



Citation: Ahmadi v. Certas Home and Auto Insurance, 2023 ONLAT 20-009098/AABS

Licence Appeal Tribunal File Number: 20-009098/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:

Abdul Ahmadi

Applicant

and

Certas Home and Auto Insurance

Respondent

DECISION

ADJUDICATOR: Derek Grant

APPEARANCES:

For the Applicant: Andrew Franzke, Counsel

For the Respondent: Jonathan Schrieder, Counsel

HEARD: By way of written submissions

OVERVIEW

- [1] Abdul Wahid Ahmadi (“AWA”), the applicant, was involved in an automobile accident on December 1, 2015, and sought benefits pursuant to the *Statutory Accident Benefits Schedule - Effective September 1, 2010* (the “Schedule”). AWA was denied benefits by the respondent, Certas, and applied to the Licence Appeal Tribunal - Automobile Accident Benefits Service (the “Tribunal”) for resolution of the dispute.
- [2] AWA initiated a dispute at the Tribunal in 2017 regarding his claim for income replacement benefits, various treatment plans and an award. These issues were argued at an in-person hearing in 2019. The Tribunal held that AWA was entitled to pre-104 weeks income replacement benefits. The Tribunal further held that the treatment plans were not reasonable and necessary, and that AWA was not entitled to an award.

ISSUES

- [3] The issues in dispute are:
- i. Is AWA entitled to \$4,068.00 for the invoice from Dr. Ghouse, dated July 6, 2020, pertaining to his witness fee for the May 2019 Tribunal hearing?
 - ii. Is AWA entitled to \$2,004.96 for chiropractic services, recommended by Spinetec Health Care Solutions in a treatment plan (OCF-18) dated June 12, 2020?
 - iii. Is Certas liable to pay an award under O. Reg. 664 because it unreasonably withheld or delayed payments to AWA?
 - iv. Is AWA entitled to interest on any overdue payment of benefits?

RESULT

- [4] AWA is not entitled to expenses related to witness fees.
- [5] AWA is not entitled to the disputed OCF-18 and no interest is payable.
- [6] AWA is not entitled to an award.

ANALYSIS

Witness expense submitted via OCF-6 dated July 6, 2020

- [7] I find that AWA is not entitled to the witness fee because the expense does not fall under the exceptions provided by section 38(2) of the *Schedule*. The expense claimed is \$4,068.00 for a witness fee.
- [8] The expenses that AWA is attempting to claim do not fall within any of the categories of payable expenses under the *Schedule*.
- [9] As s. 38(2) does not provide relief for witness fees, the expense is not payable. Further, the Tribunal does not have the jurisdiction to order the witness fees payable. Accordingly, AWA is barred from proceeding with his claim regarding the witness fee.

Is the OCF-18 dated June 12, 2020 reasonable and necessary?

- [10] Sections 14 and 15 of the *Schedule* provide that an insurer is only liable to pay for medical expenses that are reasonable and necessary as a result of the accident. In all cases, AWA bears the onus of proving on a balance of probabilities that any proposed treatment or assessment plan is reasonable and necessary. To do so, AWA should establish that the treatment goals are reasonable, that the goals are being met to a reasonable degree and that the overall cost of achieving the goals is reasonable.
- [11] For the reasons set out below, I find that AWA has failed to demonstrate on a balance of probabilities that the disputed OCF-18 for chiropractic treatment is reasonable and necessary.
- [12] AWA submits that the OCF-18 is reasonable and necessary to facilitate a goal of a return to gainful employment and a return to a normal life. His position is that despite the assertions from the s. 44 assessors that he has reached maximum medical recovery, this is not in line with the course of treatment recommended by his treating physicians before or after the 2019 Tribunal hearing. I note that AWA relies mainly on the OCF-18 in support of his position. However, the OCF-18, without contemporaneous, objective evidence, does not satisfy the reasonable and necessary threshold when determining whether the OCF-18 is payable.
- [13] In response, Certas argues that AWA has not provided compelling evidence to support that the treatment plan is reasonable and necessary. Further, its position is that the medical records are outdated, and do not support the need for further chiropractic treatment. In support of its position, Certas relies on the August 31,

2017 s. 44 report of general physician, Dr. Taylor, who provided a diagnosis of a WADII injury as a result of the accident. Dr. Taylor concluded that AWA had reached maximum medical recovery and that no further facility-based treatment was required. Dr. Taylor opined that given the length of time that had passed, and the lack of response to treatment, further improvement of AWA's condition was unlikely and that no further treatment was required.

- [14] I find the evidence does not support that the OCF-18 is reasonable and necessary. First, the medical records that AWA relies on are not recent, and there are no contemporaneous records that support the need for chiropractic treatment. The most recent record from Spinetech was a chiropractic session in 2018. Second, the last treatment plan submitted for physical treatment was September 27, 2017, almost three years prior to the June 12, 2020 OCF-18. Lastly, I note that Certas requested updated medical records by way of correspondence dated February 16, 2022. To date, Certas has not received a response to the request or any of the records requested.
- [15] Certas asks me to draw an adverse inference where AWA is requesting further treatment but has not provided updated medical records to support his request. I would agree with Certas' position and conclude that an adverse inference must be drawn as a result of AWA's failure to produce the requested medical records as it pertains to the disputed OCF-18. In failing to produce the records, I must conclude that the documents would not support his claim of entitlement to the OCF-18 or that his injuries are not as significant as alleged. Lastly, I find that AWA's failure to produce the records and not complying with the request for documents, further weakens the strength of his claim.
- [16] I note that while AWA was afforded the opportunity to refute Certas' claims by way of reply submissions, he chose not to. As such, I see no reason to interfere with Certas' determination.

Interest

- [17] Interest applies on the payment of any overdue benefits pursuant to s. 51 of the *Schedule*. As no benefits are overdue, it follows that no interest is owing.

Award

- [18] The applicant sought an award under s. 10 of Reg. 664. Under s. 10, 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. Having

determined that AWA is not entitled to any of the disputed benefits, no award is payable.

ORDER

- [19] AWA is not entitled to the expenses for witness fees.
- [20] AWA has failed to establish on a balance of probabilities that the disputed OCF-18 is reasonable and necessary. Accordingly, interest and an award are not payable.
- [21] The application is dismissed.

Released: June 21, 2023



**Derek Grant
Adjudicator**