

**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**



Tribunal File Number: 17-005419/AABS

In the matter of an Application for Dispute Resolution pursuant to subsection 280(2) of the *Insurance Act*, RSO 1990, c I.8., in relation to statutory accident benefits.

Between:

Prisca Maturine

Applicant

and

Aviva Insurance Canada

Respondent

DECISION

ADJUDICATOR:

Robert Watt

APPEARANCES:

For the Applicant:

Dr. Jordan Palmer for the Applicant

For the Respondent:

Jennifer Cosentino for the Respondent

Heard in Writing and in Person July 8, 2019

OVERVIEW

- [1] Prisca Maturine (the “applicant”) was injured in an automobile accident on May 31, 2015 and sought benefits pursuant to the *Statutory Accident Benefits Schedule- Effective September 1, 2010*.
- [2] The applicant submitted an application to the Licence Appeal Tribunal – Automobile Accident Benefits Service (the “Tribunal”) when the benefits were denied by the Respondent.

ISSUES TO BE DECIDED

- [3] The issues in dispute were identified and agreed to as follows:
 - i. the amount of \$400 from June 7, 2015 to date and ongoing?
 - ii. Is the applicant entitled to \$2,260 towards the cost of obtaining an accountant’s report from Great Oak Inc. in respect of the IRB?
 - iii. Is the applicant entitled to a medical benefit in the amount of \$1,767.81 (\$2,425.50 less the approved \$657.69) for assistive devices recommended by Network Health Assessment in a treatment plan (OCF-18) submitted on December 4, 2015 and denied on December 17, 2015?
 - iv. Is the applicant entitled to a medical benefit in the amount of \$1,047.32 (\$3,062.25 less the approved \$2,014.93) for psychological treatment recommended by Network Health Assessment in a treatment plan (OCF18) submitted on April 25, 2016 and denied on November 12, 2016?
 - v. Is the applicant entitled to a medical benefit in the amount of \$2,000 for a psychological assessment recommended by Network Health Assessment and Rehabilitation in a treatment plan submitted on October 27, 2017 and denied on January 22, 2018?
 - vi. Is the applicant entitled to interest on any overdue payment of benefits?
 - vii. Is the applicant entitled to an award under *Ontario Regulation 664* because the respondent unreasonably withheld or delayed the payment of benefits?

RESULTS

- [4] The applicant is not entitled to receive a weekly IRB in the amount of \$400 from June 7, 2015 to date and ongoing.
- [5] The applicant is not entitled to \$2,260 towards the cost of obtaining an Accountant's report from Great Oak Inc. in respect of the IRB.
- [6] The applicant is not entitled to the medical benefits in the amounts of \$1,767.81, \$1,047.32, and \$2,000 recommended by Network Health Assessment and Rehabilitation.
- [7] The applicant is not entitled to interest or an award.

BACKGROUND

- [8] On May 31, 2015, the applicant was driving a car in a mall parking lot when she was hit. The air bags did not deploy. She hit the back of her head on the head rest. The next day she felt pain in her lower back and neck. There were no broken bones. She took time off work. At the time of the accident, the applicant worked at Trentway-Wagar full time, cleaning the inside of buses. She testified that she went back to work on September 28, 2015 because she needed the income. She had moved several times causing the IRB to be paid to her late. The applicant gave evidence that her family doctor never told her she could not go back to work.
- [9] On June 30, 2015, the applicant's OCF-1 and OCF-10 were sent to the respondent.¹ Part nine of the OCF-1 was left blank, indicating that the applicant did not have access to a disability plan, employment insurance benefits, and social assistance. The applicant admitted in her evidence that she found out two months after the accident that she had collateral benefits, but it was too late to apply for those collateral benefits. The applicant elected an IRB on her OCF-10 submitted on June 30, 2015.² The applicant signed an OCF 3 on July 28, 2015.³
- [10] The applicant returned to work on September 28, 2015 (confirmed by her employer) and returned to her pre-accident hours on October 26, 2015. The respondent paid the IRB up to October 26, 2015 in the amount of \$3,477.16.⁴ The respondent was not aware that the applicant had returned to work until

¹ Tab 6A of the Respondent's Brief of Documents

² Tab 4A of the Respondent's Brief of Documents

³ Tab 5a of the Respondent's Brief of Documents

⁴ Tab 61 of the Respondent's Brief of Documents.

January 6, 2016. The applicant confirmed this in her testimony on cross-examination. The applicant also confirmed in her testimony that she had no other period of disability.

- [11] The applicant's Assurant Solutions Claim Form completed by Dr. Arnaudon on January 24, 2016 indicated that the applicant returned to "full duties" the last week of October 2015.⁵ The applicant disputes this information, that she went back to full duties, but provided no other documentation to contradict it. The applicant produced no medical notes after August 8, 2015, which stated that she could not work. She had produced medical notes on June 5, 2015, July 3, 2015, and August 8, 2015 to her employer indicating that she could not work.
- [12] When the applicant returned to work, she was given lighter tasks to perform but was paid the same salary as indicated by the tax returns for 2015, 2016, 2017, and bank statements. Her tax returns show that her income increased after 2015 for the years 2016, and 2017. On January 21, 2016, the applicant provided information to the respondent indicating the details of her return to work and employment duties, pre- and post accident.⁶ The tax returns form 2015-2017 show no loss of income post September 28, 2015.

