



**Citation: Dobrovolskaia v. Aviva Insurance Company, 2023 ONLAT 21-005519/AABS**

**Licence Appeal Tribunal File Number: 21-005519/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:

**Evguenia Dobrovolskaia**

**Applicant**

and

**Aviva Insurance Company**

**Respondent**

**DECISION**

**ADJUDICATOR: Kate Grieves**

**APPEARANCES:**

For the Applicant: Kateryna Vlada, Paralegal

For the Respondent: Yann Grand-Clement, Counsel

**HEARD: By Way of Written Submissions**

## OVERVIEW

- [1] Evguenia Dobrovolskaia, the Applicant, was involved in an automobile accident on September 27, 2016, 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, 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. Is the Applicant entitled to a medical benefit in the amount of \$2,000.00 for a chronic pain assessment recommended by Downsvew Healthcare Inc. in a treatment plan/OCF-18 dated March 26, 2019?
  - ii. Is the Applicant entitled to a medical benefit in the amount of \$2,575.12 for chiropractic services recommended by Downsvew Healthcare Inc. in a treatment plan/OCF-18 dated March 26, 2019?
  - iii. Is the Applicant entitled to a medical benefit in the amount of \$12,293.41 (less \$2,831.06 approved) for a chronic pain program recommended by Downsvew Healthcare Inc. in a treatment plan/OCF-18 dated September 6, 2019?
  - iv. Is the Applicant entitled to interest on any overdue payment of benefits?

## RESULT

- [3] The Applicant is not entitled to the disputed plans for a chronic pain assessment, chiropractic services, or a chronic pain program. No interest is payable.

## BACKGROUND

- [4] The Applicant was taken to hospital by ambulance after the accident, where she reported having hit her head on the headrest and feeling dizzy. She reported no neck or back pain but was noted to be anxious. At the hospital, she advised that her dizziness had resolved, and she was discharged home.
- [5] The Applicant attended a walk-in clinic on October 4, 2016 and was diagnosed with whiplash. Imaging reports dated October 3, 2016 revealed degenerative

changes in her neck and tenosynovitis in her right shoulder. She returned on October 16, 2016 and reported back and abdominal pain on and off, and dizziness from time to time.

- [6] Clinical notes and records of the family physician, Dr. Livshin, were provided but are largely illegible. It appears she was assessed on October 5, 2016. A bone scan dated October 29, 2016 revealed bursitis in her right shoulder, and degenerative changes in her cervical spine. More x-rays of her neck dated February 13, 2017 revealed degenerative changes. An MRI of her neck dated August 8, 2019 revealed mild to moderate disc disease and osteophytes.
- [7] Of the dozens of pages of records provided from the family doctor, only three entries were transcribed, which undermines their usefulness. Two of the three transcribed entries appear to be accident related. The first, approximately four years post accident, dated September 21, 2020 indicates that she reported headaches and pain in her neck, shoulders, and back, induced by sudden movement. Dr. Livshin noted that her range of motion of her back and neck was full, with pain on resistance. He recommended she engaged in a stretching home exercise program. The second, dated January 11, 2021 appears to be an attempt at an explanation for the lack of accident-related entries. Dr. Livshin notes that he was focusing on other diagnoses over the last few years that are more life threatening, so he “sort of brushed off” symptoms like fibromyalgia and chronic pain syndrome. He diagnosed post-concussion, and chronic pain syndrome related to premorbid degenerative disc disease aggravated by the MVA. He noted that as a result of the accident she eventually developed fibromyalgia, chronic anxiety, and panic attacks. She declined medication as she feared it may do her more harm than good. Dr. Livshin again recommended a home exercise program. It doesn’t appear that Dr. Livshin made any referrals to specialists for further investigation or treatment for pain.
- [8] Clinical notes and records of her treating psychologist indicate that the Applicant traveled to New Zealand and Australia for a month in December 2018, and to South America for two weeks in March 2019.
- [9] Dr. Harmantas prepared a musculoskeletal assessment, dated February 6, 2019 in which he noted that the Applicant reported that her treatment to date included physiotherapy, massage, TENS, acupuncture, stretching and exercise. She felt her treatments were not really helping. She reported that she was independent with her personal care. Dr. Harmantas determined that she sustained primarily soft tissue injuries as a result of the accident.

