



**Citation: Holub v. Aviva Insurance Company of Canada, 2024 ONLAT 22-008674/AABS**

**Licence Appeal Tribunal File Number: 22-008674/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:

**Anna Holub**

**Applicant**

and

**Aviva Insurance Company of Canada**

**Respondent**

**DECISION**

**ADJUDICATOR: Rachel Levitsky**

**APPEARANCES:**

For the Applicant: Piera A. Segreto, Counsel

For the Respondent: Yalda Aziz, Counsel

**HEARD: By way of written hearing**

## OVERVIEW

- [1] Anna Holub, the applicant, was involved in an automobile accident on August 28, 2018, 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:
- i. Is the applicant entitled to \$2,200.00 for an occupational therapy assessment, proposed by Innovative Occupational Therapy in a treatment plan dated June 28, 2022 and denied on July 12, 2022?
  - ii. Is the applicant entitled to \$4,538.80 for occupational therapy services, proposed by Innovative Occupational Therapy in a treatment plan dated June 23, 2022 and denied on July 12, 2022?
  - iii. 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?
  - iv. Is the Applicant entitled to interest on any overdue payment of benefits?

## RESULT

- [3] The applicant is not entitled to the treatment plans in dispute. As no benefits are owing, no interest is payable. She is not entitled to an award. The application is dismissed.

## ANALYSIS

### *Treatment Plans*

- [4] I find that the applicant has not proven that the treatment plans in dispute are reasonable and necessary.
- [5] 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.

- [6] The applicant submits that her injuries have impeded her capacity to secure full-time employment, fulfill household and caregiving responsibilities, and engage in an active lifestyle. She submits that her persistent pain has constrained her functional capabilities. She disagrees with the findings of the s. 44 occupational therapist, Anghela Sivananthan. In addition, she argues that since the respondent felt that it was reasonable to have her assessed by their own examiner, it is logical that the proposed occupational therapy assessment was reasonable and necessary.
- [7] The respondent submits that the applicant has not provided compelling medical evidence to establish the reasonableness and necessity of the treatment plans, primarily relying on OCF-18s and OCF-3 to allege impairments without explaining how occupational therapy would be of benefit. The respondent argues that there was a large gap in treatment, and the applicant did not consult her family physician for nearly 3 years prior to the submission of this treatment plan. The respondent also submits that the applicant reported to an assessor in October 2019 that she had resumed all of her pre-accident activities, so there is no explanation of how she is restricted in completing these tasks.
- [8] The applicant sustained an injury to her neck and back as a result of the accident. She visited her family physician, Dr. Louis, a number of times after the accident, however she only mentioned the accident on two occasions. The last time was on May 27, 2019, when she reported missing May 2 from work as a result of back pain. She reported to Dr. Louis that she was feeling better since then, but sometimes felt stiffness and spasms. Dr. Louis recommended that she follow up with him if the symptoms continued past 4 weeks. There are no records from Dr. Louis related to the accident past that date.
- [9] The applicant was receiving physiotherapy and chiropractic treatments up until August 20, 2019. In the final report from the treatment clinic, her pain was noted to be improving. The pain was a 2/10 to her cervical spine, 3-4/10 to her thoracic spine, and 4/10 to her lumbar spine.
- [10] On October 7, 2019, the applicant was assessed under s. 44 by Dr. Rabinovitch, physiatrist. She reported a 70% improvement in her complaints. She was independent in her self-care, but with pain. She continued to complete her household tasks but at a reduced frequency and duration due to pain. She had resumed all of her previous social/recreational activities, and had been working full time since the accident. Her neck and shoulder pain were reportedly 5/10,

and her lower back pain was 4/10. She was diagnosed with mechanical neck pain with positive painful arc and supraspinatus injury of the right shoulder, and mechanical lower back pain. Dr. Rabinovitch opined that the applicant had full range of motion, and no significant impairment. She recommended strengthening exercises.

