



Citation: Li v. Co-operators General Insurance Company, 2025 ONLAT 24-002102/AABS

Licence Appeal Tribunal File Number: 24-002102/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:

Zi Ang Li

Applicant

and

Co-operators General Insurance Company

Respondent

DECISION

ADJUDICATOR: Rasha El Sissi

APPEARANCES:

For the Applicant: Ryan Olson, Paralegal

For the Respondent: Stanislav Bodrov, Counsel

HEARD: By way of written submissions

OVERVIEW

- [1] Zi Ang Li, the applicant, was involved in an automobile accident on June 3, 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, Co-operators General Insurance Company, and applied to the Licence Appeal Tribunal – Automobile Accident Benefits Service (the “Tribunal”) for resolution of the dispute.
- [2] The applicant was removed from the Minor Injury Guideline (“MIG”) due to a psychological impairment he incurred as a result of the accident.

ISSUES

- [3] The issues in dispute are:
- i. Is the applicant entitled to \$1,518.69 for chiropractic services proposed by Easy Health Centre in a treatment plan / OCF-18 (“plan”) dated November 16, 2022?
 - ii. Is the applicant entitled to \$1,496.00 for chiropractic services proposed by Easy Health Centre in a plan dated January 18, 2023?
 - iii. Is the applicant entitled to \$448.92 (\$2,804.12 less \$2,355.20 approved) for psychological services proposed by Somatic Assessments & Treatment Clinic in a plan dated March 15, 2023?
 - iv. Is the applicant entitled to \$590.76 (\$2,056.08 less \$1,465.32 approved) for psychological services proposed by Somatic Assessments & Treatment Clinic in a plan dated August 25, 2023?
 - v. Is the applicant entitled to \$2,056.08 for psychological services proposed by Somatic Assessments & Treatment Clinic in a plan dated April 24, 2024?
 - vi. Is the respondent liable to pay an award under section 10 of Reg. 664 because it unreasonably withheld or delayed payments to the applicant?
 - vii. Is the applicant entitled to interest on any overdue payment of benefits?

RESULT

- [4] The applicant is not entitled to either of the plans for chiropractic services proposed by Easy Health Centre.
- [5] The applicant is not entitled to the outstanding balances of the plans for psychological services dated March 15, 2023 and August 25, 2023.
- [6] The applicant is entitled to \$1,474.30, plus interest, for psychological services proposed by Somatic Assessments & Treatment Clinic in a plan dated April 24, 2024.
- [7] No award is granted.

ANALYSIS

Treatment Plans

- [8] To receive payment for a treatment and assessment plan under section 15 and section 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 that the overall costs of achieving them are reasonable.

Chiropractic services treatment plans dated November 16, 2022 (“2022 plan”) and January 18, 2023 (“2023 plan”)

- [9] I find that the applicant is not entitled to these treatment plans because he has not met his burden of proof to demonstrate that they are reasonable and necessary.
- [10] The 2022 plan was not provided in evidence by the applicant for this hearing. I note that it was also not provided by the respondent. An extract from the 2022 plan was included in the section 44 psychiatry assessment report of Dr. Raymond Zabieliauskas, dated December 21, 2022. This extract states that the 2022 plan proposed six sessions of physical rehabilitation and six sessions of exercise, three sessions of acupuncture and three sessions of massage therapy, plus a documentation claim item, for a total of \$1,518.69. The extract does not indicate the goals of the plan.

- [11] The 2023 plan proposed six sessions of physical rehabilitation and six sessions of exercise with Dr. Hyo Kim, chiropractor, and three sessions of acupuncture with another practitioner, plus a documentation claim item, for a total of \$1,496.00. The goals were pain reduction, increase in strength and range of motion to return to activities of normal living and pre-accident work activities.
- [12] The applicant submits that the goals of these plans are reasonable given the applicant's ongoing physical impairments and gradual improvements being made as a direct result of the physical treatment. In support, the applicant submits that the entirety of the medical documentation provided supports the need for physiotherapy treatment. The applicant specifically refers to the hospital notes and records ("HNR") of Royal Victoria Hospital, the clinical notes and records ("CNR") of Dr. Kris Cheng, family doctor, of Birchwood Walk-in Clinic, the in-home Assessment Report of Mr. Raymond Wong, occupational therapist and the section 25 psychological assessment report of Dr. Mehrdad Pojhan, psychologist.
- [13] The respondent submits that the applicant sustained minor physical injuries that fully resolved within five months of the accident and points to the section 44 report of Dr. Zabieliauskas.
- [14] The applicant attended Royal Victoria Hospital on the day after the accident for headaches, dizziness, tenderness in his neck and lumbar area, and pain in his knee and ankle. No imaging was required, according to the HNR. He was discharged the same day with a diagnosis of a headache that resolved after taking Tylenol and Advil. About five weeks after the accident, on August 8, 2022, he saw Dr. Cheng with physical complaints of intermittent headaches, left sided neck pain, nausea, dizziness and lower back soreness. Dr. Cheng diagnosed concussion, back sprain and strain, acute whiplash and acute stress reaction. He recommended massage, heating pad, and stretches, and follow up as needed. There is no evidence before me of the applicant returning to hospital or to Dr. Cheng.
- [15] At the respondent's request, Dr. Zabieliauskas examined the applicant on November 24, 2022 for the purpose of the MIG, income replacement benefits and the 2022 plan. In Dr. Zabieliauskas's section 44 report, he noted that the applicant was experiencing some residual back pain, but his symptoms were not manifesting themselves in any overt organic pathology suggestive of any physical impairment or physical disability. Dr. Zabieliauskas concluded that applicant did not suffer from any ongoing impairment and did not require any formal rehabilitation or treatment because he had made a full physical recovery.

