Citation: Li v. Security National Insurance Company, 2025 ONLAT 23-004157/AABS

Licence Appeal Tribunal File Number: 23-004157/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:

Yu Zheng Li

Applicant

and

Security National Insurance Company

Respondent

DECISION

ADJUDICATOR: **Amar Mohammed**

APPEARANCES:

For the Applicant: Sareena Samra, Counsel

For the Respondent: Sonya Katrycz, Counsel

HEARD: **By Way Of Written Submissions**

OVERVIEW

[1] Yu Zheng Li, the applicant, was involved in an automobile accident on October 8, 2017, 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, Security National Insurance Company, 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 an income benefit replacement ("IRB") in the amount of $47.26 per week from August 18, 2022 to January 17, 2023?

2. Is the applicant entitled to an IRB in the amount of $57.51 per week from January 18, 2023 to January 31, 2023?

3. Is the applicant entitled to an IRB in the amount of $157.63 per week from February 1, 2023 to date and ongoing?

4. Is the applicant entitled to $2,872.80 ($8,339.60 less $5,466.80 approved) for occupational therapy services, proposed by UHeal Rehab Centre ("URC") in a treatment plan/OCF-18 ("treatment plan") submitted March 21, 2022?

5. Is the applicant entitled to $6,019.04 for physiotherapy services, proposed by URC in a treatment plan submitted November 14, 2022?

6. Is the applicant entitled to $3,981.88 for psychological services, proposed by Somatic Assessments & Treatment Clinic ("SATC") in a treatment plan submitted July 14, 2021?

7. Is the applicant entitled to $1,218.86 ($7,873.43 less $6,654.60 approved) for occupational therapy services, proposed by SATC in a treatment plan submitted May 25, 2022?

8. Is the applicant entitled to $400.00 for housekeeping and home maintenance, proposed by SATC in a treatment plan submitted December 23, 2022, and denied December 23, 2022?

9. Is the applicant entitled to attendant care benefits ("ACB") in the amount of $2,610.30 per month from March 1, 2022, to March 31, 2022?

10. Is the applicant entitled to ACB in the amount of $5,650.00 per month from April 1, 2022, to December 31, 2022?

11. Is the applicant entitled to ACB in the amount of $6,000.00 per month from January 1, 2023, to January 31, 2023?

12. Is the applicant entitled to ACB in the amount of $5,650.00 per month from February 1, 2023, to February 28, 2023?

13. Is the applicant entitled to ACB in the amount of $6,000.00 per month from March 1, 2023, to March 31, 2023?

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

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

[3] Issue 13 was amended, on consent, to limit the end date to March 31, 2023.

RESULT

[4] The applicant has established entitlement to ACBs between March 21, 2022 to March 31, 2023, at the rates set out in the Form-1, dated March 18, 2022, listed as issues 9-13, plus interest, pursuant to s. 51 of the *Schedule*.

[5] The respondent is liable to pay an award of 10% and compound interest under s. 10 of *Regulation 664* because it unreasonably withheld or delayed payments to the applicant for ACBs at the Form-1 rates.

[6] The applicant is not entitled to the remaining benefits in dispute.

PROCEDURAL MATTERS

Respondent's document exchange

[7] I find that the respondent's request for an indulgence for its late filed documents is not procedurally fair. However, the respondent's late filed documents are accepted for this hearing.

[8] The respondent was required to serve and file its submissions and evidence 14 calendar days prior to the written hearing scheduled for August 2, 2024, by the Tribunal's order released June 14, 2024.

[9] On July 19, 2024, the respondent served and filed its submissions, without including evidence. In the email filing its submissions, the respondent stated: "due to the impact of the Global IT outage, we cannot access the documents for the index. We will provide the indexed documents as soon as regular technical services resume."

[10] The applicant served and filed reply submissions on July 26, 2024. The applicant did not flag an absence of, or late service of, the respondent's indexed documents. I considered this when allowing the late-filing of the indexed documents.

[11] On January 30, 2025, the Tribunal contacted the parties and requested from the respondent the documents referenced in the July 19, 2024 e-mail, as well as proof of the first instance they were sent to the Tribunal, along with the corresponding Certificate of Service. The Tribunal's communication was sent to all the parties. The applicant did not flag any concerns at this opporunity.

