



Citation: El Chammaa v. Aviva Insurance Company of Canada, 2026 ONLAT 24-010988/AABS

Licence Appeal Tribunal File Number: 24-010988/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:

Mansour El Chammaa

Applicant

and

Aviva Insurance Company of Canada

Respondent

DECISION

ADJUDICATOR: Jeff Chatterton

APPEARANCES:

For the Applicant: Margaret "Rita" Gratsias, Counsel

For the Respondent: Jordan Hochman, Counsel

HEARD: In Writing

OVERVIEW

- [1] Mansour El Chamaa, the applicant, was involved in an automobile accident on October 6, 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 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 the services proposed by Meadowvale Physical Medicine, as follows:
 - i. \$2,718.60 for chiropractic services, in a treatment plan/OCF-18 (“plan”) dated September 5, 2022; and
 - ii. \$2,495.00 for chiropractic services, in a plan dated May 29, 2023?
 2. Is the applicant entitled to the assessments proposed by A & B Medical Assessments, as follows:
 - i. \$2,486.00 for an orthopedic assessment, in a plan dated April 17, 2023; and
 - ii. \$2,486.00 for a psychological assessment, in a plan dated April 19, 2023?
 3. Is the respondent liable to pay an award under s. 10 of Reg. 664 because it unreasonably withheld or delayed payments to the applicant?
 4. Is the applicant entitled to interest on any overdue payment of benefits?

RESULT

- [3] The applicant is not entitled to the treatment or assessment plans in dispute.
- [4] The application is dismissed.

ANALYSIS

Is the applicant entitled to the chiropractic treatment plans in dispute?

- [5] I find the applicant has not met the onus to establish entitlement to the chiropractic treatment plans in dispute.
- [6] 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.
- [7] In dispute are two treatment plans for chiropractic services, authored by Chiropractic Doctor Charles Goodman, calling for 27 and 25 sessions of chiropractic therapy, in an effort to increase strength and range of motion, with a stated goal of a return to the activities of a normal life.
- [8] To support his position, the applicant relies on the OCF-18s in dispute as well as two MRIs, taken in February 2021 and March 2021. The MRIs indicate the applicant suffered a torn ACL, which is an aggravation from an earlier knee injury as evidenced by an MRI taken in 2017. While I find these MRI's do establish that a knee has gotten worse with time, however, I do not find they have established WHY the knee has gotten worse (such as whether or not it was chronic or accident related). I also find them not contemporaneous with the disputed treatment plans, as the most current MRI image is over 18 months old at the time of the OCF-18 in dispute.
- [9] The applicant also relies on an orthopedic assessment authored by Orthopedic Surgeon Dr. Tejadin Getahun, authored February 23, 2024. Dr. Getahun's report was not authored in support of the chiropractic treatment plans and instead appears to focus on a claim that the applicant is suffering from chronic pain syndrome.
- [10] The respondent raises an issue regarding document exchange, and submits that the applicant, despite agreeing to do so at the Case Conference, has not produced multiple documents, including a decoded OHIP summary and Clinical Notes and Records (CNRs") from the applicant's knee specialist. The respondent has asked the Tribunal to draw a negative inference from the lack of document exchange.

- [11] Having reviewed the Case Conference Report and Order, I do note that the applicant originally agreed to produce the documents referred to by the respondent. I further note that the applicant has not filed a reply submission with the Tribunal, with an explanation for the lack of document exchange.
- [12] I find that the applicant's prior medical history, especially regarding his knee is a critical piece of evidence for this hearing. The has not supplied us with the complete picture regarding his knee, and I also note that the applicant has chosen not to provide an explanation for the lack of document production, which raises questions regarding causation or the current state of healing. For these reasons, I do draw an adverse inference.
- [13] The respondent argues the applicant has not met the onus to establish entitlement to chiropractic services. The respondent argues the applicant has not only failed to produce a decoded OHIP summary, they have submitted no medical evidence from the applicant's primary care physician from the date of the accident to the date of the case conference.
- [14] The respondent further relies on a s.44 musculoskeletal assessment conducted by General Practitioner Dr. Pankaj Bansal, dated February 5, 2022. In the assessment, Dr. Bansal diagnosed the applicant with soft-tissue injuries, and noted that the applicant displayed no signs of musculoskeletal, neurological or orthopedic injury. Dr. Bansal states this is not surprising, because any soft-tissue injuries would be healed given that the assessment occurred nearly two years after the original accident.
- [15] I put increased weight on Dr. Bansal's report because it was authored in February 5, 2022, which makes it contemporaneous to the treatment plans in dispute. Dr. Getahun's report was authored in 2024.
- [16] I put reduced weight on the report from Dr. Getahun for the following reasons:
- i. Dr. Getahun does not specifically recommend chiropractic treatment.
 - ii. The respondent has indicated that the applicant opened a Shawarma restaurant in Wasaga Beach in the summer of 2021, after the accident occurred. As the applicant did not file a reply submission, this claim was not refuted. Dr. Getahun's report references a claim that the applicant was unable to drive for Lyft, but makes no reference to the fact the applicant opened a restaurant. This is further a concern due to the physical nature of restaurant management. For example, the report states that the applicant is reliant upon his wife for household chores, but

makes no reference to how chores and physical activities around the restaurant were managed.

