



Citation: Zhang v. Aviva Insurance Company of Canada, 2026 ONLAT 24-006059/AABS

Licence Appeal Tribunal File Number: 24-006059/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:

Kexin Zhang

Applicant

and

Aviva Insurance Company of Canada

Respondent

DECISION

ADJUDICATOR: Sarah Guergis

APPEARANCES:

For the Applicant: Anil Hampole, Counsel

For the Respondent: Jonathan Charland, Counsel

HEARD: In Writing

OVERVIEW

- [1] Kexin Zhang, the Applicant, was involved in an automobile accident on March 6, 2022, 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 Insurance Company of Canada, 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 \$3,749.56 for physiotherapy services, proposed by Uheal Rehab Centre in a treatment plan/OCF-18 (“plan”) dated February 13, 2023?
 2. Is the Applicant entitled to \$1,357.36 (\$2,355.36 less \$998.00) for psychological services, proposed by Somatic Assessments & Treatment Clinic Inc. in a plan dated June 19, 2023?
 3. Is the Applicant entitled to \$1,756.36 (\$2,355.36 less \$599.00) for psychological services, proposed by Somatic Assessments & Treatment Clinic Inc. in a plan dated November 23, 2023?
 4. Is the Applicant entitled to \$1,357.36 psychological services, proposed by Somatic Assessments & Treatment Clinic Inc. in a plan dated March 24, 2024?
 5. Is the Applicant entitled to \$2,200.00 for an occupational therapy in-home assessment, proposed by Complex Care Medical & Health Services in a treatment plan dated April 21, 2023?
 6. Is the Respondent entitled to a repayment of \$12,800.00 relating to its payment of an income replacement benefit the period of August 8, 2022 to March 20, 2023?
 7. Is the Respondent liable to pay an award under s. 10 of Reg. 664 because it unreasonably withheld or delayed payments to the Applicant?
 8. Is the Applicant entitled to interest on any overdue payment of benefits?

RESULT

- [3] I find that the Applicant is not entitled to the plans, or remaining amounts of plans, in dispute.
- [4] I find that the Respondent is entitled to repayment.
- [5] I find the Applicant is not entitled to interest.
- [6] I find the Applicant is not entitled to an award.

ANALYSIS

1. Is the Applicant entitled to \$3,749.56 for physiotherapy services, proposed by Uheal Rehab Centre in a plan dated February 13, 2023?

- [7] I find that this plan is not payable.
- [8] 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.
- [9] The Applicant submits that the physical and psychological impairments they suffered have rendered them unable to return to their normal pre-accident life, and that the treatment plans in dispute are reasonable and necessary for their recovery and should have been approved by the Respondent.
- [10] The Applicant does not point me to any medical evidence to establish the reasonableness and necessity of this specific plan. However, they cite a variety of evidence in their written submissions which includes:
 - 1. Clinical notes and records from April 14, 2022, from Dr. Andy Lai, the Applicant's family doctor. The Applicant reported complaints of back pain, stiffness, muscular pain, anxiousness with driving, and issues with sleeping. The Applicant was diagnosed with anxiety and depression.
 - 2. An OCF-18 from February 11, 2023, from Mr. Ahmed Afifi, physiotherapist. Mr. Afifi noted the following with regards to the impact of the Applicant's impairments on their ability to function: difficulty sleeping (5.5 hours/night, interrupted, nightmares), decreased sitting,

standing/walking tolerance, decreased lift/carry tolerance, decreased ability to do housekeeping tasks, decreased driving tolerance, and decreased ability to push/pull and bend/twist.

- [11] The Respondent submits that there is a lack of evidence that the proposed physiotherapy treatment would be beneficial. It submits that physically, the Applicant sustained uncomplicated soft tissue injuries without objective signs of impairment and had reached maximum medical improvement. Further, medical records of Dr. Lai, document a singular complaint of back pain/stiffness about a month post-accident and do not evidence any support for the proposed treatment.
- [12] The Respondent relies on a paper review in relation to this treatment plan by Dr. Ahmad Belfon, GP, from March 30, 2023. Dr. Belfon had previously assessed the Applicant in-person on February 11, 2023, and found no objective musculoskeletal impairments. Dr. Belfon concluded that the Applicant had reached maximum medical improvement, and further facility-based therapy was unlikely to provide any additional benefit, and therefore this treatment plan was not reasonable or necessary. Dr. Belfon recommended that the Applicant continue with a home-based, self-directed exercise and strengthening program.
- [13] I do not find the Applicant has met their burden to establish the reasonableness or necessity of this plan. I was not directed to evidence of a referral for physiotherapy, or a progress report detailing how physiotherapy is addressing the Applicant's injuries and assisting her recovery, for example. Further, as stated above, 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.
- [14] I acknowledge that the Applicant has included the OCF-18 from Mr. Afifi where he notes some challenges with regard to mobility such as decreased standing. However, it is well established that an OCF-18 alone is not sufficient to establish that the treatment plan is reasonable and necessary.
- [15] Therefore, on a balance of probabilities, I find that this plan is not payable.

