

**LICENCE APPEAL
TRIBUNAL**

**Safety, Licensing Appeals and
Standards Tribunals Ontario**

**TRIBUNAL D'APPEL EN MATIÈRE
DE PERMIS**

**Tribunaux de la sécurité, des appels en
matière de permis et des normes Ontario**



File Number: 18-003348/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:

F. F.

Applicant (s)

and

Aviva Insurance Canada

Respondent

DECISION

PANEL: Thérèse Reilly, Adjudicator

APPEARANCES:

For the Applicant: William Brennan, Counsel

For the Respondent: Geoffrey Keating, Counsel

HEARD: In Writing on: April 5, 2019

- [1] The applicant was involved in an automobile accident on May 30, 2014, and sought benefits pursuant to the Statutory Accident Benefits Schedule - Effective September 1, 2010 (the "Schedule").
- [2] The applicant appeals the respondent's denial of a treatment plan for a medical benefit for additional physiotherapy treatment. The respondent denied the treatment plan on the basis of a section 44 physiotherapy assessment that concluded the treatment plan is not reasonable and necessary.

ISSUES

- [3] The following are the issues to be decided:
- a. Is the applicant entitled to a medical benefit in the amount of \$1,482.00 for physiotherapy recommended by Body Mechanics, submitted April 7, 2016 and denied on April 20, 2016?
 - b. Is the applicant entitled to interest on any overdue payment of benefits?

RESULT

- [4] For the reasons set out below, I find that the applicant is not entitled to the medical benefit. No interest is payable as there is no overdue payment of benefits.

ANALYSIS

- [5] The key issue for consideration is whether the treatment plan for physiotherapy is reasonable and necessary?
- [6] The applicant bears the burden of proving the treatment plan is reasonable and necessary. Based on the evidence presented, I find the applicant has not established that the treatment plan is reasonable and necessary.
- [7] The applicant claims that, as a result of the accident, he suffered extensive injuries to the cervical, thoracic and lumbar spine.¹ On April 7, 2016, when he submitted the disputed treatment plan for additional physiotherapy treatment, he stated that his symptoms included ongoing back pain, decreased cervical spine range of motion and decreased left shoulder range of motion.² He acknowledges he had pre-existing medical conditions but denies these include severe neck and back pain and decreased range of motion in the spine and

¹ Written submissions of the applicant, paragraphs 1 and 9.

² Written submissions of the applicant, paragraph 11.

shoulders.³ Because of his ongoing impairment, he states he is entitled to seek the additional treatment which is reasonable and necessary.

- [8] The applicant received three months of physiotherapy treatment immediately after the accident, which included application of heat, electro therapy, some exercises, acupuncture and one massage session.⁴ The treatment plan in dispute provides for 12 physical rehabilitation sessions, with some mobilization, stimulation of the muscles of the back, and exercises.⁵ The applicant argues that, as the additional physiotherapy treatment involves different services,⁶ it is not relevant that the initial physiotherapy treatment worsened the applicant's condition. The applicant did not explain or describe how the additional services are different.
- [9] The respondent denied the treatment plan is reasonable and necessary based on an insurer examination (IE) completed by Dawn Rodie, occupational therapist. In her report dated May 30, 2016,⁷ Ms. Rodie noted that the applicant had significantly reduced range of motion in his cervical spine and shoulders. However, in Ms. Rodie's opinion, the treatment plan is not reasonable and necessary for several reasons including the following:
- a. Ms. Rodie noted the applicant had reduced range of motion but she found there was a lack of pre-accident medical records touching on movement restriction. In her opinion it was therefore difficult to determine if the restrictions of motion were due to the accident.
 - b. She also noted that the applicant had a number of pre-accident medical conditions, including chronic back pain, right shoulder dislocation, a left ankle fracture, decreased strength in the left lower extremity and chronic obstructive pulmonary disease (COPD).
 - c. In her view, there was no evidence that the additional treatment would benefit the applicant. He had received physiotherapy for three months after the accident, substantially the same treatment recommended in the disputed treatment plan. The applicant had reported to her that the physiotherapy treatment he received after the accident had aggravated his injuries and was "relieved when

³ Written submissions of the applicant, paragraph 10.

⁴ Written reply submissions of the applicant, paragraph 1.

⁵ Treatment Plan dated April 7, 2016 by Troy Seely, physiotherapist, tab 1 of the written submissions of the applicant.

⁶ Reply submissions of the applicant, paragraph 3.

⁷ Physiotherapy Assessment Report by Dawn Rodie, May 30, 2016, tab e, written submissions of the respondent.

the treatment stopped.”

- d. Two years had passed since the initial physiotherapy treatment. In her view, no new information was presented to suggest the treatment plan would benefit the applicant, or to suggest that the additional treatment would be more successful than the previous course of rehabilitation that had resulted in his condition worsening.

[10] The respondent questioned the treatment’s reasonableness since the physiotherapist recommended treatment despite the applicant’s claim that the previous course of similar treatment did not improve his condition and made it worse.⁸

[11] Moreover, the respondent questions whether the goals of the treatment plan are valid in that the physiotherapist when making recommendations for treatment failed to consider the applicant’s pre-existing medical conditions.⁹

[12] Under section 15 of the *Schedule*, medical benefits, subject to section 18, “shall pay for all reasonable and necessary expenses incurred by or on behalf of an insured as a result of an accident”.