ANALYSIS

Is the applicant entitled to receive a weekly income replacement benefit (IRB) in the amount of \$400 from June 7, 2015, to date and ongoing?

- [13] Section 5 of the *Schedule* requires an insurer to pay IRB to an insured person who sustains an impairment as a result of an accident who was employed at the time of the accident and, as a result of and within 104 weeks of the accident, suffers a substantial inability to perform the essential tasks of that employment. The *Schedule* also provides that after the first 104 weeks of disability, an insurer is required to pay IRB to an insured person who suffers a complete inability to engage in any employment or self-employment for which she is reasonably suited by education, training, or experience.
- [14] Both parties submitted that the only time frame to be considered for an IRB was the first 104 weeks after the accident. The applicant went back to work on September 28, 2015, but to a slightly altered job to assist her with her recovery. The applicant was paid her normal salary from September 28, 2015 onwards.

⁵ Assurance Solutions Claim form P267-270 Applicant's Brief of Documents

⁶ Tab 33 Applicant's Brief of Documents

The respondent paid the applicant an IRB up to the date when she returned to work assuming full work responsibilities, being October 26, 2015. Both the applicant and Dr. Arnaudon confirmed that the applicant returned to “full duties” albeit slightly lighter , with less physical activity of bending down to pick up garbage to accommodate quicker recovery.

- [15] I find that the applicant does not meet the requirements for entitlement to IRB beyond October 26, 2015, as she returned to full time work and was paid in accordance with the *Schedule*, up to the time that she returned to work full time.

Is the applicant entitled to \$2,260 towards the cost of obtaining an Accountant’s report from Great Oak Inc. in respect of the IRB?

- [16] The applicant’s lack of disclosure of her return to work to the respondent until January 2016, her failure to apply for collateral benefits and her failure to disclose sick day benefits all added to the confusion for the calculation of her IRB. Had the information been provided as she was an employee, the calculations for her IRB would have been quite straightforward.
- [17] Notwithstanding that the applicant was an employee and her income for the purposes of calculating her entitlement to IRB and the quantum was readily available from her employer, the applicant hired Great Oak Vocational Forensic Accounting to calculate her IRB. She failed to give the accountants full information. Great Oak produced a report on July 14, 2015, unaware that the applicant signed the OCF-1 (June 30, 2015) and her employer completed the OCF-2 (June 17, 2015). The report noted on page 9 that the applicant did not have any short-term or long-term disability. The applicant in her testimony indicated that she knew two months after the accident, that is, by July 2015, that she had this type of coverage. The report was therefore flawed in this aspect because of the misreporting by the applicant, who failed to disclose the information on the collateral benefits.
- [18] I find that the lack of information and the inconsistent information provided by the applicant to the respondent and to the accountants, was the reason for not having the IRB calculated sooner and accurately. I find that if the applicant had provided all of the required information to the respondent, that it was not difficult to calculate the applicant’s weekly IRB as the applicant was an employee. I therefore find that the cost of the accounting report was not reasonable and necessary.

Is the applicant entitled to a medical benefit in the amount of \$1,767.81 (\$2,425.50 less the approved \$657.69) for assistive devices recommended by Network Health Assessment in a treatment plan (OCF - 18) submitted on December 4, 2015 and denied on December 17, 2015?

- [19] Section 15 of the *Schedule* requires expenses for medical and rehabilitation devices incurred as a result of an accident to be reasonable and necessary, before an insurer is required to pay for them.
- [20] Occupational Therapist, Punita Laurier, submitted a treatment plan on behalf of the applicant, after she performed range of motion and strength testing on the applicant and then set out the assistive devices that the applicant would need to overcome her impairments.⁷ Her report did not set out the components of the testing, describe the tests administered, explain the purpose of each test, the testing scale applied for each test, or her own observations.
- [21] Sara Lee, an IE assessor, conducted more extensive testing on the applicant which included active range of motion testing, manual muscle testing, grip strength testing and dynamic strength testing. Ms. Lee further administered the Beck Depression Inventory and the Beck Anxiety Inventory and had the applicant demonstrate various functions in the home. Ms. Lee set out the components of the testing, describing the tests administered with an explanation of the purpose of each test, the testing scale applied for each test and her own observations.
- [22] Ms. Lee's report was based on her assessment of the applicant's functional mobility as explained in her report. She indicated that the anti-slip mat, raised toilet seat, mattress, 16" and 24" grab bars were not reasonable and necessary. These were the devices that the respondent refused to pay for.
- [23] I accept the report of Ms. Lee because it is more of an in-depth analysis of functional ability and sets out the components of the testing describing the tests administered, explanation of the purpose of each test, the testing scale applied for each test and her own observations.
- [24] I therefore find that the medical benefit is not reasonable and necessary. The applicant is not entitled to the outstanding amount of \$1,767.81 for assistive devices.

