the two treatment plans for chiropractic services including knee braces are not reasonable and necessary.

Psychological assessment treatment plan is not reasonable and necessary

[22] The applicant has not established that the third treatment plan proposing a psychological assessment is reasonable and necessary.

- [23] This treatment plan references the applicant's unspecified mood disorder, neurotic disorder, nonorganic sleep disorder, malaise and fatigue, nightmares, irritability and anger. These psychological issues are stated to have resulted directly from the accident.
- [24] The goals of the proposed psychological assessment are to be determined by the assessment itself. The treatment plan indicates that any recommendations and barriers to the applicant's recovery will need to await the outcome of the proposed assessment.
- [25] Mehdi Lotfalizadeh, a clinical psychologist, prepared this HealthMax treatment plan. He also prepared a related "psychological screening report" to provide additional information and support for the proposed assessment.
- [26] As noted by the respondent, the treatment plan and psychological screening report are based entirely on the applicant's subjective reporting.
- [27] Further, the respondent argues that Dr. Issar's records contain no mention of any psychological injury potentially resulting from the accident. On the day of the accident, Dr. Issar's records describe the applicant being in shock at the loudness of the collision. A few days later, the applicant reported to Dr. Issar that she was not sleeping well. There are no subsequent references in the available family doctor's records to any complaints of a possible psychological nature, whether in relation to the accident or otherwise.
- [28] In reviewing the HealthMax records generally, and the psychological screening report in particular, Assessor Lotfalizadeh does not say whether he and/or others met in person with the applicant, spoke to her by telephone or via another virtual communication method. No description of the applicant's observed demeanor and/or mood is provided. There are no references to follow-up questioning of the applicant or others to critically assess the applicant's psychological complaints or probe possible non-accident-related reasons for the complaints. There is no indication that relevant pre- or post accident medical records (including those of Dr. Issar) were reviewed by HealthMax assessors in connection with purported psychological issues.
- [29] The applicant's self-reporting on psychological issues is at odds with factual information contained in medical records and reports. For example, the psychological screening report references the applicant's statement that she has had a poor appetite since the accident, barely eats or feels hungry, and has lost weight. Dr. Issar's records, HealthMax materials and the s. 44 reports of Dr. Auguste, all contain weight recordings that belie the applicant's statement. Dr.

Issar's records prior to the accident and in mid-2021 also include detailed advice to the applicant on weight loss strategies to control her Type 2 diabetes.

- [30] Due to the complete absence of any objective medical evidence in the third treatment plan and psychological screening report, I find the applicant has failed to satisfy her onus of establishing that the proposed psychological assessment is reasonable and necessary.

Chronic pain assessment treatment plan is not reasonable and necessary

- [31] The applicant has not established that the fourth treatment plan proposing a chronic pain assessment is reasonable and necessary.
- [32] Goals of the proposed assessment are indicated to be identifying barriers to recovery and treatment options.
- [33] The applicant acknowledges that she was diagnosed with chronic neck and back pain in 2016 and also was found to have mild knee osteoarthritis with occasional severe knee pain pre-accident. According to the applicant, a chronic pain assessment is still necessary as, three and a half years since the accident, she continues to suffer from increased pain, particularly in her knees.
- [34] The applicant references the *American Medical Association Guides (AMA Guides)*, which state that at least three of the following criteria must be met for a chronic pain diagnosis:
- (i) use of prescription drugs beyond the recommended duration and/or abuse of or dependence on prescription drugs or other substances;
 - (ii) excessive dependence on health care providers, spouse, or family;
 - (iii) secondary physical deconditioning due to disuse and or fear-avoidance of physical activity due to pain;
 - (iv) withdrawal from social milieu, including work, recreation, or other social contacts;
 - (v) failure to restore pre-injury function after a period of disability, such that the physical capacity is insufficient to pursue work, family or recreational needs; and
 - (vi) development of psychosocial sequelae after the initial incident, including anxiety, fear-avoidance, depression, or nonorganic illness behaviors.

According to the applicant, the HealthMax records referencing her reports of post-accident limitations, withdrawal and psychological issues, in addition to the fall or falls she experienced in 2021, establish that she has satisfied criteria (iii) to (vi) **OF** the *AMA Guides*.

- [35] Medical evidence from Dr. Issar and Dr. Auguste is relied on by the respondent in arguing that the accident did not exacerbate the applicant's pre-accident chronic pain diagnosis. The respondent disputes that the applicant satisfies at least three of the six *AMA Guides* criteria.
- [36] Consistent with my earlier analysis, I do not agree with the applicant's argument that the HealthMax records provide necessary, objective evidence to satisfy criteria (iii) to (vi) of the *AMA Guides* and thereby support a chronic pain diagnosis directly related to and exacerbated by the accident. The HealthMax records heavily rely on the applicant's self-reporting and contain little objective information, critical analysis or reference to other source material needed to verify the self-reporting.
- [37] Accordingly, I find that the applicant has not met her onus in establishing that the proposed chronic pain treatment plan is reasonable and necessary.

Interest

- [38] As there are no benefits owing for treatment plans, no interest is payable.

Award

- [39] Under s. 10 of Regulation 664, the Tribunal may grant an award of up to 50 per cent of the total benefits payable if it finds that an insurer unreasonably withheld or delayed the payment of benefits. As no benefits are payable, the applicant is not entitled to an award.

Costs

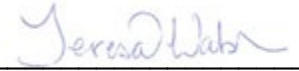
- [40] As the application is dismissed, no costs are payable.

ORDER

- [41] For the reasons outlined above, I find that:
- i. The applicant is not entitled to any of the benefits sought in four treatment plans, or interest.
 - ii. The applicant is not entitled to any award under s. 10 of Regulation 664.

- iii. No costs are payable to the applicant.
- iv. The application is dismissed.

Released: March 29, 2023



Teresa Walsh
Adjudicator