Citation: Massad v. Certas Home and Auto Insurance Company, 2026 ONLAT 25-010375/AABS

Licence Appeal Tribunal File Number: 25-010375/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:

Mary-Ann Massad

Applicant

and

Certas Home and Auto Insurance Company

Respondent

DECISION

ADJUDICATOR: **Mary Henein Thorn**

APPEARANCES:

For the Applicant: Gus Triantafillopoulos, Counsel

For the Respondent: Jonathan Schrieder, Counsel

Court Reporter: Rayssa Cavalcanti

HEARD: by Videoconference: April 29, 30 & May 1, 2026

OVERVIEW

[1] Mary-Ann Massad, the applicant, was involved in an automobile accident on August 10, 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, Certas Home and Auto Insurance Company, and applied to the Licence Appeal Tribunal - Automobile Accident Benefits Service (the "Tribunal") for resolution of the dispute.

[2] The applicant, a strong athlete, was participating in a group bike ride with her peers along a two-lane road having one-lane in each direction, separated by a yellow centre line and a gravel shoulder. She was heading downhill at speed of approximately 50km/hr when her bike contacted the gravel shoulder causing her to fall and sustain significant injuries including multiple fractures, facial lacerations, and a degloving injury to her right leg. The applicant alleges that she veered off road to avoid a collision with an oncoming vehicle driving erratically.

[3] Because a vehicle was not involved in the accident the respondent raised a preliminary issue with the Tribunal. It questioned if this was in fact an accident within the meaning of the *Schedule*, and in a decision dated October 10, 2024 the Tribunal found that it was.

ISSUES

[4] The issues in dispute are:

1. Is the applicant entitled to attendant care benefits in the amount of $10,487.34 per month from August 10, 2022, to November 10, 2022?

2. Is the applicant entitled to $2,381.36 ($4,927.21 less $2,545.85 approved) for psychological treatment, proposed by InnerQore in a treatment plan/OCF-18 ("plan") dated April 21, 2025?

3. Is the applicant entitled to $1,197.25 ($5,886.00 less $4,688.75 approved) for occupational therapy treatment, proposed by Innovative Case Management in a plan dated January 3, 2025?

4. Is the applicant entitled to $199.50 ($399.00 less $199.50) for physiotherapy submitted on a claim form (OCF-6) dated May 13, 2025?

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?

7. Is the applicant entitled to costs in the amount of $1,500?

RESULT

[5] I find:

1. The applicant is not entitled to the disputed amount of the attendant care benefit;
2. The applicant is not entitled to the balance of the psychological treatment plan;
3. The applicant is not entitled to the balance of the occupational therapy treatment plan;
4. The denied portion of the OCF-6 for physiotherapy services has been paid;
5. The respondent is not liable to pay an award under s. 10 of Reg. 664 because it unreasonably withheld or delayed payments to the applicant;
6. The applicant is not entitled to interest on any overdue payment of benefits; and
7. The applicant is not entitled to costs in the amount of $1,500.

PROCEDURAL ISSUES

[6] The applicant also advised at the start of the hearing the following issues, listed as Issues number 1 and 4 in the Case Conference Report and Order, are withdrawn:

1. Is the applicant entitled to an income replacement benefit in the amount of $400.00 per week from August 17, 2022, to October 3, 2024? This issue will not be addressed as part of this decision.
2. Is the applicant entitled to $399.01 for Occupational Therapy treatment, proposed by Innovative Case Management in a plan dated October 30, 2025? This issue will not be addressed as part of this decision.

[7] The applicant also requested costs be added as an issue in dispute towards the end of the hearing. The respondent did not raise an objection to the addition of costs. In accordance with Rule 19, the issue of costs is added as an issue in dispute for this hearing.

