



Citation: Kong v. Aviva Insurance Company of Canada, 2026 ONLAT 24-011317/AABS

Licence Appeal Tribunal File Number: 24-011317/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:

Lai Seong Kong

Applicant

And

Aviva Insurance Company of Canada

Respondent

DECISION

ADJUDICATOR: Rebecca Hines

APPEARANCES:

For the Applicant: Ryan Olson, Counsel

For the Respondent: Branson Wong, Counsel

HEARD: By way of written submissions

OVERVIEW

- [1] Lai Seong Kong, the applicant, was involved in an automobile accident on September 14, 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.

ISSUES

- [2] The issues in dispute are:
1. Is the applicant entitled to \$224.44 (\$4,069.56 less \$3,845.12 approved) for physiotherapy services, proposed by Total Recovery Rehab in a treatment plan (“OCF-18”) submitted August 26, 2022?
 2. Is the applicant entitled to \$623.48 (\$4,069.56 less \$3,446.08 approved) for physiotherapy services, proposed by Total Recovery Rehab in an OCF-18 submitted October 21, 2022?
 3. Is the applicant entitled to \$4,383.90 for chiropractic services, proposed by Total Recovery Rehab in an OCF-18 submitted November 3, 2023?
 4. Is the applicant entitled to \$3,701.88 for social worker services/psychology treatment, proposed by Somatic Assessments & Treatment in an OCF-18 submitted April 20, 2023?
 5. Is the respondent liable to pay an award under s. 10 of Reg. 664 because it unreasonably withheld or delayed payments to the applicant?
 6. Is the applicant entitled to interest on any overdue payment of benefits?

RESULT

- [3] After reviewing both parties’ submissions and evidence, I find the applicant is not entitled to any of the OCF-18s in dispute, interest or an award.

ANALYSIS

- [4] To receive payment for a medical benefit 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. 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 same are reasonable.

OCF-18s for Physiotherapy

- [5] The applicant is not entitled to the balance of either OCF-18 for physiotherapy in dispute because she did not address these issues at all in her submissions. No arguments were made to support that the disputed amounts of these OCF-18s are reasonable and necessary. I have no information about what was denied on each treatment plan and no submissions for why the balance is reasonable and necessary. I conclude that the applicant has not met her onus on a balance of probabilities in proving that either is reasonable and necessary.

OCF-18 for Chiropractic Treatment

- [6] The applicant is not entitled to the OCF-18 for chiropractic treatment in the amount of \$4,383.90.
- [7] The OCF-18 for chiropractic treatment dated November 1, 2023, was authored by Dr. Palantzas, chiropractor and recommended 16 sessions each of chiropractic treatment, acupuncture and exercise, plus provider travel time, report writing and form completion for a total cost of \$4,383.90. The goal of the OCF-18 was pain relief and to increase strength and range of motion (“ROM”) in order to return the applicant to her activities of daily living.
- [8] The applicant argues that the OCF-18 for chiropractic treatment is reasonable and necessary because she continued to make complaints of back pain to her family doctor. She relies on the clinical notes and records (“CNRS”) of her family doctor and the decision of the Financial Services Commission of Ontario in *Violi and General Accident Assurance Company of Canada*, 2000 ONFSCDRS 177 (CanLII) where the arbitrator determined that pain relief in itself is a legitimate goal for treatment which has been adopted by this Tribunal. The applicant submits that chiropractic services would meet this goal, and the costs are proportionate to the degree of success that these services would have.
- [9] The respondent submits that the medical evidence supports that the applicant’s injuries resolved by the one-year mark and the resurgence of these more recent complaints are non-organic and were made after she filed an application with the Tribunal. It maintains that the applicant did not make any accident-related complaints to her family doctor between October 2021 and August 2023. It also relies on an email between the applicant and the adjuster, and the insurer examination (“IE”) reports of medical doctors Dr. Harmantas (dated April 19,

2022) and Dr. Belfon (dated December 23, 2023) who determined that the applicant sustained soft-tissue injuries and that she had reached maximum medical recovery from past physical treatment.

- [10] I find the applicant is not entitled to the OCF-18 for chiropractic treatment for the following reasons.
- [11] First, I find the CNRs of the applicant's family doctor unhelpful because they support that the applicant sustained soft tissue injuries as a result of the accident. The applicant made very few pain complaints and did not mention any ongoing physical impairment in these records. There is also a significant gap in time where the applicant made no complaints to her family doctor because there are no notes between October 2021 and August 2023. In my view, the gap in the records do not support that applicant suffered from ongoing pain, which is what the OCF-18 is meant to address.
- [12] Second, I find an email the applicant sent to the adjuster on November 9, 2022, establishes that as of this date she felt much better and did not need further physiotherapy. In my view, this correspondence demonstrates that as of this date the applicant's physical impairments had healed and she did not require additional treatment. I was provided with little explanation for why the applicant required treatment one year later.
- [13] Third, I find the IE reports of Dr. Harmantas and Dr. Belfon establish that the applicant sustained soft tissue injuries and that as of Dr. Belfon's assessment these injuries had healed. Dr. Belfon conducted a physical examination of the applicant which was normal and concluded that additional facility-based treatment was not required. I accept Dr. Belfon's opinion because it was consistent with the medical record before me.
- [14] For the above-noted reasons, I find the applicant has not met her onus in proving that the OCF-18 for chiropractic treatment is reasonable and necessary.