- [16] The applicant also pointed to the in-home assessment report of Mr. Wong, dated January 20, 2023 and the section 25 psychological assessment report of Dr. Pojhan, dated January 25, 2023. Mr. Wong recorded that the applicant identified considerable ongoing physical pain that Mr. Wong included in his report. Dr. Pojhan recorded the applicant's physical complaints of headaches, and mid-back and knee pain, and included that information in his report.
- [17] With respect to physical ailments, I place more weight on the assessment of Dr. Zabieliauskas compared to the diagnosis of back sprain and strain and acute whiplash of Dr. Cheng. Dr. Cheng's diagnosis is in the form of a single CNR entry five weeks after the accident and four months before the date of the 2022 plan (i.e., on August 8, 2022). Dr. Zabieliauskas examined the applicant in the same month as the 2022 plan. I note that the applicant does not direct me to any evidence that he continued to report pain symptoms to Dr. Cheng after August 8, 2022, or that Dr. Cheng was recommending physical therapy at the time of the 2022 plan and 2023 plan.
- [18] I place limited weight on the reports of Mr. Wong and Dr. Pojhan on the issue of the applicant's ongoing accident-related physical injuries and entitlement to the chiropractic plans in dispute. The reports indicate that the applicant reported pain symptoms to them. However, neither practitioner was qualified to examine and diagnose physical and musculoskeletal injuries and, in any case, neither recommended the physical therapy proposed in the plans in dispute.
- [19] Therefore, I find, on a balance of probabilities, that the 2022 plan and 2023 plan are not reasonable and necessary because they are not supported by the predominance of the relevant medical evidence.

***Partially approved psychological treatment plan dated March 15, 2023
("March plan")***

- [20] I find that the applicant has not established that he is entitled to the outstanding balance of the March plan.
- [21] The March plan proposed 12 psychological treatment sessions with Joyce Zhou, registered psychotherapist (College Registration Number 10841), at a length of 1.25 hours each, plus two documentation items, for a total of \$2,804.12. The March plan referred to the section 25 psychological assessment report of Dr. Pojhan dated January 25, 2023 and was signed by Dr. Pojhan.
- [22] The respondent partially approved the March plan for 12 sessions at a length of 1 hour each, instead of 1.25 hours each, for a total of \$2,355.20, citing the

recommendation of its section 44 psychological assessor of 12, 1-hour sessions. The denied portion of the March plan, which is in dispute, is \$448.92.

- [23] The applicant submitted that the March plan should be approved in its entirety. The applicant relies on the section 25 psychological assessment report of Dr. Pojhan as well as the progress report completed by “Mr. Yuling Zhou, M.A., RP”, working under the supervision of Dr. Pojhan, on August 16, 2023 (whom I understand to be the same person as Joyce Zhou). In the section 25 report, Dr. Pojhan recommended 12 individual psychological counselling sessions (duration not identified) and outlined the goals and strategies for the treatment plan. In the August progress report, they recommended eight, 1.25-hour sessions.
- [24] With respect to the duration of the treatment sessions under the March plan, the respondent relies on the section 44 report of Dr. Cindi Goodfield, dated December 21, 2022 in which Dr. Goodfield recommended 12, 1-hour sessions.
- [25] The applicant cited *Qu v Allstate Insurance Company of Canada*, 2022 CanLII 2658 (ON LAT), among other Tribunal cases, for the proposition that the insured’s treatment providers possess a strong understanding of their psychological impairments based on their history of treating them and that their recommendations are based on their expertise and knowledge of the insured’s specific impairments.
- [26] I do not find the cases cited by the applicant helpful regarding the dispute over the March plan. At the time the plan was proposed, neither Joyce Zhou nor Dr. Pojhan was the applicant’s treating therapist. At this time, both Dr. Goodfield and Dr. Pojhan had psychologically assessed the applicant. However, Dr. Pojhan did not make any recommendations in the section 25 report about the duration of each session, whereas Dr. Goodfield did. The applicant provided no other submissions or evidence to explain why he needed 1.25 hours of treatment per session rather than the 1 hour of treatment per session approved by the respondent.
- [27] Therefore, after considering the totality of the evidence, I find that the applicant has not met his burden of proof to substantiate that he is entitled to sessions of 1.25 hour’s duration under the March plan.

