



**Citation: Balasubramaniam v. Aviva Insurance Company of Canada, 2023 ONLAT
21-010688/AABS**

Licence Appeal Tribunal File Number: 21-010688/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:

Kogul Balasubramaniam

Applicant

and

Aviva Insurance Company of Canada

Respondent

DECISION

ADJUDICATOR: Harry Adamidis

APPEARANCES:

For the Applicant: Alexi Antonov, Counsel

For the Respondent: Sonya Katrycz, Counsel

HEARD: By way of Written Submissions

OVERVIEW

- [1] Kogul Balasubramaniam, the applicant, was involved in an automobile accident on January 24, 2017, 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.

PRELIMINARY ISSUES

- [2] The respondent submits that the motor vehicle accident (MVA) occurred six years ago. As the applicant has not been found to be catastrophically impaired, he is ineligible for any further benefits. Therefore, the disputes between the parties are moot.
- [3] The applicant submits that issues were denied and disputed within 5 years of the accident and therefore are not moot.
- [4] I agree with the applicant. Under section 20 of the Schedule no medical, rehabilitation and attendant care benefit is payable for expenses incurred more than 260 weeks after the accident. The treatment plans were submitted by the applicant to the respondent well before the 260 week period expired. The respondent denied the plans and the applicant brought these issues to the Tribunal. The time limits in s. 20 do not apply and these matters are not moot in the manner suggested by the respondent.

ISSUES

- [5] The issues in dispute are:
- i. Is the applicant entitled to \$12,293.41 for a chronic pain treatment program, proposed by Downsview Healthcare Inc in a treatment plan/OCF-18 (“plan”) dated September 6, 2019?
 - ii. Is the applicant entitled to \$2,000.00 for a neurological examination proposed by Downsview Healthcare Inc in a plan dated May 30, 2019?
 - iii. Is the applicant entitled to \$2,000.00 for a psychological examination proposed by Downsview Healthcare Inc in a plan dated June 8, 2019?

- iv. 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?
- v. Is the applicant entitled to interest on any overdue payment of benefits?.

RESULT

[6] This application is dismissed.

ANALYSIS

Treatment Plans

[7] Three treatment plans are in dispute. The applicant bears the burden of demonstrating, on a balance of probabilities, that these plans are reasonable and necessary as a result of the accident. To do so, he 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.

Is the applicant entitled to a chronic pain treatment program?

[8] The applicant submits that he is entitled to a chronic pain treatment program. He suffers from chronic pain. This is corroborated by family doctor records and “various assessment reports.” In particular, the report of Dr. Grigory Karmy diagnoses him with ongoing pain caused by the motor vehicle accident (MVA). The goals of the treatment plan is to reduce pain, increase strength and range of motion, and to return to the activities of daily living. These are legitimate therapeutic goals and establishes that this treatment is reasonable and necessary.

[9] The respondent submits that the applicant does not have ongoing pain caused by the accident. He made no pain complaints to his family doctor between March, 2017 and December 25, 2019. The applicant confirmed to Dr. Zakzanis the remediation of his ankle and foot and advised that he was in school full-time, working part-time, attending the gym, and that he would be travelling to Vancouver to volunteer at a nursing home. Dr. Nesterenko notes that imaging confirmed that the applicant’s accident related right ankle fracture has healed. She found no evidence of ongoing musculoskeletal impairments and concluded that the chronic pain treatment plan is not reasonable and necessary. For these reasons, according to the respondent, the applicant has not established that he is not entitled to this plan.

[10] I find that the applicant not entitled to this treatment plan.

