



Citation: Perveen v. Allstate Insurance, 2023 ONLAT 21-005070/AABS

Licence Appeal Tribunal File Number: 21-005070/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:

Rokshana Perveen

Applicant

and

Allstate Insurance

Respondent

DECISION

VICE-CHAIR:

Monica Ciriello

APPEARANCES:

For the Applicant:

Camille Narine-Ramrattan, Paralegal

For the Respondent:

Evan Argentino, Counsel

HEARD: In Writing

July 3, 2023

OVERVIEW

- [1] Rokshana Perveen, the applicant, was involved in an automobile accident on June 22, 2019, 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 the respondent, Allstate Insurance, 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. Is the applicant entitled to medical benefits recommended by Midland Wellness Centre in the following treatment plans (“OCF 18”):
 - i. \$3,003.77 for physiotherapy submitted September 14, 2019;
 - ii. \$2,649.95 for physiotherapy submitted December 23, 2019;
 - iii. \$2,296.13 for physiotherapy submitted February 29, 2020;
 - iv. \$1,973.72 for physiotherapy submitted September 3, 2020;
 - v. \$3,192.25 for psychological treatment submitted September 3, 2020?
 - vi. \$2,020.00 for an attendant care assessment submitted September 3, 2020;
 - ii. Is the applicant entitled to interest on any overdue payment of benefits?

RESULT

- [3] I find that the applicant is not entitled to any OCF-18, or interest.

ANALYSIS

- [4] The onus is on the applicant to demonstrate on a balance of probabilities that the treatment plans in dispute are reasonable and necessary as a result of the accident.

The applicant is not entitled to the four OCF-18s for physiotherapy treatment

- [5] I find that the applicant has not established that the OCF-18s for physiotherapy treatment are reasonable and necessary.

- [6] The OCF-18s propose physical rehabilitation sessions, activity therapy and massage therapy.
- [7] The applicant submits that these plans are reasonable and necessary because she has ongoing sprain and strain injuries. The applicant visited her family doctor, Dr. Sivashankary Prabhakaran, the day after the accident, on June 23, 2019. Dr. Prabhakaran's clinical notes and records ("CNRs") provide that the applicant was diagnosed with whiplash.
- [8] The applicant attended Scarborough Hospital for diagnostic imaging on June 24, 2019, Dr. Godfrey Kim, MC FRCPC, reported that it was a negative exam, soft tissues are unremarkable, and no fractures or dislocations.
- [9] The applicant continued to follow up with her family doctor. The CNRs of Dr. Prabhakaran between June 25, 2019 and August 27, 2019 reveal that the applicant was diagnosed with sprain and strains from the accident with no red flags. On June 28, 2019, and July 12, 2019, during a follow up appointment with Dr. Prabhakaran, it was recommended that the applicant take pain medication along with physiotherapy. The CNRs reveal that August 27, 2019, was the last date the applicant visited Dr. Prabhakaran.
- [10] The respondent submits that the treatment plans themselves do not provide that the proposed treatments are reasonable and necessary. There should be supportive objective medical evidence to substantiate the reasonableness or necessity of the proposed treatment.
- [11] The CNRs of Dr. Prabhakaran, the diagnostic imaging reported by Dr. Kim and the physiatry Insurer Examination ("IE") of Dr. Michael Ko, physiatrist, all reveal that the applicant suffered soft tissue injuries. On March 2, 2020, Dr. Ko assessed the applicant and opined she suffered soft tissue injuries and that there is no objective evidence of ongoing organic pathology and that the applicant had reached maximum medical recovery.
- [12] I agree with the respondent and find that the physiotherapy treatment plans submitted September 14, 2019, December 23, 2019, February 29, 2020, and September 3, 2020, are not reasonable and necessary as a result of the accident.
- [13] I am persuaded by the medical evidence before me, which suggests that the applicant suffered soft tissue injuries and reached maximum medical recovery. I also note that there is no referral from the applicant's family doctor for ongoing physiotherapy treatment after August 2019. Furthermore, I am supported by the

Midland Wellness discharge notice on September 10, 2020, which recommended that the applicant engage in independent exercises at home.

- [14] The evidence before me does not substantiate the reasonableness or necessity of the OCF-18s in dispute.

