Tribunals Ontario | **Tribunaux décisionnels Ontario**

Licence Appeal Tribunal | Tribunal d'appel en matière de permis

Citation: Torrie v Aviva Insurance Company of Canada, 2026 ONLAT 25-003991/AABS

File Number: 25-003991/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:

Ann Torrie

Applicant

and

Aviva Insurance Company of Canada

Respondent

DECISION AND ORDER

ADJUDICATOR: **Bernard Trottier, Member**

APPEARANCES:

For the Applicant: Laura Blackshaw , Paralegal

For the Respondent: Jordan Hochman, Counsel

HEARD: **By written submissions**

OVERVIEW

[1] On July 5, 2022, Ann Torrie (the "applicant") was the seat-belted driver of her vehicle with three passengers in Orangeville, when another vehicle exited a shopping plaza. The applicant's vehicle struck the driver's side of the other vehicle. The applicant's airbags did not deploy. Police attended the scene, but paramedics did not. The applicant then drove away from the scene with her passengers and went to her destination as planned.

[2] The applicant had pre-accident medical conditions, including chronic neck and low back pain, sciatica, fibromyalgia and interstitial cystitis. Diagnostic imaging indicated that, pre-accident, the applicant had multilevel degenerative disc disease and disc protrusions in the lumbar spine. Her pre-accident medical history indicated that she had undergone past orthopedic procedures.

[3] The applicant sought benefits pursuant to the *Statutory Accident Benefits Schedule – Effective September 1, 2010 (including amendments effective June 1, 2016)* (the "*Schedule*"), from Aviva Insurance Company of Canada (the "respondent"). The parties agree that the Minor Injury Guideline is not in dispute. The parties dispute whether the proposed treatment and assessment plans are reasonable and necessary.

ISSUES IN DISPUTE

[4] The issues in dispute are:

1. Is the applicant entitled to $2,460.00 for an orthopaedic assessment, proposed by HydroHealth Evaluations Inc. ("HydroHealth") in a treatment and assessment plan/OCF-18 ("OCF-18") submitted August 24, 2023?

2. Is the applicant entitled to $2,652.10 for a chronic pain assessment, proposed by HydroHealth in an OCF-18 submitted August 8, 2023?

3. Is the applicant entitled to $2,038.50 for an attendant care assessment, proposed by HydroHealth in an OCF-18 submitted July 8, 2024?

4. Is the applicant entitled to interest on any overdue payment of benefits?

[5] In her written submissions, the applicant withdrew two issues that were listed in the Case Conference Report and Order of August 7, 2025, namely the issue of a disputed amount for psychological services and the issue of an award under s. 10 of Reg. 664.

RESULT

[6] The applicant is not entitled to the orthopaedic and chronic pain assessments in dispute.

[7] The applicant is entitled to the attendant care assessment in dispute, with interest.

ANALYSIS

Legal test and onus for "reasonable and necessary" under the Schedule

[8] To receive payment for an OCF-18 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 the OCF-18, how the goals would be met to a reasonable degree and that the overall costs of achieving them are reasonable.

[9] The disputed OCF-18s all pertain to assessments. Under s. 25 of the *Schedule*, an insurer is required to pay only for specific reports and assessments tied to statutory forms and determinations, including disability certificates, Minor Injury Guideline treatment confirmations, treatment plan review, attendant care needs assessments

(provided that they are reasonable and necessary), and catastrophic impairment applications.

The applicant is not entitled to an orthopaedic assessment

[10] The applicant directed me to the clinical notes and records (”CNRs”) of her family physician, Dr. Katie Awad of Orangeville Urgent Care Family Practice, indicating that, on July 13, 2022, she advised Dr. Awad that she was in a motor vehicle accident. Dr. Awad referred the applicant for physiotherapy for muscular pain. On July 15, 2022, the applicant followed up with Dr. Awad due to a sciatica flare-up.

[11] The applicant submits, further, that on July 21, 2022, her back pain worsened and she required an ambulance to Headwaters Health Care Centre in Orangeville. She was diagnosed with mechanical back pain and required a walker to ambulate.

[12] On October 26, 2022, with a referral from Dr. Awad, the applicant underwent magnetic resonance imaging (MRI) of her back, which revealed arthritis and a large bulging disc in the L5-S1 regions, causing impingement of the nerve roots.

