



**Citation: Yip v. Aviva Insurance Company of Canada, 2025 ONLAT 23-014702/AABS**

**Licence Appeal Tribunal File Number: 23-014702/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:

**Wai Kin Yip**

**Applicant**

and

**Aviva Insurance Company of Canada**

**Respondent**

**DECISION**

**ADJUDICATOR: Teresa Walsh**

**APPEARANCES:**

For the Applicant: Aylina Dhanji, Counsel

For the Respondent: Marim Hadi, Counsel

**HEARD: By way of written submissions**

## OVERVIEW

- [1] Wai Kin Yip, the applicant, was involved in an automobile accident on July 21, 2022. The applicant sought benefits from the respondent, Aviva Insurance Company of Canada, pursuant to the *Statutory Accident Benefits Schedule - Effective September 1, 2010 (including amendments effective June 1, 2016)* (the “Schedule”).
- [2] The respondent denied the benefits in dispute. The applicant disagreed and applied to the Licence Appeal Tribunal - Automobile Accident Benefits Service (the “Tribunal”) for resolution of the dispute.

## ISSUES

- [3] The issues in dispute are:
1. Is the applicant entitled to \$4,303.90 for chiropractic services, proposed by Total Recovery Rehab Centre in an OCF-18/treatment plan (treatment plan) dated October 26, 2022?
  2. Is the applicant entitled to \$1,495.92 (\$3,252.92 less approved \$1,757.00) for psychological services, proposed by Somatic Assessments and Treatment Clinic in a treatment plan dated August 23, 2023?
  3. Is the applicant entitled to \$130.00 (\$2,200.00 less approved \$2,070.00) for an occupational therapy in-home assessment, proposed by Somatic Assessments and Treatment Clinic in a treatment plan dated July 10, 2023?
  4. Is the applicant entitled to \$1,495.92 (\$3,252.92 less approved \$1,757.00) for psychological services, proposed by Somatic Assessments and Treatment Clinic in a treatment plan dated February 1, 2024?
  5. Is the respondent liable to pay an award under s. 10 of Reg. 664 because it unreasonably withheld or delayed payments to the applicant?
  6. Is the applicant entitled to interest on any overdue payment of benefits?

## RESULT

- [4] The applicant is entitled to the unapproved portions of the February 1, 2024 psychological treatment plan in the amount of \$1,495.92, plus interest per s. 51 of the *Schedule*.

- [5] The applicant is not entitled to the treatment plan for chiropractic services, the unapproved portions of the August 23, 2023 treatment plan for psychological services, the unapproved portion of the occupational therapy in-home assessment, or an award.

## **ANALYSIS**

### ***Applicant's onus to establish a treatment plan is reasonable and necessary***

- [6] To receive payment from an insurer for a medical benefit sought under sections 15 and 16 of the *Schedule*, an 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 that the overall costs of achieving them are reasonable.
- [7] There must be medical evidence supporting the treatment plan. A treatment plan on its own does not establish on a balance of probabilities that the benefits sought are reasonable and necessary.

### ***Chiropractic treatment plan is not reasonable and necessary***

- [8] I find that the applicant has not proven on a balance of probabilities that the October 26, 2022 treatment plan for chiropractic services, in the amount of \$4,303.90, is reasonable and necessary.
- [9] The goals of the treatment plan are pain reduction, increase in strength and range of motion, return to activities of normal living and return to pre-accident work activities. The treatment plan includes 16 sessions involving manipulation of multiple body sites, spinal vertebrae exercise and acupuncture of multiple body sites. There are few details regarding how the treatment goals are to be achieved.
- [10] Dr. Palantzas, the chiropractor who prepared this treatment plan, describes the applicant as having "chronic and persistent mva injuries," including "pain and decreased range of motion in his back and shoulders." Dr. Palantzas does not refer to any medical evidence pre-dating or following the accident to support her findings.
- [11] Additionally, the applicant has provided little, if any, contemporaneous medical support for the chiropractic services treatment plan. The only medical records are for the applicant's attendances at a medical clinic the day after the accident and at a hospital emergency department two days after the accident. Both sets of

records note the applicant's complaints of neck, shoulder and lower back pain with no radiation or arm weakness. Both Dr. Koldorf at the medical clinic and Dr. Kapoor at the hospital emergency department prescribe pain medication, recommend physiotherapy and advise the applicant to follow-up for re-assessment.

