



**Citation: Zhong v. Aviva General Insurance, 2023 ONLAT 20-012548/AABS - A**

**Licence Appeal Tribunal File Number: 20-012548/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:

**Shan Zhong**

**Applicant**

and

**Aviva General Insurance**

**Respondent**

**AMENDED DECISION AND ORDER**

**VICE-CHAIR:** **Julian DiBattista**

**APPEARANCES:**

For the Applicant: Philip Kai Kwong Yeung, Paralegal

For the Respondent: ~~Arijana B Schrauwen~~, **Lauren Kolarek** Counsel

**HEARD:** **By Way of Written Submissions**

## REASONS FOR DECISION

### BACKGROUND

- [1] Shan Zhong, “the applicant”, was involved in an automobile accident on April 11, 2019, and sought benefits from Aviva General Insurance, “the respondent”, pursuant to the *Statutory Accident Benefits Schedule Effective September 1, 2010 (including amendments effective June 1, 2016)* (“the Schedule”)<sup>1</sup>.
- [2] The respondent partially denied the applicant’s claims for psychological treatment, disputing line items in the proposed treatment plan. As a result, the applicant submitted an application to the Licence Appeal Tribunal – Automobile Accident Benefits Service (“Tribunal”) for resolution of this dispute.

### ISSUES

- [3] The issues to be decided at this hearing are as follows:
1. Is the applicant entitled to a medical benefit in the amount of \$2,372.27 (\$4,121.88 less \$1,749.61 partially approved) for psychological services, submitted April 6, 2020?
  2. Is the applicant entitled to a medical benefit in the amount of \$3,222.76 (\$4121.88 less \$899.12 partially approved) for psychological services, submitted May 19, 2020?
  3. Is the applicant entitled to interest on any overdue payment of benefits?

### RESULT

- [4] The applicant is not entitled to the unapproved portion of either disputed treatment plan. As there is no overdue payment of benefits, the applicant is not entitled to interest.

### ANALYSIS

#### Written submission page limits

- [5] In a case conference held on July 8, 2021, Member Driesel set the following parameters for written submissions:<sup>2</sup>

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<sup>1</sup> O. Reg 34/10 as amended

<sup>2</sup> Case Conference Report and Order Tribunal File 20-012548/AABS

	Max # of Pages
Applicant's submissions and evidence	10
Respondent's submissions and evidence	10
Applicant's reply submissions (if any)	5

- [6] When Member Driesel ordered these limits, there were 7 issues in dispute and these limits were issued on consent. Since the Case Conference, 4 of the 7 issues were withdrawn or resolved with only 3 remaining in dispute for this hearing.
- [7] As the parties agreed a 10-page limit was sufficient for a 7-issue hearing, a 10-page limit is more than sufficient for a 3-issue hearing.
- [8] It is noted that applicant's written submissions contained 13 pages and respondent's written submissions contained 11 pages.
- [9] In the case conference report and order, Member Driesel stated that the hearing adjudicator may not consider submissions outside of the stated limits. Given reasons above, I have chosen not to consider any submissions beyond the 10-page limit.

## Medical Benefits

- [10] There are two treatment plans which will be addressed at this hearing. Due to the nature of the respondent's partial approvals, I will outline in detail what was requested and approved.

Treatment Plan Submitted April 6, 2020 - Denied April 7, 2020								
Line	Description	Provider	Speciality	Quantity	Count	Cost	Amount Requested	Approved Amount
1	Therapy, mental health and addictions	Mandy Fang	Social Worker	1.5 hours	14	\$ 224.42	\$ 3,141.88	\$ 1,400.00
2	Documentation, support activity	Bhatia Maneet	Clinical Psychologist	1 unit	1	\$ 360.00	\$ 360.00	\$ 149.61
3	Documentation, support activity for claim form	Bhatia Maneet	Clinical Psychologist	1 unit	1	\$ 200.00	\$ 200.00	\$ 200.00
4	Claimant transportation to treatment	Somatic Transp	N/A	1 unit	14	\$ 30.00	\$ 420.00	\$ -
						<b>Total</b>	<b>\$ 4,121.88</b>	<b>\$ 1,749.61</b>
Treatment Plan Submitted May 19, 2020 - Denied August 21, 2020								
Line	Description	Provider	Speciality	Quantity	Count	Cost	Amount Requested	Approved Amount
1	Therapy, mental health and addictions	Mandy Fang	Social Worker	1.5 hours	14	\$ 224.42	\$ 3,141.88	\$ 400.00
2	Documentation, support activity	Bhatia Maneet	Clinical Psychologist	1 unit	1	\$ 360.00	\$ 360.00	\$ 299.22
3	Documentation, support activity for claim form	Bhatia Maneet	Clinical Psychologist	1 unit	1	\$ 200.00	\$ 200.00	\$ 200.00
4	Claimant transportation to treatment	Somatic Transp	N/A	1 unit	14	\$ 30.00	\$ 420.00	\$ -
						<b>Total</b>	<b>\$ 4,121.88</b>	<b>\$ 899.22</b>

