



Citation: Gao v. Aviva General Insurance Company, 2025 ONLAT 23-013206/AABS

Licence Appeal Tribunal File Number: 23-013206/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:

Xian Ping Gao

Applicant

and

Aviva General Insurance Company

Respondent

DECISION

ADJUDICATOR: Christin Carmichael Greb

APPEARANCES:

For the Applicant: Aylina Dhanji, Counsel

For the Respondent: Purva Vaidya, Counsel

HEARD: By Way of Written Submissions

OVERVIEW

[1] Xian Ping Gao, the applicant, was involved in an automobile accident on July 19, 2021, 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 Company, 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 \$5,023.90 for chiropractic services, proposed by Total Recovery Rehab Centre, in a treatment plan/OCF-18 (“plan”) dated January 9, 2023?
- ii. Is the applicant entitled to the plans proposed by Somatic Assessments and Treatment Clinic as follows:
 - a. \$1,122.00 (\$4,150.56 less \$3,028.56 approved) for psychological services, in a plan dated January 19, 2023;
 - b. \$635.80 (\$2,804.10 less \$2,168.30 approved) for psychological services, in a plan dated May 5, 2023;
 - c. \$1,495.92 (\$3,252.92 less \$1,757.00 approved) for psychological services, in a plan dated October 16, 2023; and
 - d. \$997.28 (\$2,355.28 less \$1,358.00 approved) for psychological services, in a plan dated February 9, 2024?
- 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] The application is dismissed. The applicant is not entitled to the treatment plans or amounts in dispute. No award or interest is payable.

ANALYSIS

Is the applicant entitled to \$5,023.90 for chiropractic services, proposed by Total Recovery Rehab Centre, in a plan dated January 9, 2023?

- [4] The applicant has not met the onus to prove that the chiropractic treatment plan is 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 the treatment, how the goals would be met to a reasonable degree and that the overall costs of achieving them are reasonable.
- [6] The proposed treatment plan submitted by chiropractor Dr. Palantzas calls for 16 one-hour sessions of chiropractic treatment, 16 half-hour sessions of exercise/strength and balance training, 16 half-hour sessions of acupuncture, \$960.00 for travel assistance, \$200.00 for a reassessment, and \$253.82 for completion of a progress report for a total of \$5,023.90. The goals are listed as: pain reduction, increased range of motion, increase in strength, to minimize compensatory strain, to return to activities of normal living, return to pre-accident work activities, and to promote soft tissue healing.
- [7] The applicant submits that the clinical notes and records of Dr. Heung-Wing Li, Family Physician, outline back pain since the accident and recommend physiotherapy. The applicant also advises that Dr. Daniel Wong, Family Physician, was seen regarding his injuries. The applicant goes on to rely upon the psychological assessment report of Dr. Sedigheh Naisi, Psychologist, dated December 27, 2022, as well as Dr. Naisi's progress reports dated May 1, 2023, and September 28, 2023, in which the applicant states intermittent neck pain and back pain and limited physical movements. The applicant also relies upon the clinical notes and records from Dr. Georgia Palantzas, Chiropractor, at Total Recovery Rehab Centre. Dr. Palantzas is the recommending treatment provider for the treatment plan in dispute.
- [8] The applicant argues that the medical evidence submitted establishes that the various treatment modalities received over the years were beneficial in either improving functional limitations or assisting with pain reduction.
- [9] The respondent submits that the applicant has only attended a general practitioner one time since the motor vehicle accident, approximately one-month

post-accident, according to the clinical notes and records produced. The respondent also submits that according to the IE Assessments of Dr. Eric Silver, General Practitioner, dated September 7, 2021, February 18, 2022, and February 21, 2023, the applicant was first diagnosed with abrasions, soft tissue injuries, and lumbar strain post-MVA, but that the reassessments showed no objective evidence of ongoing accident-related injuries or impairments. The respondent also argues that during the 2022 reassessment, the applicant confirmed that he had returned to full-time employments a few weeks post-accident.

