



**Citation: Alkhazov v. Aviva Insurance Company of Canada, 2023 ONLAT 21-004825/AABS**

**Licence Appeal Tribunal File Number: 21-004825/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:

**Oleg Alkhazov**

**Applicant**

and

**Aviva Insurance Company of Canada**

**Respondent**

**DECISION**

**ADJUDICATOR: Sofia Ahmad**

**APPEARANCES:**

For the Applicant: Kateryna Vlada, Counsel

For the Respondent: Jonathan Charland, Counsel

**HEARD: By way of written submissions**

## OVERVIEW

- [1] Oleg Alkhazov, the applicant, was involved in an automobile accident on **April 18, 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, Insurer, and applied to the Licence Appeal Tribunal - Automobile Accident Benefits Service (the “Tribunal”) for resolution of the dispute.
- [2] The respondent filed a motion raising a preliminary issue. The issue was dismissed by Adjudicator Samia Makhamra on September 15, 2022.

## PRELIMINARY ISSUE

- [3] The preliminary issue was: Is the applicant barred from proceeding with his claim for non-earner benefits as he failed to submit an OCF-10 form electing benefits?
- [4] Adjudicator Samia Makhamra found the applicant was barred from proceeding with his claim for a non-earner benefit for failing to submit an OCF-10. She then ordered a written hearing for the remaining issues in dispute.

## ISSUES

- [5] The issues in dispute are:
- i. Is the applicant entitled to a medical benefit of \$3,930.32 for physiotherapy services?
  - ii. Is the applicant entitled to a medical benefit of \$3,256.64 for physiotherapy services?
  - iii. Is the applicant entitled to interest on any overdue payment of benefits?

## RESULT

- [6] Based on the totality of the evidence before me, I find:
- i. The applicant is not entitled to a medical benefit of \$3,930.32 for physiotherapy services as they are not deemed reasonable or necessary.
  - ii. The applicant is not entitled to a medical benefit of \$3,256.64 for physiotherapy services as they are not deemed reasonable or necessary.

- iii. As there are no outstanding benefits, the applicant is not entitled to interest.

[7] The application is dismissed.

## **ANALYSIS**

- [8] The applicant was involved in a minor rear-end accident on April 18, 2019. The property damage totalled \$892.14.
- [9] The applicant did not seek medical attention or attend a hospital immediately after the accident.
- [10] On April 20, 2018, two days after the accident the applicant sought medical attention. Dr. Steven Matlis assessed the applicant for neck pain, mild neck whiplash, left shoulder and right hip sprains at a walk-in clinic.
- [11] The applicant followed up with regular visits to his family physician, Dr. Alla Osadchy. His complaints were subjective with no objective basis.
- [12] The diagnostic imaging was all normal with x-rays of the cervical spine, pelvis/hips and shoulder x-rays dated May 29, 2019, left shoulder ultrasound on June 5, 2019 and right hip ultrasound on June 6, 2019.
- [13] Dr. Osadchy referred the applicant to Dr. Fernando Gonzalez Martinez, physiatrist, for right thigh and left shoulder pain symptoms. In his report of July 25, 2019, Dr. Gonzalez Martinez indicated that the applicant was demonstrating submaximal effort. When he distracted the applicant, the physiatrist was able to observe normal range of motion of the left shoulder. Dr. Gonzalez Martinez did not suggest further treatment.
- [14] The applicant was referred to a pain specialist, Dr. Inese Robertus. Dr. Robertus did not recommend facility-based treatment, she only recommended at-home exercises.
- [15] The note from Dr. Robertus to Dr. Osadchy indicates that the applicant found facility-based treatment to provide only temporary improvement. The applicant reported minimal changes with physiotherapy.

