



Citation: Imam v. Aviva General Insurance, 2025 ONLAT 23-006934/AABS

Licence Appeal Tribunal File Number: 23-006934/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:

Nehal Imam

Applicant

and

Aviva General Insurance

Respondent

DECISION

ADJUDICATOR: Kathleen Wells

APPEARANCES:

For the Applicant: Nehal Imam, Applicant

For the Respondent: Jodie Therrien, Counsel

HEARD: By way of written submissions

OVERVIEW

- [1] Nehal Imam, the applicant, was involved in an automobile accident on DATE, 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:
1. Is the applicant entitled to \$2,302.08 for physiotherapy services, proposed by Giancarlo D'Uva, PT - CBI Health Centre in a treatment plan/OCF-18 (“treatment plan”) submitted December 9, 2021?
 2. Is the respondent liable to pay an award under s. 10 of Reg. 664 because it unreasonably withheld or delayed payments to the applicant?
 3. Is the applicant entitled to interest on any overdue payment of benefits?
- [3] The applicant also sought relief with respect to other incurred expenses, including medications, which were not set out in the Case Conference Report and Order dated January 31, 2024, and are not before the Tribunal in this application.

RESULT

- [4] I find that:
1. The applicant is not entitled to the treatment plan in dispute;
 2. The applicant is not entitled to an award;
 3. As no payments are owing, the applicant is not entitled to interest; and
 4. The application is dismissed.

PROCEDURAL ISSUES

- [5] The applicant was represented by counsel at the Case Conference on January 23, 2024. Counsel was removed on February 14, 2024 and the applicant

confirmed with the Tribunal on May 7, 2024 that he would be representing himself at the hearing.

- [6] I note that the applicant’s submissions were not in the format set out in the Case Conference Report and Order, dated January 31, 2024, and the applicant instead provided a one- and one-half page word document, which included a summary of the accident and his medical treatment and therapy, and a request for relief. The applicant also attached evidence which he referred to as “every single document” related to his file.
- [7] The respondent raised an issue with respect to the format of the applicant’s submissions, but given the finding below, I find it is not necessary to address the issue.

ANALYSIS

Is the applicant entitled to \$2,302.08 for physiotherapy services, in a treatment plan dated December 9, 2021?

- [8] I find that the applicant has not met his burden to prove, on a balance of probabilities that the treatment plan is reasonable and necessary.
- [9] 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.
- [10] The treatment plan was prepared by Giancarlo D'Uva, physiotherapist, and dated December 9, 2021. It seeks the following:

Documentation (support activity):	\$85.00
Planning services:	\$30.00
Therapy, multiple body sites, 3 1-hour sessions:	\$174.57
Mobilization, multiple body sites, 14 1-hour sessions:	\$1,396.50
Exercise, multiple body sites, 8 1-hour sessions:	\$465.52
Brace:	\$60.00
Exercise equipment:	\$60.00

- [11] The goals of the treatment plan are: pain reduction, increased range of motion, improving diligence and ability to manage residual pain, return to activities of normal living, improve sit/standing tolerances, and increase consistency of cardio routine.
- [12] The respondent argues that the applicant has not met his onus to prove that the treatment plan is reasonable and necessary.
- [13] I find that the applicant has not provided sufficient medical evidence to support a finding that the treatment plan in dispute is reasonable and necessary. The CNRs of the applicant's family physician, Dr. Shazia Latif, reveal that the applicant was diagnosed with sprains and strains of his back and shoulder after the accident, and was sent for an ultrasound on his shoulder, which found no abnormalities. Dr. Latif's CNRs reveal no complaints related to the applicant's accident-related soft-tissue injuries in the year prior to the submission of the treatment plan. Further, the CNRs of CBI Medical Clinic end on October 13, 2020, more than a year before the treatment plan was submitted.
- [14] The applicant also provided the report of the independent medical assessment of Dr. S.W. Joseph Wong, physiatrist, dated February 17, 2021. Dr. Wong conducted a physical examination and review of the applicant's medical records. I assign little weight to the assessment, as it was conducted more than nine months before the treatment plan was submitted, and Dr. Wong diagnosed the applicant with cervicogenic headaches, which are not corroborated by other medical evidence.
- [15] I am persuaded by the Musculoskeletal Assessment ("s.44 report") of Dr. Ahmed Mian, physician, dated February 10, 2022. Dr. Mian conducted a physical examination and review of the applicant's medical records. At his s.44 examination, the applicant reported that his shoulder pain had resolved, but that he continued to experience low back and cervical pain, which had improved by about 40% since the accident. Dr. Mian opined that the treatment plan was not reasonable and necessary because the applicant had likely reached maximum medical improvement from his soft tissue injuries. He had no recommendation for further treatment.
- [16] Further, the applicant has not identified how the goals of the treatment plan would be met, nor has he made any submissions with respect to the reasonableness of the cost of the treatment plan. Additionally, while the applicant appears to be seeking reimbursement for medical costs, the applicant has not provided any evidence to suggest that the treatment plan was incurred.

[17] For these reasons, I find that the applicant has not met his burden to prove on a balance of probabilities that the treatment plan for physiotherapy dated December 9, 2021 is reasonable and necessary.

Interest

[18] As no payments are due, no interest is payable.

Award

[19] 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.

[20] As the applicant is not entitled to the treatment plan in question, no benefits were unreasonably delayed or withheld by the respondent, and the applicant is not entitled to an award.

ORDER

[21] I find that:

- i. The applicant is not entitled to the treatment plan for physiotherapy services dated December 9, 2021.
- ii. The applicant is not entitled to an award.
- iii. No interest is payable.
- iv. The application is dismissed.

Released: April 8, 2025

Kathleen Wells
Adjudicator