2. Is the Applicant entitled to \$1,357.36 (\$2,355.36 less \$998.00) for psychological services, proposed by Somatic Assessments & Treatment Clinic Inc. in a plan dated June 19, 2023?

3. Is the Applicant entitled to \$1,756.36 (\$2,355.36 less \$599.00) for psychological services, proposed by Somatic Assessments & Treatment Clinic Inc. in a plan dated November 23, 2023?

4. Is the Applicant entitled to \$1,357.36 for psychological services, proposed by Somatic Assessments & Treatment Clinic Inc. in a plan dated March 24, 2024?

[16] I find that these plans (full and partial) are not payable.

[17] In its submissions, the Respondent notes that the amounts in dispute for issues 2, 3 and 4, relate to the hourly rate proposed for services to be performed by a psychotherapist, session length, and for progress reports in treatment plans dated June 19, 2023, November 23, 2023, and March 24, 2024. Further, for each treatment plan, Aviva partially approved 1-hour sessions of psychological services proposed to be provided by a psychotherapist at the hourly rate of \$99.75.

[18] The Applicant submits that the physical and psychological impairments suffered by the Applicant rendered them unable to return to their normal pre-accident life, and that the treatment plans in dispute are reasonable and necessary for the Applicant's recovery and ought to have been approved by Aviva.

[19] The Applicant does not direct me to the specific medical evidence they are relying on to establish the reasonableness and necessity of these plans in their written submissions. Nor do they specifically address the hourly rate of the treatment providers, the session lengths or progress reports. However, they cite a variety of evidence in their written submissions which includes:

1. A psychological assessment dated, June 20, 2022, by Dr. Shahriar Moshiri, psychologist. Dr. Moshiri, diagnosed the Applicant with the following: adjustment disorder with mixed anxiety and depressed mood, specific (isolated) phobias, vehicular, and insomnia disorder, persistent, with other sleep disorders.
2. A psychological progress note from Dr. Bruce Cook, psychologist, dated June 6, 2023, where he diagnosed Ms. Zhang with Mild Depressive Disorder (with anxious distress).
3. An OCF-18 from June 19, 2023, by Dr. Bruce Cook. He assessed the Applicant and wrote "they have been experiencing significant emotional and psychological distress since the accident. They are distressed from

the accident such as their worries about general health and future outlook, their avoidance and anxiety when traveling in a vehicle, difficulties with sleep, fluctuating emotions, and feelings of guilt for causing family and friends to worry.”

- [20] The Respondent submits that the Applicant’s submissions erroneously focus on the psychological diagnoses and need for treatment, which treatment was approved at appropriate hourly rates and duration by Aviva. However, there is no evidence suggesting that the partial denials in dispute prevented the Applicant from obtaining treatment.
- [21] The Respondent submits that it invited the provider to call to discuss the hourly rate, advised that the treatment provider had not provided a medical explanation for the extended session length as opposed to the standard 1-hour session, and advised that a progress report was not reasonable and necessary, nor essential for the Applicant’s treatment.
- [22] The Respondent relies on the Professional Services Guideline (“PSG”) which it submits sets out the maximum rate for psychologists and psychological associates at \$149.61 per hour. The rate provided for unregulated professionals is \$58.19 per hour. The amounts payable for professional services not covered by the PSG are to be determined by the parties involved.
- [23] The Respondent submits that it approved treatment provided by a psychotherapist at the rate of \$99.75 per hour, which exceeds the rate for unregulated providers under the PSG. It submits that the Tribunal has consistently found that \$99.75, or less, is a reasonable hourly rate for a psychotherapist providing counselling services.
- [24] The Respondent submits that these decisions are persuasive authority and should be followed in this case where there is no evidence of the psychotherapist’s education, training or experience that warrants a higher hourly rate.
- [25] I considered both parties submissions. I agree with the Respondent that the Applicant has not provided any evidence nor advanced any arguments to support her position that a higher hourly rate, extended session length of 1.5-hours as opposed to the standard 1-hour session, or progress report are reasonable and necessary in her written submissions. Nor has the Applicant provided reply submissions to address this. I also agree that the Applicant has not pointed me to evidence suggesting that the partial denials in dispute prevented the Applicant

from obtaining treatment. I do not find that the Applicant has met their burden of proving entitlement to the denied amounts of these treatment plans.