- [11] Dr. Karmy's Chronic Pain Assessment, dated July 8, 2019, states that the applicant developed chronic headaches and right ankle pain as a result of the accident. The headaches occur at least twice per month. The applicant reports the severity of the pain to be 6/10. The right ankle pain is constant. The applicant rates his pain 3-4/10 but it can flare up to 5/10.
- [12] In terms of pain medication, the applicant told Dr. Karmy that he occasionally takes Advil.
- [13] The report states that applicant was able to continue school after the accident, but struggled because of chronic pain, "subsequent impairments," and cognitive problems. The applicant did graduate from his post-secondary program. Before the accident, the applicant worked part-time at Burger King. He was off work for 10 months after the accident. He then resumed his usual work activities. His work hours then increased to full-time. However, his physical limitations are distracting and prevent him from working at full capacity. In regard to housekeeping, the applicant advised Dr. Karmy that he can no longer do activities that require heavy lifting and prolonged standing due to his ankle pain. The applicant can perform self-care activities independently, but some activities, like taking a shower and toenail care, require more time than usual and adaptive techniques.
- [14] Dr. Karmy's physical examination notes the applicant reporting that he initially had widespread pain in the neck, shoulders, and back. This pain settled down more than a year ago and no longer bothers him. The applicant's right ankle pain is mild. Pain is caused by movements in the right ankle joint in all directions. The left ankle showed full and painless ranges of movement.
- [15] Dr. Karmy diagnoses the applicant with, among other things:
- a) Chronic post-fracture and post-operative mechanical right ankle pain due to subject-accident-related fractures of the medial and posterior malleoli and talus, requiring surgical intervention.
 - b) Status post fracture of the manubrium, complicated by left-sided pneumatocele, lung contusion and pneumothorax, caused by the subject accident.
 - c) Persisting symptoms following mild Traumatic Brain Injury, caused by the subject accident.
 - d) Chronic Post-Traumatic Headache, caused by the subject accident.
 - e) Myofascial pain syndrome, caused by the subject accident.

f) Chronic Pain Syndrome, caused by the subject accident.

- [16] Dr. Konstantine Zakzanis, psychologist, assessed the applicant less than two years earlier for an insurer's examination (IE) on November 20, 2017. He documents the applicant reporting "regular" headaches that do not occur any more often than before the MVA. The applicant also reported transient back pain and constant ankle pain that vary in severity.
- [17] The applicant advised Dr. Zakzanis that after the MVA he took a semester off but then resumed his post-secondary studies. He studies without accommodations. He also denies any problems at school and states that he is doing well. Prior to the MVA, he was working at Burger King as a cashier/sandwich maker. He returned to work after the MVA with modified duties but is working more hours. He is independent with his activities of daily living. In regard to housekeeping, the applicant can no longer do his laundry because of ankle pain.
- [18] The applicant completed a number of psychometric tests, including the Beck Depression Inventory II, Beck Anxiety Inventory, and the Pain Patient Profile. Dr. Zakzanis determined that the applicant had no diagnosable psychological disorder.
- [19] Dr. Maria Nesterenko, general practitioner, completed an IE dated November 10, 2020. The purpose of the IE was to provide an opinion on this treatment plan.
- [20] Dr. Nesterenko notes that the applicant does not take any medication for his pain symptoms.
- [21] The applicant rates his neck pain at 4/10. He also rates his back pain at 4/10. He reported occasional shoulder pain that he rates at 7/10. He also has occasional hip pain that he rates at 6/10. He has occasional right knee pain and right ankle pain which is exasperated by walking and house chores. He rates this pain at 7-8/10.
- [22] Dr. Nesterenko observed the applicant to have a normal, unsupported gait without any limp. He sat comfortably in the chair during the interview without any visible distress due to pain. His cervical spine had a normal range of motion with some reported end range pain. Palpation of the right shoulder revealed some tenderness. There was also some end range pain in his thoracic and lumbar spine, and tenderness over some lumbar muscles. Right ankle flexion was mildly reduced with normal range of motion. There was no tenderness with palpation over both ankles.

- [23] The applicant advised Dr. Nesterenko that he resumed his pre-accident employment after the MVA on fewer hours. He began working an office job in July 2018. He also advised that he finished his studies after the MVA.
- [24] Dr. Nesterenko diagnosed the applicant with the following MVA-related injuries:
- a) Cervical spine sprain/strain – WAD I/II.
 - b) Thoracolumbar spine sprain/strain.
 - c) Bilateral shoulder sprain/strain.
 - d) Manubrial comminuted fracture.
 - e) Bilateral hip and right knee sprain/strain.
 - f) Bimalleolar fracture of the right ankle – treated surgically.
- [25] Dr. Nesterenko opines the applicant did not demonstrate any significant ongoing objective musculoskeletal impairment attributable to MVA-related injuries. The customary healing time for his soft tissue injuries and fractures is 10 to 12 weeks. In light of this, she opines that he has reached maximum medical improvement.
- [26] Dr. Nesterenko also opines that the applicant already had facility based treatment, achieved maximum medical recovery, and is not expected to gain additional therapeutic benefit from the treatment proposed in the plan. She notes that the applicant has no significant ongoing objective musculoskeletal impairment attributable to the accident. For these reasons, she opines that this treatment plan is not reasonable and necessary.
- [27] The goals of the treatment plan are to reduce pain, increase strength and range of motion, and to return to the activities of daily living. In my view, the applicant has not established that he has impairments that make the attainment of these treatment plan goals reasonable and necessary.
- [28] The three medical reports confirm that the applicant continues to experience pain related to the MVA. However, it is also true that the applicant does not rely on pain medication to be functional. In terms of pain management, he reported to Dr. Karmy that he occasionally takes Advil. The applicant told Dr. Nesterenko that he takes no medication for pain. His modest use of pain medication does not support the premise that the treatment plan goal of pain reduction is reasonable and necessary.

