



**Citation: Liu v. TD Insurance Meloche Monnex, 2022 ONLAT 20-009761/AABS**

**Licence Appeal Tribunal File Number: 20-009761/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:

**Wei Liu**

**Applicant**

and

**TD Insurance Meloche Monnex**

**Respondent**

**DECISION**

**ADJUDICATOR: Lyndra Griffith**

**APPEARANCES:**

**For the Applicant: Yu Jiang, Counsel**

**For the Respondent: Andrew Cottreau, Counsel**

**HEARD: By way of written submissions**

## BACKGROUND

- [1] The applicant, Wei Liu, was involved in an automobile accident on February 25, 2018. His vehicle was suddenly rear-ended by another vehicle while stopped before an intersection. The applicant sought benefits pursuant to the *Statutory Accident Benefits Schedule - Effective September 1, 2010 ("Schedule")*.<sup>1</sup> The applicant was denied certain benefits by the respondent, TD Insurance Meloche Monnex ("TD"), and submitted an application to the Licence Appeal Tribunal - Automobile Accident Benefits Service ("Tribunal") for resolution of the dispute.
- [2] TD denied the applicant's claims because it took the position that the disputed treatment plans are not reasonable and necessary.

## ISSUES

- [3] The issues I am asked to determine are:
1. Is the applicant entitled to \$1,768.00 for chiropractic treatment recommended by Easy Health Centre in a treatment plan (OCF-18) submitted on June 29, 2018, and denied on October 17, 2018?
  2. Is the applicant entitled to \$1,768.00 for chiropractic treatment recommended by Easy Health Centre in a treatment plan (OCF-18) submitted on March 1, 2019, and denied on March 6, 2019?
  3. Is the applicant entitled to interest on any overdue payment of benefits?

## RESULT

- [4] Based on the evidence before me, I find that the applicant is entitled to the two treatment plans in dispute for chiropractic treatment.
- [5] As a result, the applicant is entitled to interest for the treatment plan that was found to be reasonable and necessary pursuant to s. 51 of the *Schedule*.

## BACKGROUND

- [6] Shortly after the accident, the applicant started receiving physiotherapy treatments including chiropractic and massage therapy. He started attending twice a week and later reduced his attendance to once every two weeks.

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<sup>1</sup> O. Reg. 34/10, as amended.

- [7] The applicant's accident-related physical complaints include neck, shoulder, and back pain, and headaches. He was prescribed pain medication by his family doctor, Dr. Yeung.
- [8] The applicant was removed from the Minor Injury Guideline following a psychological diagnosis in a psychological insurer's examination report dated June 11, 2019.

## LAW AND ANALYSIS

### The Applicant's entitlement to \$1,768.00 for chiropractic treatment

- [9] I find on the evidence that the applicant is entitled to the treatment plan for a chiropractic treatment, as it is reasonable and necessary.
- [10] In order for the applicant to receive payment for a medical or rehabilitation benefit under the *Schedule*, the benefit in dispute must be reasonable and necessary, pursuant to s. 14-16. On June 29, 2018, chiropractor Dr. Donald Shin recommended 8 sessions of chiropractic treatment, 8 sessions of FC, TENS, Electrotherapy, 8 sessions of acupuncture, for a total of \$1,768.00. Dr. Shin noted in the OCF-18 that the applicant showed 65% improvement and would require further treatments. The goals of the OCF-18 were pain reduction, increased range of motion and to increase his strength.
- [11] The applicant saw his family doctor Dr. Yeung on several occasions and the following was noted:
- i. March 22, 2018 - neck, mid back, and top of shoulder pain. got hit from behind Feb 26, went to get tx twice per week, still neck and mid back pain and top of shoulder tender at bases of neck, mid thoracic spine and top of bil shoulders Rom fair.
  - ii. On June 19, 2018 - MVA Feb 2018...Still c spine pain and bilat shoulder pain esp left side..massage 1/w..never had similar injury before...tender on left trapezium ..a MSK pain and physio
  - iii. August 14, 2018 - Feb 2018 MVA upper back pain chronic...MSK pai... chronic bilat knee pain esp medial side...exercise
  - iv. September 11, 2018 - "chronic upper back pain".
- [12] Dr. Manhas completed a Family Medicine Insurer Examination Report dated October 2, 2018, in which he noted that the applicant "has a high self-perceived

extent of disability, pain behaviour, self-restricted range of motion and inconsistency on physical examination, which affects his true level of function.” Dr. Manhas opined that the OCF-18 in dispute is not reasonable and necessary, as the applicant has received maximal benefit from facility-based treatment, and further treatment, is not expected to provide any additional benefit. Dr. Manhas encouraged the applicant to continue with a home-based, self-directed exercise program for further gains.

