Tribunals Ontario | **Tribunaux décisionnels Ontario**

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

2026 CanLII 118426 (ON LAT)

Citation: Ayotte v Co-operators General Insurance Company, 2026 ONLAT 25-004630/AABS

File Number: 25-004630/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:

Joseph Ayotte

Applicant

and

Co-operators General Insurance Company

Respondent

DECISION AND ORDER

ADJUDICATOR: Sarah Guergis, Member

APPEARANCES:

For the Applicant: Sandra Train, Counsel

For the Respondent: Jennifer Griffiths, Counsel

HEARD: **by written submission**

OVERVIEW

[1] Joseph Ayotte, the applicant, was involved in an automobile accident on May 26, 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, Co-operators General Insurance Company, and applied to the Licence Appeal Tribunal - Automobile Accident Benefits Service (the "Tribunal") for resolution of the dispute.

[2] The applicant was struck by a car while riding his bicycle at 13 years of age. An urgent transfer was arranged by ORNGE air ambulance to the Hospital for Sick Children in Toronto, Ontario, for neurosurgical consultation and emergency management. The applicant continued to require ongoing follow-up with his family physician and multiple specialists, including neurosurgery, plastic surgery, neurology, neuro-ophthalmology, and otolaryngology. The applicant submits that he was deemed catastrophic ("CAT") due to a severe brain injury.

[3] The respondent submits that it approved all treatment sought by the applicant and the sole issue in dispute between the parties relates to the appropriate hourly rate for the payment of case management services provided by Kim Doogan, social worker, in connection with three treatment plans dated February 25, 2022, June 1, 2022, and July 11, 2023.

[4] The applicant submits that the higher hourly rate for the social worker is reasonable and that the respondent's explanation of benefit letters ("EOBs") were not compliant with s. 38 of the *Schedule*.

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ISSUES IN DISPUTE

[5] The issues in dispute are:

1. Is the applicant entitled to $2,527.97 ($7,813.54 less $5,285.57 approved) for case management services, proposed by Kim Doogan of Focus Rehab in a treatment plan/OCF-18 (“plan”) dated February 25, 2022?

2. Is the applicant entitled to $4,276.07 ($12,979.09 less $8,703.02 approved) for case management services, proposed by Kim Doogan of Focus Rehab in a treatment plan/OCF-18 dated June 1, 2022?

3. Is the applicant entitled to $3,878.60 ($11,738.62 less $7,860.02 approved) for case management services, proposed by Kim Doogan of Focus Rehab in a treatment plan/OCF-18 dated July 11, 2023?

4. Is the respondent liable to pay an award under s. 10 of Reg. 664 because it unreasonably withheld or delayed payments to the applicant?

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

RESULT

[6] I find that the outstanding amount of the plans in dispute is not payable.

[7] I find that no interest is owing.

[8] I find that no award is owing.

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ANALYSIS

Hourly Rate of the Social worker

[9] I find that the applicant has not met his onus to establish that the higher hourly rate of $134.17 for Ms. Doogan's services is reasonable and necessary because he has not pointed me to evidence which would establish that the case management services in dispute had to be provided by a social worker with Ms. Doogan's experience, at a higher hourly rate than is set out in the Financial Services Commission of Ontario (FSCO) Professional Services Guideline 03/14 (the "PSG").

[10] The PSG dated September 2014 lists case managers as unregulated providers and lists two maximum hourly rates: $58.19 for non-catastrophic impairments and $89.07 for catastrophic impairments. Since the PSG is silent on the maximum hourly rate for a social worker, it is left to the parties to determine what the acceptable hourly rate would be, and if they are unable to do so, the Tribunal must decide. The onus is on the applicant to demonstrate that the proposed rate is appropriate on the basis of the provider's education, training, and experience.

[11] The applicant submits that Ms. Doogan's expertise as demonstrated by her curriculum vitae justifies payment at the hourly rate claimed and the hourly rate for case management set out in the PSG is outdated and the amount proposed by the respondent was arbitrarily fixed at the applicant's expense.

[12] Upon review of Ms. Doogan's curriculum vitae, she has a Master of Social Work degree, certification as a Canadian Certified Life Care Planner, a certificate in trauma counselling for front-line workers, and management and leadership training from recognized institutions. The applicant also relies on Ms. Doogan's registration with the Ontario College of Social Workers and Social Service Workers, and her continuous professional experience in the field since 1991 to submit that her proposed hourly rate is reasonable.