## **ANALYSIS**

- [10] The onus is on the Applicant to demonstrate that the treatment and assessments she seeks are reasonable and necessary as a result of the accident.

### ***Chronic Pain Assessment***

- [11] I find that the Applicant has not established that the chronic pain assessment is reasonable and necessary as a result of the accident because the Applicant does not exhibit the symptoms typically associated with a chronic pain condition that would warrant an assessment. The Tribunal has considered chronic pain condition in the context of the *American Medical Association Guides*, or alternatively, ongoing persistent pain accompanied by a functional impairment.
- [12] The Applicant has not demonstrated that her ability to function is adversely affected by pain. The evidence shows that the Applicant is functional, able to complete her daily activities living and personal care, returned to work as a travel agent, and traveled overseas.
- [13] The Applicant has not demonstrated that she meets three of the six criteria in the *AMA Guides*. She does not use prescription drugs for pain, she is not excessively dependent on health care providers or family members, she has not provided evidence of secondary physical deconditioning, withdrawal from social milieu or failure to restore pre-injury function. She did sustain a psychological impairment.

### ***Chronic Pain Program and Chiropractic Treatment***

- [14] The August 26, 2019 OCF-18 for \$12,293.41 recommends counselling sessions, chiropractic, massage, exercise and other rehabilitation treatments with the aim to reduce pain, increase strength and range of motion, and return to activities of normal living. The injuries listed include sprain and strain of the cervical spine, lumbar spine and pelvis, chronic post-traumatic headache, shoulder lesion, post-concussional syndrome, symptoms and signs involving emotional state, and other chronic pain. The OCF-18 dated March 26, 2019 for \$2,575.12 plan proposes chiropractic treatment, massage therapy and exercises.
- [15] The Applicant submits that the treatment plans are reasonable and necessary to address her accident-related impairments. She relies on the August 8, 2019 chronic pain assessment report from Dr. Karmy. Dr. Karmy diagnoses post-traumatic fibromyalgia, mild traumatic brain injury, chronic post-traumatic headaches, chronic mechanical neck, back, bilateral shoulder and left ankle pain,

sacroiliac joint dysfunction, chronic pain syndrome, sleep disorder and mood disorder with passenger anxiety as a result of the accident, and recommended treatment in a multidisciplinary setting.

- [16] Given that the psychological component of the chronic pain treatment plan was approved by the Respondent, my analysis is focused on the physical components of the proposed plans.
- [17] I find Dr. Karmy's report unconvincing. Dr. Karmy relies on the Applicant's self-reports and subjective complaints regarding her accident-related injuries and the impact on her activities of daily living. He did not include a list of medical records reviewed and noted that he did not have copies of any x-rays, ultrasounds or MRIs that were performed after the accident. He states that the Applicant developed chronic pain syndrome as a result of the accident without reviewing any medical records or conducting an analysis pursuant to the six criteria set out by the *AMA Guides*.
- [18] I prefer the report and opinion of Dr. Harmantas, dated December 23, 2020. He had the benefit of reviewing voluminous medical records including imaging reports and clinical notes and records of the family doctor, and concluded that the Applicant sustained soft tissue injuries, and had reached maximum medical improvement. The Applicant also reported to Dr. Harmantas that the treatment she received to date, similar to what is proposed, was not really helping. It appears she stopped attending treatment around March 2017. Dr. Harmantas recommended she engage in a self-directed home exercise program. This is persuasive because it is consistent with the recommendations of Dr. Livshin in the two transcribed entries provided.
- [19] Considering the evidence, I find that the Applicant has not met her burden to prove that either treatment plan was reasonable and necessary.

### ***Interest***

- [20] Interest applies on the payment of any overdue benefits pursuant to s. 51 of the *Schedule*. Given that no benefits are owing or overdue, no interest is payable.

### **CONCLUSION AND ORDER**

- [21] The Applicant is not entitled to the plans for chiropractic treatment, a chronic pain assessment or chronic pain program.

[22] Given that no benefits are owing, the Applicant is not entitled to interest.

**Released:** August 4, 2023

A handwritten signature in cursive script, appearing to read "K. Grieves", is positioned above a horizontal line.

**Kate Grieves**  
**Adjudicator**