[13] The applicant submits that she had persistent complaints of back pain, along with reduced tolerance for daily activities, as noted in the CNRs of Dr. Awad and Headwaters Health Care Centre. The applicant submits, further, that the insurer’s examination (“IE”) reports of Dr. Sabrina Ming-Wai Tu, general practitioner, and Dr. Iyswarya Bhaskar, neurologist, dated October 12, 2023 and February 16, 2024 respectively, confirmed that the applicant suffered from exacerbation of her pre-existing lower back pain. The applicant argues that an orthopaedic assessment is reasonable and necessary to evaluate the nature and extent of her ongoing musculoskeletal impairments and to assess her functional limitations.

[14] The respondent submits that the applicant had a long pre-accident history of musculoskeletal issues for which she had seen many healthcare practitioners. The applicant underwent a surgical repair of a foot fracture in 1994 and arthroscopic knee surgery for osteoarthritis in 1998. She was diagnosed with fibromyalgia in 1999, and

degenerative disc disease in 2015. Notably, the respondent submits that the applicant was involved in a motor vehicle accident on July 4, 2014, after which she was diagnosed with chronic neck and back pain, sciatica, sternum pain, trigeminal neuralgia and facial pain.

[15] The respondent submits that, under s. 47(2) of the *Schedule*, an insurer is not required to pay a medical or rehabilitation benefit if that benefit is reasonably available to the insured person under any insurance plan or law, including the Ontario Health Insurance Plan ("OHIP"). The respondent argues that Dr. Awad's CNRs indicate that she was seen by an orthopaedic surgeon in the past, and accordingly, she and Dr. Awad could have agreed to an OHIP-funded referral. The respondent argues that either Dr. Awad did not think such a referral was reasonable and necessary, or the applicant did not seek a referral because she herself did not think it was reasonable and necessary. The respondent argues that, in either instance, the orthopaedic assessment is not payable.

[16] The respondent argues, also, that the list of circumstances where an insurer is required to pay for an assessment under s. 25 of the *Schedule* is exhaustive, and it does not create a general entitlement to medical or rehabilitation assessments outside of the enumerated categories. The respondent argues that, because the disputed orthopaedic assessment is not tied to any of the circumstances specified in s. 25, the assessment is not payable.

[17] The Tribunal finds generally that, if an insurer demonstrates that a disputed medical benefit is reasonably available through OHIP or other collateral plan, the insurer is not required to pay the benefit. See, for example: *G.T. v. Unifund Assurance Company*, 2017 CanLII 81567 (ON LAT) ("*G.T.*"). While I am not bound by the decision in *G.T.*, I find it instructive regarding the onus of determining whether services can be obtained through OHIP in lieu of a private clinic. In *G.T.*, the Tribunal found that:

> an insurer must advance some evidence or submission that, on balance, establishes that the benefit at issue, whether in whole or in part, was reasonably

> available to the insured from a collateral provider [OHIP]. If an insurer has satisfied that onus, the burden then shifts to the insured to prove that the benefit at issue was not in fact reasonably available.

[18] In the present matter, I find that the respondent has advanced evidence that an orthopaedic assessment is available through OHIP, because the applicant has consulted with at least one OHIP-funded orthopaedic surgeon in the past. I accept that, had Dr. Awad thought another orthopaedic referral were required, she could have referred the applicant. I find that the applicant has not demonstrated that the orthopaedic assessment proposed by HydroHealth is not reasonably available through OHIP.

[19] I find, also, that the disputed orthopaedic assessment is not tied to the review of a treatment plan, or tied to one of the enumerated categories under s. 25 of the *Schedule*. I find that s. 25 is specific regarding the circumstances where an insurer is required to pay for an assessment, and that the proposed orthopaedic assessment does not fit one of those circumstances.

[20] For the reasons above, I find that the applicant has not demonstrated that the proposed orthopaedic assessment is reasonable and necessary, and therefore I find that it is not payable.

The applicant is not entitled to a chronic pain assessment

[21] The applicant argues that she suffers from chronic pain as a result of the accident, requiring the disputed chronic pain assessment to establish a current diagnosis and to develop recommendations for recovery. The applicant submits the following as evidence in support of the need for the assessment:

1. On March 8, 2023, she attended with Dr. Malalai Kamawi, chronic pain specialist with Pain Care Clinics in Orangeville, for a chronic pain assessment. The applicant was referred to Dr. Kamawi by Dr. Awad, through OHIP. Dr. Kamawi diagnosed the applicant with degenerative disease of the lumbar

spine, large disc extrusion at level L5-S1 regions causing nerve impingement and bilateral S1 pain. He diagnosed the applicant with chronic pain.