- iii. As noted above, the report, authored in 2024, is not contemporaneous to the treatment plans in dispute, which were authored and submitted in September 2022 and May 2023.

[17] In summary, I find the applicant has not provided supportive medical evidence to indicate that the chiropractic treatment plans in dispute are reasonable and necessary. The applicant did not provide me with CNRs from the applicant's primary care physician or an OHIP summary, and as a result, has not clarified significant confusion regarding whether or not the applicant's physical injuries are chronic and pre-existing, or caused by the accident. Furthermore, I have reviewed a s.44 assessment indicating a distinct lack of orthopedic or musculoskeletal injuries.

[18] For these reasons, I find that, on the balance of probabilities, the applicant has not met his onus to establish entitlement to the chiropractic treatment plans in dispute.

Is the applicant entitled to an orthopedic assessment?

[19] The applicant is not entitled to the treatment plan for the orthopedic assessment in dispute.

[20] The purpose of an assessment is to determine whether a condition exists. For an insured, they bear 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.

[21] The applicant argues that an orthopedic assessment is reasonable and necessary to determine future treatment. The applicant states that the applicant attended an orthopedic assessment despite the denial, which is proof that the assessment was necessary.

[22] It is unclear what assessment the applicant is referring to, and if this quote is in reference to a separate assessment than the one authored by Dr. Getahun, I have not been provided with another report in the applicant's submissions.

[23] The respondent argues that while the applicant was offered an assessment provided by OHIP, CNRs indicate that he did not attend the offered assessment, despite an offer to reschedule twice. The respondent argues even the applicant did not believe an orthopedic assessment to be necessary.

- [24] Although the applicant did not submit CNRs from the Milton Urgent Care Clinic as evidence, the respondent has submitted them. I can see multiple notations indicating that the applicant “did not attend assessment” in these CNRs. It is unclear why the applicant is requesting an orthopedic assessment from the respondent when they failed, on multiple occasions, to attend an earlier orthopedic assessment.
- [25] Further, it points to the fact that the applicant was offered an assessment provided by OHIP (regardless of his attendance), but the insurer is only required to cover accident-related services which would not have been covered by OHIP. For these reasons, I find the applicant has not, on the balance of probabilities, met the onus to establish that the treatment plan for an orthopaedic assessment is reasonable and necessary.

Is the applicant entitled to a psychological assessment?

- [26] The applicant is not entitled to the treatment plan for a psychological assessment.
- [27] The applicant points to an earlier psychological assessment, signed by Psychologist Zabina Ladak, with a reference that the actual work was conducted by Psychometrist Ashvanie Svrithan, dated December 20, 2021. The applicant argues this is evidence that a psychological condition exists.
- [28] The respondent referred back to the original denial letter, stating that the requested psychological assessment would be a duplication of service. The respondent also argues that the original assessment should be given little weight as evidence because Ms. Ladak has an MA, not a PhD, and therefore, is not a Psychologist.
- [29] Although this information was communicated to the applicant in the original Explanation of Benefits, dated May 12, 2023, when the respondent wrote “This appears to be a duplication of a service that is not reasonable or necessary. As such, we are not agreeable to funding the proposed Psychology Assessment in this treatment plan. “
- [30] The applicant did not provide specific submissions or medical evidence to indicate why a second assessment was required. There were no CNRs from a health practitioner which would indicate ongoing psychological concerns.
- [31] For these reasons, I agree with the respondent that a second psychological assessment would be a duplication of service.

[32] I find the applicant has not, on the balance of probabilities, met the onus to establish entitlement to the treatment plan for a psychological assessment.

Interest

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

Award

[34] 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. As no benefits were unreasonably withheld or delayed, no award is payable.

ORDER

[35] The application is dismissed.

- i. The applicant is not entitled to two treatment plans for chiropractic services.
- ii. The applicant is not entitled to the treatment plans for an orthopedic assessment or a psychological assessment.
- iii. Neither interest nor an award are payable.

Released: April 13, 2026



**Jeff Chatterton
Adjudicator**