Citation: Ahmed v. Aviva General Insurance Company, 2025 ONLAT 23-011936/AABS

Licence Appeal Tribunal File Number: 23-011936/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:

Fatema Ahmed

Applicant

and

Aviva General Insurance Company

Respondent

DECISION

ADJUDICATOR: **John Mazzilli**

APPEARANCES:

For the Applicant: Rasha El-Tawil, Counsel

For the Respondent: Kari-Anne Layng, Counsel

HEARD: **By way of written submissions**

OVERVIEW

[1] Fatima Ahmed, (the "applicant"), was involved in an automobile accident on November 28, 2020, 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 Aviva General Insurance (the "respondent") and applied to the Licence Appeal Tribunal - Automobile Accident Benefits Service (the "Tribunal") for resolution of the dispute.

[2] This matter was originally scheduled for a videoconference hearing, however on the consent of the parties, this matter was converted to a written hearing by way of a Motion Order dated September 25, 2024, because the applicant withdrew income replacement benefits and attendant care benefits as issues in dispute. The issues in dispute outlined below are in accordance with the Motion Order dated September 25, 2024.

ISSUES

[3] The issues in dispute are:

i. Is the applicant entitled to the services proposed by Pursuit Health:

(a) $2,977.89 for occupational therapy in a treatment plan/OCF-18 ("treatment plan") submitted December 7, 2021;

(b) $4,158.82 for physiotherapy in a treatment plan submitted August 18, 2022;

(c) $1,002.40 ($5,940.80 less $4,937.78 approved) for social rehab counselling in a treatment plan submitted May 6, 2022;

(d) $273.00 ($1,448.00 less $1,170.00 approved) for social rehab counselling in a treatment plan submitted December 14, 2021;

(e) $1,302.40 ($5,848.40 less $4,546.00 approved) for social rehab counselling in a treatment plan submitted September 19, 2022; and

(f) $1,130.40 ($5,270.40 less $4,140.00 approved) for social rehab counselling in a treatment plan submitted May 5, 2023?

ii. Is the respondent liable to pay an award under s. 10 of Reg. 664 because it unreasonably withheld or delayed payments to the applicant?

iii. Is the applicant entitled to interest on any overdue payment of benefits?

RESULT

[4] The applicant is not entitled to the treatment plans in dispute.

[5] Having found that the benefits are not payable, interest is not owing.

[6] The applicant is not entitled to costs.

[7] The applicant is not entitled to an award.

[8] The application is dismissed.

ANALYSIS

The disputed treatment plans

[9] To receive payment for a treatment and assessment plan under sections 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 applicant was removed from the minor injury guideline ("MIG") by the respondent after a s.44 psychological examination determined that the applicant sustained psychological injuries from the accident.

Social Rehab Counselling Hourly Rate

[11] I find that the applicant is not entitled to the disputed treatment plans for social work as listed above as issues iii, iv, v and vi ("social rehab counselling").

[12] The applicant submits that, while the respondent has approved the treatment plans submitted by Sarah Humphrey who is the applicant's social worker for the disputed social rehab counselling, the respondent partially denied the treatment plans on the basis that the hourly rate payable is $100.00. The applicant submits that social workers are not covered by the Financial Services Commission of Ontario ("FSCO") and that it is difficult to find psychologists willing to provide services through HCAI at *Schedule* rates. The applicant further submits that it is

imperative that the reasonable rate be paid which she deems to be $128.00 per hour to ensure that she receives the continued benefit of a qualified social worker. The applicant relies on OCF-18's submitted by Sarah Humphrey dated December 14, 2021, August 18, 2022, September 19, 2022, and May 5, 2023.

[13] The respondent argues that it has approved $14,793.78 in social work and counseling and that the remaining $3,708.20 in dispute is due to the applicant's request that Sarah Humphrey be paid an hourly rate of $128.00. However, the respondent has approved and paid for her services at the rate of $100.00 per hour. The respondent argues that although $91.43 is a reasonable hourly rate for social worker services and that it has paid above that rate as it has paid $100.00 per hour for the services of Sarah Humphrey.

[14] The FSCO Professional Services Guideline sets the hourly rates for professional services covered under the *Schedule*. The Professional Services Guideline stipulates that for services provided by health care professionals and providers not covered by the Guideline, then the amount payable is to be determined by the parties involved.