Partially approved psychological treatment plan dated August 25, 2023 (“August plan”)

- [28] I find that the applicant has not established that he is entitled to the outstanding balance of the August plan.

- [29] The August plan proposed eight psychological treatment sessions with Joyce Zhou at the hourly rate of \$149.61. The respondent partially approved the August plan at a maximum hourly rate of \$91.43 for psychological treatment.
- [30] The parties' dispute is regarding the hourly rate payable for Joyce Zhou, a psychotherapist. The applicant submitted a number of cases in support of his position that the hourly rate for Joyce Zhou should be \$149.61 per hour because she is providing the same cognitive behavioural therapy and psychotherapy services as would be provided by a psychologist.
- [31] The respondent submitted that the applicant misinterpreted the cases and the Professional Services Guideline ("PSG") and has not provided sufficient evidence to support his position on Joyce Zhou's hourly rate.
- [32] The applicant cites *A.S. v. Aviva Insurance Company*, 2020 CanLII 12787 (ON LAT) ("A.S.") for the proposition that a psychotherapist performing the same services as a psychologist is entitled to the same rate as a psychologist. The applicant also cites *Jones v. Intact Insurance Company*, 2021 CanLII 131121 (ON LAT) for the proposition that the PSG does not state that a psychotherapist must be paid less than a psychologist. Having read *A.S.*, I note it specifically relates to cognitive behavioural therapy and not to psychological services more broadly, as submitted by the applicant.
- [33] I find that the applicant has not met his onus to show why Joyce Zhou should be paid \$149.61 per hour instead of \$91.43 approved by the respondent.
- [34] Dr. Pojhan recommended a treatment plan composed of seven goals and therapeutic intervention strategies, some of which refer to "cognitive-behaviour strategies", "cognitive restructuring" or "cognitive approaches". Others include: providing tools to help manage depression, somatic concerns, stress and trauma-related response; encouraging and applying planning, scheduling, etc.; techniques to cope with trauma-related anxiety and stress (relaxation, mindfulness, etc.); and reinforcing social skills and encouraging the applicant to engage in his previous social activities.
- [35] The applicant did not point me to any evidence concerning the treatment goals and strategies holistically, such as the proportion of therapy time to be spent on each them, the training required to conduct each of them, or whether they are services provided by psychologists. The applicant also did not provide information about Joyce Zhou, such as their individual training, areas of expertise, qualifications, particularly with respect to cognitive behavioural therapy, experience or usual rates. Therefore, I find that the applicant has not

substantiated his request to pay Joyce Zhou the same rate as the maximum rate for a psychologist under the PSG.

- [36] The applicant also submits that the supervision of Joyce Zhou by Dr. Pojhan and their proficiency in Mandarin, the applicant's first language, ensured effective and efficient service, further justifying their rate.
- [37] The applicant did not provide any particulars or evidence of how these submissions support that Joyce Zhou is doing the same work as a psychologist. There could be other reasons for Dr. Pojhan's supervision. I also note that interpretation is a different service from psychological treatment. Therefore, I am not persuaded by this submission.
- [38] The respondent's letter to the applicant dated September 11, 2023 stated that the approved maximum hourly rate of \$91.43 for a psychotherapist is commensurate with the established hourly rate for a registered nurse or nurse practitioner, based on the PSG, and that given their relative training and responsibilities, the respondent felt this was a reasonable compromise.
- [39] Having reviewed the totality of the evidence, I am not persuaded that an hourly rate of \$149.61 for psychological treatment by Joyce Zhou is reasonable and necessary instead of the hourly rate of \$91.43 approved by the respondent.