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[13] The applicant further submits that the respondent already agreed to pay this rate for case management services, notwithstanding that $109.24 exceeds the maximum rate of $58.19 set out in the PSG, and accordingly, neither the *Schedule* nor the PSG is available as a defence to the respondent.

[14] The applicant submits that the minimum reasonable hourly rate for social workers acting as case managers in catastrophic cases should similarly increase from $100.00 to $153.00 per hour**,** applying the methodology used in the PSG where the rate for unregulated professionals in catastrophic cases is increased by 53%, from $58.19 to $89.07. The applicant submits that, therefore, Ms. Doogan's requested rate of $134.17 per hour is reasonable because it is below this benchmark.

[15] The applicant relies on *Breault v CAA Insurance Company*, 2025 CanLII 72418 (ON LAT), where Adjudicator Szczudlo approved a higher hourly rate of $134.17 per hour for case management services provided by Ms. Doogan. In this case, Adjudicator Szczudlo stated, "I am persuaded by Ms. Doogan's credentials and do not accept that an effective case manager for a polytraumatic client is simply a co-ordinator/administrator to be compensated at a lower rate detached from their rate as a registered professional."

[16] The respondent submits that the cases relied upon by the applicant do not support their conclusion. Rather, the social workers in question were providing clinical social work treatment, and therefore, those cases are of no application to the issue presently before the Tribunal.

[17] The respondent submits that although it initially approved the first case management plan at an hourly rate of $109.24 in its letter dated March 3, 2022, this position was quickly amended by letters dated March 13, 2022, and June 21, 2022. It submits that these subsequent letters confirmed its willingness to fund case management services at the rate of $89.07 consistent with the maximum rate payable for such services in the PSG.

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[18] The respondent further submits that no evidence was provided by the applicant to establish that his parents went into debt to incur the shortfall in the social worker's hourly rate, nor that Ms. Doogan's experience adds "significant value" to his care.

[19] I find the applicant has not met his onus to demonstrate that the proposed higher hourly rate for case management services is reasonable and necessary. The applicant has not provided compelling evidence which would establish that Ms. Doogan's services at a higher hourly rate were required in this case.

[20] I acknowledge that Ms. Doogan is accomplished in her field, however, it is not clear why her expertise is required in this case. For example, in *Breault*, Adjudicator Szczudlo, had clear and persuasive evidence that Ms. Doogan was performing more than simple co-ordination or administrative work, for which her expertise was required. In this case, that was not made clear to me by the applicant.

[21] Further, I acknowledge the applicant's submissions regarding the respondent's initial agreement to pay $109.24, before changing its decision. However, I find that the initial agreement does not beholden the respondent to pay a higher hourly rate, nor does it restrict the respondent from using the *Schedule* or PSG as a defence. Nor has the applicant pointed me to any authority which would establish the respondent's inability to change their mind on the hourly rate.

[22] I acknowledge that the applicant also relies on *R.O. v Aviva Insurance Company of Canada*, 2019 CanLII 122721 (ON LAT) and *S.K. v Aviva Insurance Canada, 2020* CanLII 43700 (ON LAT), and submits that in these cases, the Tribunal has accepted an hourly rate of $130.00 and $135.00 for social workers, however, I am not bound by these decisions.

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[23] I find that the respondent identified the grounds on which it changed its decision regarding the payable hourly rate and communicated this to the applicant in a timely and clear manner. Further, this does not speak to the test for entitlement, which is the applicant's onus to demonstrate the reasonableness and necessity of the higher hourly rate.

[24] I do not find that the applicant has met his onus to prove, on a balance of probabilities, that $130.00 or $134.17 per hour for case management services to be provided by a social worker is reasonable and necessary.

[25] I acknowledge the applicant's submission that the rate of $134.17 per hour is reasonable because the rate for unregulated professionals in catastrophic cases is increased by 53% according to the PSG. However, I agree with the respondent that the specific provision from the PSG being referred to, refers to services not covered by the guideline, and in this case, case management services were being provided and are covered by the PSG.

[26] Therefore, I do not find the outstanding amount of these treatment plans to be payable based on the higher hourly rate requested by the applicant.

S. 38

[27] I find that the outstanding amounts of the treatment plans in dispute are not payable pursuant to s.38(8) of the *Schedule.*

[28] Sections 38(8) and 38(11) of the *Schedule* set out strict notice requirements for insurers responding to treatment plans and specific consequences if they fail to comply. Section 38(8) requires an insurer to inform an insured person within ten business days after it receives an OCF-18 which goods, services, assessments, and/or examinations it agrees to pay for, and which it does not, as well as the medical and other reasons why it considered any of the goods or services to not be reasonable and necessary.