[12] On February 3, 2025, the respondent stated it filed its evidence on January 31, 2025, and it requested an indulgence for this late filing. However, the Respondent did not file a Certificate of Service, and it did not include the applicant on correspondence requesting the indulgence.

[13] It is clear from a review of correspondence that the respondent was aware on July 19, 2024 that it was facing technical difficulties and intended to file its documents thereafter. However, the respondent did not file its documents until January 31, 2025. It also did not file a Certificate of Service. The applicant did not have an opportunity to respond to the respondent's request for an indulgence made on February 3, 2025 because the applicant was not included in that correspondence by the Respondent. For this reason, I am not engaging with the respondent's request for an indulgence because it is not procedurally fair to do so without proper notice to the applicant.

[14] However, I have also considered that the applicant did not flag any issues regarding service or filing of the respondent's indexed documents and did not raise it in reply submissions. The applicant also did not raise any concerns or request any relief upon receiving correspondence in January 2025. I find that the applicant had notice of the case to be met. Under these circumstances, excluding the respondent's evidence would interfere with my ability to consider the merits of

this application. In my view, it would be most procedurally fair to accept the late filing of the respondent's indexed documents at the Tribunal.

[15] For the reasons above, the respondent's late-filed indexed documents are accepted for this hearing.

ANALYSIS

Issues 1-3: Is the applicant entitled to an income replacement benefit ("IRB") in the amounts being claimed?

[16] I find that the applicant has not met her onus, on a balance of probabilities, that she is entitled to the following IRB claims: $47.26 per week from August 18, 2022 to January 17, 2023, $57.51 per week from January 18, 2023 to January 31, 2023, and $157.63 per week from February 1, 2023 to date and ongoing.

[17] The parties are disputing how much of the applicant's CPP-D benefit is to be subtracted from the weekly base amount of the applicant's IRB. Both parties agree the weekly base amount is $346.37. There is a dispute over how to calculate the deduction of the applicant's CPP-D benefit from this weekly amount.

[18] The applicant argues the correct calculation for payment of her IRB is 70% of the weekly CPP-D amount subtracted from the IRB weekly base amount. As a result, the applicant's position is that she is entitled to $236.00 per week. The applicant's submissions do not refer to or explain what the $47.26 amount in dispute is. However, the respondent's submissions clarify that the applicant is requesting $236.00 per week, which is $47.26 more than the $188.74 per week she received from August 18, 2022 to January 17, 2023. Since the applicant's submissions request $236.00 per week, in my view, it is more clear to state that the applicant is not claiming entitlement to $47.26 per week during this period, but is rather seeking $236.00 per week or $47.26 in addition to the $188.74 per week paid by the respondent.

[19] The respondent argues that 100 per cent, not 70 per cent, of the applicant's CPP-D benefit is to be subtracted from the weekly base amount. This is the basis for the dispute between the parties. The respondent submits that the CPP-D benefit was $157.63 per week, and this total was subtracted in calculating the IRB payments from August 18, 2022 through January 17, 2023. The respondent states, based on this, the applicant was paid $188.74 per week during this period.

[20] The respondent states: “The legislation is clear that all other income replacement assistance is to be subtracted, and the case law holds the same.” Neither party has referenced any sections of the *Schedule* or pointed me to caselaw relating to calculation of an IRB payment or relating to deduction of CPP-D to support their positions. After considering the positions of the parties, I gather that sections 4 and 7 of the *Schedule* provide the relevant framework for resolution of this dispute.

[21] In *[T.A.K.] vs. Aviva General Insurance Company*, 2020 ONLAT 18-008232/AABS (“*T.A.K.*”), the Tribunal states at paragraph 12 (**emphasis added**):

> The weekly IRBs are calculated by using 70 percent of the base amount of a person’s income **minus the total other income replacement assistance received or available that week**..[3] The base amount is the insured person’s gross annual employment income divided by 52.[4] **Other income replacement assistance includes** long term disability benefits, short term disability benefits and **Canada Pension Plan (“CPP”) disability benefits**, whether received by the insured person or available.[5]

[22] Focusing on paragraphs 12, 16 and 21, the *T.A.K.* decision finds that the applicant’s CPP-D benefit is included in s. 7(1) and s. 4(1) of the *Schedule* and is deductible from the weekly base amount calculated under s. 7(2) of the *Schedule*. While other decisions at this Tribunal are not binding on me, I am persuaded by the interpretation and application of sections 7(2), 7(1) and 4(1) to the deduction of CPP-D benefits in the *T.A.K.* decision. Accordingly, the applicant was paid the weekly base amount of $346.37 less the total of her CPP-D benefit payments.

