



Citation: Liu v. Aviva Insurance Company of Canada, 2025 ONLAT 23-013859/AABS

Licence Appeal Tribunal File Number: 23-013859/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:

HuiMin Liu

Applicant

and

Aviva Insurance Company of Canada

Respondent

DECISION

ADJUDICATOR: Aric Bhargava

APPEARANCES:

For the Applicant: Sareena Samra, Counsel

For the Respondent: Ibrahim Farag, Counsel

HEARD: By way of written submission

OVERVIEW

- [1] HuiMin Liu, the applicant, was involved in an automobile accident on March 17, 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, Aviva Insurance Company of Canada, and applied to the Licence Appeal Tribunal — Automobile Accident Benefits Service (the “Tribunal”) for resolution of the dispute.
- [2] On May 22, 2024, a case conference took place for this matter and the Case Conference and Report Order (“CCRO”) dated May 27, 2024, set a 3-day videoconference hearing scheduled for December 9-11, 2024.
- [3] On November 6, 2024, the applicant filed a Notice of Motion requesting that the Tribunal grant a motion order to convert the videoconference hearing to a written hearing. The respondent consented to the motion.
- [4] The Motion Order dated November 7, 2024, granted the motion.

ISSUES

- [5] The issues in dispute are:
 - i. Is the applicant entitled to the treatment plans/OCF-18 (“plan”) proposed by Total Recovery Rehab Centre as follows:
 - (1) \$4,863.90 for chiropractic services dated June 14, 2022; and
 - (2) \$4,675.12 for physiotherapy services dated August 8, 2022?
 - ii. Is the applicant entitled to the plan proposed by Somatic Assessments and Treatment Clinic as follows:
 - (1) \$1,346.56 (\$3,701.88 less \$2,355.32 approved) for psychological services dated April 26, 2022;
 - (2) \$1,257.73 (\$3,301.88 less \$2,044.15 approved) for psychological services dated August 16, 2022;
 - (3) \$2,005.63 (\$3,101.88 less \$1,096.25 approved) for psychological services dated October 20, 2022;

- (4) \$1,047.64 (\$3,701.88 less \$2,654.54 approved) for psychological services dated January 23, 2023;
 - (5) \$1,346.56 (\$3,701.88 less \$2,355.32 approved) for psychological services dated April 6, 2023; and
 - (6) \$808.88 (\$2,804.20 less \$1,995.32 approved) for psychological services dated August 30, 2023?
- iii. Is the applicant entitled to the claim forms (OCF-6) as follows:
- (1) \$15.30 for medication, dated April 7, 2022;
 - (2) \$15.30 for medication, dated June 23, 2022;
 - (3) \$124.64 for medication, dated April 14, 2023;
 - (4) \$334.50 for medication, dated July 17, 2023;
 - (5) \$198.21 for medication, dated July 21, 2023;
 - (6) \$30.93 for medication, dated September 14, 2023; and
 - (7) \$28.93 for medication, dated October 3, 2023?
- iv. Is the applicant entitled to interest on any overdue payment of benefits?
- v. Is the respondent liable to pay an award under s. 10 of Reg 664 because it unreasonably withheld or delayed payments to the applicant?

RESULT

- [6] I find that the applicant is entitled to the remaining balance for the following OCF-18s with interest in accordance with s. 51 of the *Schedule*:
- i. The unapproved amount of \$1,346.56 for psychological services;
 - ii. The unapproved amount of \$1,257.73 for psychological services;
 - iii. The unapproved amount of \$2,005.63 for psychological services;
 - iv. The unapproved amount of \$1,047.64 for psychological services; and
 - v. The unapproved amount of \$1,346.56 for psychological services.

- [7] I find the applicant is not entitled to the following OCF-18s:
- i. \$4,863.90 for chiropractic services;
 - ii. \$4,675.12 for physiotherapy services; and
 - iii. The unapproved amount of \$808.88 for psychological services.
- [8] I find the applicant is not entitled to the OCF-6s in dispute.
- [9] The respondent is not liable to pay an award.