- [13] Dr. Manhas diagnosed the applicant with associated cervicogenic headache, whiplash associated disorder (WAD II), left shoulder sprain and strain, thoracic spine sprain and strain, and lumbar spine sprain and strain. Dr. Manhas has concluded that the injuries noted fall under the definition of a Minor Injury.
- [14] The applicant reported to psychologist Dr Kelley in a Psychological Insurer’s Examination report dated September 18, 2018: “Physical therapy has been helpful for me. It helps to alleviate my pain”.
- [15] The applicant submits pain relief in and of itself can be a legitimate medical and rehabilitative goal, and is therefore reasonable and necessary, even if it does not promote recovery. The applicant relies on *16-003460 v The Dominion of Canada General Insurance Company* which stated that “pain relief is a valid medical care goal that insurers may be required to pay for.”
- [16] The TD submits that prior to attending the Insurer Examination, the applicant saw his family doctor again on three occasions: June 19, 2018, August 14, 2018, and September 11, 2018. There were no recommendations for massage or chiropractic care. TD submits that the August 14, 2018, clinical note ends noting “exercise”, suggesting a recommendation for exercise.
- [17] Based on the medical evidence before me, I am persuaded by the applicant’s evidence that on a balance of probability, the treatment plan for chiropractic treatment is reasonable and necessary. The applicant reported to his family doctor on several occasions that he was suffering from neck, shoulder and back pain as a result of the accident. Dr. Yeung noted that the applicant’s upper back pain was chronic. One of the goals of the OCF-18 is to reduce pain. The applicant reported to Dr. Pojhan (see below) that massage and chiropractic treatments help relieve his pain to some extent. I accept the applicant’s statement to Dr. Pojhan that physical therapy including chiropractic treatment and massage helped to reduce his pain.
- [18] I disagree with the TD’s characterisation of the applicant’s family doctor’s records. Although there were no recommendations for massage or chiropractic

care, there were multiple references to the applicant suffering from chronic back pain and on June 19, 2018 “massage 1/w” was noted. TD had approved a treatment plan for chiropractic services and massage on May 11, 2018, and this may be what the “massage 1/w” reference is about. It is clear that physical therapy was discussed with Dr. Yeung shortly before this treatment plan was recommended on June 29, 2018. Based on the medical note alone, it is unclear what the reference to massage is about without the proper context. TD is suggesting that because there is a notation in Dr. Yeung’s clinical notes and records on August 14, 2018, stating “exercise”, this meant he was recommending that the applicant exercise instead of facility-based treatment for his accident-related pain. TD also submits that “In agreement with the family doctor”, Dr. Manhas recommended the applicant should continue treatment with self-directed exercise program, and that further chiropractic and massage therapy was not reasonable and necessary. This statement would suggest that the applicant’s family doctor thought that further chiropractic and massage treatment was not reasonable and necessary. There is no evidence that the applicant’s family doctor made such a conclusion.

- [19] In reading the Dr. Yeung’s clinical notes, his reference to “exercise” may be in relation to the applicant’s blood pressure as the applicant was using a home blood pressure monitor and was advised to cut down on salt. Dr. Yeung’s notes are simply not clear as to what exactly he his referring to when he made his “exercise” reference. It is clear however that Dr. Yeung considered the applicant’s upper back pain to be chronic. It is more likely that Dr. Yeung did not make any recommendations for massage or chiropractic treatment because he was under the impression that he was already receiving treatment at Easy Health Centre.

