Citation: Osuchowski v. Aviva General Insurance, 2024 ONLAT 21-012992/AABS - R

RECONSIDERATION DECISION

Before:	**Monica Ciriello, Vice Chair**
Licence Appeal Tribunal File Number:	**21-012992/AABS**
Case Name:	**Celine Osuchowski v. Aviva General Insurance**

Written Submissions by:

For the Applicant:	Doina Marinescu, Paralegal
For the Respondent:	Thulasi Kandiah, Counsel

OVERVIEW

[1] This request for reconsideration was filed by the applicant in this matter.

[2] It arises out of a decision dated October 25, 2023 ("decision") in which I found that:

a. The applicant is not entitled to $298.90 ($1,995.00 less partial approval of $1,696.10) for a Psychological Assessment, proposed by Scarborough Medical Centre in a treatment plan ("OCF-18") dated August 14, 2020.

b. The applicant is not entitled to $3,714.49 for Chiropractic Services, proposed by Scarborough Medical Centre in the OCF-18 dated October 15, 2020.

c. The applicant is not entitled to $1,300 for Yoga Therapy Services, proposed by Scarborough Medical Centre in the OCF-18 dated June 8, 2021.

d. The applicant is not entitled to $82.00 for Massage Therapy Services, proposed by Healing Tree Clinic in the OCF-18 dated March 6, 2022.

e. The applicant is not entitled to $2,486.00 for a Psychological Assessment, proposed by Q Medical Centre in the OCF-18 dated October 15, 2020.

f. The applicant is not entitled to $2,486.00 for a chronic pain assessment, proposed by Q Medical Centre in the OCF-18 dated July 17, 2021.

g. The applicant is not entitled to $815.00 for a Nutritional Assessment, proposed by Scarborough Medical Centre in the OCF-18 dated January 20, 2022.

h. The applicant is not entitled to $1,950.00 for an Invehicle/Mental Health Assessment, proposed by Scarborough Medical Centre in the OCF-18 December 13, 2021

i. The applicant is not entitled to interest.

RECONSIDERATION CRITERIA

[3] Rule 18.2 of the *Licence Appeal Tribunal Rules, 2023* ("Rules") states that a request for reconsideration will not be granted unless one or more of the following criteria are met:

a. The Tribunal acted outside its jurisdiction or committed a material breach of procedural fairness;

b. The Tribunal made an error of law or fact such that the Tribunal would likely have reached a different result had the error not been made; or

c. There is evidence that was not before the Tribunal when rendering its decision, could not have been obtained previously by the party now seeking to introduce it, and would likely have affected the result.

[4] In this instance, the applicant is seeking reconsideration of the decision under Rule 18.2(a) and (b).

[5] Rule 18.4 provides that the following remedies are available to the Tribunal on request for reconsideration:

a. Dismiss the request; or

b. After providing responding parties an opportunity to make submissions,

i. Confirm, vary, or cancel the decision or order; or

ii. Order a rehearing on all or part of the matter.

RESULT

[6] The applicant's request for reconsideration is dismissed.

ANALYSIS

[7] The test for reconsideration under Rule 18.2 involves a high threshold. The reconsideration process is not an opportunity for a party to re-litigate its position where it disagrees with the Tribunal's decision, or with the weight assigned to the evidence. The requestor must show how or why the decision falls into one of the categories in Rule 18.2.

Rule 18.2(a) procedural fairness

[8] The applicant submits that the Tribunal breached procedural fairness and natural justice. However, the applicant did not provide submissions nor evidence to support a breach of Rule 18.2(a).

[9] I see no breach of procedural fairness in my decision. As a result, I find the applicant has not established grounds for reconsideration pursuant to Rule 18.2(a).

Rule 18.2(b) an error of law or fact

[10] In order for the applicant to establish grounds for reconsideration, she must establish that there was an error of fact or law in the decision, and that the Tribunal would likely have reached a different result had the error not been made. I disagree with the applicant and find that I did not err in my decision, and even if there was an error, I do not find that the concerns raised by the applicant would have changed the result of my decision.

[11] The applicant takes the position that the Tribunal did not consider or review various evidence that was put forward in her submissions. The applicant submits that the Tribunal did not consider that she had psychological injuries, a post concussive diagnosis, nor did the Tribunal consider the definition of chronic pain attributed to the Canadian Institute of Pain and Disability, which is pain that "persists after three months". She argues that as a result of these errors, the Tribunal found that the applicant was found not to be entitled to eight treatment plans.

[12] The remainder of the applicant's reconsideration submissions are verbatim reiterations of her written hearing submissions. Reconsideration is not an opportunity to re-argue the case, and these submissions do not establish grounds for reconsideration.

[13] In my decision, I clearly considered the applicant's psychological injuries at paragraphs 11, 12, 13, 14 and 29. In addition to considering the applicant's psychological injuries I also reviewed the applicant's psychological diagnosis by Dr. Svetlana Gabidulina, psychologist, Dr. Rick Lindal, psychologist and Dr. Rakesh Ratti, psychologist. Furthermore, I clearly noted at paragraph 13 that the applicant had sustained an adjustment disorder, and I was persuaded by Dr. Ratti that a 10-hour psychological assessment was reasonable. However, I was not persuaded that the cost to complete a 12-hour psychological assessment, as submitted by the applicant, was reasonable, and at paragraph 14 I explained why I was persuaded by the arguments and evidence of Dr. Ratti.

[14] The applicant submits that I did not consider the applicant's "post-concussive" diagnosis. This is inaccurate. At paragraph 17 of my decision, I noted that the applicant was diagnosed with a concussion after the accident. I further provided that this was the applicant's only post-accident consultation with a healthcare provider and concluded that the lack of medical evidence for ongoing injuries did not support entitlement to further treatment.

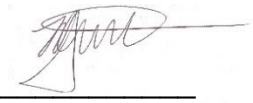
[15] The applicant also submits that I did not consider the definition of chronic pain as defined by the Canadian Institute of Pain and Disability. I agree with the applicant, I did not consider that specific chronic pain definition, because the applicant did not raise it in her written hearing submissions. At paragraph 35 of my decision, I reference the *American Medical Association Guides ("AMA Guides")*, which are a useful interpretative tool for evaluating chronic pain claims. The *AMA Guides* provides that you can be diagnosed with chronic pain when you have three or more of the six factors. At paragraph 35 I outlined that the applicant did not provide evidence to demonstrate that she meets three of the six factors, as there is limited or no evidence of abuse of or dependence on prescription drugs or other substances, of excessive dependence on health care providers, her spouse, or family, any physical deconditioning, withdrawal from social milieu, or failure to restore pre-injury function. The applicant has consulted with a doctor only once, almost four years ago, she has returned to social and recreational life, she is working full-time and moved to British Columbia after the accident.

[16] Furthermore, at paragraph 36 of my decision, I explained that the applicant did not provide evidence from any expert, physician or health care provider that establishes why a chronic pain assessment is reasonable and necessary.

[17] I stand by my decision, and I see no error of law or fact in my decision as issued. As a result, I find the applicant has not established grounds for reconsideration pursuant to Rule 18.2(b).

CONCLUSION

[18] For the reasons noted above, I dismiss the applicant's request for reconsideration.



Monica Ciriello
Vice-Chair
Tribunals Ontario – Licence Appeal Tribunal

Released: February 15, 2024