ANALYSIS

Treatment and assessment plans

- [10] To receive payment for an OCF-18 under sections 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 treatment, how the goals would be met to a reasonable degree, and that the overall costs of achieving them are reasonable.
- [11] The applicant was removed from the MIG and summarized her accident-related impairments as serious physical and psychological injuries.

The applicant is not entitled to \$4,863.90 for chiropractic services

The applicant is not entitled to \$4,675.12 for physiotherapy services

- [12] I find the applicant has not met her burden to demonstrate the chiropractic services and physiotherapy services treatment plans are reasonable and necessary.
- [13] The chiropractic services plan dated June 14, 2022 was prepared by Dr. Georgia Palantzas, chiropractor with Total Recovery Rehab Centre. The plan intends to address the applicant's injuries including chronic pain, wound of nose, concussion, post concussion syndrome, sprain and strain of joints and ligaments at neck, thorax, spine and pelvis, sacroiliac joint, shoulder girdle, knee, hip, ankle and foot, headache, dizziness, malaise and fatigue, nausea, radiculopathy, contusions, rotator cuff syndrome, emotional shock, nervousness, difficulty walking, and irritability. The provider proposed 32 sessions over six weeks including 16 sessions for manipulation at multiple body sites, 16 half sessions of exercise of the spinal vertebrae, 16 half sessions of acupuncture, and provider

travel time, documentation and assessment. The goals for this plan are pain reduction, increased range of motion, increase in strength, to minimize compensatory strain, return to activities of daily living, and promote soft tissue healing. The provider noted travel time is added because of the applicant's inability to drive, the applicant has a concussion, and neurological impairments.

- [14] The physiotherapy services plan dated August 8, 2022 was prepared by Mr. Ahmed Afifi, physiotherapist with Total Recovery Rehab Centre. The plan intends to address the applicant's injuries including chronic pain, concussion, post concussion syndrome, sprain and strain of joints and ligaments at neck, thorax, spine and pelvis, sacroiliac joint, shoulder girdle, knee, hip, ankle and foot, headache, dizziness, malaise and fatigue, nausea, radiculopathy, contusions, emotional shock, nervousness, difficulty walking, and irritability. The provider proposed 32 sessions of physiotherapy and massage therapy at multiple body sites for one hour each, 16 half hour sessions of active therapy at multiple body sites, including travel time, documentation and assessment over six weeks. The goals for this plan are pain reduction, increase in strength and range of motion, and return to activities of daily living. Progress will be evaluated through objective and subjective tests with no particulars of tests provided.
- [15] The applicant submits the chiropractic and physiotherapy treatments are reasonable and necessary to address the ongoing physical impairments from the accident. The applicant relies on the treatment plans submitted by the treatment providers and the family doctor's clinical notes and records ("CNRs"). However, the applicant has not directed me to any referrals for physiotherapy or chiropractic treatments.
- [16] The respondent states the treatment plans are not reasonable and necessary and relies on the s. 44 insurer's examination report dated August 9, 2022 prepared by Dr. Howerd Platnick, physician, which found her accident-related soft tissue injuries have resolved and she has now reached maximum medical improvement. Dr. Platnick also stated the chiropractic treatment plan is not reasonable and necessary.
- [17] I acknowledge the applicant's argument that pain relief is a legitimate goal for a treatment plan, however, the treatment plans are not supported by contemporaneous corroborating medical evidence requiring the treatments other than the treating providers themselves.
- [18] I find on a balance of probabilities that the applicant has not met her burden to establish the chiropractic and physiotherapy treatment plans are reasonable and necessary.