- [12] As neither Dr. Koldorf nor Dr. Kapoor recommend chiropractic treatment, I find that their medical evidence does not support the treatment plan.
- [13] Besides the brief records from Dr. Koldorf and Dr. Kapoor referenced above, the applicant did not provide the Tribunal with any subsequent treating records, including for re-assessments, nor did he provide any treating records pre-dating the accident.
- [14] The applicant also relies on the s. 25 in-home assessment report prepared by occupational therapist Raymond Wong, dated July 20, 2023. I find that this report provides no support for the applicant's chiropractic services treatment plan as the report focuses on an assessment of the applicant's attendant care and housekeeping needs and Mr. Wong does not recommend or even discuss chiropractic treatment.
- [15] The respondent relies on the s. 44 report dated June 22, 2023, prepared by family physician Dr. Tu, who opines that the treatment plan for chiropractic services is not reasonable and necessary. Dr. Tu's opinion is based on her review of the few available treating records, treatment plans, and an interview and physical examination of the applicant. In her view, the applicant sustained "uncomplicated soft tissue injuries only as a result of the subject MVA." Dr. Tu states that the applicant reported no pre-existing or concurrent medical conditions that would prevent maximal recovery, and that after apparently having regular therapy, the applicant had reported 50% to 60% improvement in his neck and back symptoms. Dr. Tu adds: "There is no compelling evidence in the current literature for ongoing facility-based therapy 7 months after uncomplicated strains and uncomplicated soft tissue injuries have been sustained."
- [16] In summary, the applicant has not provided corroborating evidence that the chiropractic services treatment plan is reasonable and necessary. The plan itself includes few details regarding how the treatment goals are to be achieved. The only medical records the applicant has produced are dated within days of the accident and do not include a recommendation for chiropractic treatment. Mr. Wong's s. 25 in-home assessment does not address chiropractic treatment. Further, the applicant did not counter information he reported to the respondent's

s. 44 assessor Dr. Tu that regular therapy in the year post-accident did not significantly improve his neck and back symptoms.

[17] Accordingly, I find that the applicant has not proven on a balance of probabilities that the chiropractic services treatment plan is reasonable and necessary.

***Denial letter for chiropractic services treatment plan complies with s. 38 of the Schedule***

[18] I find that the applicant has not proven on a balance of probabilities that the respondent failed to comply with s. 38 of the *Schedule* in its initial denial letter regarding the chiropractic services treatment plan.

[19] Subsection 38(8) of the *Schedule* requires an insurer to give an insured person a notice within 10 business days after receiving a treatment plan, identifying the goods, services, assessments and examinations described in the plan that the insurer agrees to pay for, any that the insurer does not agree to pay for, and the medical and all other reasons why the insurer considers any of the goods, services, assessments and examinations, or the proposed costs of them, not to be reasonable and necessary.

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

1. The insurer is prohibited from taking the position that the insured person has an impairment to which the Minor Injury Guideline applies.
2. The insurer shall pay for all goods, services, assessments and examinations described in the treatment plan that relate to the period starting on the 11<sup>th</sup> business day after the day the insurer received the application and ending on the day the insurer gives a notice described in subsection (8).

[21] The applicant submits that the respondent “did not give medical and relevant reasons for the denial of the chiropractic treatment plan.”

[22] The respondent submits that its initial letter of October 27, 2022 denying the chiropractic treatment plan complies with ss. 38(8), as it states that the applicant’s injuries appear to be predominantly minor in nature.

[23] I find that the respondent’s October 27, 2022 denial letter regarding the chiropractic treatment plan complies with the requirements of ss. 38(8) because it provides a specific reason for the respondent’s decision that the plan is not

reasonable and necessary, and the respondent's language is sufficiently clear and unambiguous.

[24] As such, I find that the respondent has complied with ss. 38(8) of the *Schedule* in its October 27, 2022 denial letter regarding the applicant's chiropractic services treatment plan.

[25] Because I have found the initial, October 27, 2022 denial letter to be compliant with ss. 38(8), I need not address whether the respondent's subsequent letter of June 26, 2023, maintaining the denial of the chiropractic services treatment plan based on Dr. Tu's s. 44 assessment, is also compliant with ss. 38(8).

***Unapproved portions of psychological treatment plans are not reasonable and necessary***

[26] I find that the applicant has not proven on a balance of probabilities that the unapproved portions of the August 23, 2023 and February 1, 2024 treatment plans for psychological services, both in the amount of \$1,495.92, are reasonable and necessary.

[27] The disputed or unapproved portions of these treatment plans relate to two items. First, while the applicant seeks payment of \$149.61 per hour for the psychological services to be provided, the respondent agreed to an adjusted hourly rate of \$99.75, as the services are to be provided by a psychotherapist, not a psychologist. Second, the respondent denies amounts sought by the applicant for "Brokerage service", "Preparation service" and "Brokerage fees" (the "additional fees").