ANALYSIS

ATTENDANT CARE BENEFITS ("ACB")

[8] The applicant confirmed that her entitlement to ACB is not in dispute, rather what is in dispute is whether the respondent must pay the full amount of the Form 1 and whether or not it should be deemed incurred. She argues that her injuries are significant and the full amount should be paid. Further, she argues that it should be deemed incurred pursuant to section 3(8) of the *Schedule* because the respondent did not properly advise her of her entitlement to ACB, it did not respond to the OCF-1 and she was not aware she could incur ACB expenses or she would have obtained professional services. She argues the respondent was more focussed on its position that it was not an accident than adjusting the file correctly.

[9] Section 19 of the *Schedule* states that an insurer shall pay for all reasonable and necessary expenses incurred by or on behalf of an insured person as a result of an accident for attendant care services provided by an aide or attendant.

[10] Section 18(3)(a) of the *Schedule* provides that, for an insured person who is neither subject to the Minor Injury Guideline ("MIG") nor catastrophically impaired, the combined amount payable for medical, rehabilitation, and attendant care benefits shall not exceed $65,000.00, plus any applicable harmonized sales tax, for any one accident.

[11] Further, pursuant to s. 19(2), the amount of a monthly ACB is determined in accordance with the approved version of the document entitled Assessment of Attendant Care Needs ("Form 1") that is required to be submitted under s. 42 and is calculated by (a) multiplying the total number of hours per month of each type of attendant care listed in the document that the insured person requires by an hourly rate that does not exceed the maximum hourly rate, as established under the Guidelines, that is payable in respect of that type of care, and (b) adding the amounts determined under clause (a), if more than one type of attendant care is required.

[12] The maximum payable for ACB under the *Schedule* is $3,000.00 per month for non-catastrophically impaired insureds.

[13] This dispute involved a disagreement between the parties about the amount of entitlement for ACB and whether or not ACB should be deemed incurred. The respondent has approved ACB in the amount of $3,000 per month from August 10, 2022, to November 10, 2022, and the respondent submits no proof of incurred has been provided by the applicant to date.

Request for ACB exceeding the Schedule limits

[14] Pursuant to s. 19(3) of the *Schedule*, the amount of the attendant care benefit payable in respect of an insured person shall not exceed the amount determined under the following rules:

1. If the optional medical, rehabilitation and attendant care benefit referred to in paragraph 4 of subsection 28 (1) or the catastrophic impairment benefit referred to in paragraph 5 of subsection 28 (1) has not been purchased and does not apply to the insured person, the amount of the attendant care benefit payable in respect of the insured person shall not exceed,

    i. $3,000 per month plus the amount of any applicable harmonized sales tax payable under Part IX of the Excise Tax Act (Canada) for accidents that occur on or after June 3, 2019, if the insured person did not sustain a catastrophic impairment as a result of the accident, or

    ii. $6,000 per month plus the amount of any applicable harmonized sales tax payable under Part IX of the Excise Tax Act (Canada) for accidents that occur on or after June 3, 2019, if the insured person sustained a catastrophic impairment as a result of the accident.

[15] A Form 1 authored by Occupational Therapist Samantha Hanser dated January 7, 2025, was submitted to the respondent which indicated the applicant required ACB in the amount of $10,487.34 per month. According to the Form 1, the applicant requires assistance with: dressing and undressing upper and lower body; brushing and shampooing her hair, cleaning and trimming toenails as required; preparing, serving, and feeding meals; ambulating to a different location; walking; cleaning tub/shower/sink/toilet after use; changing bedding, making the bed, and cleaning the bedroom; ensuring comfort, safety, and security in the bedroom; preparing daily wearing apparel; hanging clothes and sorting clothing to be laundered/cleaned; basic supervisory care as the applicant lacks the ability to independently get in and out of a wheelchair or to be self-sufficient in an emergency; co-ordinating/scheduling attendant care; and assistance with prescribed exercise/stretching program.

She relied on her husband mainly, her children, friends and neighbours from time to time to assist her with her attendant care needs. The applicant did not pay or promise to pay any of her friends, family members or husband for the support they provided her after the accident. The applicant's husband testified at the hearing that he works as an executive therefore he was able to take paid time off to provide care for his wife.