The applicant is not entitled to the OCF-18 for psychological treatment

- [15] I find that the applicant has not established that the OCF-18 for psychological treatment is reasonable and necessary.
- [16] The pre-accident CNRs of Dr. Prabhakaran refer to the applicant's anxiety and depression. The applicant was previously diagnosed with depression and anxiety following the divorce from her ex-husband. She was on anti-depressant medication pre-accident.
- [17] The applicant provides vague submissions and evidence to the Tribunal leaving it to the adjudicator to puzzle through a document dump to decipher and then assemble an evidentiary foundation for the applicant's treatment plan.
- [18] The applicant relies on the mental health referral of Dr. Laila Afroz, general physician, to Dr. Wahid Abouelnasr, psychiatrist, as well as the psychologist report, dated August 10, 2020 of Ms. Mila Pova, M.A., C.R.P.O, under the supervision of Dr. Nina Belyakova, clinical psychologist.
- [19] The applicant was referred by Dr. Afroz, to Dr. Abouelnasr, at the East Toronto Health Centre on October 16, 2019, for a psychiatric assessment. The referral form was for depression, the relevant medical history on the referral form stated "divorced, single mother with two sons," and under the "any motor vehicle accidents" Dr. Afroz selected "no". Dr. Abouelnasr asked the applicant to continue her Cipralex and prescribed her Lorazepam. The respondent submits and I agree that the applicant's psychological complaints are non-accident related.
- [20] The August 10, 2020 psychologist report was a telephone consultation. Ms. Pova concluded that the applicant is suffering from other specified trauma- and stressor-related disorder: adjustment-like disorder with prolonged duration of more than six months and specific phobia, situational (driver and passenger-related). I am not persuaded by this report and find the contents of it inconsistent with the other medical evidence. In the report, the applicant self- reports that her psychological and emotional issues are a direct consequence of the subject motor vehicle accident, and that she never experienced any previous mental or

emotional health problems prior to the accident, nor did she take any prescription drugs. This is contradicted in the CNRs of Dr. Prabhakaran and Dr. Abouelnasr.

- [21] On December 9, 2020, the applicant had a telephone consultation with the Comprehensive Healthcare Network Family Practice and Walk In Clinic. The applicant reported ongoing issues with depression due to the COVID-19 pandemic and work. The CNRs reference no mention of the accident.
- [22] While I accept that the applicant has depression and anxiety, I am not persuaded that the psychological complaints are accident related. The evidence before me suggests the applicant's depression and anxiety were present before the accident, the applicant was already on medication and post accident the applicant's psychological complaints remained consistent.
- [23] I find that the applicant's OCF-18 in dispute is for non-accident related issues. The psychological treatment plan is not reasonable or necessary.

The applicant is not entitled to the OCF-18 for an attendant care assessment

- [24] I find that the applicant has not established that the OCF-18 for an attendant care assessment is reasonable and necessary.
- [25] The applicant failed to make an argument for an attendant care assessment and listed it as a physiotherapy treatment in her submissions. The applicant submits no evidence that she hired any qualified person for attendant care services since the accident. On reply the applicant submits that she did not seek the services of a qualified professional and has been seeking the assistance of a friend to help with her children. The applicant submits that she is aware that an attendant care assessment must be approved in order to incur the costs.
- [26] The respondent submits the applicant has not incurred the assessment as submitted. Further, the facts and evidence demonstrate that the applicant do not require any assistance with her self-care, housekeeping, home maintenance and childcare. As a result, an attendant care assessment is unreasonable and unnecessary.
- [27] Absent evidence and submissions, I find that the applicant fails to meet her onus in explaining how the proposed OCF-18 is reasonable and necessary.

Interest

- [28] Given that no benefits are payable, the applicant is not entitled to interest.

ORDER

[29] I find that the applicant is not entitled to:

- i. \$3,003.77 for physiotherapy submitted September 14, 2019;
- ii. \$2,649.95 for physiotherapy submitted December 23, 2019;
- iii. \$2, 296.13 for physiotherapy submitted February 29, 2020;
- iv. \$1,973.72 for physiotherapy submitted September 3, 2020;
- v. \$3,192.25 for psychological treatment submitted September 3, 2020?
- vi. \$2,020.00 for an attendant care assessment submitted September 3, 2020;
- vii. Interest.

Released: July 20, 2023



Monica Ciriello
Vice-Chair