## Treatment Plan submitted April 6, 2020

- [11] The applicant submits the following issues with line item 1 of this treatment plan:
1. The length of the sessions should be 1.5 hours and not the 1 hour approved by the respondent.

2. That the rate Ms. Fang is entitled to should be \$149.61 per hour, not the \$100 per hour approved by the respondent.

[12] There were no submissions advanced regarding partial approvals of any other line items in this treatment plan. Therefore, I must conclude that only line 1 is in dispute.

a) Length of therapy sessions

[13] To support the need for 1.5-hour therapy sessions, the applicant referenced the Section 25 Psychological Assessment conducted by Dr. M. Bhatia (Clinical Psychologist) and Ms. M. Fang (Registered Psychotherapist) on September 21, 2019. Dr. Bhatia diagnosed the applicant with adjustment disorder and specific phobia, recommending 14 weeks of therapy, without indicating a session-length.

[14] The applicant was assessed by Dr. R Ratti (Clinical Psychologist) for an Insurer's Examination on August 23, 2019. Dr. Ratti states his opinion that "the claimant presents with symptoms of depressed mood and anxiety in regard to the accident, and she meets criteria for a diagnosis of Major Depressive Disorder with Anxious Distress, Mild to Moderate degree and Recurrent."<sup>3</sup>

[15] As the respondent approved 14 sessions of therapy, the dispute is whether 1.5-hour sessions are reasonable and necessary in contrast to the 1-hour sessions approved. I have reviewed the clinical notes and records of Dr. J. Chen (Family Physician) which cover the period from April 11, 2016, to November 4, 2021. There is no mention of psychotherapy within these notes nor is there a recommendation for any psychological treatment.<sup>4</sup>

[16] The applicant references *C.M. v. Intact Insurance Company* ("C.M.").<sup>5</sup> In this case, Member Manigat found at paragraph 36, that a treating psychologist was the most qualified person to determine the length of a psychological treatment session.

[17] However, the circumstances that led Member Manigat to this finding differ from the circumstances before me. Member Manigat had two competing expert reports, one from the treating psychologist which recommended 90-minute sessions and one from the respondent's expert, which recommended 60-minute

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<sup>3</sup> Section 44 Report of Dr. R Ratti September 9, 2019/

<sup>4</sup> Clinical notes and records of Dr. J Chen

<sup>5</sup> 2020 CanLII 14419. (ON LAT)

sessions. The expert reports submitted as evidence in this case do not address the length of psychotherapy sessions.

- [18] The only evidence before me from an expert that mentions session length is the disputed OCF-18. Recommending a course of treatment in an OCF-18 is not evidence that the treatment is reasonable or necessary. The OCF-18 alone is not sufficient to prove that the treatment is reasonable or necessary.
- [19] In their report, Dr. Bhatia and Ms. Fang made detailed recommendations. “We recommend an initial fourteen (14) weekly sessions, once weekly, with a review at the end of this period to determine whether additional sessions are necessary.”<sup>6</sup> They don’t specify the duration of each session.
- [20] Without them being present for questioning, we cannot determine whether it was omitted as an oversight or if it was intentionally omitted as they have no recommendation on a session length which is medically necessary.
- [21] The fact that Dr. Bhatia co-authored the Psychological Assessment and is the author of the OCF-18 is not evidence that 1.5-hour sessions are reasonable or necessary. The treatment plan cannot be used as evidence to prove that same treatment plan is reasonable or necessary.
- [22] There is no other medical report, clinical notes or records presented to me as evidence that would support therapy sessions of 1.5 hours in duration. As such, the applicant has not proven that 1.5-hour sessions are reasonable or necessary.