### **The Applicant’s entitlement to \$1,768.00 for chiropractic treatment**

- [20] I find on the evidence that the applicant is entitled to the treatment plan for a chiropractic treatment, as it is reasonable and necessary.
- [21] On March 1, 2019, chiropractor Dr. Shin submitted an OCF-18 recommending the same treatment as in the previous OCF-18 dated June 29, 2018. The OCF-18 recommended 8 sessions of chiropractic treatment, 8 sessions of FC, TENS, Electrotherapy, 8 sessions of acupuncture, for a total of \$1,768.00. The goals of the OCF-18 were pain reduction, increased range of motion and to increase his strength. The OCF-18 noted that at the end of the previous treatment plan, the applicant’s range of motion had improved, and his associated pain had reduced.

- [22] TD denied the treatment plan on March 6, 2019, on the bases on the findings in the October 2, 2018, insurer examination (discussed above), which had concluded that the applicant's injuries were within the MIG.
- [23] The applicant saw psychiatrist Dr. Lowe on April 29, May 6 and June 3, 2019, for a psychiatric assessment. In his report dated June 13, 2019, Dr. Lowe diagnosed the applicant with chronic pain and Major Depressive Disorder. Dr. Lowe noted that the applicant has been going to physiotherapy once every two weeks and still has pain in in his neck, back and shoulder and left arm. The applicant rated his accident-related pain as 8/10.
- [24] On May 21, 2019, the applicant consulted Dr. Yeung and he noted "since MVA upper back and C spine left shoulder pain and shoulder pain"
- [25] In June 2019, the applicant underwent a psychological assessment with psychologist Dr. Mehrdad Pojhan. Dr. Pojhan noted that the applicant complained of frequent pain in his neck, lower back, left shoulder, and left hand, as well as low mood and travel anxiety. Dr. Pojhan diagnosed the applicant with Major Depressive Disorder, and Somatic Symptom Disorder with Predominant Pain. Dr. Pojhan also noted that he was receiving physiotherapy treatments every two weeks including massage, chiropractic treatment, TENS as well as exercise. The applicant reported to Dr. Pojhan that massage and chiropractic treatments help relive his pain to some extent.
- [26] TD submits that the undisputed objective evidence is that the proposed treatment is not reasonable and necessary. The G.P. Insurer Assessor, family doctor, and OHIP-funded psychologist all appear to have been in agreement that applicant needed exercise for further treatment and gains.
- [27] TD also submits that there are no clinical notes, records, or reports recommending the proposed treatment in dispute. TD relies on *Corpuz v. Aviva General Insurance*<sup>2</sup>, which states "An applicant's evidentiary onus is not discharged by relying on the treatment plan itself. OCF-18 itself is not evidence of the necessity of the treatment plan. It is well-established in the case law that contemporaneous corroborating medical evidence is required to establish entitlement to medical benefits."
- [28] Based on the medical evidence before me, I am persuaded by the applicant's evidence that on a balance of probability, the treatment plan for chiropractic treatment is reasonable and necessary for the same reasons described above.

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<sup>2</sup> *Corpuz v. Aviva General Insurance*, 2021 CanLII 18909 (ON LAT) at para 17.

Furthermore, Dr. Lowe diagnosed the applicant with chronic pain and Dr. Pojhan diagnosed him Somatic Symptom Disorder with Predominant Pain. I find these diagnoses to be sufficient contemporaneous corroborating medical evidence that this treatment plan was reasonable and necessary at the time it was requested. I don't find it unreasonable that none of these medical professionals did not make any recommendations for physical therapy as the applicant had reported that he was receiving physical therapy at the time these assessments were conducted.

[29] I disagree with TD's characterization of the evidence that the applicant's family doctor, and the OHIP-funded psychologist appear to have been in agreement that the applicant needed exercise for further treatment and gains. Exercise can be beneficial for many reasons, and I don't think these medical professionals were suggesting that the applicant only exercise and not seek other forms of physical therapy.

## **CONCLUSION**

[30] For the reasons outlined above, I find that the applicant has demonstrated that he is entitled to the two treatment plans in dispute for chiropractic treatment.

[31] Interest is payable for the treatment plan that was found to be reasonable and necessary pursuant to s. 51 of the *Schedule*.

**Released: April 11, 2022**



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**Lyndra Griffith  
Adjudicator**