- [10] I am not persuaded by the submissions of the applicant. I find that the evidence does not support the need for ongoing chiropractic treatment. The applicant relies upon a single record of Dr. Li, two-years prior to the subject treatment plan, records of Dr. Wong, which have no reports of any accident-related complaints, and records of Dr. Palantzas from 2021. There is no medical evidence provided between 2021 and the date of the subject treatment plan to support the ongoing need for chiropractic treatment.
- [11] While there is no doubt that the applicant did sustain injuries, I have not been led to supporting medical evidence to indicate that prior treatment plans have been successful in reducing pain or improving range of movement, nor any of the other stated goals. I was not led to a progress report or other indication of successful healing.
- [12] I find, on the balance of probabilities, that the applicant has not met the onus to establish that the treatment plan for chiropractic services is reasonable and necessary.

Psychological Services

Is the applicant entitled to \$1,122.00 (\$4,150.56 less \$3,028.56 approved) in a plan dated January 19, 2023, and \$635.80 (\$2,804.10 less \$2,168.30 approved) in a plan dated May 5, 2023?

- [13] I find that the applicant is not entitled to the remaining amounts of the treatment plans for psychological services.
- [14] The outstanding amounts for these treatment plans are for communication with others and ongoing evaluation and modification of treatment as indicated in the February 1, 2023, and May 12, 2023, denial letters.
- [15] The applicant relies on the clinical notes and records of Dr. Li, diagnosing the applicant with PTSD, as well as a psychological assessment report dated

December 27, 2022, as well as progress reports dated May 1, 2023, and September 28, 2023, from Dr. Naisi. Dr. Naisi provided a diagnosis of Adjustment Disorder Mixed with Anxiety and Depressed Mood, Somatic Symptom Disorder, with Predominant Pain Specific (in-vehicle) Phobia. The recommendations from this report included 16 sessions of 60-minute psychotherapy, and cognitive behavioural therapy.

- [16] The respondent submits that on February 1, 2023, it agreed to pay \$3,028.56 for 16 sessions of psychological treatment (16 sessions x \$149.61 = \$2,393.76), two sessions of communication with others (2 sessions x \$37.40 = \$74.80), a progress report (\$360.00) and completion of an OCF-18 (\$200.00). However, it did not agree to pay for 14 sessions of communication with others (\$523.60) and ongoing evaluation and modification of treatment (\$598.40). Therefore, according to the respondent, the outstanding amount is not reasonable and necessary.
- [17] The respondent also submits that on May 12, 2023, it agreed to pay \$2,168.30 for 10 sessions of psychological treatment (10 sessions x \$149.61 = \$1,496.10), three sessions of communication with others (3 sessions x \$37.40 = \$112.20), a progress report (\$360.00) and completion of an OCF-18 (\$200.00). However, it did not agree to pay for 7 sessions of communication with others (\$261.80) and ongoing evaluation and modification of treatment (\$374.00). Therefore, the outstanding amount is not reasonable and necessary.
- [18] While the applicant points to the report of Dr. Naisi and a single report in the clinical notes and records of Dr. Li from 2021, I find that the applicant did not provide submissions and did not direct me to evidence to establish the reasonableness and necessity of the unapproved portion of the treatment plans.
- [19] Therefore, as the applicant bears the onus, I find that he is not entitled to the unapproved amounts for the psychological treatment plans in dispute.

Is the applicant entitled to \$1,495.92 (\$3,252.92 less \$1,757.00 approved) in a plan dated October 16, 2023, and \$997.28 (\$2,355.28 less \$1,358.00 approved) in a plan dated February 9, 2024?

- [20] I find the applicant is not entitled to the outstanding amount of these treatment plans.
- [21] The applicant submits that the treatment plan dated October 16, 2023, contains language that differentiates from the Explanation of Benefits dated November 21, 2023, and that the denial is unclear. The applicant also submits that the treatment plan dated February 9, 2024, has an unclear denial and that the

reasons for the denial are not valid. The applicant goes on to submit that he is vulnerable as a Mandarin-speaking individual and that translation is required.

