



**Citation: Rose v. Aviva General Insurance, 2025 ONLAT 23-005773/AABS**

**Licence Appeal Tribunal File Number: 23-005773/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:

**Lisa Rose**

**Applicant**

and

**Aviva General Insurance**

**Respondent**

## **DECISION**

**ADJUDICATOR: Roderick Walker**

### **APPEARANCES:**

For the Applicant: Avneet Kaur, Counsel

For the Respondent: Jonathan White, Counsel

**HEARD: By Way of Written Submissions**

## OVERVIEW

- [1] Lisa Rose, the applicant, was involved in an automobile accident on November 10, 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 General Insurance, 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 \$3,435.60 for chiropractic services, proposed by Whitby Physiotherapy and Rehab in a treatment plan/OCF-18 dated April 30, 2021?
  - ii. Is the applicant entitled to \$2,878.47 for chiropractic services, proposed by Whitby Physiotherapy and Rehab in a treatment plan/OCF-18 dated October 2, 2022?
  - iii. Is the respondent liable to pay an award under s. 10 of 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?

## [3] RESULT

- i. The applicant is not entitled to any of the above treatment plans.
- ii. The applicant is not entitled to an award.
- iii. No interest is awarded because no payments are owing.
- iv. The application is dismissed.

## **Background**

- [4] On November 10, 2018, the applicant was the driver of a vehicle travelling uphill toward a line of vehicles stopped at a traffic light in the City of Toronto. The applicant was unable to stop her vehicle and rear-ended the rear passenger side of the vehicle ahead. The applicant reported hitting her head on the headrest but

reported no airbag deployment and no loss of consciousness after the accident. The applicant reported the accident to police.

### ***Treatment Plans***

- [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 because 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.

### ***Analysis***

- i. Is the applicant entitled to \$3,435.60 for chiropractic services, proposed by Whitby Physiotherapy and Rehab in a treatment plan/OCF-18 dated April 30, 2021?***
- ii. Is the applicant entitled \$2,878.47 for chiropractic services, proposed by Whitby Physiotherapy and Rehab in a treatment plan/OCF-18 dated October 2, 2022?***

- [6] I find that the applicant is not entitled to any of the above treatment plans.
- [7] The applicant relies on an OCF- 3 filed by the family doctor, Dr. Dawood G.P. and two OCF-18's from Dr. Jerome Wong, Chiropractor of Whitby Therapy and Rehabilitation Clinic. She states her injuries are headaches, cervical intervertebral discopathy, sprain and strain of shoulder joint, sprain and strain of lumbar spine, sprain and strain of thoracic spine, bilateral knee and sleep disturbances. The goals for the applicant are pain reduction, increased range of motion, increased strength, return to activities of normal living, return to pre accident work and return to recreational activities. i.e. walking. Also, the OCF-18's state that the applicant has barriers to a full recovery which include severe headaches. The applicant also relies on Dr. Rami Khalil, Rheumatologist, Clinical Notes and Records, Ms. Diana Orlando Psychotherapist, notes, s. 25 Psychological Report of Ms. Danielle Jeffrey, psychotherapist completed under the supervision of Dr. Andrew Shaul psychologist, and Dr. Cavlin, chronic pain specialist.
- [8] The respondent submits that the treatment plan is not reasonable and necessary. The respondent also relies on the s. 44 Insurer's Examination Psychology Report by Dr. Goodwin Lau.