[23] The applicant has not established that only 70 per cent of the CPP-D benefit is to be subtracted from the weekly base amount. For these reasons, the applicant has not established entitlement to the quantum she is requesting above what she is already receiving.

[24] The other disputed amounts listed as issues are $57.51 per week from January 18, 2023 to January 31, 2023 and $157.63 per week from February 1, 2023 to date and ongoing. The applicant has not made any submissions regarding these disputed amounts or time periods, and the respondent requests that these issues be dismissed.

[25] The respondent submits that the applicant has received and continues to receive a weekly IRB, net of 100 per cent of her CPP-D benefit. The respondent states that in January of 2023, the applicant's CPP-D amount increased from $157.63 to $167.88 and the respondent accounted for this by continuing to subtract 100 per cent of the increased CPP-D benefit. In reply submissions, the applicant once again states her position that the weekly IRB amount should be $236.00 per week, but she does not provide any arguments replying to the respondent's arguments.

[26] For the reasons above, the applicant has not established entitlement to the further amounts of IRB claimed.

Issues 4-7: Is the applicant entitled to occupational therapy, physiotherapy and psychological services, in the amounts being claimed, as submitted in treatment plans?

[27] I find that the applicant has not met her onus on a balance of probabilities that she is entitled to the benefits claimed for the amounts in dispute, in issues 4-7. Since the applicant has addressed all four treatment plans together in her submissions, I will address them together in this decision.

[28] 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 demonstrate that the overall costs of achieving them are reasonable.

[29] The applicant's submissions rely on "all the treating practitioners above confirming that the treatment plans requested are reasonable and necessary." The applicant requests that more weight be assigned to the treating practitioners, as opposed to the independent assessors, but does not support this position with submissions for me to consider. Also, the applicant's submissions don't refer to or identify the treating practitioners or the independent assessors being referred to. The applicant's submissions do not point me to copies of the plans, and a review of the applicant's index of 46 tabs does not reveal if the plans could be found somewhere within those documents.

[30] The applicant argues all of the claimed benefits are reasonable and necessary, because they address the applicant's ongoing physical and psychological impairments resulting from the accident. However, the submissions do not refer to or identify the applicant's physical or psychological impairments. The applicant

also submits that the plans have been incurred and that the applicant has been determined to meet the definition of catastrophic impairment. However, having incurred a plan does establish the plan meets the reasonable and necessary test. In addition, having been designated as meeting the definition of catastrophic impairment does not establish that plans submitted by the applicant are reasonable and necessary.

[31] The respondent argues the applicant has not made any submissions or provided any evidence relating to any of the four issues in dispute. The respondent requests that the issues be dismissed. The respondent makes separate submissions addressing each of the applicant's claimed benefits, providing context and details on each issue in dispute. However, it is not necessary that I focus on the respondent's submissions because it is the applicant's onus to meet. While the applicant made reply submissions addressing some of the respondent's arguments, she did not sufficiently make her case in her original submissions. Even after considering the applicants reply submissions, in addition to the deficiencies outlined above, I find that the applicant has not identified the goals of treatment, how the goals would be met to a reasonable degree and did not make submissions to support the position that the overall costs of achieving the goals are reasonable.

[32] For these reasons, the applicant has not met her onus in establishing entitlement to the benefits claimed in these four plans.

Issue 8: Is the applicant entitled to $400.00 for housekeeping and home maintenance, proposed by SATC in a treatment plan submitted December 23, 2022?

[33] I find that the applicant has not met her onus, on a balance of probabilities, that she is entitled to $400.00 for housekeeping and home maintenance, proposed by SATC in a treatment plan submitted December 23, 2022.

[34] Section 23 of the *Schedule* states that an insurer shall pay up to $100.00 per week for reasonable and necessary additional expenses incurred by or on behalf of an insured person as a result of an accident for housekeeping and home maintenance services if, as a result of the accident, the insured person sustains a catastrophic impairment that results in a substantial inability to perform the housekeeping and home maintenance services that he or she normally performed before the accident.