OCF-18 for Social Work

- [15] The applicant is not entitled to the OCF-18 for social work treatment in the amount of \$3,701.88.
- [16] The OCF-18 dated April 20, 2023, was authored by Raymond Wong, occupational therapist and the goal was to challenge and reduce negative thought patterns by utilizing cognitive restructuring techniques to deal with anxiety and depressive feelings and cognitions. The OCF-18 proposed 14 hour

and a half sessions of counselling, at a cost of \$3,141.88, \$360 for documentation to support activity and \$200 for completion of the OCF-18 for a total cost of \$3,701.88.

- [17] The applicant submits that the OCF-18 for social work is reasonable and necessary because she has been diagnosed with mixed anxiety disorder with depressed mood and specific phobia (driver anxiety) as a result of the accident. She relies on the CNRs of her family doctor who diagnosed her with post traumatic stress disorder and the report of Dr. Gabidulina, psychologist and report of Bruce Cook, psychotherapist dated May 15, 2022 in support of same.
- [18] The respondent agrees that the applicant sustained a psychological impairment as a result of the accident because its own assessor, Dr. Bradbury, psychologist diagnosed the applicant with a psychological impairment. However, it maintains that the resurgence of the applicant's psychological complaints in August 2023 to her family doctor were manufactured after she filed her first application with the Tribunal. Additionally, any psychological impairment the applicant had has resolved and that additional psychological treatment is not required. It relies on the IE report of Dr. Schwartz dated June 22, 2023, who determined that the applicant no longer met the criteria for a DSM-5 psychological diagnosis.
- [19] I find that the applicant is not entitled to the OCF-18 for social work/ psychological treatment for the following reasons.
- [20] First, the applicant was removed from the MIG as a result of a psychological impairment and attended psychological treatment in 2022. I find the applicant has provided no submissions or evidence to support that the past treatment she has received resulted in any benefit. Consequently, I find it unclear whether the subject OCF-18 will meet its stated goal which is part of the legal test.
- [21] Second, I find the fact that the applicant's family doctor diagnosed her with PTSD does not help her position because, in Dr. Gabidulina's report, the doctor opined that she clearly does not have PTSD. Further, as highlighted above, there was a significant gap in the family doctor's CNRs where the applicant made no accident-related complaints.
- [22] Third, I find the IE report of Dr. Schwartz establishes that the applicant does not have an ongoing psychological impairment that requires treatment. In this assessment, the applicant denied feeling depressed and advised the doctor that the psychological treatment received in 2022 was not helpful and she did not want further treatment. In addition, the results of the psychometric tests revealed that the applicant had minimal or below average symptoms. Dr.

Schwartz opined that the applicant did not have any ongoing psychological impairment and had reached maximum medical improvement from a psychological perspective and that additional treatment was not reasonable and necessary.

[23] The applicant submits that Dr. Schwartz' report should be given little weight because she complained about having a fear of driving on numerous occasions and the other assessors diagnosed her with driving phobia. Despite this, Dr. Schwartz concluded that she does not suffer from any DSM-5 diagnoses without providing any detailed explanation. I disagree. I find that the applicant did not dispute that she advised Dr. Schwartz that she denied feeling depressed, found no benefit from treatment and did not want future treatment. Based on the applicant's self-reports about her psychological symptoms to Dr. Schwartz and the results on the psychometric tests, I find it reasonable that the doctor would conclude that there was no psychological diagnosis. Finally, the applicant reported to assessors that she had resumed driving.

[24] For the above-noted reasons, I find the applicant has not met her onus in proving on a balance of probabilities that the OCF-18 is reasonable and necessary.

Interest

[25] Interest applies on the payment of any overdue benefits pursuant to s. 51 of the *Schedule*. The applicant is not entitled to interest because I have not determined that any benefits are overdue.

Award

[26] 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. The applicant set out the legal test the Tribunal has applied in determining whether an award is payable. However, her submissions did not address the respondent's conduct in support of her position that benefits were unreasonably withheld. In light of my decision in this matter, I do not find that an award is warranted in this case.

ORDER

[27] For the above-noted reasons, I order as follows:

1. The applicant is not entitled to any of the OCF-18s in dispute, interest or an award.
2. The application is dismissed.

Released: March 5, 2026



Rebecca Hines
Adjudicator