***Is the applicant entitled to a medical benefit of \$3,930.32 for physiotherapy services?***

- [16] The applicant has the onus to prove that on a balance of probabilities that the goods and services proposed are reasonable and necessary.
- [17] The applicant submitted an OCF-18 dated July 22, 2020 on August 11, 2020. This OCF-18 was completed by Dr. Babak Panahloo, chiropractor, at Doctor Med Rehabilitation Centre and was for chiropractic, massage, and acupuncture treatment in the amount of \$3,930.32.
- [18] The applicant's evidence included that he had pre-collision history of neck pain, left arm pain, back pain, hemorrhoids, prostatitis, anxiety and depression.
- [19] Since the collision, but prior to July 22, 2020, the applicant's evidence also included that he had:
- a. Claimed that the collision had caused distinguishable neck pain, left arm pain and back pain;
  - b. Made multiple visits to his family physician, Dr. Osadchy, regarding persistent and worsening pain symptomology since the collision;
  - c. Seen a physiatrist, Dr. Gonzalez Martinez, who diagnosed myofascial pain syndrome in the shoulder and strain of the adductor muscles of the right hip;
  - d. Been examined by an orthopaedic surgeon, Dr. Farid Guirguis, on October 8, 2019, who noted weakness of the knee flexor and a hamstring spasm, but with no tear. Shortly afterwards he underwent a cervical MRI, which revealed an osteochondral bar or degenerative overgrowth of tissue.
- [20] With regards to the cervical MRI of the applicant, the notes of Dr. Osadchy state on October 29, 2019, that the MRI had no clear correlation to the applicant's symptoms.
- [21] Dr. Osadchy referred the applicant to Dr. Gonzalez Martinez for right thigh and left shoulder pain symptoms. In his report of July 25, 2019, Dr. Gonzalez Martinez indicated that the applicant was demonstrating submaximal effort. When he distracted the applicant, the physiatrist was able to observe normal range of motion of the left shoulder. Dr. Gonzalez Martinez did not suggest further treatment.

- [22] Dr. Gilbert Yee, orthopaedic surgeon, conducted an insurer's examination (IE) of the applicant on September 9, 2020 and completed an IE report dated September 18, 2020.
- [23] Dr. Yee physically examined the applicant. He found some tenderness to palpation in the regions of complaint, functional ranges of motion and no objective clinical determinations to indicate an active radiculopathy or myelopathy. Dr. Yee noted that the applicant has some residual symptoms related to soft tissue injuries mainly affecting the cervical and thoracic spine, left shoulder, right hip and thigh.
- [24] Dr. Yee concluded that the treatment plan is not reasonable or necessary. The applicant had reached maximum medical recovery from an orthopaedic perspective.
- [25] I find that the applicant is not entitled to this OCF-18 because he has not satisfied me on a balance of probabilities that it is reasonable or necessary.

***Is the applicant entitled to a medical benefit of \$3,256.64 for physiotherapy services?***

- [26] The applicant submitted an OCF-18 dated February 12, 2021 on February 16, 2021. This OCF-18 was completed by Dr. Kevin Barr, chiropractor at Doctor Med Rehabilitation Centre and was for chiropractic, massage and acupuncture treatment in the amount of \$3,256.64.
- [27] Between the first OCF-18 and this one, the applicant's evidence included:
- a. The family doctor, Dr. Osadchy assessing chronic neck and shoulder pain;
  - b. That on January 27, 2021, the applicant was referred to Dr. Robertus of the Vaughan Pain Clinic, who found the applicant had decreased range of motion of the cervical spine and upper trapezius.
- [28] Dr. Yee opined in his earlier report of September 18, 2020, that maximum medical recovery had been reached and further treatment was not reasonable and necessary.
- [29] A note by Dr. Robertus to Dr. Osadchy, dated January 27, 2021, recommended the applicant continue at-home exercises. No facility-based treatment was recommended as well that the applicant found facility-based treatment to only be providing temporary relief.

[30] I find that the applicant is not entitled to this OCF-18 because he has not satisfied me that it is reasonable or necessary.

### ***Summary***

[31] The applicant has failed to provide contemporaneous and relevant evidence to support his claim for medical benefits.

[32] The applicant was involved in a minor accident. Objective evidence suggests that the applicant sustained minor soft tissue injuries as a result of the subject accident.

[33] I am persuaded by the evidence that the applicant has reached maximal medical recovery and none of the disputed treatment plans are reasonable and necessary.

### ***Interest***

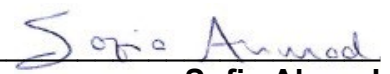
[34] As there are no outstanding benefits, the applicant is not entitled to interest.

### **ORDER**

[35] I find that:

- i. The applicant is not entitled to a medical benefit of \$3,930.32 for physiotherapy as it is not reasonable and necessary.
- ii. The applicant is not entitled to a medical benefit of \$3,256.64 as it is not reasonable and necessary.
- iii. As there are no outstanding benefits, the applicant is not entitled to interest.
- iv. The application is dismissed.

**Released:** November 22, 2023

  
**Sofia Ahmad**  
Adjudicator