[35] The applicant's submissions regarding housekeeping make three main points:

1. housekeeping has been approved by the respondent and incurred by the applicant;

2. despite approval, it is being improperly withheld; and

3. housekeeping should be paid because the applicant's impairment has been determined to meet the definition of catastrophic impairment.

[36] The respondent requests that this issue be dismissed for a lack of evidence to support the claim. The respondent argues the applicant has not provided evidence of $400.00 in housekeeping benefits being withheld, or that this amount was incurred. The respondent submits, for context, that it has paid and continues to pay $100.00 per week, subject to the applicant proving that the expense has been incurred.

[37] The applicant's submissions don't refer to or identify any documentary evidence in support of this claim. The applicant has not identified or explained when the disputed $400.00 in housekeeping and home maintenance was incurred or what the services rendered were.

[38] There is also no indication of where I may find supporting documentation in her submissions. For example, focusing on invoices that itemize housekeeping that are included in the applicant's brief of documents, I find $1,400.00, with no GST/HST, invoiced for various service dates from March to June 2022. In addition, the applicant provided a separate invoice for $300.00, plus GST/HST for a total of $339.00, invoiced for service dates in July 2022. I am not certain if any of these documents are relevant to the applicant's $400.00 dispute which is referred to as being submitted in a treatment plan on December 23, 2022 and denied the same day. Without the applicant making clear submissions with sufficient details, including references to the evidence, I am unable to find in the applicant's favour regarding entitlement to this claim. It is also unclear as to why the applicant sought $400.00 in s. 23 benefits by way of a treatment plan, as the issue states, rather than by submitting an Expense Claim Form/OCF-6. I was not referred to a copy of the treatment plan referred to in this issue for review.

[39] I find that the applicant has not identified the details of her claim sufficient to establish entitlement under s. 23 of the *Schedule*, including whether there was an incurred expense of $400.00 that is disputed. For these reasons, the applicant has not met her onus in establishing entitlement to $400.00 for housekeeping and home maintenance.

Issues 9-13: Is the applicant entitled to ACBs in the amounts and for the periods being claimed?

[40] I find that the applicant is entitled to rates set out in the approved Form-1 identified as: $14.90 per hour for Part 1, $14.00 per hour for Part 2, and $21.11 per hour for Part 3, from March 1, 2022 to March 31, 2023.

[41] 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. Section 42(1) of the *Schedule* provides that an application for ACBs must be in the form of, and contain the information required to be provided in, the version of the document entitled Assessment of Attendant Care Needs ("Form-1"). In addition, s. 42(5) of the *Schedule* states that an insurer is not required to pay for ACBs until a corresponding Form-1 is submitted.

[42] The applicant submits that all the ACBs in dispute, beginning in March 2022, are being unreasonably withheld by the respondent, despite being approved and incurred. The applicant submits she has fulfilled all the requirements in order to receive payment for the ACBs in dispute.

[43] The respondent confirms that it approved the applicant's entitlement to ACBs in the amount of $6,000.00 per month, as provided in the applicant's Form-1 in March 2022. The issues listed provide a range of ACB amounts below and up to $6,000.00 per month. The respondent makes two main arguments in defence of non-payment of these claimed amounts.

[44] First, the respondent argues that the applicant is not entitled to reimbursement beyond the rates set out in the approved Form-1. The respondent submits that the personal support worker rates set out in that Form-1 range between $14.00 and $21.11 per hour, depending on the level of the task. However, the respondent argues that the applicant submitted invoices with higher rates than those set out in the Form-1. In correspondence and invoices provided by the applicant, the claimed rates, before HST, include:

1. An average of $28.25 per hour in invoices dated June 15, 2022, May 13, 2022, July 21, 2022, and July 6, 2022;

2. An average of $39.55 per hour or $237.30 for every six hours in an invoice dated April 8, 2022;

3. Reference to $35.00 and $39.55 per hour for March 2022 and $25.00 thereafter, as referred in correspondence dated May 30, 2025;

4. Reference to $28.25 and $25.00 per hour in correspondence dated August 23, 2023.

[45] The respondent relies on *Daly v. ING Halifax Insurance Company*, 2006 CanLII 42548 (ON CA) to argue that the applicant is barred from disputing the approved rates set out in the Form-1. The respondent also relies on *Spencer v Economical Insurance Company*, 2024 CanLII 46904 (ON LAT), in which the Tribunal commented on its jurisdiction to determine attendant care rates, stating:

> Even if the applicant has demonstrated that the invoiced rates are reasonable, marketplace rates for attendant care, the applicant still has not shown how the statutory scheme and related instruments give the Tribunal the authority to determine the rates payable for attendant care.

