



Citation: Knight v. Aviva General Insurance, 2025 ONLAT 23-004167/AABS

Licence Appeal Tribunal File Number: 23-004167/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:

Nicolette Knight

Applicant

and

Aviva General Insurance

Respondent

DECISION

ADJUDICATOR: Caley Howard

APPEARANCES:

For the Applicant: Filipe Santos, Counsel

For the Respondent: Jonathan Charland, Counsel

HEARD: By way of written submissions

OVERVIEW

- [1] Nicolette Knight, the applicant, was involved in an automobile accident on December 19, 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, 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 \$1,888.38 (\$4,688.38 less \$2,800.00 approved) for psychological services, proposed by 101 Assessments in a treatment plan/OCF-18 (“treatment plan”) submitted March 9, 2021?
 - ii. Is the applicant entitled to \$350.00 (\$2,560.00 less \$2,210.00 approved) for psychological services, proposed by 101 Assessments in a treatment plan submitted July 27, 2023?
 - 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?

RESULT

- [3] I find:
- i. The applicant is not entitled to the remainder of the partially approved treatment plan dated March 9, 2021;
 - ii. The applicant is not entitled to the remainder of the partially approved treatment plan dated June 28, 2023; and
 - iii. As there are no overdue benefits, the applicant is not entitled to interest or an award.

ANALYSIS

Entitlement to treatment plans

- [4] 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.

A) Treatment plan for psychological services dated March 9, 2021

- [5] The treatment plan submitted March 9, 2021, was proposed by Dr. Peter Waxer, psychologist, and sought funding of \$4,688.38 for psychological services. The respondent partially approved the treatment plan in the amount of \$2,800.00, leaving \$1,888.38 in dispute. While the respondent did not dispute the reasonableness and necessity of the proposed services, it did not approve the hourly fees proposed on the basis that the services were provided by a social worker rather than the psychologist specified in the treatment plan.
- [6] The applicant submits that the hourly fee of \$149.61 proposed in the treatment plan is reasonable and necessary because the treatment was provided under the direct supervision of Dr. Waxer. The applicant further submits that the proposed hourly fee is reasonable because the treatment provided by the social worker, Punitha Manoharan, specifically psychotherapy, cognitive behavioural therapy and driving anxiety treatment services, constitute services routinely provided by a psychologist. The applicant relies on the treatment plan, a letter from the respondent dated October 31, 2022, and a progress report authored by Punitha Manoharan and attached to a treatment plan dated September 28, 2021. The applicant further relies on the case of *J.V. v. Intact Insurance Company*, 2019 CanLII 76995 (ON LAT) ("*J.V. v. Intact*"), in which the Tribunal found that fees of \$149.61 per hour for psychological services were reasonable and necessary despite the services being performed by a psychotherapist rather than a psychologist. The applicant submits that the determinative factors in a dispute over the rates paid to treatment providers should be the qualifications of the provider and the services provided, rather than the title or educational credentials of the provider.

- [7] The respondent submits that the applicant has not shown how and why Dr. Waxer's supervisory services were reasonable and necessary. The respondent further submits that the applicant has not proven that Punitha Manoharan has any training or qualifications that would warrant paying her at the rate for psychologists. The respondent relies on a series of Tribunal decisions in which the Tribunal found that fees for psychotherapists and social workers of \$100.00 per hour were reasonable and necessary.
- [8] The disputed treatment plan shows the proposed services were to be provided by Dr. Waxer. The respondent's letter of October 31, 2022, specifically requested that if proposed treatment involved supervision by a separate health care practitioner, that a separate treatment plan be submitted with information relating to the supervisory services. I find that the applicant has not referred me to evidence, whether in the form of a treatment plan or otherwise, explaining the reasonableness and necessity of Dr. Waxer's involvement in the applicant's treatment in a supervisory, rather than a treating, capacity.
- [9] The rates of service providers are prescribed in the Professional Services Guideline, Superintendent's Guideline No. 03/14, September 2014 (the "Guideline") and contain no specified rate for social workers. The Guideline states that rates for services not covered by the Guideline are to be determined by the parties involved. The respondent agreed to pay for the social worker's services at a rate of \$100.00 per hour.
- [10] I find that the progress report written by Ms. Manoharan concentrates on the applicant's progress and does not provide any details of Ms. Manoharan's qualifications or the therapeutic techniques used during her counseling sessions. Therefore, I find that the evidence does not support that Ms. Manoharan was qualified to provide, or did provide, cognitive behavioural therapy services or any other specified therapeutic technique that might warrant charging her services at a higher rate.
- [11] Despite the applicant's submissions that the determinative factors in a dispute respecting rates should be the qualifications of the provider and the services provided, I find that the applicant has not directed me to any evidence of the qualifications of Ms. Manoharan or any services that she provided beyond counseling services.

- [12] For the above reasons, I find that the applicant has not proven, on a balance of probabilities, that the balance of the disputed treatment plan is reasonable and necessary.