- [11] There are no further records before me until May 6, 2022, when the applicant was assessed by a psychologist, Dr. Joshua Goldstein. In the meantime, the applicant had a baby. She was working full time as a front desk agent at the same hotel she was working at the time of the accident (she was previously a spa attendant). The applicant explained to Dr. Goldstein that after the accident, she did not take any time off work, but she needed some support from coworkers to complete her duties. She had difficulties with bending, standing, and back pain, and needed longer breaks. These accommodations were required for approximately one year. The applicant reported that she no longer needed those accommodations, stating "I'm better". She did not identify any barriers to her ongoing successful employment, and worked the same amount as her peers.
- [12] The applicant explained that her back pain was better, but she had difficulty lifting, bending, sitting, standing, and walking for an extended period of time. She had also developed pain in both of her knees which she attributed to her pregnancy, not the accident. She was able to complete all of her self-care, housekeeping, grocery shopping, and outdoor maintenance tasks without difficulty. She described diminished activity in her pleasurable activities for 6 months after the accident, and then became more active after participating in physiotherapy.
- [13] Despite her ability to work and complete all of her activities of daily living, she reported to Dr. Goldstein that her pain interfered with her daily functioning in the amount of 6/10. She described a decreased quality of life due to pain, decreased exercise, fear in cars, reduced intimacy, and reduced social life. She was diagnosed by Dr. Goldstein with Adjustment Disorder with Mixed Anxiety and Depressed Mood. She subsequently attended 5 sessions of psychological treatment, and then ended the sessions voluntarily as she reported that she was able to handle the stressors in her life.
- [14] On September 7, 2022, the applicant underwent a s. 44 assessment with Anghela Sivananthan, occupational therapist, as a result of her request for the treatment plans in dispute. She described headaches once per month, neck pain 2x/week that lasts for 2 days and comes and goes, and back pain that comes and goes for a couple of days at a time. She was independent in all of her

personal care and housekeeping activities. She reported that it was hard to go to work every day, so she started working part-time as a banquet server (at the same hotel she was previously employed), which allowed her to rest and was easier on her body. She used to do a lot of overtime before the accident, but was unable to do that anymore. She was also taking a real estate course, and had passed all of her exams so far.

- [15] The applicant described her sitting tolerance as 40 minutes to 1 hour, standing tolerance as 40 minutes to 1 hour, and she could walk for a long time. She could carry and lift 5-10 pounds. Ms. Sivananthan noted that all range of motion was within functional limits, with reported pain. She opined that the treatment plans were not reasonable and necessary because the applicant was independent, had resumed driving, was working part-time, and was in a real-estate program.
- [16] The applicant submits that Ms. Sivananthan failed to provide a coherent rationale for deeming the treatment plans unreasonable or unnecessary, as she had restrictions in her movements four years post-accident. I disagree with the applicant's assertion, as she did not report any restrictions to her movements during the assessment, and had functional range of motion. Although she reported pain, there is no other evidence before me that the applicant's movements were restricted around this time.
- [17] The applicant also argues that just because she can carry 5 pounds once, that is not indicative of her ability to lift 5 pounds repeatedly, or throughout the day. In addition, the applicant takes issue with Ms. Sivananthan's portrayal of the medical timeline as summarized in her report. I agree with the applicant that Ms. Sivananthan's assessment and report was not particularly fulsome. However, even if I give Ms. Sivananthan's report less weight, the applicant has not directed me to any other evidence regarding her functionality around the time the treatment plans were submitted. It is the applicant's onus to prove that she has limitations that would justify the treatment plans in dispute. I do not have much to weigh Ms. Sivananthan's report against.
- [18] The applicant relies on the OCF-3 completed by Dr. Rakkar, chiropractor, on September 22, 2018. Dr. Rakkar stated that the applicant was substantially unable to perform the essential tasks of her employment and could not return to work, even on modified hours or duties. The applicant apparently returned to her full-time job immediately following the accident, so I do not know why Dr. Rakkar believed she was unable to work at all. While the applicant may have had some limitations at the time this OCF-3 was submitted, she reported to Dr. Goldstein

that she did not require accommodations past one year, and that she was able to work the same amount as her peers.