[13] The standard to determine if a treatment plan is reasonable or necessary is whether:

- a. The treatment goals, as identified, are reasonable;
- b. The treatment goals are being met to a reasonable degree; and,
- c. The overall costs of achieving these goals are reasonable.¹⁰

[14] The applicant states that the treatment is for ongoing back pain, decreased cervical spine range of motion and decreased left shoulder range of motion. Dr. Wahby, general practitioner, confirmed in his assessment of November 13, 2014¹¹ that the applicant’s injuries from the accident included a concussion, which removed him from the Minor Injury Guideline, whiplash, headaches, and a left shoulder strain. He did not list a back and cervical spine injury as accident-related. The injuries listed by Dr. Wahby as accident-related were

⁸ Written submissions of the respondent, page 6.

⁹ Written submissions of the respondent, page 6.

¹⁰ *17-001007/AABS v Aviva Insurance Canada*, 2018 CanLII 2309 (ON LAT), paragraph 12, written submissions of the respondent, tab b.

¹¹ Assessment Report of Dr. Robert Wahby, general practitioner, November 13, 2014, written submissions of the respondent, tab K, and Reply written submissions of the applicant, tab C.

also confirmed by Ms. Rodie in her physiotherapy assessment. Both Dr. Wahby and Ms. Rodie in their reports do not list either the back or cervical spine injury as among those sustained in the accident.

- [15] Moreover, the applicant conceded that he has pre-existing medical conditions, though denies these included severe neck and back pain or decreased range of motion in the spine and shoulders. I accept the respondent's position, which questions the applicant's claim that his pre-existing conditions did not include severe neck or back pain or decreased range of motion in the spine. Ms. Rodie in her assessment report noted that, prior to the accident, the applicant suffered from chronic back pain. Further, the respondent noted in its written submissions that in 2012, the applicant complained of neck pain such that he was unable to work, drive, sleep, and perform any recreational activities.¹² He also was not working at the time of the accident and was on disability due to pre-existing low back and left leg pain.¹³ I find the accident is not the cause of the applicant's ongoing complaint of severe back, neck pain decreased range of motion in the spine. The applicant suffered from chronic back pain and neck pain prior to the accident.
- [16] I find the treatment plan is not reasonable and necessary as it relates to the applicant's back and neck injuries and decreased range of motion in the spine as they are not accident-related. This is not to deny there was a finding of impaired range of motion discussed below, or that the left shoulder was injured.
- [17] Further, Ms. Rodie noted the applicant had a significantly reduced range of motion in the shoulders and cervical spine.¹⁴ However, she found the lack of pre-accident medical records touching on movement restriction made it difficult to determine if the restrictions of motion are due to the accident. I agree with the applicant that no documentation "is not conclusive evidence that there were pre-accident movement restrictions "on which to blame his current impairments."¹⁵
- [18] I note however that the evidence concerning his reduced range of motion is not consistent. Ms. Rodie as noted above stated the applicant had a significantly reduced range of motion in the shoulders and cervical spine. Dr. Wahby however in his report noted following his examination of the applicant,

¹² Self reporting neck disability index, dated June 5, 2012, written submissions of the respondent, tab H.

¹³ Self reporting neck disability index, dated September 24, 2014, written submissions of the respondent, tab I.

¹⁴ This conclusion is also noted by Derek Adam, occupational therapist in his in home assessment date September 24, 2015, reply submissions of the applicant, Tab D.

¹⁵ Written submissions of the applicant, paragraph 12.

that the applicant's lumbar, cervical and thoracic spine range of motion was within normal limits.¹⁶

- [19] The respondent questioned whether the treatment goals can be reasonably met as the physiotherapist in recommending treatment failed to consider the admission by the applicant that the previous treatment worsened his condition. The applicant in response claims the fact that the previous treatment aggravated his condition is not relevant as the disputed treatment plan involves different services. I disagree and find this is a relevant consideration.
- [20] Ms. Rodie concluded based on her reading of the treatment plans that the treatment plan in dispute is substantially the same as what was provided to the applicant immediately after the accident. The applicant did not present evidence to show the differences between the treatment in dispute and his previous physiotherapy treatment and how the additional treatment would benefit him. I accept Ms. Rodie's conclusion that the treatment is substantially the same as before, which actually worsened his condition. Indeed, the applicant stated that he was relieved when the physiotherapy treatment ended. On this basis, I find the treatment plan is not reasonable and necessary.
- [21] Lastly, the respondent questioned whether the treatment goals can be reasonably met as the physiotherapist in recommending treatment indicated there are no pre-existing medical conditions. I find the treatment plan does refer to the COPD condition but the physiotherapist did fail to consider the other pre-existing medical conditions such as those listed in Ms. Rodie's report which included chronic back pain, a right shoulder dislocation, a left ankle fracture, and decreased strength in the left lower extremity when recommending treatment. I find it is not reasonable to recommend treatment without considering the pre-existing medical conditions. I agree this raises doubt as to the validity of the treatment goals. On this basis the treatment plan is not reasonable and necessary.
- [22] Based on the totality of the evidence, I find the applicant has not satisfied the reasonableness and necessity test as outlined above. As such, he is not entitled to the claimed medical benefit.

INTEREST

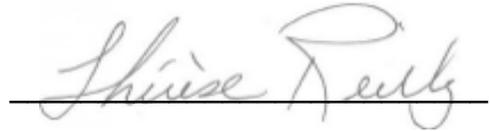
- [23] Given that there has been a finding that the applicant is not entitled to the medical benefit, no interest is payable.

¹⁶ Report of Dr. Wahby, Tab K, footnote 1, pages 4 and 5.

CONCLUSION

[24] For the reasons outlined above, I find that the applicant is not entitled to the medical benefit and interest is payable.

Released: June 4, 2019

A handwritten signature in cursive script, reading "Thérèse Reilly", is written over a horizontal line.

Thérèse Reilly, Adjudicator