[28] The fees for services provided under the *Schedule* are governed by the Financial Services Commission of Ontario – Professional Services Guideline, Superintendent's Guideline No. 03/14 (the "PSG"). The PSG provides that the maximum hourly rate for services provided by psychologists is \$149.61. The PSG does not provide a maximum hourly rate for psychotherapists' services, instead stating that amounts payable by an insurer related to services not covered by the PSG are to be determined by the parties involved.

[29] The PSG also includes administration costs, overhead and related costs, fees and expenses which may be sought for professional services.

[30] The applicant's submissions focus on the denied hourly rate for the services to be provided by the psychotherapist, Mr. Wai Yan Lui. The applicant argues that Mr. Lui is entitled to be paid at the same hourly rate as a psychologist for

“services within his expertise.” The applicant relies on two Tribunal decisions in support of his position – *J.V. v. Intact Insurance Company*, 2019 CanLII 76995 (ON LAT) and *[A.S.] v. Aviva*, 2020 CanLII 12787 (ON LAT). Further, the applicant argues that the hourly rate sought for Mr. Lui is based on the applicant requiring interpretation services and that “only a specific service provider can provide the necessary treatment with interpretation.”

- [31] The respondent submits that the case law relied on by the applicant is distinguishable here because the applicant has not produced any information regarding Mr. Lui’s education, training and experience regarding any particular psychological treatment, including cognitive behaviour therapy. In support of its position, the respondent references a number of Tribunal decisions which are more recent than those relied on by the applicant, where Adjudicators found that the PSG hourly rate for psychologists is based on their specialized education, training and experience, which is distinguishable from a psychotherapist’s education, training and experience. Accordingly, the Adjudicators in these cases found that the psychotherapist providing the services in issue was not entitled to the same hourly rate as a psychologist (see, for example, *Hawes v. Aviva General Insurance Company*, 2022 CanLII 70525 (ON LAT), *Han v. Aviva General Insurance*, 2023 CanLII 9225 (ON LAT), and *Bowen v. Aviva Insurance Company*, 2024 CanLII 23451 (ON LAT)).
- [32] Further, the respondent argues that neither of the psychological treatment plans include interpretation costs.
- [33] Regarding the additional fees sought by the applicant for the psychological treatment plans, the respondent submits that as set out in the PSG and outlined in its denial letters, these fees are not payable as they result in an increase in the hourly rate and are included in the \$200.00 “completion fee”, which the respondent approved.
- [34] In this case, the applicant did not identify any evidence regarding Mr. Lui’s professional qualifications to support his submission that this psychotherapist should be paid at the same hourly rate as a psychologist. Further, the applicant did not point to, nor did I identify, any information in the two psychological treatment plans regarding interpretation being required as part of the psychological services, or Mr. Lui’s ability to provide such interpretation. Accordingly, I find that the applicant has not met his onus in establishing that the \$149.61 hourly rate for Mr. Lui’s psychotherapy services is reasonable and necessary.

- [35] Regarding the additional fees sought for these treatment plans, based on the applicant neither pointing me to any evidence, or making any submissions, I find that the applicant has not met his onus to demonstrate that the fees are reasonable and necessary.
- [36] In sum, I find that the unapproved amounts of \$1,495.92 for the August 23, 2023 and February 1, 2024 psychological treatment plans are not reasonable and necessary.
- [37] However, as set out below, I find that the \$1,495.92 unapproved amounts for the February 1, 2024 psychological treatment plan are payable due to the respondent's non-compliance with ss. 38(8) of the *Schedule*.

***Denial letter for February 1, 2024 psychological treatment plan does not comply with ss. 38(8) of the Schedule***

- [38] I find that while the respondent's denial letter regarding the August 23, 2023 psychological treatment plan complies with ss. 38(8) of the *Schedule*, the respondent's denial letter regarding the February 1, 2024 psychological treatment plan is non-compliant with the subsection for the reasons that follow.
- [39] The applicant submits that the denial letters for both psychological treatment plans fail to comply with ss. 38(8) as the respondent does not give medical/relevant reasons for the denials.
- [40] The respondent submits that both the August 31, 2023 denial letter and the February 20, 2024 denial letter stipulate that the respondent would pay for psychotherapeutic treatment at a rate of \$99.75 based on a psychotherapist providing the services, and that the respondent would not pay for the additional fees.
- [41] I agree with the respondent that its August 31, 2023 denial letter sets out clear reasons for denying the hourly fees sought for a psychotherapist providing the services, and similarly provides clear reasons for denying the additional fees sought. However, the February 20, 2024 denial letter contains no indication that the additional fees are being denied, or the basis for this denial. Apart from the February 20, 2024 denial letter, no other notice regarding denial of the additional fees for the second psychological treatment plan was provided by the respondent in its hearing materials. I accordingly find that the February 20, 2024 denial letter is not compliant with ss. 38(8).