Psychological treatment plan dated April 24, 2025 ("2024 plan")

- [40] I find that the 2024 plan was reasonable and necessary to treat the applicant's accident-related psychological impairments.
- [41] The 2024 plan, signed by Dr. Pojhan, proposed eight psychological counselling sessions with Joyce Zhou, the applicant's treating psychotherapist, and two documentation items by Dr. Pojhan, for a total of \$2,056.08. The goal of the 2024 plan was "[t]o challenge and reduce negative thought patterns by utilizing cognitive restructuring techniques to deal with anxiety and depressive feelings and cognitions." It was denied by the respondent in its entirety.
- [42] The applicant submits that this plan is reasonable and necessary to treat his ongoing psychological symptoms. The applicant points to the progress report completed on August 16, 2023 by Yuling Zhou (who I understand to be the same person as Joyce Zhou) and Dr. Pojhan which stated that the applicant continued to meet the criteria for Adjustment Disorder with Mixed Anxiety and Depressed Mood and recommended continuing treatment in order to achieve further improvement in the applicant's psychological condition.

- [43] The respondent submits that the applicant is not entitled to the 2024 plan because he had not submitted any medical evidence to establish that further psychological treatment was reasonable and necessary, i.e., after August 16, 2023.
- [44] I note that no therapy notes or other progress report was provided in respect of the sessions completed in the eight months between August 16, 2023 and the date of the 2024 plan. I also note that the applicant asserted that his psychological symptoms were ongoing, but did not point me to any evidence that his psychological symptoms had not resolved, and that he needed more treatment.
- [45] Having reviewed the August progress report on which the applicant relies, I note that it stated that therapy has had an ongoing stabilizing effect on the applicant. It identified the following future therapy goals: 1) alleviation of anxiety and depressive symptoms; 2) adjust to loss / change in psychological and physical functioning due to the accident; 3) develop strategies for stress management and relaxation (pain-reducing techniques); and 4) establish more effective and flexible cognitive patterns. It said that the applicant would be re-examined by the end of the treatment “and if needed, will apply for further treatment sessions.” It stated that the number of sessions recommended was only an estimate of the duration of treatment required because each client responds differently to treatment.
- [46] I place weight on the fact that the 2024 plan was for treatment with the applicant’s treating psychotherapist and was signed by their supervising psychologist who had initially assessed the applicant and co-signed the August 2023 progress report. I give weight to the effective recommendations of the treating practitioners because of their understanding of the applicant’s impairment gained through prior treatment. I place relatively less weight on the lack of a further progress report or other new evidence in the period cited by the respondent considering the extent of the future therapy goals outlined in the progress report.
- [47] On a balance of probabilities, based on the totality of the available evidence, I am satisfied that the treatment goals of the 2024 plan are reasonable and necessary, and accordingly that the applicant is entitled to the 2024 plan, subject to the reduction of Joyce Zhou’s hourly rate from \$149.61, as proposed, to \$91.43, consistent with my decision concerning the August plan. With this reduction, the amount of the applicant’s entitlement is \$1,474.30 under the 2024 plan.

Interest

[48] Interest applies on the payment of any overdue benefits pursuant to section 51 of the *Schedule*. Interest applies on the overdue benefits under the 2024 plan.

Award

[49] The applicant sought an award under section 10 of Reg. 664. Under section 10, the Tribunal may grant an award of up to 50 per cent of the total benefits payable if it finds that an insurer unreasonably withheld or delayed the payment of benefits. The Tribunal has determined that an award is justified where the delay or withholding of benefits by the insurer is unreasonable conduct, meaning “behaviour which is excessive, imprudent, stubborn, inflexible, unyielding or immoderate.” The onus is on the applicant to prove, on a balance of probabilities, that the respondent’s conduct meets this threshold.

[50] The applicant submits that an award is justified in this case, among other things, because the respondent ignored the medical records of the applicant’s treating practitioners and assessors and acted in a high-handed manner. The applicant did not cite any particulars in the evidence to substantiate these submissions.

[51] While the applicant and respondent disagreed over whether there was sufficient medical evidence to support the reasonableness and necessity of the 2024 plan, this alone does not establish that the respondent’s conduct in adjudicating the claim ignored Dr. Pojhan’s assessment and the August 16, 2023 progress report, or was high handed.

[52] The applicant has not met his onus to prove that the respondent’s conduct met the threshold to justify an award.

ORDER

[53] For the above reasons:

- i. The applicant is not entitled to either of the plans for chiropractic services proposed by Easy Health Centre.
- ii. The applicant is not entitled to the outstanding balances of the plans for psychological services dated March 15, 2023 and August 25, 2023.
- iii. The applicant is entitled to \$1,474.30, plus interest, for psychological services proposed by Somatic Assessments & Treatment Clinic in a plan dated April 24, 2024.

iv. No award is ordered.

Released: November 13, 2025

A handwritten signature in black ink that reads "Rasha El Sissi". The signature is written in a cursive style with a horizontal line underneath the name.

Rasha El Sissi
Adjudicator