[46] In the applicant's reply submissions, the applicant submits that the respondent should pay amounts towards the submitted invoices in accordance with the approved Form-1 rates, even if the invoices are based on higher rates.

[47] Both parties agree on the applicant's entitlement to ACBs at the Form-1 rates approved in March 2022. However, the applicant has not established entitlement to amounts above the Form-1 rates, nor has she addressed this Tribunal's authority to determine the rates payable for attendant care. I find that the applicant is not entitled to any rates other than those set out in the approved Form-1 identified as: $14.90 per hour for Part 1, $14.00 per hour for Part 2, and $21.11 per hour for Part 3.

[48] In my view, since the respondent was in agreement with these Form-1 rates, the respondent should make payments based on these approved rates even though the invoiced rates are higher, despite this meaning that invoices for ACBs would be only partially paid. However, I recognize that the applicant was seeking sufficient information regarding the ACBs that I need to address. Specifically, it requested further information, challenging whether or not the attendant care services had been incurred. The respondent relies on s. 46.2(2) and 46.2(3) of the *Schedule*. The respondent states that the applicant claims supervisory care was rendered for seven to nine hours per day, and that this is insufficient to prove the benefit was incurred because the applicant "lived for years after the accident without any supervision at all".

[49] I am not persuaded by this argument and find it unreasonable. The Form-1 submitted by the applicant identifies the applicant's need for basic supervisory care, specifically because the applicant lacks the ability to independently get in and out of a wheelchair or to be self-sufficient in an emergency. The Form-1 estimates 900 minutes, 7 times per week for this activity. The respondent has already acknowledged approval of this Form-1, and I find that the applicant is looking to recover this level 2 attendant care cost within the Form-1 estimate of 900 minutes per day, 7 times per week.

[50] Section 46.2(1) of the *Schedule* allows the respondent to request information directly from a service provider in order to establish liability for payment of invoices before payment is made. Further, s. 46.2(2) and (3) require the service provider to supply the requested information within 10 days and the respondent is not liable for payment of invoices until the service provider has complied with such a request.

[51] I find that the applicant's service provider complied with the respondent's request. I considered s. 3(7)(e) and 3(8) of the *Schedule* defining when expenses can be considered as having been incurred. I am not persuaded by the respondent's position that the applicant has not incurred the ACBs she is claiming, including for the following reasons. In short, by November 22, 2023 the respondent had information including invoices, daily logs individually signed by the applicant, and breakdowns of both the services rendered and the hours spent each day for each service, satisfying the requirements to be recognized as an incurred expense under the *Schedule*.

[52] I find that the applicant's supporting invoices establish the hours of incurred ACBs for each day listed in their respective invoices from March 21, 2022 to July 20, 2022. I was not referred to invoices beyond this date range, however, the applicant also relies on a daily log, described as an attendant care break down, to further assist in establishing the hours of incurred ACBs from March 21, 2022 to February 28, 2023. This breakdown was provided by the service provider to the respondent in correspondence dated March 29, 2023. By further correspondence, dated November 22, 2023, the respondent received a similar daily breakdown for ACBs, with more details covering all the periods in dispute from March 21, 2022 to March 31, 2023. Accordingly, once the breakdowns were delivered to the respondent by the service provider, the respondent could not rely on s. 46.2 of the *Schedule* for non-payment. I find that as of November 22, 2023, the respondent knew the approved Form-1 rates, the specific services provided to the applicant each day, and proof the services had been incurred. For this reason, the respondent's s. 46.2 defense is not engaged.