The applicant is entitled to the unapproved amount of \$1,346.56 (\$3,701.88 less \$2,355.32 approved) for psychological services

The applicant is entitled to the unapproved amount of \$1,257.73 (\$3,301.88 less \$2,044.15 approved) for psychological services

The applicant is entitled to the unapproved amount of \$2,005.63 (\$3,101.88 less \$1,096.25 approved) for psychological services

The applicant is entitled to the unapproved amount of \$1,047.64 (\$3,701.88 less \$2,654.54 approved) for psychological services

The applicant is entitled to the unapproved amount of \$1,346.56 (\$3,701.88 less \$2,355.32) for psychological services

- [19] I find the applicant is entitled to the unapproved amounts of \$1,346.56, \$1,257.73, \$2,005.63, \$1,047.64, and \$1,346.56 for the treatment plans for psychological services.
- [20] The applicant submits the treatment is to address the applicant's "ongoing psychological and physical pain, reduced range of motion and functionality as a result of the accident." The applicant relies on the family doctor's CNRs, the psychology assessment report prepared by Dr. Bruce Cook, psychologist, and psychological progress reports. The respondent partially approved a lower number of sessions based on the section 44 insurer's examination reports.
- [21] The treatment plans for psychological services prepared by Dr. Bruce Cook, psychologist, with Somatic Assessments and Treatment were partially approved by the respondent. At issue is the remaining \$1,346.56 for nine sessions of therapy, \$1,257.73 for seven sessions of therapy, \$2,005.63 for twelve sessions of therapy including \$200 for a progress report, \$1,047.64 for seven sessions of therapy, and \$1,346.56 for nine sessions of therapy.
- [22] The applicant relies on the psychology assessment dated April 6, 2022 prepared by Dr. Cook and the CNRs of the family doctor. In the report Dr. Cook diagnoses the applicant with adjustment disorder mixed with anxiety and depressed mood. The applicant visited her family doctor frequently and repeatedly with accident-related concerns for the period of March 2022 to April 2023 and the CNRs corroborate the applicant complained of poor sleep, low mood, disturbed sleep and anxiety as a result of the accident. The applicant's family doctor recommended psychotherapy in May and October 2022 and again in February

and March 2023 as a result of her psychological related complaints due to the accident.

- [23] The respondent partially approved the treatment plans and relies on the s. 44 insurer's examination dated May 17, 2023 prepared by Dr. Kelly McCutcheon, psychologist. Dr. McCutcheon's report notes that the applicant meets the criteria for adjustment disorder with mixed anxiety and depressed mood as a result of the accident. The report notes that the psychological treatment plan is warranted. However, the report does not provide reasoning for the reduced number of sessions, only that it is "excessive". I am not persuaded the remaining sessions are excessive because the family doctor's CNRs establish the applicant's ongoing need for treatment due to her reported psychological impairments and the s. 44 report does not further explain how the proposed sessions are excessive.
- [24] I find the s. 44 report and Dr. Cook's psychology assessment are corroborated by the family doctor's CNRs. I find the family doctor's CNRs and the applicant's ongoing visits regarding her psychological impairments with her family doctor from the date of the accident to October 2023 support the ongoing need for the psychological treatment plans. The s. 44 report states the applicant has not reached maximum medical recovery and treatment sessions are warranted because it continues to help with her recovery.
- [25] I find on a balance of probabilities the applicant is entitled to the remaining amount of psychological therapy sessions in the amount of \$1,346.56, \$1,257.73, \$2,005.63, \$1,047.64, and \$1,346.56.

The applicant is not entitled to the unapproved amount of \$808.88 (\$2,804.20 less \$1,995.32 approved) for psychological services

- [26] I find the applicant is not entitled to the unapproved amount of \$808.88 for psychological services.
- [27] The treatment plan dated August 30, 2023, prepared by Mr. Raymond Wong, occupational therapist, intends to address the applicant's injuries including severe depressive episode, post-traumatic stress disorder, and undifferentiated somatoform disorder. The provider proposes ten sessions of psychology treatment at 1.5 hours for each session with a registered psychotherapist, a progress report, and documentation. The goals for the plan are to reduce negative thought and return to activities of normal living. The plan was partially approved for \$1,995.32.

[28] The applicant submits the treatment plan is reasonable and necessary; however, the applicant has not directed me to what the partial approval is for and what portion of the treatment plan is unapproved and why the balance is reasonable and necessary.