- [29] There is no indication in the reports that the applicant has any muscle atrophy. He walks with a normal gait. Post-MVA he is also able to work full-time hours at Burger King. In terms of physical activity, he has limitations in regard to heavy lifting. Range of motion limitations are very minor in the areas where he reports pain, such as his right ankle. Consequently, his functional abilities and minor range of motion limitations undermine the second goal of the plan, which is to increase strength and range of motion.
- [30] The third goal of the plan is for the applicant to return to the activities of daily living. This cannot be viewed as a reasonable treatment goal given that the applicant is able to complete his activities of daily living.
- [31] For these reasons I find, on a balance of probabilities, that this treatment plan is not reasonable and necessary.

Is the applicant entitled to a neurological examination?

- [32] The applicant submits that he has been diagnosed with a traumatic brain injury at Sunnybrook Hospital by Dr. Karmy. He also notes that Dr. Dubravka Dodig, neurologist, diagnosed him with a concussion. A similar diagnosis is found in the applicant's OCF-3 Disability Certificate. These facts support a finding that this treatment plan is reasonable and necessary.
- [33] The treatment plan was completed by Dr. Oleksandr Pivtoran, chiropractor, for Downsview Healthcare Inc. The purpose of the treatment plan "is to determine if there is an accident related neurological impairment and to provide recommendations for recovery."
- [34] The applicant has already been examined by two neurologists. Dr. Dodig's report dated December 1, 2017 states that the applicant did not sustain an impairment from the accident from a neurological perspective. Dr. Nagib Yahmad's IE dated August 25, 2000 states that from a physical neurological perspective, no impairment was detected as a result of the accident.
- [35] The applicant already had two neurological examinations which determined that he has no neurological impairments caused by the accident. In my view, a third neurological assessment would constitute an unnecessary duplication of services that have already been provided. For this reason, I find that this treatment plan is not reasonable and necessary.

Is the applicant entitled to a psychological examination?

- [36] The applicant submits that Dr. Andrew Shaul, psychologist, diagnosed him with an adjustment disorder with anxiety. In light of this diagnosis, the goals of the proposed treatment plan, to evaluate applicant's psychological and emotional repercussions following the subject accident, make this plan reasonable and necessary.
- [37] The assessment of Dr. Shaul took place on January 24, 2017. He administered a number of psychometric tests, including the Beck Depression Inventory II, and Beck Anxiety Inventory. Dr. Shaul concluded that the applicant is experiencing minimal levels of emotional distress characterized by symptoms of depression and anxiety.
- [38] The applicant was examined by Dr. Zakzanis about 10 months later. As noted above, he also administered a number of psychometric tests, including the Beck Depression Inventory II, Beck Anxiety Inventory, and the Pain Patient Profile. In the report, Dr. Zakzanis opines that the applicant has no diagnosable psychological disorder.
- [39] The evidence shows that the applicant had minimal levels of emotional distress when Dr. Shaul examined him. Ten months later, his symptoms had resolved to the point where Dr. Zakzanis found no psychological disorder. This significantly undermines the necessity of the proposed treatment plan for a psychological assessment. Consequently, I also find that this treatment plan is not reasonable and necessary.

Interest

- [40] As there are no overdue benefits, the applicant is not entitled to interest pursuant to s. 51 of the *Schedule*.

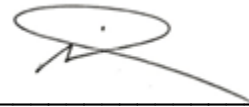
Award

- [41] As no benefits are payable, the respondent cannot be liable to pay an award under s. 10 of Reg. 664.

ORDER

[42] This application is dismissed.

Released: November 9, 2023

A handwritten signature in black ink, consisting of a large, stylized 'H' and 'A' that are interconnected. The signature is positioned above a horizontal line.

Harry Adamidis
Adjudicator