



**Citation: Metcalfe v. Aviva Insurance Company of Canada, 2026 ONLAT 24-005573/AABS**

**Licence Appeal Tribunal File Number: 24-005573/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:

**Kirk Metcalfe**

**Applicant**

and

**Aviva Insurance Company of Canada**

**Respondent**

**DECISION**

**ADJUDICATOR: Aric Bhargava**

**APPEARANCES:**

For the Applicant: Roanna Guiang-Tulloch, Paralegal

For the Respondent: Simran Walia, Counsel

**HEARD: By way of written submissions**

## OVERVIEW

- [1] Kirk Metcalfe, the applicant, was involved in an automobile accident on December 3, 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 Insurance Company of Canada, and applied to the Licence Appeal Tribunal — Automobile Accident Benefits Service (the “Tribunal”) for resolution of the dispute.
- [2] The applicant was removed from the minor injury guideline (“MIG”) on April 22, 2022.

## ISSUES

- [3] The issues in dispute are:
- i. Is the applicant entitled to \$2,000.48 for physiotherapy services proposed by York Medical Centre in a treatment plan/OCF-18 (“plan”) submitted May 10, 2022?
  - ii. Is the applicant entitled to \$2,000.48 for physiotherapy services proposed by York Medical Centre in a plan submitted June 21, 2022?
  - iii. Is the applicant entitled to \$2,000.48 for physiotherapy services proposed by York Medical Centre in a plan submitted August 10, 2022?
  - iv. Is the applicant entitled to \$2,000.48 for physiotherapy services proposed by York Medical Centre in a plan submitted November 14, 2022?
  - v. Is the applicant entitled to \$2,000.48 for physiotherapy services proposed by York Medical Centre in a plan submitted May 9, 2023?
  - vi. Is the applicant entitled to the assessments proposed by York Medical Centre, as follows:
    - i. \$2,200.00 for a general practitioner assessment, in a plan submitted June 22, 2022; and
    - ii. \$2,200.00 for a social work assessment, in a plan submitted November 22, 2022?
  - vii. Is the applicant entitled to interest on any overdue payment of benefits?

## RESULT

- [4] The applicant is not entitled to the physiotherapy treatment plans, general practitioner assessment, or social work assessment.
- [5] As none of the benefits in dispute are owing, the applicant is not entitled to interest.

## ANALYSIS

### *Treatment plans*

- [6] To receive payment for an OCF-18 under section 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.

### *Physiotherapy treatment plans*

- [7] I find that the applicant has not demonstrated, on a balance of probabilities, that he is entitled to the physiotherapy treatment plans.
- [8] The physiotherapy treatment plans each in the amount of \$2,000.48, dated May 10, 2022, June 21, 2022, August 9, 2022, November 14, 2022, May 8, 2023, propose twelve sessions over 6 weeks for one and a half hour of active/passive physical rehab with Dr. San Bui, chiropractor, and documentation fees. The applicant's injuries are noted as sprain and strain of cervical and lumbar spine, joints and ligaments of head, and chronic pain. The goal of each plan is pain reduction, increased range of motion, increase in strength, improve tolerance, return to activities of normal living, return to pre-accident work activities, return to modified work activities, and improve functioning in daily activities. The applicant's progress will be measured through visual analogue scale, range of motion, orthopaedic testing, strength testing, ADL/Functional analysis. The respondent denied these plans in full.
- [9] The applicant submits that the physiotherapy treatment plans are reasonable and necessary because he suffers from chronic pain and the treatment provides temporary pain relief and supports the return to his pre-accident condition. The applicant relies on the OCF-18s and the clinical notes and records ("CNRs") of Dr. Vinoja Vanniyasingam, family doctor, and the physiotherapy treatment notes of York Medical Centre.

- [10] I am directed to Dr. Vanniyasingam's CNRs dated December 30, 2021 that note "needs rx for physio. Has back pain, drives uber and sometimes drives for long periods of time." The doctor notes lumbar strain and provided a prescription for physio, however, there is no mention of the accident from four weeks earlier. Based on the family doctor CNRs, during the period of December 2021 to June 2023 the applicant visited with his family physician a total of ten times, however, there is no reference to the accident in the notes during this period.
- [11] I am directed to the physiotherapy treatment notes of York Medical Centre for the period of January 21, 2022 to May 8, 2023. In the York Medical Centre physiotherapy treatment notes the applicant reported pain in the neck and lower back during this time with the pain consistently reported in the range of 4 to 6 on a scale of 1 to 10, with ten being the worst possible pain. In my view, the physiotherapy notes a year after the accident and the single prescription for physiotherapy from December 30, 2021 does not meet the threshold to support her position that the treatment plans are reasonable and necessary.
- [12] The respondent submits the applicant has not met his onus to demonstrate the treatment is reasonable and necessary. The respondent argues the applicant is showing no improvement in his pain or as a result of the treatments, and the treatment is not recommended by any medical professional. The respondent relies on the section 44 general practitioner assessment report dated August 11, 2022, prepared by Dr. Johnathan Presvelos, physician.
- [13] I find the opinions of Dr. Presvelos in the section 44 general practitioner assessment report, eight months after the accident to be more persuasive than the applicant's physiotherapy treatment records. I make this finding particularly in light of the family physician records which do not include accident-related complaints following the accident or reference the accident in the prescription for physiotherapy in December 2021. Dr. Presvelos assessed the applicant in person for a clinical examination, including a review of the family doctor CNRs, imaging reports, and notes symptoms of myofascial neck and low back pain. Dr. Presvelos concludes that the applicant "has reached maximal medical improvement."
- [14] Accordingly, I find that the applicant has not met his onus to demonstrate, on a balance of probabilities, that these plans are reasonable and necessary as a result of the accident.

