



Citation: Swing v Aviva Insurance Company of Canada, 2023 ONLAT 21-009073/AABS

Licence Appeal Tribunal File Number: 21-009073/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:

Catherine Swing

Applicant

and

Aviva Insurance Company of Canada

Respondent

DECISION

ADJUDICATOR:

Clive Forbes

APPEARANCES:

For the Applicant:

A. Fabio Longo, Counsel
Vince Angelillo, Counsel

For the Respondent:

Kevin So, Counsel

HEARD:

By Way of Written Submission

OVERVIEW

- [1] Catherine Swing, the applicant, was involved in an automobile accident on July 23, 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, Aviva Insurance Company of Canada, 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:
1. Is the applicant entitled to the following psychotherapy, chiropractic, acupuncture, and massage expenses that were submitted on an Expense Claim Form (“OCF-6”):
 - a. \$363.58 for psychotherapy and acupuncture expenses, submitted on an OCF-6 dated January 23, 2020?
 - b. \$326.25 for massage and acupuncture expenses, submitted on an OCF-6 dated February 10, 2020?
 - c. \$390.20 for psychotherapy and acupuncture expenses, submitted on an OCF-6 dated March 25, 2020?
 - d. \$385.01 for acupuncture and massage expenses, submitted on an OCF-6 dated March 11, 2020?
 - e. \$456.90 for massage and chiropractic expenses submitted on an OCF-6 dated October 28, 2020?
 - f. \$185.00 for acupuncture expenses, submitted on an OCF-6 dated January 9, 2021?
 - g. \$90.00 for chiropractic expenses submitted on an OCF-6 on March 08, 2021?
 - h. \$45.00 for chiropractic expenses submitted on an OCF-6 dated May 04, 2021?
 - i. \$45.00 for chiropractic expenses submitted on an OCF-6 dated August 30, 2021?

- j. \$135.34 for chiropractic and massage expenses submitted on an OCF-6 dated September 28, 2021?
 - k. \$180.34 for chiropractic expenses submitted on an OCF-6 dated October 21, 2021?
 - l. \$90.00 for chiropractic expenses submitted on an OCF-6 dated October 21, 2021?
 - m. \$45.00 for chiropractic expenses submitted on an OCF-6 dated November 02, 2021?
 - n. \$45.00 for chiropractic expenses submitted on an OCF-6 dated November 17, 2021?
 - o. \$403.40 for acupuncture and massage expenses, submitted on an OCF-6 dated January 10, 2022?
2. Is the applicant entitled to \$1,210.00 for chiropractic services, proposed by Dr. Varsha Tripathi in a treatment plan/OCF-18 ("plan") submitted October 1, 2020, and denied on October 27, 2020?
 3. Is the applicant entitled to \$1,197.59 for occupational therapy ("OT") services, proposed by Joanne Romas & Associates in a plan submitted September 15, 2020 and denied on May 28, 2020?
 4. Is the respondent liable to pay an award under s. 10 of O. Reg. 664 because it unreasonably withheld or delayed payments to the applicant?
 5. Is the applicant entitled to interest on any overdue payment of benefits?

RESULT

[3] I find that:

1. The applicant is not entitled to the psychotherapy, chiropractic, acupuncture, and massage expenses claimed.
2. The applicant is not entitled to chiropractic and OT services claimed.
3. No award is payable.
4. No interest is payable.

ANALYSIS

Psychotherapy, Chiropractic, Acupuncture and Massage Expenses

- [4] I find that the applicant has not established that she is entitled to the psychotherapy, chiropractic, acupuncture, and massage expenses claimed.
- [5] The applicant submits that she is entitled to all OCF-6 expenses in dispute, as stated at issues 1(a) to 1(o) above, without submitting OCF-18s, because the respondent's March 18, 2020, letter stated it would fund all incurred necessary medical expenses. She also submits that the respondent did not challenge the reasonableness and necessity of the treatments.
- [6] The respondent asserts that its February 25, 2020, letter advised the applicant that in accordance with s. 38(2) of the *Schedule*, the OCF-6 expenses were not payable because OCF-18s were not submitted prior to the expenses being incurred. In addition, it submits the March 18, 2020, letter did not give notice that expenses would be paid without a treatment plan, pursuant to s. 39 of the *Schedule*.
- [7] I do not agree with the applicant that the respondent's March 18, 2020, letter granted her an exemption to submit OCF-6s without submitting OCF-18s. The letter addressed the cancelation of a medical assessment that was scheduled for March 24, 2020, because of the spreading of the COVID-19 virus at the time. I find that there was no notice given under s. 38(2)(a) that complies with the requirements under s. 39(1) of the *Schedule*. As such, the applicant is not exempt from submitting an OCF-18 prior to incurring medical expenses based solely on the March 18, 2020, letter.
- [8] In addition, I do not agree with the applicant's submission because the contemporaneous medical and documentary evidence reveals that the respondent advised the applicant to submit the OCF-18s repeatedly pursuant to s. 38(2) of the *Schedule*. Furthermore, I was not directed to any OCF-18s that were submitted by the applicant relating to any of the medical expenses on the OCF-6s that were submitted.
- [9] Given all of the above, I find that the applicant is not entitled to the psychotherapy, chiropractic, acupuncture, and massage expenses claimed.