[16] The applicant requests the Tribunal find attendant care payable by the respondent in the amount submitted in the Form 1 exceeding the allowable $3,000.00 for a person with non-catastrophic impairment according to the *Schedule*. Beyond the request she did not make any further submissions.

[17] The respondent submits the *Schedule* is clear, the allowable amount is a maximum of $3,000.00 since the applicant is within the non-CAT, non-MIG limits.

[18] Beyond her request the applicant has not made any submissions as to why she is entitled to ACB beyond the maximum allowable amount in the *Schedule.* Nor did the applicant direct me to any statutory provision or authority to support her position that the maximum amount of ACBs set out in s. 19(3) of the *Schedule* can be exceeded.

[19] Although the Form-1 indicates the required attendant care is a higher amount, I agree with the respondent, the *Schedule* is very clear. The maximum allowable amount for a monthly ACB benefit is $3,000.00 per month given that the applicant is not deemed catastrophic. The applicant's request to exceed the monthly amount of ACBs set out in s. 19(3) is denied.

Deemed incurred

[20] Section 3(7)(e) of the *Schedule* provides that expenses are not incurred by an insured person unless: (i) they have received the goods or services to which the expense relates; (ii) they have paid the expense, have promised to pay the expense, or are otherwise legally obligated to pay the expense; and (iii) the person who provided the goods or services (a) did so in the course of the employment, occupation, or profession in which he or she would ordinarily have been engaged, but for the accident, or (b) sustained an economic loss as a result of providing the goods or services to the insured person.

[21] Section 3(8) of the *Schedule* further provides that if the Tribunal finds that an expense was not incurred because the insurer unreasonably withheld or delayed payment of a benefit in respect of the expense, the Tribunal may, for the purpose

of determining an insured person's entitlement to the benefit, deem the expense to have been incurred.

[22] It is the applicant's argument that she was not advised of her right to ACB benefits, she was not told she needed proof of incurred nor did she know that she needed to track the hours of those who were providing care. Had she known, she would have hired a professional caregiver and provided proof of incurred expenses.

[23] The respondent submits the applicant is entitled to $3,000.00 per month of ACB services provided that she submits proof of incurred expenses pursuant to s. 3(7) of the *Schedule*. To date the applicant has not provided any proof of incurred services for ACB, therefore it is not incurred.

[24] In response to the applicant's allegation that it did not advise her of the benefits she may be entitled to, the respondent points me to a letter dated September 22, 2022 from the respondent to the applicant addressing the benefits she may be entitled to, how to obtain the benefits and how to contact their office (via letter, telephone number, fax or email) should she require any further assistance. Upon examination of the letter, it is broken down into easy to read sections, with specific details for each benefit which the applicant may be eligible for, what forms would be needed to complete them, who would need to complete the forms and how to obtain the treatment. The letter also advises the reader that there is a video link on its website to assist with navigating the benefits available to the applicant. The letter also indicates that the applicant may be entitled to ACB and the limit for a non-cat individual is the $3,000.00/month up to $65,000.00. The applicant testified she has no recollection of receiving or reviewing this letter, she was medicated with serious injuries and was not in a state to take in the contents of a letter. She further testified she or someone collecting the mail may have received and it and have tossed out with the recycling.

[25] The attendant care benefits are not deemed incurred. I am not persuaded by the applicant that the respondent did not comply with the *Schedule* and notify her of her possible entitlement to the benefit. Upon review of the letter I find the letter is clear, user friendly, precise, with a friendly tone encouraging the applicant to reach out if she has any questions. It sets out that the applicant may be entitled to ACBs in the amount of up to $3,000 per month and also points the reader to further information and a video on its website. I find the respondent met its onus to provide the applicant with the necessary information required to apply for the benefits she may be entitled to.

[26] It is the applicant's testimony that her husband was her primary caregiver and her children, friends and neighbours assisted when needed. Throughout the hearing her husband testified that he was fortunate enough to have an executive position which allowed him to take paid time off of work to provide care giving services for his wife.