[42] Based on my finding that the respondent did not comply with the requirements of ss. 38(8) regarding the information to be provided to the applicant in its February 20, 2024 denial letter, I find that ss. 38(11)2 of the *Schedule* is triggered. Pursuant to this subsection, the respondent shall pay all unapproved amounts owing under the February 1, 2024 treatment plan, being \$1,495.92.

***Unapproved portion of the occupational therapy in-home assessment is not reasonable and necessary***

[43] I find that the applicant has not proven on a balance of probabilities that the unapproved portion of the treatment plan for the occupational therapy in-home assessment, in the amount of \$130.00, is reasonable and necessary.

[44] The denied amount is for “Planning services”. The applicant submits that these services are reasonable and necessary as they “indicate the applicant’s treatment progress, goals and barriers to recovery.” The applicant further submits that the services “form a valuable tool to evaluate improvement and recommend treatment.”

[45] The respondent submits that, in its July 11, 2023 denial letter, it approved the total assessment cost, as well as the document support activity fee. The respondent further submits that the denial letter indicates that the Planning services are additional administrative costs, overhead and related expenses that increase hourly rates or exceed the maximum fees in the PSG.

[46] The applicant’s submissions do not assist me in distinguishing between the denied fees and the documentation support activity fee of \$270.00 which was approved. In my view, documentation support fees would cover Planning services, and an additional amount for these services is duplicative.

[47] Accordingly, I find that the applicant has not met his onus in establishing that the \$130.00 denied amount for Planning services is reasonable and necessary.

***Denial letter for the occupational therapy in-home assessment complies with s. 38 of the Schedule***

[48] I find that the applicant has not proven on a balance of probabilities that the respondent’s denial letter for the occupational therapy in-home assessment is non-compliant with s. 38 of the *Schedule*.

[49] The applicant appears to submit that the respondent provides no explanation regarding the medical and all other reasons for considering the Planning services not to be reasonable and necessary.

- [50] The respondent submits that its July 11, 2023 denial letter identifies the Planning services as being denied and provides a reason for the denial.
- [51] I note that the denial states that the respondent does not agree to pay the Planning services as the treatment provider does not detail how the proposed services would contribute to recovery of the applicant's injuries, and therefore, the services are not reasonable and necessary. Further, the respondent states that it has approved the treatment plan up to a maximum of \$2,070.00 and that it will not pay for expenses that exceed the PSG.
- [52] I find that the respondent's explanation for denying the Planning services is sufficiently detailed and clear in accordance with the requirements of ss. 38(8) of the *Schedule*.

### ***Interest***

- [53] Interest applies on the payment of any overdue benefits pursuant to s. 51 of the *Schedule*. As the unapproved portions of the February 1, 2024 psychological treatment plan in the amount of \$1,495.92 are payable, interest on this amount per s. 51 is also payable.

### ***Award***

- [54] I find that that applicant has not established on a balance of probabilities that the respondent unreasonably withheld or delayed the benefit of payments.
- [55] The applicant seeks 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.
- [56] The Tribunal has determined that an award is justified where the delay or withholding of benefits by the insurer is unreasonable conduct, meaning it 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 these criteria.
- [57] The applicant argues that it seeks an award as the respondent's denials of the treatment plans are unreasonable, including because it "categorically denied the medical records of all of the applicant's treating practitioners and assessors."
- [58] The applicant did not direct the Tribunal to evidence in support of his submissions.

- [59] As noted above, the applicant provided few treating records from practitioners as part of his hearing materials, and I located no assessment centre treatment records. The applicant has not established that the respondent ignored the few available treating records.
- [60] Further, the applicant did not direct the Tribunal to any evidence demonstrating that the respondent's conduct in denying treatment plans/portions of treatment plans is excessive, imprudent, stubborn, inflexible, unyielding, or immoderate.
- [61] For these reasons, I find that the applicant has not met his onus to prove on a balance of probabilities that the respondent unreasonably withheld or delayed the payment of benefits.
- [62] Accordingly, I find that the applicant is not entitled to an award.

### **ORDER**

- [63] The applicant is entitled to the unapproved portions of the February 1, 2024 psychological treatment plan in the amount of \$1,495.92 per ss. 38(11)2 of the *Schedule*, plus interest per s. 51 of the *Schedule*.
- [64] The applicant has not proven on a balance of probabilities that he is entitled to the treatment plan for chiropractic services, the unapproved portions of the August 23, 2023 treatment plan for psychological services, or the unapproved portion of the occupational therapy in-home assessment.
- [65] No benefit payments have been unreasonably withheld or delayed and accordingly, no award is owing.

**Released:** October 14, 2025



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**Teresa Walsh**  
Adjudicator