Is the applicant entitled to a medical benefit in the amount of \$1,047.32 (\$3,062.25 less the approved \$2,014.93) for psychological treatment recommended by

⁷ OCF 18 dated December 4, 2015 Respondent's Brief of Documents Tab 7 B

Network Health Assessment in a treatment plan (OCF18) submitted on April 25, 2016 and denied on November 12, 2016?

- [25] Dr. Mills, psychologist on behalf of the applicant submitted a treatment plan on April 25, 2016, recommending 10 ninety-minute psychological treatment sessions.
- [26] Dr. H. Rockman, psychologist, on an IE assessment that included an in-person interview and a later paper review of the updated medical reports,⁸ instead recommended 10 sixty-minute sessions. Dr. Rockman relied on the Motor Vehicle Anxiety Treatment Progress Report dated June 27, 2016, completed by Sandeep Kaur which indicated that the “applicant had regained her confidence back and required no further intervention”.⁹ Dr. Rockman felt that the applicant had overcome her driving phobias and that the 60 minute sessions were all that was needed for the applicant to have addressed other lingering psychological symptoms.
- [27] Dr. Rockman’s position seems to be more reasonable as the applicant had returned to her previous level of psychological functioning with regard to motor vehicle exposure, and on this issue, no further intervention was required.
- [28] I therefore find that the remainder of the treatment plan still outstanding is not reasonable and necessary.

Is the applicant entitled to a medical benefit in the amount of \$2,000 for a psychological assessment recommended by Network Health Assessment and Rehabilitation in a treatment plan submitted on October 27, 2017, and denied on January 22, 2018?

- [29] Dr. C. Goodfield, psychologist, in her IE report dated January 4, 2018,¹⁰ indicated as her overall conclusion that there was no need for any further psychological assessment. She noted that the applicant had achieved maximum medical improvement. Dr. Goodfield also noted in her report that the applicant chose not to follow through on a psychological treatment plan that had been approved.¹¹ Dr.

⁸ Section 44 driving phobia assessment dated June 1 206 Tab 20 of the applicant’s Brief of Documents/ section 44 Paper Review by Dr. H. Rockman Tab 8B of the Respondent’s Lat Brief

⁹ Tab 30 of Applicant Brief of Documents

¹⁰ Tab 13 Applicant’s Compendium

¹¹ Ibid p13

Goodfield noted the applicant's life stressors as being her separation and lack of child support.¹²

- [30] Dr. Kerry Lawson, psychologist, in her IE report on October 14, 2015,¹³ diagnosed the applicant with adjustment disorder with mixed anxiety and depressed mood - moderate. Dr. Daniel Arnaudon, the applicant's family physician, opined in a letter dated November 2, 2017 that "it would make sense to combine extensive psychological and therapeutic interventions."¹⁴
- [31] The goals set out in the submitted treatment plan are to assist the applicant to return to the activities of normal living and return to modified work activities. Since the applicant has already accomplished this, I query what value a further assessment would have. The application identifies one of the barriers to recovery as the "fear of driving/being in a car". The applicant had already overcome this issue by completing 10 psychological sessions and 10 driving re-integration sessions, with improvements noted in the reports already referred to.
- [32] It is noted that between the date of the accident and the date of Dr. Arnaudon's report dated November 2, 2017, there were no complaints made by the applicant to her family doctor about psychological issues and getting psychological treatment.
- [33] I find that the applicant returned to work full time after the accident, continued to drive and returned to her housekeeping chores. Having not attended a second approved psychological treatment plan and not complaining to her family doctors suggests that further psychological intervention was not required.
- [34] I find that the recommended treatment plan is not reasonable and necessary. The applicant is not entitled to the medical benefit for \$2,000 for a psychological assessment.

Interest and Award

- [35] Since no benefits are owing, I find that the applicant is not entitled to interest or an award.

¹² Ibid p 18

¹³ Tab 12 Applicant's Compendium

¹⁴ Letter of Dr. Arnaudon dated November 2 2017, Tab 7 of Applicant's Compendium

CONCLUSION

[36] For the reasons outlined above, I find that:

- a) The applicant is not entitled to receive a weekly IRB in the amount of \$400 from June 7, 2015 to date and ongoing.
- b) The applicant is not entitled to \$2,260 towards the cost of obtaining an Accountant's report from Great Oak Inc. in respect of the IRB.
- c) The applicant is not entitled to the medical benefits in the amounts of \$1,767.81, \$1,047.32, and \$2,000 recommended by Network Health Assessment and Rehabilitation.
- d) The applicant is not entitled to interest or an award.

Released: October 29, 2019



Robert Watt
Adjudicator