- [9] I find that the OCT-18's in dispute is not reasonable and necessary. The two OCF-18's in this case are most identical and state the same injuries and goals for the applicant. I find that the applicant has not been diagnosed with chronic pain by any s. 25 assessor. The OCF-18's are uncorroborated by any medical evidence that would lead me to believe that the treatment plans are reasonable and necessary. The goal of the OCF-18's is to decrease physical pain problems and return to activities of daily living, increase of range of motion, increase in strength, return to her pre-employment and to participate in recreational activities, i.e. walking. The applicant answered that there were no barriers from any pre-accident activity that would prevent the applicant to preform her daily activities. However, I find that the applicant has returned to her pre-accident employment of being the owner of a day care and has started a new job as a bookkeeper. I also did not find the OCF-18's compelling evidence that the applicant suffers from chronic pain or has any functional limitations as no objective evidence was submitted to support such a finding. For example, there were no progress reports or log notes submitted by Dr. Jerome Wong, Chiropractor. Further, there was insufficient evidence that Dr. Wong had conducted any physical examination of the applicant.
- [10] Further, I find that the family doctor notes do not support the OCF-18's in dispute. On March 26, 2019, Dr. Dawood noted that in January 2019 the applicant twice fell downstairs causing a head injury, neck pain and significant shoulder pain. This I find was not caused by the accident. There was also a note of breakdown of the applicant's marriage causing significant stress on the applicant. On April 3, 2019, the family doctor noted the applicant underwent a series of imaging. The reports showed mild osteoarthritis in both AC joints and minimal osteoarthritis in the right knee. The reports did not show any trauma to the cervical spine, AC joints, shoulders, right elbow, knees or ankles. Dr. Dawood did not diagnose a chronic pain condition or make any mention of the accident. Furthermore, the Applicant has not produced a s. 25 expert report by a qualified physician diagnosing any physical impairments caused from the accident.
- [11] I also find that on May 6, 2019, an MRI of the cervical spine showed mild degenerative changes at C4-5 vertebrae. On May 10, 2019, Dr. Dawood assessed full range of motion and a normal neurovascular examination. Dr. Dawood's June 25, 2021, entry notes joint pain and stiffness, which are symptoms of Sjogren's syndrome, and a condition not related to the accident. This condition of Sjogren's syndrome was also corroborated by Dr. Khalil's rheumatologist's consultation report regarding the applicant's diagnosed Sjogren's syndrome.

- [12] Further, I find that the Applicant relies on Ms. Danielle Jeffrey, psychotherapist completed under the supervision of Dr. Andrew Shaul, psychologist. The assessors rely heavily on the applicant's self-reports of functional limitations. There is no evidence that Ms. Jeffrey reviewed any medical documents to verify the applicant's reports. Her psychological tests include two self-reporting questionnaires and a symptom checklist completed by the applicant. There is no indication that Ms. Jeffrey completed any validity testing to identify the exaggeration or over-reporting.
- [13] Furthermore, Ms. Jeffrey was not asked to comment on the two treatment plans at issue. As a psychotherapist working under a psychologist, I find that she is not completely qualified to diagnose the Applicant's psychological injuries from the accident. The Applicant's reports of her functional limitations are unsupported by any objective medical evidence of any accident-related impairments. I find there is no indication that Dr. Shaul himself was involved in supervising or assessing the applicant.
- [14] I also find that Ms. Diana Orlando's psychotherapy notes do not support the treatment plans in dispute. For example, the applicant reported headaches from a neck injury and stress related events that are unrelated to the accident including stress from work, finances, and divorce proceedings. In October 2023, I find the applicant started a new job and felt overwhelmed with work and her life situation.
- [15] I find the respondent's s.44 assessor Dr. Jugnundan's January 5, 2023, IE report convincing. Dr. Jugnundan in his third in-person assessment of the applicant found upon examination, that the applicant had no physical impairment from the accident. He concluded that she had reached maximum medical improvement from her accident-related injuries. The applicant reported that she was independent in her daily activities, performing them with pacing. She also reported that she continued to work 20 to 30 hours in her bookkeeping position. The applicant completed her daily activities independently in her own pace.
- [16] The Applicant has failed to meet her burden of proof adducing medical evidence demonstrating the two treatment plans are reasonable and necessary.
- [17] For the above reasons, I find that the applicant has not meet her onus and on the balance of probabilities, I find that the treatment plans in dispute are not reasonable and necessary.

***Interest***

[18] There is no interest award because no plans are payable.

***Award***

[19] The applicant is not entitled to an award because the applicant is not entitled to any treatment plans.

**ORDER**

[20] On the totality of the evidence given, I find:

- i. The applicant is not entitled to any of the above treatment plans.
- ii. The applicant is not entitled to an award.
- iii. No interest is awarded because no payments are owing.
- iv. The application is dismissed.

**Released:** April 14, 2025

  

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**Roderick Walker**  
Adjudicator