[26] Therefore, on a balance of probabilities, I find that these plans are not payable.

5. Is the Applicant entitled to \$2,200.00 for an Occupational Therapy In-Home Assessment, proposed by Complex Care Medical & Health Services in a treatment plan dated April 21, 2023?

[27] I find that this plan is not payable.

[28] The Applicant does not direct me to the specific medical evidence they are relying on to establish the reasonableness and necessity of this plan in their written submissions. However, they cite a variety of evidence in their written submissions which includes an OCF-18 from Complex Care dated April 14, 2023.

[29] The Applicant was assessed by Mr. Justin Moy, an occupational therapist. Mr. Moy noted the following with regards to the impact of the Applicant's impairments on their ability to function as a result of the motor vehicle accident. He wrote that the Applicant experiences functional ability limitations and difficulties to perform the activities of daily living and housekeeping tasks.

[30] The Respondent submits that no further credible, objective or compelling evidence has been provided, and the Applicant has not met her onus of proving this treatment plan is reasonable and necessary.

[31] Further, it submits that the amounts sought for an occupational therapy assessment are excessive, having regard to the hourly rates set out in the PSG for occupational therapists of \$99.75 per hour. The Respondent submits that the claim effectively is for 20+ hours for an assessment that typically takes a fraction of the time, and there is no evidence to justify this amount of time. Further, the Tribunal is unable to conclude that proposed fees for an assessment were reasonable without being provided with a breakdown as to the components of the assessment process, in terms of the duration of time or an hourly rate.

[32] The Respondent additionally relies on *Zhong v Aviva General Insurance, 2023 CanLII 7272 (ON LAT)*, which holds that "the treatment plan cannot be used as evidence to prove that same treatment plan is reasonable or necessary."

[33] The purpose of an assessment is to determine whether a condition still exists. The Applicant bears the onus to demonstrate that there are grounds on which to believe that a condition exists that would warrant further investigation by way of an assessment. It is well established that an OCF-18 alone is not sufficient to

establish that the treatment plan/assessment is reasonable and necessary. I find the Applicant has not met their burden to establish the reasonableness or necessity of this specific plan.

[34] Therefore, on a balance of probabilities, I find that this is not payable.

6. Is the insurer (Aviva) entitled to a repayment of \$12,800.00 relating to its payment of an income replacement benefit for the period of August 8, 2022, to March 20, 2023?

[35] I find that the Aviva is entitled to repayment.

S.33

[36] Section 33 of the *Schedule* states that an Applicant shall, within 10 business days after receiving a request from the insurer, provide the insurer with any information reasonably required to assist the insurer in determining the Applicant's entitlement to a benefit.

[37] Aviva submits that on February 17, 2023, it made a s. 33 request for confirmation of the Applicant's employment status, including complete details of the Applicant's return to work, with specific requests for the date of her return and all post-accident income earned.

[38] Aviva submits that the s. 33 request arose after it received a treatment progress report dated November 23, 2022, indicating that the Applicant was working as an assistant manager. The letter states that the Applicant's entitlement would be suspended on March 3, 2023, if she failed to provide the requested information.

[39] Aviva submits that by failing to comply with the s.33 requests for information and documentation relating to her post-accident employment status and income, the Applicant deprived Aviva of the ability to properly quantify the amount of IRBs that were overpaid and accordingly Aviva seeks repayment of the total amounts paid for IRBs given the Applicant's wilful misrepresentation of her employment status and post-accident income.

[40] The Applicant does not specifically address s. 33 in their written submissions. Nor did they provide reply submissions.

S. 52(2)

[41] Section 52 of the *Schedule* concerns the repayment of benefits. Under s. 52(1)(a), a person is liable to repay to the insurer any benefit that is

“paid to the person” as a result of an “error on the part of the insurer,” the insured person or any other person, or as a result of wilful misrepresentation or fraud.