[27] Given the totality of the evidence before me I find the applicant has not proven she has incurred any ACB. In order for me to determine that ACB has been incurred, I would need to find that by providing care to the applicant, there was an economic loss to the person providing the care which I have no evidence of. As the applicant has not been able to point me to evidence that she complied with s. 3(7)(e) for proof of incurred, her request is denied.

[28] I also find the respondent did not unreasonably withhold the payment of attendant care benefits. The respondent appropriately advised the applicant as to how to apply for ACB pursuant to the *Schedule*, I find the applicant has not proved on a balance of probabilities the respondent neglected its duty.

Additional Psychological session time and costs of planning set out in OCF-18 dated April 21, 2025, is not reasonable or necessary

[29] I find on a balance of probabilities that the applicant has not established that the outstanding amount of $2,381.36 for the individual counselling sessions and session planning is reasonable and necessary.

[30] To receive payment for a medical benefit under s. 15 and s. 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.

Extended session time

[31] The applicant testified she suffered psychological impairments such as anxiety, depression, recurrent memories of the accident, nightmares, anger and has a pre-occupation with her safety. She also struggles with anxiety and worry as a passenger, pedestrian, and cyclist as a result of the accident and requires psychological treatment to overcome these impairments.

[32] Psychologist Dr. Jeremy Frank submitted an OCF-18 dated April 21, 2025, in the amount for $4,927.21 for psychological treatment which was partially approved by the respondent in the amount of $2,545.85. The areas of disagreement are the 1.5 hour sessions, [versus the 1 hour approved by the respondent], treatment planning costs and assessment, mental health and addictions.

[33] Noted in Dr. Frank's report is the applicant's pre-accident psychological history which included seasonal affective disorder, a history of depression, and pre-accident stress related to work and her aging parents. Her symptoms were well managed pre-accident with increased vitamin D intake and two sessions with a psychologist a year. He attributes the decline in her mental health strictly to the accident and opines the applicant requires 1.5 hours for each session, which is in accordance with the Guidelines for Assessment and Treatment in Auto Insurance Claims set by the Ontario Psychological Association (OPA, 2010) because of the presence of clinically significant posttraumatic stress symptomology. The goal of the sessions are to reduce phobic, posttraumatic stress, depressive and anxious symptomology.

[34] The applicant reported to Dr. Frank that she experienced worry and anxiety 40% of the time, occurring in intermittent episodes throughout the day. She has heightened concerns about potential dangers in the world, irrational dread, and she continues to worry about her parents' health, well being, and work responsibilities as she did pre-accident. Since the accident she reported she has been experiencing low mood approximately 10% of the time, and she has infrequent feelings of worthlessness (occurring about twice a month) and difficulties with concentration.

[35] Dr. Frank administered the following tests Personality Assessment Inventory (PAI), Depression Anxiety and Stress Scales (DASS-21), Pain Catastrophizing Scales (PCS), PTSD Checklist for DSM-5 (PLC-5) and Pre-Post Symptom Questionnaire. He opined the applicant falls short of meeting DSM-5 criteria for a posttraumatic stress disorder diagnosis, and if taken at face value the applicant's profile is not suggestive of a Post Traumatic Stress Disorder. however, he diagnosed her with Unspecified Trauma and Stressor-Related Disorder with significant features of Specific Phobia (Vehicle and cycling anxiety). He also found she meets the DSM-5 diagnosis of an adjustment disorder with anxiety, moderate in severity.

[36] The respondent argues the applicant's psychological impairments are not significant enough to require longer sessions. Her pre and post accident activities have not significantly changed according to her self-reporting to both assessors. In support of its position, it relies on the opinion of section 44 assessor Dr. Mehdi Lotfalizadeh, Psychologist who authored a report dated June 20, 2025.

[37] The applicant reported to Dr. Lotfalizadeh that she has been adversely affected since the accident. Her moods fluctuate, she has moments of hopelessness, and she has overwhelming anxiety. To cope with her psychological symptoms she works out, walks, listens to meditation tapes and continues to cycle and drive.