2. On January 28, 2024, Asad Sewani, nurse practitioner with Orangeville Urgent Care Family Practice, sent a referral to Dr. Jas, neurosurgeon, for a consultation related to chronic back pain radiating to both legs.

3. On April 29, 2024, the applicant attended an independent neurology assessment with Dr. Lance Majl, neurologist, who opined that the applicant sustained a moderate myofascial injury of the cervical and lumbar muscles, headaches and other pain symptoms. Dr. Majl suggested that the applicant receive a chronic pain assessment along with a multidisciplinary chronic pain program.

4. On September 26, 2024 and October 29, 2024, the applicant attended an assessment with Ms. Erin Langis, psychologist. Ms. Langis diagnosed the applicant with trauma and stressor-related disorder, persistent response to trauma with post-traumatic stress disorder-like symptoms, and somatic symptom disorder with predominant pain (moderate).

5. On November 24, 2024, the applicant attended with Dr. Awad with complaints of chronic headaches and chronic musculoskeletal pain.

[22] The applicant argues that the need for a chronic pain assessment is supported, specifically, by the reports of Dr. Majl and Ms. Langis, who recommended interdisciplinary pain management intervention.

[23] The respondent submits that the chronic pain assessment proposed by HydroHealth, on August 8, 2023, is a duplication of the chronic pain assessment conducted by Dr. Kamawi on March 8, 2023. The respondent argues that the applicant has not demonstrated how this assessment is different than the previous assessment, and therefore it is not reasonable and necessary under s. 15 and 16 of the *Schedule*.

[24] As with the disputed orthopaedic assessment, the respondent argues that a chronic pain assessment can be reasonably obtained through OHIP, via a referral from Dr. Awad or Ms. Sewani, or in a follow-up with Dr. Kamawi. The respondent argues that, under s. 47(2) of the *Schedule*, the proposed chronic pain assessment is not payable.

[25] Also, the respondent argues that the proposed chronic pain assessment is not tied to the review of a treatment plan or tied to one of the enumerated categories under s. 25 of the *Schedule*.

[26] I find that the applicant has not demonstrated that a second chronic pain assessment, proposed just four months after the assessment by Dr. Kamawi, is essential for the treatment of the applicant, and therefore it is not reasonable and necessary under s. 15. I find also that, if a second opinion regarding chronic pain were deemed reasonable and necessary by Dr. Awad or Ms. Sewani, they could make referrals under OHIP as they did before. Lastly, I find that the proposed chronic pain assessment is not related to the review of a treatment plan of one of the enumerated categories under s. 25. For these reasons, I find that the proposed chronic pain assessment is not payable.

The applicant is entitled to an attendant care assessment

[27] The applicant submits that an attendant care assessment is supported by the report of Dr. Majl, who opined that the applicant continued to suffer from multiple impairments that prevented her from performing personal care tasks, housekeeping and home maintenance.

[28] The applicant submits that the need for an attendant care assessment is further supported by the report of Ms. Langis, who noted that the applicant had trouble performing her activities of daily living, including self-care, cleaning, cooking, laundry, household chores and pet care. Ms. Langis noted that, since the accident, the applicant relied on the support of family members and friends for these tasks.

[29] The applicant argues that an attendant care assessment is reasonable and necessary to determine her current, future and/or past needs for attendant care due to her struggles with her daily activities.

[30] The respondent submits that the applicant had another accident on March 28, 2023 (the “second accident”), which appears to have been more severe than the July 5, 2022 accident (the “index accident”). For the second accident, the CNRs of Dr. Awad indicate that the applicant went to the hospital emergency by ambulance, after a report of going into a ditch and hitting her forehead on the steering wheel, with headaches and right shoulder pain. The second accident was not reported to the respondent for any accident benefits claims.

[31] The respondent submits that Dr. Majl, despite reviewing the applicant’s medical records, does not mention the second accident in his report, whether as a potential cause of injury or merely as an event. The respondent submits, also, that Ms. Langis’s report notes that the second accident occurred, but its impact is not analyzed. The respondent argues that Dr. Majl’s and Ms. Langis’s reports should be given little weight because of these omissions.