- [22] The respondent submits that on November 21, 2023, it agreed to pay a higher hourly rate than the Professional Services Guideline for a psychotherapist (\$99.75 per hour vs. \$58.19 per hour) for 12 sessions (12 sessions x \$99.75 = \$1,197), the completion of the OCF-18 (\$200), and a progress report (\$360). The respondent submits that it did not agree to pay for the additional higher hourly rate proposed or the brokerage and planning services.
- [23] The respondent also submits that on February 23, 2024, it agreed to again pay a higher hourly rate than the Professional Services Guideline for a psychotherapist (\$99.75 per hour vs. \$58.19 per hour) for 8 sessions (8 sessions x \$99.75 = \$798), the completion of the OCF-18 and progress report (\$560). The respondent submits that it did not agree to pay for the additional higher hourly rate or the planning and preparation fees. The respondent also submits that the facility has sought to gouge the respondent by overcharging and seeking to over assess.
- [24] I find the that the applicant did not provide submissions and did not direct me to evidence to establish the reasonableness and necessity of the unapproved portion of the treatment plans.

S.38(8)

- [25] The applicant further submits that the respondent failed to meet the requirements set out under section 38(8) of the *Schedule* by not making the denial clear and unequivocal.
- [26] Section 38(8) requires an insurer to inform an insured person, within 10 business days after it receives the treatment plan, of the medical and other reasons why it considered the goods and services not to be reasonable and necessary if it denies a plan. Pursuant to s. 38(11), if an insurer fails to comply with its obligations under section 38(8), it must pay for the goods and services that relate to the period starting on the 11th business day after the insurer received the application and ending on the day the insurer gives a notice described in s. 38(8) and it is prohibited from taking the position that the insured person has a impairment to which the MIG applies.
- [27] I find the respondent's denial notices of November 21, 2023, and February 23, 2024, were compliant with s. 38(8). The reasons for the denial in the November 21, 2023, notice is clearly outlined as stating the agreed hourly rates, and that the denied amounts for brokerage and planning are not reasonable and

necessary as they can be adequately funded via the approved hourly rates as well as the approved amounts for completion of the treatment plan and progress report. In the February 23, 2024, notice the reasons for the denial is clearly outlined as stating the agreed hourly rates, and that the denied amounts for planning and preparation fees can be adequately funded via the approved cost for the treatment plan and progress report completion.

- [28] Therefore, I find on a balance of probabilities that the outstanding amounts of the treatment plans are not payable pursuant to s. 38.

Interest

- [29] Interest applies on the payment of any overdue benefits pursuant to s. 51 of the *Schedule*. Having found no benefits payable, it follows that no interest is payable.

Award

- [30] 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.
- [31] I find that the applicant is not entitled to an award because he has not met his onus on a balance of probabilities.
- [32] The applicant submits that the claim should be assessed in a balanced and reasonable manner and that as he has paid premiums for the benefit of insurance, the claim should be assessed in good-faith and transparently.
- [33] The respondent submits that the applicant has not made any submissions showing the respondent's conduct to be "excessive, imprudent, stubborn, inflexible, unyielding, or immoderate," and that the applicant has not provided any particulars of the award claim.
- [34] The applicant is not entitled to an award because he has not demonstrated that benefits have been unreasonably withheld or delayed.
- [35] Accordingly, I do not find an award is payable.

ORDER

[36] The applicant is not entitled to:

- i. \$5,023.90 for chiropractic services, proposed by Total Recovery Rehab Centre, in a plan dated January 9, 2023.
- ii. The following proposed by Somatic Assessments and Treatment Clinic:
 1. \$1,122.00 (\$4,150.56 less \$3,028.56 approved) for psychological services, in a plan dated January 19, 2023;
 2. \$635.80 (\$2,804.10 less \$2,168.30 approved) for psychological services, in a plan dated May 5, 2023;
 3. \$1,495.92 (\$3,252.92 less \$1,757.00 approved) for psychological services, in a plan dated October 16, 2023; and
 4. \$997.28 (\$2,355.28 less \$1,358.00 approved) for psychological services, in a plan dated February 9, 2024.
- iii. The respondent is not liable to pay an award under s. 10 of Reg 664.
- iv. The applicant is not entitled to interest.
- v. This application is dismissed.

Released: December 15, 2025



Christin Carmichael Greb
Adjudicator