[38] Based on the assessment of the applicant Dr. Lotfalizadeh found on the General Anxiety Disorder – 7 (GAD-7) used to measure anxiety the applicant scored severe anxiety, on the QIDS-SR-16 it indicates she suffers a moderate level of depression and on the WHODAS 2.0 she suffers a mild level of disability. He opines the applicant does require psychological treatment but based on her scores he disagrees with the length of time per session proposed by Dr. Frank. It is his opinion that the severity of the applicant's psychological impairment is not severe enough to warrant one and a half hour sessions, she requires only one hour sessions. He further opines the recommended $847.79 for planning services should be included in the session planning and the mental health and addictions portion of the plan at $635.85 is unnecessary.

[39] I find the applicant is not entitled to the amount in dispute for her psychological treatments. The goals of the treatment plan are to decrease psychological problems and to return to activities of normal living. The applicant reported to both assessors that she continues to drive frequently, cycle, work, travel and her pre and post accident activities have not deviated far from her pre-accident activities. Both assessors have determined the applicant has psychological impairments however neither assessor found her overall psychiatric impairment to be severe.

[40] Dr. Frank determined the applicant fell short of meeting a DSM-5 diagnosis for post traumatic stress disorder and suffers a diagnosis of an adjustment disorder with anxiety, (moderate in severity) and Dr. Lotfalizadeh opined the applicant suffers severe anxiety, moderate depression and a mild level of psychological disability overall.

[41] Given the goal of the treatment plan is to decrease psychological problems and to return to activities of normal living I find the applicant has not substantiated that her psychological conditions are severe to the extent that an additional ½ hr per session is warranted. I find although the applicant was diagnosed with vehicle and cycling anxiety although cautious, she continues to cycle, drive and is a passenger in vehicles. She also continues to drive, travel, cycle, maintain the level of her current relationships and maintain her position as a high level executive. Further, a portion of her worry is focused on the health of her parents and work related issues which are not related to the accident and should not be accounted for in the treatment plan. Therefore, based on the evidence before me, I do not find the additional session time reasonable or necessary.

Treatment planning Service in the amount of $847.79

[42] Dr. Lotfalizadeh opined these fees are unreasonable and are not necessary. It is his opinion that these fees should be included in the session fees.

[43] The applicant bears the onus to establish that each portion of the treatment plan is reasonable and necessary and without any submissions from the applicant regarding the additional fees, she has not met her onus.

[44] I find that the applicant has not demonstrated, on a balance of probabilities, that she is entitled to the unapproved portion of $847.79 for treatment planning.

Assessment, mental health and addictions in the amount of $635.85

[45] The applicant has not met her burden to prove that the assessment, mental health and addictions portion of the treatment plan is reasonable or necessary.

[46] The applicant did not provide any submissions as to why this portion of the treatment is reasonable or necessary.

[47] Dr. Frank included the fee for assessment, mental health and addictions however, it is not clear as to why Dr. Frank finds this assessment is necessary. The respondent's assessor Dr. Lotfalizadeh opines that due to the low severity of the applicant's psychological impairments this treatment is not reasonable or necessary.

[48] I am not persuaded that this assessment is reasonable or necessary given the low severity of the applicant's psychological impairments, this portion of the plan is denied.

Outstanding amount of occupational therapy treatment plan is not reasonable or necessary

[49] An OCF-18 $5,886.00 was submitted by Occupational therapist Samantha Hanser for occupational therapy services which was partially approved by the respondent $4,688.75.

[50] The applicant did not provide submissions about the denied portion of the treatment plan.

[51] The respondent's assessor Ms. Angela Bertolo found the following requests within the OCF-18 are not reasonable or necessary. She opined three hours for documentation support activity is reasonable as opposed to eight hours and there isn't a reasonable explanation as to why disbursements and "preparation services" or "communication services" fees are being incurred. Based on her findings the respondent denied these portions of the OCF-18.

[52] Given that the applicant has not provided any explanation or evidence in support of the additional request for these fees, I cannot find it is reasonable or necessary.