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[29] If any insurer fails to comply with its obligations under section 38(8), the following consequences set out in section 38(11) of the *Schedule* are triggered:

i. The insurer is prohibited from taking the position that the insured person has an impairment to which the Minor Injury Guideline applies.

ii. The insurer shall pay for all goods, services, assessments, and examinations described in the treatment and assessment plan that relate to the period starting on the 11th business day after the day the insurer received the application and ending on the day the insurer gives a notice described in subsection (8).

[30] The applicant relies on *T.F. v. Peel Mutual Insurance Company*, 2018 CanLII 39373 (ON LAT) where the Tribunal held that the respondent's "medical and any other reasons" should be clear and sufficient enough to allow an unsophisticated person to make an informed decision to either accept or dispute the decision at issue. Only then will the explanation serve the *Schedule*'s consumer protection goal.

[31] The applicant submits that the respondent relied on boilerplate, non-specific language in its EOBs, stating only that social workers are not listed as regulated health professionals under the PSG and that it would pay an hourly rate of $109.24 instead of the claimed $134.17.

[32] Further, that in its EOB dated March 3, 2022, it failed to recognize the applicant's medical condition or identify any missing information and did not provide clear or sufficient reasons to permit an informed decision. Further, that this error was repeated in its EOB dated June 21, 2022, while further reducing the hourly rate to $89.07, and in the EOB dated July 13, 2023.

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[33] In its denial letters the respondent outlined that “although an hourly fee of $134.17 has been requested, social workers do not appear as a Regulated Health Care Professionals in the Professional Services Guideline and as such, an established rate of pay is not found therein. However, in the interest of providing a contribution towards your treatment, approval was being provided at the hourly rate of $109.24, which is in keeping with the level of education of the provider and other Health Care Professionals listed in the above Guideline.”

[34] I find the respondent’s EOB letters dated March 3, 2022, June 21, 2022, and July 13, 2023, are compliant with the requirements under section 38(8) of the *Schedule.* The correspondence clearly states what is in dispute, in this case the hourly rate of the social worker, provides reasons for the approval of the lower hourly rate, and it allows an unsophisticated person to understand the denial and make an informed decision. I find that in this case, medical reasons for denial would be moot, as the respondent was not denying this plan based on medical reasons.

[35] Further, the *Schedule*, allows for “other” explanations for denial, which I find are applicable in this case.

[36] Therefore, the outstanding amounts of the treatment plans in dispute are not payable due to the respondent’s failure to comply with s. 38(8) of the *Schedule*.

Interest

[37] As the outstanding amounts of the plans in dispute are not payable, no interest is owing on these outstanding amounts.

Award

[38] I find the applicant is not entitled to an award because the respondent agreed to pay for the applicant’s proposed treatment, and the denial of the outstanding amount of the plans in dispute regarding the hourly rate of the social worker does not amount to an unreasonable withholding of payment.

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[39] The applicant seeks an award under section 10 of Regulation 664. Under section 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 Tribunal has determined that an award is justified where the delay or withholding of benefits by the insurer is unreasonable conduct, meaning “behaviour, which is excessive, imprudent, stubborn, inflexible, unyielding or immoderate.” The onus is on the applicant to prove, on a balance of probabilities, that the respondent’s conduct meets this threshold.

[40] The applicant submits that as a result of this improper denial, his parents had to go into debt to fund the shortfall between what the respondent paid and what Ms. Doogan’s rate was, to ensure their son had the best care when he needed it the most. The applicant argues that the behaviour by an insurer in withholding payments can be seen as behaviour, which was excessive, imprudent, stubborn, inflexible, unyielding, or immoderate. Taken in totality, these factors should persuade the Tribunal to order an award of 50 per cent on the total medical and rehabilitation benefits owing plus interest.

[41] As the outstanding amount of the plans in dispute are not payable and the respondent agreed to pay for the proposed treatment, I find no benefits were withheld or delayed. Therefore, the respondent’s behaviour does not amount to being imprudent, inflexible, or unyielding.

[42] I find the applicant is not entitled to an award.

ORDER

[43] For the following reasons I find that:

1. The outstanding amount of the treatment plans in dispute is not payable.

2. No interest or award are owing.

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3. This application is dismissed.

Released: October 30, 2026

Sarah Guergis
Member

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