Treatment and Assessment Plans (OCF-18s)

- [10] To receive payment for a treatment and assessment plan under s. 15 and 16 of the *Schedule*, the applicant bears the burden of demonstrating on a balance of

probabilities that the benefit is reasonable and necessary as a result of the accident. To do so, 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 them are reasonable.

Chiropractic Services

- [11] I find that the applicant has not met her onus to prove on a balance of probabilities that she is entitled to the chiropractic services claimed.
- [12] The applicant submits that she is entitled to \$1,210.00 for chiropractic services, proposed by Dr. Varsha Tripathi, chiropractor. She relies on Ms. Rhoda Breen's, occupational therapist, OT Functional Assessment s. 25 report dated July 12, 2020, to support her claim. Ms. Breen in her report recommended that the applicant remain involved in an active rehabilitation treatment program to improve strength, endurance, range of motion ("ROM"), functional restoration and pain management.
- [13] The respondent relies on the s. 44 report of Dr. Isa Mohammed, physician, dated June 01, 2021, in its denial of chiropractic services. Dr. Mohammed concluded that the applicant has reached maximum medical improvement and even though symptoms and signs may wax and wane over time, further overall recovery or deterioration is not anticipated.
- [14] I find that the contemporaneous medical and documentary evidence do not support the applicant's position that she is entitled to the chiropractic services claimed. Firstly, I was not directed to any clinical records from any physician documenting ongoing complaints from the applicant and the need or benefit for facility-based treatment. Secondly, Dr. Mohammed noted in his report that the applicant's ROM across all joints were normal and within normal limits and that he found no evidence of any neurological or radicular findings as a result of the subject accident. He also indicated that she had sustained soft tissue musculoskeletal injury and no objective signs of ongoing impairment have been identified. Thirdly, the applicant has not submitted a copy of the OCF-18 for the chiropractic services so that a proper assessment can be done to identify the goals of treatment, how the goals would be met to a reasonable degree and that the overall costs of achieving them are reasonable.
- [15] As such, I find that the applicant has failed to establish entitlement to the chiropractic services claimed.

Occupational Therapy Services

- [16] I find the applicant has not demonstrated that the OT services are reasonable or necessary as a result of the accident and she is not entitled to payment of these expenses under the *Schedule*.
- [17] The applicant submits that since her OT treatment on the OCF-18 dated September 15, 2020, was deemed necessary by the respondent, the balance owing representing expenses associated with the provider's travel time should not be denied. She relies on *Butler v. Allstate Insurance*, 2021 CanLII 28679 (ON LAT), to support her claim for provider travel time. She also argues that since the treatment was deemed necessary by the respondent, expenses associated with the provider's travel time should not be denied.
- [18] The respondent submits that pursuant to s. 15(2)(c) of the *Schedule*, the insurer is not liable to pay medical benefits for transportation expenses other than authorized transportation expenses. The respondent further submits that s. 3(1) of the *Schedule* defines "authorized transportation expenses" as expenses related to transportation (a) that are authorized by, and calculated by applying the rates set out in the most recent transportation expense guideline published by the Financial Services Regulatory Authority of Ontario, and (b) that unless the insured person sustained a catastrophic impairment as a result of the accident, relate to transportation expenses incurred only after the first 50 kilometres of a trip.
- [19] I do not agree with the applicant that the provider travel time should not be denied because the OT treatment was deemed necessary by the respondent. Firstly, with respect, I am not bound by the other Tribunal decision cited by the applicant. Secondly, the respondent is correct that in accordance with s. 15(2)(c) of the *Schedule*, provider travel time is neither an authorized travel expense nor a payable benefit under the *Schedule*. Thirdly, there is no provision in the *Schedule* that grants an exemption for provider travel to be paid because the treatment on an OCF-18 is deemed necessary by the insurer. Therefore, there is no outstanding amount owing on this OT treatment plan.

Interest

- [20] Interest is payable on the overdue payment of benefits in accordance with s. 51 of the 2010 *Schedule* on any overdue payment of benefits. As there were no overdue payments found, no interest is payable under s. 51.

Award

- [21] The applicant also sought an award under s. 10 of Regulation 664, submitting that the respondent unreasonably withheld payment of the psychotherapy, chiropractic, acupuncture, and massage expenses and the chiropractic and OT treatment plans in dispute. Under s. 10, the Tribunal may award up to 50% of the total benefits payable if it determines that the insurer unreasonably withheld or delayed the payment of benefits.
- [22] I find an award is not warranted. As the applicant is not entitled to any of the issues in dispute and no payments for benefits were unreasonably withheld or delayed, it follows that the Tribunal cannot order an award.

ORDER

- [23] I find that:
1. The applicant is not entitled to the psychotherapy, chiropractic, acupuncture, and massage expenses claimed.
 2. The applicant is not entitled to chiropractic and OT services claimed.
 3. No award is payable.
 4. No interest is payable.
- [24] The application is dismissed.

Released: October 16, 2023



Clive Forbes
Adjudicator