[53] To assist the parties, a sample calculation for March 21, 2022 is provided below. While the invoice requests payment for March 21, 2022 in the total amount of 237.30 plus HST for six hours. This calculation is not in line with the approved Form-1 rates and did not provide sufficient information as to what services were provided or what rates were being applied to each service. The detailed breakdown of the six hours, delivered by the service provider at a later date, states as follows, for the six hours of services incurred on March 21, 2022:

i. 2 hours or 120 minutes for feeding related services ($14.90 Part-1 rate applies);

ii. 30 minutes for Hygiene related services specific to the bedroom ($14.00 Part-2 rate applies);

iii. 6 hours or 360 minutes for supervisory care services ($14.00 Part-2 rate applies).

[54] Based on the above together with the information from the Form-1, the six hour total for March 21, 2022 should be broken down and calculated as follows.

	Total Minutes		Total Hours		Hourly Form -1 Rate $	Amount $	Plus HST (13%)	Total Payable $
Part 1	120	/60	2	x	14.90	29.80		
Part 2	240	/60	4	x	14.00	56.00		
Total	**360**	**/60**	**6**			**85.80**	**11.15**	**96.95**

[55] For the reasons above, the applicant has established entitlement to ACBs between March 21, 2022 to March 31, 2023, at the rates set out in the Form-1, dated March 18, 2022.

Interest

[56] Interest applies on the payment of any overdue benefits pursuant to s. 51 of the *Schedule.* Accordingly, I find that the applicant is entitled to interest on any overdue payment of ACBs.

Award

[57] 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.

[58] This Tribunal has previously referred to insurer's conduct that is inflexible, stubborn, immoderate or unyielding to warrant an award; as an example, if the insurer clearly went against the recommendations of its assessor that were in favour of the insured, then an award would be warranted, as found in *18-002994 v Aviva Insurance Canada*, 2019 CanLII 76837 (ON LAT) at paragraph 22. The threshold for an award is high.

[59] The applicant advances its position for an award on the basis of four listed arguments, quoted as follows:

1. "The insurer categorically ignores the medical records of all the Applicant's treating practitioners and assessors;

2. The applicant is vulnerable she has sustained serious injuries as a result of this accident;

3. The Tribunal need to set precedents to ensure deterrence to Insurers; and

4. The Insurer acted in a highhanded manner."

[60] The respondent argues there is no evidence of high handed or unreasonable conduct on its part.

[61] This Tribunal has previously found that insurers should not be held to a standard of perfection and are entitled to make errors. I also recognize that the respondent should not be liable to pay an award simply because my decision disagrees with their position. I am persuaded though by the applicant's argument that the respondent should have paid the the ACBs at the rates in the Form-1 that it approved.

[62] As it relates to ACBs, the respondent argues that it cannot pay ACBs at a higher rate than the rates set out in the Form-1. While I find that this is a reasonable position for not paying above these set rates, I find that the respondent withheld or delayed payment of the ACBs at the rates set out in the Form-1 because no payments were made. I find that the invoices originally delivered to the respondent did not, on their own, contain sufficient information to establish what

specific services were incurred. For this reason, it is my view that the unreasonable portion of the delay began from the time the applicant's service provider delivered a detailed daily breakdown of services in correspondence dated November 22, 2023. This breakdown supported the previously delivered invoices beginning in April 2022. This daily breakdown provides sufficient details to process and deliver payment in accordance with the Form-1, including confirmation of incurred services and a breakdown of hours and services, in accordance with the *Schedule*. With the help of the daily breakdown, the parties could establish the services incurred and how many hours of services each day would fall into the three distinct hourly rates approved in the Form-1.

[63] I have already found the respondent to be unreasonable in arguing that it does not accept supervisory care services were incurred because the applicant lived without supervisory care prior to March 2022. This is unreasonable. Whether services are incurred or not is not at all dependent on whether those services were incurred previously. In this case, the position the respondent's unreasonable position is further weakened because the respondent is pointing to a period prior to the services being approved by the respondent on a Form-1. The applicant began incurring ACBs shortly following approval of a Form-1 in March 2022 as she was entitled to do. The respondent has not provided any good reason to hold it against the applicant that she did not incur ACBs prior to the approval of the Form-1.