### **General Practitioner Assessment**

- [15] I find that the applicant has not demonstrated on a balance of probabilities that the plan for a general practitioner assessment is reasonable and necessary.
- [16] The purpose of an assessment is to determine whether a condition still exists. For an insured, they bear the onus to demonstrate that there are grounds on which to believe that a condition still exists that would warrant further investigation by way of an assessment.
- [17] The general practitioner assessment for \$2,200.00 dated June 22, 2022 prepared by Dr. Rodrigo Castro, physician, proposes one session for an assessment, and documentation fees. The goal of the plan is to identify any illness or medical condition that might have been generated due to the accident, to restore functional tolerance and endurance. The respondent denied the plan because the medical evidence did not support the need for a general practitioner assessment and was deemed not reasonable and necessary.
- [18] The applicant relies upon the section 25 general practitioner assessment report prepared by Dr. Rodrigo Castro, dated September 10, 2022. Dr. Castro's report notes the applicant has a permanent injury and he has not achieved maximum medical improvement. However, the report does not note what specific permanent injury the applicant has suffered as a result of the accident.
- [19] The respondent submits the applicant has not met his onus to demonstrate a condition exists that warrants an assessment. The respondent relies upon the section 44 report prepared by Dr. Presvelos, and the section 44 psychology assessment dated January 26, 2023, prepared by Dr. Arnold Rubenstein, psychologist that note the applicant has achieved maximum medical improvement.
- [20] I place less weight on the section 25 report because the report does not note a specific injury and the general assessment is not clear in its purpose.
- [21] I find the applicant has not made persuasive submissions with respect to why, on a balance of probabilities, the plan for a general assessment is reasonable and necessary.

### **Social Work Assessment**

- [22] I find that that applicant has not demonstrated on a balance of probabilities that the plan for a social work assessment is reasonable and necessary.

- [23] The social work assessment for \$2,200.00 dated November 22, 2022 prepared by Sebastian Tharimackal, social worker, proposes one session for an assessment, and documentation fees. The injuries listed include problems related to social environment, psychosocial circumstances, relationship with partner, employment, housing and economic circumstances, and other anxiety disorders. The plan notes the applicant developed social and mental impairment and chronic pain symptoms since the accident. The goal for the plan is to address psycho-social impairments. The respondent denied the plan because the medical evidence did not support the need for a social work assessment and was deemed not reasonable and necessary.
- [24] The applicant relies upon the section 25 report prepared by Dr. Castro and the applicant also pointed me to the physiotherapist's treatment notes indicating the applicant was experiencing anxiety during the time of his treatments. The applicant argues the section 44 report prepared by Dr. Rubenstein should be given little weight because it was conducted over 12 months after the accident.
- [25] The respondent submits the applicant has not met his onus to demonstrate a condition exists that warrants an assessment. The respondent relies upon the family doctor CNRs that make no note of psychological impairments as a result of the accident and the section 44 psychology assessment report prepared by Dr. Rubenstein that notes the social work assessment is not reasonable and necessary because the applicant has not experienced any accident-related psychological issues or impairment providing any barrier to carrying on his normal daily activities. The respondent argues the proposed \$2,000.00 rate for a social worker exceeds what is permissible under the Professional Services Guideline and social workers are to be paid \$58.19 per hour.
- [26] I find that the applicant has not made persuasive submissions with respect to why the social work assessment is reasonable and necessary, especially in light of the fact that the plan is dated almost 12 months after the accident, or that the overall costs of achieving the goals are reasonable because the applicant has not pointed me to any corroborating evidence in this regard.

### ***Interest***

- [27] Interest applies on the payment of any overdue benefits pursuant to s. 51 of the *Schedule*. As no benefits are payable, no interest applies.

## ORDER

- [28] For the reasons above, I find that the applicant is not entitled to the treatment plans for physiotherapy services, a general practitioner assessment, or a social work assessment.
- [29] No interest is payable.
- [30] The application is dismissed.

**Released:** February 17, 2026

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**Aric Bhargava**  
**Adjudicator**