[29] Accordingly, I find the applicant is not entitled to the unapproved amount of \$808.88 for psychological services.

The applicant is not entitled to the OCF-6 in the amount of \$15.30.

The applicant is not entitled to the OCF-6 in the amount of \$15.30.

[30] I find the applicant has not established entitlement to the OCF-6 for the cost of prescribed medicines.

[31] The applicant submitted an OCF-6 for medication in the amount of \$15.30 dated April 7, 2022 and another OCF-6 for medication in the same amount dated June 23, 2022.

[32] The applicant states the prescribed medication is reasonable and necessary as the prescription is for her ongoing pain. The applicant has not directed me to evidence that the prescriptions related to her accident or accident-related impairments.

[33] The respondent submits the OCF-6 was denied because the medication was taken prior to the accident and not considered a necessary cause of the applicant's impairment.

[34] As such, I find that the applicant has not met her burden of proof to demonstrate the cost of these prescribed medications is reasonable and necessary.

The applicant is not entitled to the OCF-6 in the amount of \$124.64

The applicant is not entitled to the OCF-6 in the amount of \$334.50

The applicant is not entitled to the OCF-6 in the amount of \$198.21

The applicant is not entitled to the OCF-6 in the amount of \$28.93

The applicant is not entitled to the OCF-6 in the amount of \$30.93

[35] I find the applicant has not established entitlement to the OCF-6 for the cost of prescribed medicines.

- [36] The applicant states the prescribed medication is reasonable and necessary because it addresses her ongoing pain. The family doctor's CNR do not support the applicant's claim that the prescription is required as a result of the accident or her accident-related impairments.
- [37] The respondent submits the OCF-6 was denied because the medication was taken prior to the accident and not considered a necessary cause of the applicant's impairment.
- [38] As such, I find that the applicant has not met her burden of proof to demonstrate the cost of these prescribed medications is reasonable and necessary.

Interest

- [39] Interest applies on the payment of any overdue benefits pursuant to s. 51 of the *Schedule*. As such, I find the applicant is entitled to interest only on any overdue payment of benefits for the following OCF-18s:
- i. \$1,346.56 for psychological services;
 - ii. \$1,257.73 for psychological services;
 - iii. \$2,005.63 for psychological services;
 - iv. \$1,047.64 for psychological services; and
 - v. \$1,346.56 for psychological services.
- [40] The applicant is not entitled to interest on any of the other OCF-18s in dispute.

Award

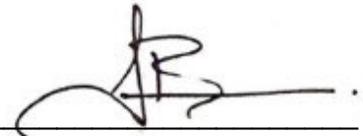
- [41] The applicant sought an award under s. 10 of Reg. 664. Under s. 10, the Tribunal may grant an award of up to 50 per cent of the total benefits payable if it finds that an insurer unreasonably withheld or delayed the payment of benefits. The Tribunal has determined that an award is justified where 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.
- [42] The applicant submits the respondent sent precedent letters and acted in a high-handed manner.

- [43] The respondent submits it reviewed all evidence and articulated reasons for denials throughout.
- [44] I find that the applicant has not led evidence to demonstrate that the respondent's behaviour was excessive, imprudent, stubborn, inflexible, unyielding or immoderate. The respondent is not liable to pay an award.
- [45] I find the applicant has not met the threshold to demonstrate the respondent's behaviour merits an award.

ORDER

- [46] For the reasons outlined above, I find that the applicant is entitled to the following OCF-18s with interest:
- i. \$1,346.56 for psychological services;
 - ii. \$1,257.73 for psychological services;
 - iii. \$2,005.63 for psychological services;
 - iv. \$1,047.64 for psychological services; and
 - v. \$1,346.56 for psychological services.
- [47] The applicant is not entitled to the remaining OCF-18s.
- [48] The applicant is not entitled to the OCF-6s in dispute.
- [49] The respondent is not liable to pay an award.

Released: October 16, 2025



Aric Bhargava
Adjudicator