B) Entitlement to the treatment plan for psychological services dated June 27, 2023

- [13] I find that the applicant is not entitled to the balance of the partially approved treatment plan dated June 27, 2023.
- [14] The treatment plan submitted June 27, 2023 was proposed by Konstantinos Papazoglou, psychologist, and sought funding of \$2,560.00 for psychological services. The respondent partially approved the treatment plan in the amount of \$2,210.00 but denied the amount of \$350.00 for a psychologist follow-up on the understanding that this amount was for a re-assessment, which the respondent asserted should properly be included in a subsequent treatment plan, if necessary.
- [15] The applicant submits that the unapproved portion of the treatment plan is reasonable and necessary due to the accident. The applicant submits that the psychologist follow-up was not a re-assessment but rather a chance for the applicant to meet with the psychologist following the 12 proposed treatment sessions and allow the applicant to ask questions respecting the treatment. The applicant submits that the proposed amount of \$350.00 was for a one-hour session with the psychologist and the psychotherapist following the treatment sessions.
- [16] The respondent submits that the applicant has not provided any evidence to explain why a psychologist follow-up is reasonably necessary, what the follow up entails, the time it would take to complete or the hourly rate for the service.
- [17] I find that the applicant has not directed me to evidence to support her submissions respecting the amount in dispute. The treatment plan's additional comments indicate only "psychologist follow-up" in relation to the amount in dispute. I find that there is no further explanation respecting what were the goals of the service, the length of time it would take, or the hourly rate charged.
- [18] Therefore, I find that the applicant has not demonstrated, on a balance of probabilities, that the amount in dispute is reasonable and necessary.

Compliance of the respondent's denial with section 38(8) of the Schedule

- [19] The applicant submits that the respondent's denial letter of July 7, 2023, in which it partially denied the treatment plan submitted June 27, 2023, does not comply with s. 38(8) of the *Schedule* because it does not refer to any medical reasons for the denial.
- [20] I find that the denial letter of July 7, 2023, complies with s. 38(8) and therefore the treatment plan submitted June 28, 2023, is not payable under s. 38(11).
- [21] Section 38(8) of the *Schedule* requires an insurer to respond to each treatment plan within 10 days of receiving it by identifying the goods, services, assessments, and examinations described in the treatment plan that the insurer does and does not agree to pay for. The response must include the medical reasons and all of the other reasons why the insurer considers any proposed treatments or assessments not reasonable or necessary.
- [22] If an insurer fails to comply with s. 38(8), the consequences are:
- (i) The insurer cannot take the position that the insured person has an impairment to which the MIG applies; and
 - (ii) The insurer must pay for any proposed treatments or assessments set out in the plan that are incurred in the period starting on the 11th day after the insurer receives the plan and ending on the date when the insurer provides the insured with a response that complies with s. 38(8).
- [23] Although I am not bound by Tribunal decisions, I find that *T.F. v. Peel Mutual Insurance Company*, 2018 CanLII 39373 (ON LAT), provides useful guidance on the meaning of "medical reasons." It found that such reasons should:
- (i) include specific details about the insured's condition that formed the basis for the insurer's decision; and
 - (ii) should allow an unsophisticated person to make an informed decision to accept or dispute the insurer's decision.
- [24] The respondent does not address the applicant's submissions with respect to s. 38(8).

- [25] The respondent's July 7, 2023, denial letter indicates the following in respect of the denied amount of \$350.00 for a psychologist follow-up: "We will not pay for any fee for re-assessment as this would be included in any future OCF-18 completion fee as part of that submission."
- [26] While I agree that the respondent's letter does not refer to a medical reason for the denial, I find that is because the respondent accepted that the proposed treatment was reasonable and necessary as a result of the accident. I find that the partial denial was not made for a medical reason but for an "other reason", which was that a fee for re-assessment of the applicant should properly be included in a subsequent treatment plan, if needed, rather than as part of the current treatment plan. Therefore, I find that the reason would allow an unsophisticated person to make an informed decision to accept or dispute the insurer's decision.
- [27] In these circumstances, I find that the denial letter of July 7, 2023, complies with s. 38(8). Therefore, the disputed amount of the treatment plan submitted June 28, 2023, is not payable under s. 38(11).

Interest

- [28] Interest applies on the payment of any overdue benefits pursuant to s. 51 of the *Schedule*. I have found no overdue benefits therefore the applicant is not entitled to interest.

Award

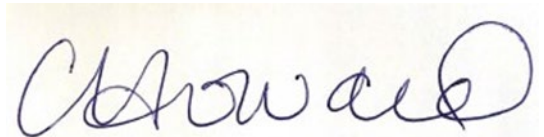
- [29] The applicant sought an award under s. 10 of Reg. 664. Under s. 10, the Tribunal may grant an award of up to 50 per cent of the total benefits payable if it finds that an insurer unreasonably withheld or delayed the payment of benefits.
- [30] As there are no benefits withheld or delayed, the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

ORDER

[31] I find:

- i. The applicant is not entitled to the remainder of the partially approved treatment plan dated March 9, 2021;
- ii. The applicant is not entitled to the remainder of the partially approved treatment plan dated June 28, 2023; and
- iii. As there are no overdue benefits, the applicant is not entitled to interest or an award.

Released: May 2, 2025

A handwritten signature in blue ink, appearing to read "C. Howard", is written over a horizontal line.

Caley Howard
Adjudicator