- [19] Dr. Rakkar recommended in his OCF-3 that the applicant receive occupational therapy. Aside from Sheila Don, the author of the treatment plans in dispute, no one else made this recommendation. I can understand why occupational therapy may have been warranted in 2018 or 2019, based on the evidence before me. However, an OCF-3 from almost four years before the treatment plans were submitted is of limited value in this analysis, especially as the applicant's symptoms and functionality improved since then.
- [20] The applicant submits that by May 2019, her back pain reached a severity that rendered her unable to continue working as a spa attendant at the hotel. Although it does appear that she changed jobs at the hotel, there is no evidence before me as to why, and no evidence that it was due to her injuries. In addition to what she told Dr. Goldstein, Dr. Louis wrote on May 27, 2019, that the applicant was unable to work on May 2 due to back pain, but that she was feeling better. Dr. Louis' note is vague and it is difficult to determine how much time the applicant took off work. In any event, I am not convinced that the applicant's injuries impaired her ability to work past the first year after the accident, and certainly not in 2022.
- [21] The applicant states in her reply submissions that her restrictions compelled her to seek more flexible employment options, which is why she was taking a real estate course. This does not align with what the applicant told Dr. Goldstein about her ability to work in May 2022. She did not describe any functional difficulties with her activities of daily living to either assessor in 2022. She told Ms. Sivananthan that she was able to work 20-40 hours per week, take a real estate course, and take care of her child and household without difficulty. She has not proven on a balance of probabilities that the reason she began working part-time and was taking a real estate course was due to the injuries she sustained in the accident.
- [22] I do not accept the applicant's submission that, according to Ms. Sivananthan, her "mother-in-law and sister-in-law support her with activities such as cooking." The applicant reported to Ms. Sivananthan that she was able to cook the items she used to before the accident, and that her mother-in-law and sister-in-law did most of the cooking because they liked to cook.
- [23] The appliance also argues that she faced obstacles to treatment from 2020 - 2022 because of the pandemic, and when she felt it was safe to do so, she resumed treatment for her injuries. The applicant attended 5 sessions of

psychotherapy in 2022. There is no other evidence that she visited her family physician or other treatment providers for her physical injuries after 2019. The applicant submits that this was because her priorities shifted towards ensuring the well-being of her baby during her pregnancy, forcing her to forego certain medical interventions. It is not clear to me why she was able to attend sessions with a psychologist but not visit her family physician for her physical injuries, especially as she submits her impairments were so significant that she went from working full time to only being able to handle part-time work. I do not find that this argument assists the applicant in proving her case.

- [24] Ms. Don's treatment plan, and her accompanying letter to the insurer, states that the applicant sometimes has difficulties with her self-care, leisure/social functioning, vocational pursuits, caregiving, housekeeping, education, community access, banking, and grocery shopping. The goal of the treatment plans was to allow the applicant to return to her activities of normal living. I cannot accept the veracity of Ms. Don's statements, given the rest of the evidence before me that the applicant does not have any difficulty with those tasks.
- [25] I do not doubt that the applicant has some residual pain as a result of this accident. However, I do not accept that the goal of this treatment plan is justifiable, as the evidence before me is that she is able to participate in all of her activities of normal living.
- [26] I do not agree with the applicant that because the respondent felt it was reasonable to obtain its own occupational therapy report, she is entitled to one as well. The applicant has not directed me to any authority to support this proposition. My decision in this case does not hinge on the findings of Ms. Sivananthan, or why the respondent chose to obtain the report. The onus is on the applicant to prove entitlement to an occupational therapy assessment, and she has not done so.
- [27] For the reasons above, I find that the applicant has not proven on a balance of probabilities that the proposed treatment plans are reasonable and necessary.

### ***Interest***

- [28] Interest applies on the payment of any overdue benefits pursuant to s. 51 of the *Schedule*. As no benefits are overdue, interest is not payable.

### ***Award***

[29] The applicant sought an award under s. 10 of Reg. 664. Under s. 10, the Tribunal may grant an award of up to 50 per cent of the total benefits payable if it finds that an insurer unreasonably withheld or delayed the payment of benefits. As I have found that no benefits are payable, the applicant is not entitled to an award.

### **ORDER**

[30] The applicant is not entitled to the treatment plans in dispute. As no benefits are owing, no interest is payable. She is not entitled to an award. The application is dismissed.

**Released: August 30, 2024**

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**Rachel Levitsky  
Adjudicator**