[15] I find that the applicant has not met her onus to establish entitlement to $128.00 per hour for social worker services. The Guidelines do not establish an hourly rate for social workers The respondent has agreed to pay $100.00, which is higher than the $91.43 that it submits is a reasonable hourly rate for social workers. Therefore, the applicant is not entitled to social rehabilitation counselling beyond the rate the respondent has agreed to pay, namely $100.00 per hour.

[16] I find on a balance of probabilities that the applicant is not entitled to the unapproved amounts for social rehabilitation counselling.

Physiotherapy

[17] I find that the applicant is not entitled to $4,158.82 for physiotherapy treatment.

[18] The applicant submits that physiotherapy is beneficial and part of a multidisciplinary approach as it alleviates her pain symptoms and improves her mobility and function. The applicant submits that the goals of the disputed treatment plan are pain reduction, increase/strengthen motor control as well as to help with increase in range of motion and improve static balance. The applicant relies on an OCF-18 dated August 18, 2022, completed by Priyanka Mondal, physiotherapist, and the Clinical Notes and Records ("CNRs") of Dr. Bhayana, family physician.

[19] The respondent argues that the applicant has achieved maximum medical improvement with respect to her physical injuries and that she had received sufficient treatment to address her physical injuries and that she already had a home exercise program following her initial physiotherapy treatments. The respondent relies on the assessment of Dr. Zdravkovic, physiatrist, and the EMG note of Dr. VanderEnde, physiatrist, dated August 28, 2024.

[20] I find that the CNRs of the family physician do not support the need for physiotherapy because I am persuaded by the assessment conducted by Dr. Zdravkovic which revealed that the applicant had achieved maximum medical recovery. Dr. Zdravkovic's assessment was conducted on November 19, 2022, approximately two years after the accident and after the applicant had already attended physiotherapy, contrary to the applicant's self report to Dr. VanderEnde, that she had not participated in physiotherapy.

[21] The applicant's family doctor based the OCF-18 in question on the recommendation of Dr. VanderEnde, however the CNRs of Dr. VanderEnde show that the applicant had advised Dr. VanderEnde that she had not been to physiotherapy to address her neck and shoulder injuries. The CNRs of Pinnacle Physiotherapy confirm that the applicant did participate in physiotherapy and in a home rehabilitation program following the accident. For this reason, I place more weight on the report of Dr. Zdravkovic who ultimately determined that the applicant had reached maximum medical recovery from her soft tissue injuries sustained in the accident.

[22] In addition, the OCF-18 in question assumes the applicant's pain is from the subject accident, however the medical evidence shows that the applicant does suffer from pre-existing neck pain and degenerative disc disease in her cervical spine. The medical evidence does not show that the accident exacerbated her pre-existing condition nor has the applicant argued that her condition has been exacerbated by the accident from a physical perspective.

[23] While the applicant may benefit from intermittent pain relief from physiotherapy, the goals listed in the OCF-18 do not justify the continued participation in active physiotherapy treatments because the medical evidence does not show that the applicant derives a benefit to her physical symptomology other than pain management, and in the absence of any continued improvement that is beneficial to the applicant's long term comfort, function or improvement of her physical injuries, the evidence does not support the plan to be reasonable and necessary.

[24] I find on a balance of probabilities that the applicant is not entitled to $4,158.82 for physiotherapy treatment.

Occupational Therapy

[25] I find that the applicant is not entitled to $2,977.89 for occupational therapy because it is not reasonable and necessary.

[26] The applicant submits that occupational therapy intervention is needed to facilitate improved participation with the applicant's activities of daily living ("ADLs") and to assist in the resumption of the applicant's pre-accident roles and routines. She submits that occupational therapy will help address gaps in her current and potential function with the goal of restoring functional levels of participation and well being and promoting reintegration into life role activities.

[27] In addition, the applicant submits that she was removed from the MIG due to a s.44 psychological assessment and the respondent failed to re-adjudicate the treatment plan. She submits that the s.44 assessment did not adequately contemplate the applicant's cognitive and psychological symptoms and the need for occupational therapy intervention. The applicant relies on the report of Ms. DaSilva, occupational therapist, dated November 12, 2021, an OCF-18 dated December 7, 2021, and the report of Jennifer Out, psychologist, dated March 23, 2022.