[64] While the above is sufficient for the respondent's position to be unreasonable, further, the respondent is not being consistent in using the same principle to challenge whether other services were incurred or not, such as services relating to meals and hygiene. Meals and hygiene related services would also not have been incurred before March 2022 just as supervisory care services were not incurred prior the approval of the Form-1. However, the respondent is challenging supervisory care and not challenging other services. This inconsistent approach shows the respondent was effectively applying a higher standard of proof for supervisory care as compared to other ACB services. By taking this approach, in my view, the respondent is, first, essentially challenging whether supervisory care is reasonable or necessary on the basis that the applicant lived without it prior to March 2022. This is unreasonable because the respondent has already approved the Form-1 which lists this service and the applicant is entitled to incur and claim it. Second, the respondent is also holding the applicant to a higher standard of proof regarding supervisory care as compared to other services which are accepted as incurred without good reason as to why it takes this split approach between the services. These are unreasonable positions by the respondent that led to non-payment.

[65] I am guided by this Tribunal's decisions engaging with factors to consider when determining the quantum of an award. Some of these factors include the blameworthiness of the insurer's conduct, the amount withheld, the length of the delay, any prejudice to the applicant, any mitigating factors, the need for deterrence and the vulnerability and potential harm to the insured person. See, for e.g., *Y.K. v Aviva General Insurance Company*, 2020 CanLII 34443 (ON LAT); *J.T. v Certas Home and Auto Insurance Company*, 2022 CanLII 49934 (ON LAT); *Wynn v. Belair Direct,* [2003] O.J. No. 3531; and *D.K.M. v. Motor Vehicle Accident Claims Fund*, 2017 CanLII 8202 (ON LAT).

[66] The applicant submits that I should consider the applicant's impairment has been determined to meet the threshold of catastrophic impairment as defined by the *Schedule*, and that she does not speak English. I find that the Form-1 identifies the applicant's vulnerability and potential harm as a need for basic supervisory care for 900 minutes, 7 times a week, specifically because the applicant lacks the ability to independently get in and out of a wheelchair or to be self-sufficient in an emergency. The applicant submits that the respondent repeatedly sent stock letters rather than issuing payments for attendant care services that had already been approved. I find that the insurer is blameworthy for non-payment of the ACBs for reasons already provided. The non-payment was unreasonable as a result of the information received on November 2023. By November 22, 2023 the respondent had information including invoices, daily logs individually signed by the applicant, and breakdowns of both the services rendered and the hours spent each day for each service. The respondent had sufficient information in November 2023 which is eight months prior to the hearing. I find there is a need for deterrence of the respondent's approach to withholding or delaying payment of the approved Form-1 rates despite having sufficient information to make those payments, especially when it is conceding in its submissions that the applicant is entitled to the Form-1 rates.

[67] I find that the respondent is liable to pay an award of 10% as a result of withheld or delayed payments of ACBs at the Form-1 rates, plus interest. In order to establish the award and interest payable or a reasonable approximation, the following formula applies, in this case:

> 10% x (amount unreasonably withheld or delayed benefits +
> interest on these benefits calculated under s. 51 of the *Schedule)*
> + compound interest calculated at 2% per month, compounded
> monthly, per s.10 of *Regulation 664*.

[68] The ACB amount unreasonably withheld or delayed for March 21, 2022, inclusive of HST, was previously calculated as $96.95. Generally, interest is payable on overdue amounts under s. 51(4) of the *Schedule* from the date the application was filed at the Tribunal, April 13, 2023. However, the respondent is correct that s. 46.2(3) states an amount payable is not overdue and no interest applies until the provider complies with its request for information. I have found that the provider complied in this case, on November 22, 2023.

ORDER

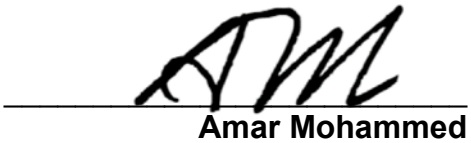
[69] I find that:

i. The applicant has established entitlement to ACBs between March 21, 2022 to March 31, 2023, at the rates set out in the Form-1, dated March 18, 2022, listed as issues 9-13, plus interest, pursuant to s. 51 of the *Schedule*.

ii. The respondent is liable to pay an award of 10% and compound interest under s. 10 of *Regulation 664* because it unreasonably withheld or delayed payments to the applicant for ACBs at the Form-1 rates.

iii. The applicant is not entitled to the remaining benefits in dispute.

Released: April 30, 2025



Amar Mohammed
Adjudicator