b) Hourly rate of Ms. M. Fang

- [23] The Professional Services Guideline (the Guideline) issued by the Superintendent of the Financial Services Commission of Ontario (FSCO) outlines maximum rates payable for certain professions under the *Schedule*. The guideline sets the maximum rate a psychologist or psychological associate can bill at \$149.61 per hour.<sup>7</sup>
- [24] A psychotherapist is not covered by the guideline, which states, “[s]ervices provided by health care professionals/providers, unregulated providers and other occupations not listed in the Guideline are not covered by the Guideline. The

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<sup>6</sup> Section 25 Report of Dr. M Bhatia and Ms. M Fang October 3, 2019

<sup>7</sup> FSCO Superintendent’s Guideline No. 03/14 – Professional Services Guideline

amounts payable by an insurer related to services not covered by the Guideline are to be determined by the parties involved.”<sup>8</sup>

- [25] The applicant submits that Ms. Fang, as a psychotherapist, should be paid at a rate of \$149.61 per hour based upon the Tribunal’s decision in *J.V. v. Intact Insurance Company*<sup>9</sup> (“*J.V.*”). The applicant further submits that because Ms. Fang has a Master of Social Work, is registered with the College of Registered Psychotherapists, is trained in Cognitive Behaviour Therapy and has been working in the field for over 10 years that the hourly rate of \$149.61 is reasonable.
- [26] The respondent cites *S.M.Z v. Aviva Insurance Company*<sup>10</sup> (“*S.M.Z.*”) which has distinguished *J.V. v. Intact* and found that the applicable hourly rate for a psychotherapist was \$58.19 per hour.
- [27] I also find that *J.V. v. Intact* is distinguishable from the facts in this matter for the following reasons:
1. While Ms. Fang has an extensive educational background, she holds herself out as a psychotherapist in her curriculum vitae.
  2. While Ms. Fang does list training in Cognitive Behavioural Therapy (“CBT”), the April 6, 2020 OCF-18 does not propose to provide any CBT treatment which is unlike the OCF-18 at issue in *J.V.* The absence of CBT in the April 6, 2020 OCF-18 is significant given a reason that the Tribunal found that the hourly rate of \$149.61 was reasonable for the psychotherapist in *J.V.* was because the psychotherapist in that matter was providing CBT treatment which was a service aligned with treatment provided by psychologists and psychological associates.
- [28] As the facts of this matter are distinguishable from *J.V* for the reasons set out above, I find that the applicant has failed to prove that the difference between the hourly rate proposed by the respondent of \$100.00 and the hourly rate of \$149.61 for Ms. Fang’s services was reasonable and necessary and, therefore, the applicant is not entitled to the difference. I also find that the respondent agreed to pay a reasonable hourly rate of \$100.00 for Ms. Fang’s services as a psychotherapist considering the various Tribunal decisions that the respondent

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<sup>8</sup> Ibid

<sup>9</sup> 2019 CanLII 76995 (ON LAT)

<sup>10</sup> 2020 CanLII 27401 (ON LAT)

relied upon wherein the Tribunal determined that the appropriate hourly rate payable was \$58.19.

**TREATMENT PLAN SUBMITTED MAY 19, 2020**

- [29] The burden of proof falls on the applicant to convince the Tribunal, on a balance of probabilities, that a treatment plan is reasonable and necessary. The applicant's submissions on this treatment plan were made on pages 11-13 of their written document, outside of the 10-page limit.
- [30] As those submissions were not considered in this hearing, the applicant has failed to prove this treatment plan reasonable and necessary beyond the partial approval provided by the respondent.

**INTEREST**

- [31] As the applicant is not entitled to any of the amounts in dispute, there is no basis to order the payment of interest.

**ORDER**

- [32] The applicant is not entitled to any of the treatment plans in dispute.
- [33] The applicant is not entitled to interest.
- [34] The application is dismissed.

**Released: June 30, 2023**



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**Julian DiBattista**  
**Vice-Chair**