[53] The applicant has not met her burden of proof that the denied portions of the treatment plan are reasonable or necessary.

Previously denied portion of OCF-6 has been paid

[54] It is the applicant's position that the denied portion for physiotherapy services in the amount of $199.50 submitted on an OCF-6 dated May 13, 2025, should be paid.

[55] The respondent gave submissions and referred me to evidence that in fact the OCF-6 has been paid with interest. The respondent sent the applicant a cheque in the disputed amount which was cashed on September 11, 2025. It argues that this matter should not be no longer in dispute. The applicant disagrees, she testified she cannot recall if she received or cashed a cheque from the respondent.

[56] According to a letter from the respondent dated July 9, 2025, the applicant's provider Iscope Concussion and Pain Centers ("Iscope") submitted to the respondent two separate OCF-6's both dated May 13, 2025. The respondent indicates in the letter that the corresponding invoices do not match with the treatment plan dates. Some invoices were missing and some were duplicative. The OCF-6 lists the treatment dates as Oct 27, 2022; Jan 10, 2023; Jan 31,

2023; Aug 23, 2023, but there were no invoices provided for Jan 10, 2023, and Aug 23, 2023. Duplicate invoices were submitted for: Oct 27, 2022 - Inv #1004396 and Jan 31, 2023 - Inv #1004, therefore the OCF-6's were partially approved less the portion of the invoices that were incorrect. The outstanding $199.50 was later paid by the respondent directly to Iscope on July 8, 2025, as indicated in a Standard Benefit Statement addressed to the applicant covering the period of May 29, 2025, to July 17, 2025.

[57] I find based on the evidence before me the denied portion of the OCF-6 has been paid directly to the treatment provider as indicated in the Statement of Benefits and this issue should not be in dispute. Accordingly, the applicant has not established that any amounts are outstanding on the OCF-6 dated May 13, 2025.

COSTS

[58] The applicant is not entitled to $1,500.00 in costs.

[59] The applicant requested costs pursuant to Rule 19.1 which allows for parties to request costs related to the proceeding, if they believe that the other party has acted unreasonably, frivolously, vexatiously, or in bad faith. Rule 19.4 further sets out the requirements for that request, which must include the reasons for the request and the particulars of the alleged conduct.

[60] The request for costs arises from the applicant's belief that the respondent denied her benefits early on focusing on the preliminary issue of whether or not this was an accident rather than providing her necessary benefits and assisting her with her healing process. She further submits the respondent's conduct prolonged the length of hearing.

[61] The respondent argues the applicant complicated the hearing by continuing to litigate an issue which was already paid and withdrew substantial issues at the doorstep of the hearing, costs should not be awarded.

[62] Pursuant to Rule 19.1 costs are to be awarded if a party has acted unreasonably, frivolously, vexatiously, or in bad faith during the proceeding. I am not persuaded of any conduct that rises to these levels or any behaviour that interfered with the Tribunal's ability to carry out a fair, efficient and effective process. I disagree with the applicant, the hearing proceeded as scheduled without any incident. Therefore, the applicant's request for costs is dismissed.

Interest

[63] Interest applies on the payment of any overdue benefits pursuant to s. 51 of the *Schedule.*

[64] As no benefits are owing, there is no interest payable.

Award

[65] 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.

[66] As no benefits are payable, the applicant has not established that the respondent unreasonably withheld or delayed the payment of benefits. Therefore, there is no basis for an award.

ORDER

[67] I find that:

i. The applicant is not entitled to the disputed amount of the attendant care benefit

ii. The applicant is not entitled to the balance of the treatment plans submitted;

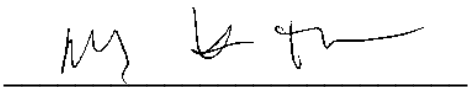
iii. The applicant has not established that any amounts are owing under the OCF-6;

iv. The applicant is not entitled to interest or an award;

v. Costs are not payable; and

vi. The application is dismissed.

Released: July 23, 2026



Mary Henein Thorn
Adjudicator