[28] The respondent argues that the treatment plan is not reasonable and necessary, and that the applicant herself was unaware of the treatment plan submitted on her behalf for the occupational therapy plan in dispute. The respondent further argues that the applicant did not sign the OCF-18 and that it is not required to re-adjudicate the OCF-18 as the plan was considered by two specialists at the time it was submitted. It argues that the surveillance evidence of the applicant in 2023 shows that she engages in activities of daily living. The respondent relies on the multidisciplinary reports of Dr. Naaman, physiatrist, and Mr. Horban, occupational therapist, dated March 16, 2022, and the investigation report and footage dated November 27, 2023, completed by Xpera.

[29] I find that the applicant is not entitled to the disputed treatment plan for occupational therapy for the following reasons.

[30] I find that the respondent's denial letter and s.44 assessments related to this treatment plan are sufficient that the treatment plan was considered by the respondent and properly submitted by the applicant while not being signed by the applicant.

[31] Ms. DaSilva's report, which is a two paragraph description of an in home assessment of the applicant on October 29, 2021 notes that her "clinical assessment indicates that overall, the client endorses severe levels of pain, depression, and perceived disability with respect to accident-related injuries, and indicates that overall, this impacts her ability to engage in everyday tasks such as personal care, making meals, leisure, housekeeping and return to work".

[32] I find Dr. Naaman's and Mr. Horban's opinions in the denial of the treatment plan to be persuasive because the denial of the plan is supported by inconsistencies in the applicant's descriptions of of her pre and post accident level of function. This is extensively addressed in Mr. Horban's comprehensive report which also includes an extensive document review of the applicant's medical files, while Ms. DaSilva's report lacks comprehensive corroborating insights of the applicant's pre and post level of function. For these reasons I place more weight to the report of Mr. Horban than that of Ms. DaSilva.

[33] Ms. DaSilva completed an OCF-18 and lists the applicant's sequalae from the accident as sprain and strain of the cervical spine, lumbar spine, shoulder joint and headaches. While the medical evidence shows that the treatment plan is not reasonable or necessary the surveillance evidence from late 2023 also does not support the plan to be reasonable and necessary as the applicant is observed to have attended numerous new home construction sites and attended open houses. Further, the applicant is observed going out for lunch, shopping, paying, carrying groceries throughout the store and to the car for items that she purchased in several large stores with no observed difficulty in ambulation, concentration and pace that appear to interfere with her activities of daily living.

[34] While I accept that surveillance is a snapshot in time, I find the applicant was following the opinion of Mr. Horban who encouraged the applicant "to engage in her typical activities of daily living within her perceived symptoms and limitations" because there was no medical documentation presented which would preclude her from doing so. The surveillance evidence is supportive that the applicant is engaging in her typical activities of daily living.

[35] The applicant has failed in her onus to prove entitlement to the disputed plan. On a balance of probabilities, I find that the applicant is not entitled to $2,977.89 for occupational therapy because it is not reasonable and necessary.

The applicant seeks Costs

[36] I find that the applicant is not entitled to $2,500.00 for the costs associated with the preparation of this hearing.

[37] Rule 19.5 states that in considering whether to award costs, I must consider all relevant factors, including the seriousness of the misconduct, whether the conduct was in breach of a direction or order issued by the Tribunal, whether a party's behaviour interfered with the Tribunal's ability to carry out a fair, efficient, and effective process, prejudice to other parties and the potential impact an order for costs would have on individuals accessing the Tribunal system.

[38] In her written submissions the applicant requested costs in the amount of $2,500.00 to compensate for legal fees associated with the preparation of this hearing.

[39] The respondent submits that the applicant has not provided any evidence or argument to substantiate her request for legal costs.

[40] I find that the applicant is not entitled to $2,500.00 in costs. The respondent did not commit any misconduct, or breach a direction or order issued by the Tribunal, and the respondent's behaviour did not interfere with the Tribunal's ability to carry out a fair, efficient, and effective process. Awarding costs in this case would not align with the intention of Rule 19.5.

Interest

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

Award

[42] 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.

[43] Since no benefits are payable, it follows that the respondent did not unreasonably withhold or delay the payments of benefits. I find that the applicant is not entitled to an award from the respondent.

ORDER

[44] It is ordered that:

i. The applicant is not entitled to the treatment plans in dispute.

ii. As no benefits are payable interest is not payable.

iii. The applicant is not entitled to an award.

iv. The applicant is not entitled to costs.

v. The application is dismissed.

Released: August 7, 2025

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John Mazzilli
Adjudicator