- [42] Sections 52(2) and (3) provide timelines for repayment requests if a person is liable to repay an amount to an insurer. The insurer shall give the person notice of the amount that is required to be repaid. If the notice required is not given within 12 months after the payment of the amount that is to be repaid, the person to whom the notice would have been given ceases to be liable to repay the amount unless it was originally paid to the person as a result of wilful misrepresentation or fraud.
- [43] Aviva submits that the Applicant wilfully misrepresented and withheld her employment status and post-accident income and therefore the 12-month requirement to demand repayment does not apply pursuant to s. 52(3) and it is therefore entitled to a repayment of IRBs as a result.
- [44] Aviva submits that it paid IRBs for the period of August 8, 2022, to March 20, 2023, in the total amount of \$12,800.00. During that period, the Applicant neglected to advise Aviva that she was in fact working and earning post-accident employment income.
- [45] On March 9, 2023, Aviva wrote to the Applicant and advised that the Applicant’s IRBs would be suspended as of March 21, 2023, based on her failure to provide the requested documentation. Aviva submits that it acted in good faith to its insured in providing this notice.
- [46] Further, Aviva submits that it notified the Applicant by letter, dated April 3, 2023, pursuant to s. 52, that (i) it had paid \$12,800 in IRBs, (ii) had not received requested information as to post-accident employment status, and (iii) it was requesting repayment of overpaid IRBs.
- [47] Aviva relies on *Definity Insurance Company v Khalgholimoghaddam*, 2025 CanLII 35947 (ON LAT), which held that a notice similar to the one in this case was found to be substantially correct and therefore valid.
- [48] The Applicant submits that Aviva is not entitled to a repayment for the \$12,800.00 relating to its payment of an IRB for the period of August 8, 2022 to March 20, 2023.
- [49] The Applicant relies on s. 52(3) of the *Schedule*, which states that the obligation to repay an overpayment does not apply unless a notice, as required by s. 52(2), is given within 12 months after the overpayment was made.

- [50] The Applicant submits that because Aviva's letter was sent to the Applicant over 12 months after the IRB period in dispute, that Aviva has not provided the Applicant with a repayment notice as required by the *Schedule*. As a result, Aviva is barred from making a claim for repayment of IRBs.
- [51] The Applicant submits that the April 3, 2023, notice was not issued within the timeframe set out in s. 52.
- [52] I considered the Applicant's progress report where their return to work is mentioned, following the Respondent's s. 33 request with no reply. In the progress note by Dr. Ahmad Belfon, dated February 21, 2023, it states that the Applicant "continued to work after the accident but was provided a different position as Assistant Store Manager due to her accident-related injuries and difficulty with long drives. The company she was working for went bankrupt in June 2022, but she kept her job as Assistant Store Manager at a Rogers retailer in Stouffville. She continues to work full-time in this capacity."
- [53] The Applicant did not specifically address the reason why they breached the s. 33 request in their written submissions. Nor did they provide reply submissions or evidence that would contradict the Respondent's position.
- [54] The Tribunal has defined "misrepresentation" as "any manifestation by words or other conduct by one person to another that, under the circumstances, amounts to an assertion not in accordance with the facts." The Tribunal has also held that "silence or a failure to report" can constitute wilful misrepresentation (*Definity Insurance Company v Hassoun, 2025 CanLII 72399 (ON LAT)*).
- [55] I find that Aviva has met their onus to establish that the Applicant's silence and failure to reply to the s. 33 request amounts to misrepresentation. The Applicant additionally had an opportunity to address the misrepresentation as well as their reason for not responding to the s. 33 request in their submissions or reply submissions, and did not. Further, the Applicant had an opportunity to address the mention of their return to work from the progress note in their submissions and did not. I acknowledge the Applicant's argument that the Respondent failed to provide notice of repayment pursuant to s. 52(3) of the *Schedule*. However, this does not take precedence over the Respondent meeting their onus.
- [56] Therefore, on a balance of probabilities, I find that Aviva is entitled to repayment.

Interest

- [57] I find that no interest is owing as no benefits are payable.

Award

[58] I find that no award is owing.

[59] The Applicant did not specifically mention the s.10 award in their written submissions, nor did they provide reply submissions. As they did not point me to evidence which would establish the Respondent's unreasonable withholding or delay of payment of benefits, I do not find an award is owing.

ORDER

[60] I find that the Applicant is not entitled to the plans, or remaining amounts of plans, in dispute.

[61] I find that Aviva is entitled to repayment.

[62] As no plans are payable, I find the Applicant is not entitled to interest.

[63] I find that no award is owing.

Released: February 10, 2026



**Sarah Guergis
Adjudicator**