[32] The respondent submits that the applicant has not provided any evidence of a recommendation for attendant care in her medical records. The respondent argues, also, that the applicant has not led evidence that the index accident was the cause of her alleged impairments related to daily living activities, as opposed to her numerous pre-existing conditions or the second accident.

[33] The respondent relies on a second IE report of Dr. Ming-Wai Tu, dated September 19, 2024, where she found no residual musculoskeletal impairments resulting from the index accident, and concluded that the applicant’s injuries were limited to uncomplicated soft tissue injuries and an acute exacerbation of her chronic low back pain. Dr. Ming-Wai Tu opined that the applicant’s diagnostic imaging reflected chronic degenerative changes, and that she found no trauma from the index accident. She

opined that the applicant had achieved maximum medical improvement from a musculoskeletal perspective.

[34] Dr. Ming-Wai Tu reported that the applicant presented with significant guarding, self-limitation, and inhibition of effort throughout the IE, with magnification of non-organic pain symptoms. The applicant was noted to have increased range of motion, fluidity and strength on informal observation compared to formal testing, with positive Waddell signs for overreaction on examination of the lumbar spine. Dr. Ming-Wai Tu concluded that the applicant's pain complaints were based on psychological, emotional, and neurophysiological factors, rather than anatomical factors, and she found significant reasons to doubt the veracity of the applicant's claims of her attendant care needs. Dr. Ming-Wai Tu opined that attendant care was not reasonable and necessary as a direct result of the index accident from a musculoskeletal perspective, and neither was the attendant care assessment.

[35] Lastly, the respondent submits that the cost of the proposed attendant care assessment is unreasonable. It argues that the Financial Services Commission of Ontario *Professional Services Guideline* provides for a maximum hourly rate of $99.75 for occupational therapists, and it estimates that it would take six to ten hours to conduct the assessment and prepare a report, resulting in a fee that would be less than half of the $2,038.50 proposed.

[36] I find that the reports of Dr. Majl and Ms. Langis identify that the applicant was impaired in her ability to perform personal care, housekeeping and home maintenance tasks. I find that none of the assessors, including Dr. Ming-Wai Tu, were able to determine the extent to which the impairments were caused by the applicant's pre-existing conditions, the index accident, or the second accident. I do not assign less weight to the reports of Dr. Majl or Ms. Langis, because I have no evidence before me that assigns definitive causation of the applicant's pain complaints.

[37] I find that although Dr. Ming-Wai Tu identified symptom magnification during her IE, she acknowledged that the applicant suffered from acute exacerbation of her chronic

low back pain. Dr. Ming-Wai Tu also recognized that the applicant's pain complaints could be due to neuropsychological factors.

[38] I find that it is not material that there is no mention of attendant care needs in the applicant's medical records, such as the CNRs of Dr. Awad, because her discussions with her family physician would be focused on her near-term medical needs and services available through OHIP, which would not include attendant care.

[39] I find that the applicant has demonstrated that she may have attendant care needs because of her chronic pain and the exacerbation of her chronic low back pain. I find that she is entitled to attendant care assessment to the determine the extent of those needs.

[40] I find that the OCF-18 proposes to conduct an assessment, including an interview covering relevant social history, accident details, post-accident injury diagnosis, current medical conditions, rehabilitation efforts and functional capacity of the applicant's daily living. The assessor would then prepare a report and a Form 1. I make no finding on the specific number of hours required to complete this work. Put another way, the respondent has not presented specific evidence on what the cost of an attendant care assessment should be. I find that the proposed scope of work and cost of the assessment is not unreasonable compared to similar assessments that the Tribunal sees.

[41] I find that the applicant has demonstrated, on a balance of probabilities, that she is entitled to an attendant care assessment and that the proposed cost of the assessment is reasonable in the circumstances.

Interest

[42] Interest applies on the payment of any overdue benefits pursuant to s. 51 of the *Schedule*. I find that the payment for the attendant care assessment should have been made when the OCF-18 was submitted to the respondent on July 8, 2024. I find that the applicant is entitled to interest at a rate of 1% per month, compounded monthly, on amounts then owing.

[43] Because I have found that the orthopaedic assessment and the chronic pain assessment are not payable, no interest is payable for these OCF-18s.

ORDER

[44] The applicant is not entitled to the orthopaedic and chronic pain assessments in dispute.

[45] The applicant is entitled to the attendant care assessment in dispute, with interest.

Released: August 11, 2026

Bernard Trottier
Member