

**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**



**Date: 2018-08-10**

**Tribunal File Number: 17-005691/AABS**

**Case Name: 17-005691 v Aviva Insurance Canada**

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:

**Applicant**

**Applicant**

and

**Aviva Insurance Canada**

**Respondent**

**DECISION**

**ADJUDICATOR:**

**Avvy Go**

**APPEARANCES:**

For the Applicant:

Jeton Memeti, representative

For the Respondent:

Ramandeep Pandher, counsel

**HEARD in Writing:**

**June 4, 2018**

## REASONS FOR DECISION AND ORDER

### OVERVIEW

- [1] The applicant was injured in a motor vehicle accident on June 30, 2016. The applicant was making a left-hand turn when he struck another vehicle. Police and ambulance were called to the scene. The applicant was offered to be taken to the hospital, which he denied. Within two or three days of the accident, the applicant reported the onset of pain in his lower back, upper back, and left leg. He started physiotherapy treatments within two weeks after the accident.
- [2] At the time of the accident, the applicant was employed. He has been able to maintain his employment since the accident, with accommodation from his employer.
- [3] The applicant was involved in a prior motor vehicle accident in 2007 and required surgery for injuries to his right hand.
- [4] The applicant applied to the respondent, Aviva Insurance Company of Canada, for benefits for the June 2016 accident pursuant to the *Statutory Accident Benefits Schedule – Effective September 1, 2010*<sup>1</sup> (“Schedule”). The respondent paid for some of the benefits sought and denied other benefits, either in whole or in part.
- [5] A case conference was held on March 6, 2018 to determine the issues in dispute. The parties were unable to resolve the dispute, and proceeded to this hearing.

### ISSUES

- [6] The issues in dispute are:
  - (a) Is the applicant entitled to medical benefits in the amount of \$4,261.25 for physiotherapy, chiropractic and massage therapy treatment recommended by Active Life Wellness Centre dated November 3, 2016, and denied on March 29, 2017?
  - (b) Is the applicant entitled to payment for the cost of an examination expense in the amount of \$200.00 for psychological assessment (\$2,200.00 less \$2,000 approved) recommended by Pilowsky Psychology

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<sup>1</sup> O. Reg. 34/10.

Professional Corporation dated January 13, 2017, and denied on March 29, 2017?

- (c) Is the applicant entitled to interest on any overdue payment of benefits?
- (d) Is the applicant entitled to an award under Ontario Regulation 664<sup>2</sup> because the respondent unreasonably withheld or delayed the payment of benefits?

## RESULT

- [7] For the reasons set out below, I find that the applicant is entitled to the medical benefits claimed in paragraphs 6(a) and (b), above, and that interest is payable. I find that the applicant is not entitled to an award under Ontario Regulation 664.

## ANALYSIS

- [8] In assessing the applicant's entitlement to the medical benefits sought, I am guided by several provisions of the *Schedule*. These include section 14, which makes an insurer liable to pay medical and rehabilitation benefits for an insured person who sustains an impairment as a result of an accident; and section 15, which states that insurers shall pay for all reasonable and necessary medical expenses incurred by the insured person as a result of the accident.
- [9] The burden rests with an insured person to establish that the benefits sought are reasonable and necessary.

***Issue 1: Is the applicant entitled to medical benefits in the amount of \$4,261.25 for physiotherapy, chiropractic and massage therapy treatment recommended by Active Life Wellness Centre dated November 3, 2016, and denied on March 29, 2017?***

- [10] The treatment plan in question was prepared by Dr. Ravin Sodhi, a chiropractor. He recommended treatment to address, among other issues, pain in the applicant's cervical spine, neck tension and related shoulders tension and headaches, as well as persistent back pain with stiff, dull and occasionally sharp pain radiating into his left thigh. The applicant's pain is aggravated by bending and repetitive work activities, but is alleviated by physiotherapy and rest. Dr. Sodhi opined that continued myofascial release is required for cervical and upper extremity musculature with focus on active exercise programs. Dr. Sodhi also noted that while the applicant has been compliant with active rehab exercises,

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<sup>2</sup> R.R.O. 1990, Regulation 664

however, his improvement has been slow since his last treatment plan. Overall, while the prognosis is fair, continual rehabilitation is required.

- [11] I find the treatment plan recommended by Dr. Sodhi to be reasonable and necessary for the reasons set out below.
- [12] The goal of Dr. Sodhi's proposed treatment plan is pain reduction, increase range of motion, increase in strength, return patient to pre-accident level and function, chronic pain prevention with strengthening and stretching, and to return to activities of normal living, and functional restoration.
- [13] The decision of the respondent to deny the treatment plan as proposed by Dr. Sodhi relied on the Insurer's Examination ("IE") completed by Dr. Jacqueline Auguste (an orthopaedic surgeon), who determined that the treatment plan recommended is not reasonable and necessary for the injuries sustained in the accident.
- [14] In a report dated January 13, 2017, Dr. Auguste opined that there were "no findings of any substantive musculoligamentous, osseous or neurologic impairments on clinical testing today that would cause me to believe [the applicant] suffered anything other than strain/sprain injury to the thoracolumbar spine". Dr. Auguste also found "no evidence of a pre-existing condition that has been exacerbated by the subject accident that would necessitate treatment outside of the (Minor Injury Guideline) MIG". On that basis, Dr. Auguste found the treatment plan in question not reasonable or necessary.
- [15] Subsequent to Dr. Auguste's report, the respondent notified the applicant by a letter dated March 29, 2017 that the applicant's injuries "no longer meet the criteria of a minor injury".
- [16] Dr. Auguste issued an addendum report dated May 4, 2018, in which she reiterated her earlier opinion that the treatment plan in dispute is not reasonable or required because she found "no evidence of pre-existing condition that has been exacerbated by the subject accident that would allow for treatment outside of the MIG".
- [17] I note first of all that the respondent based its denial of the treatment plan solely on Dr. Auguste's report which, in her own words, found that the applicant's injuries fall within the MIG. However, by March 2017, the respondent had already accepted that the applicant's injuries do not fall under MIG. In other words, the respondent did not accept Dr. Auguste's opinion with respect to the MIG

assessment yet continued to rely on Dr. Auguste's report to deny the treatment plan proposed by Dr. Sodhi.

- [18] In its submission, the respondent argued that the applicant was removed from the MIG "on a psychological basis only, in March 2017, after Dr. Auguste's report was authored. The applicability of the Minor Injury Guideline to the Applicant's physical injuries has not been raised as an issue in dispute before this Tribunal in this matter on the within LAT Application and is not the subject of this dispute".
- [19] Yet therein lies the contradiction: the respondent holds up Dr. Auguste's opinion as the basis for denying the treatment plan, when that opinion has essentially been disregarded by the respondent as it decided to take the applicant out of the MIG. Just because the applicant was removed from the MIG "on a psychological basis only" does not mean his physical needs can be ignored. The applicant's psychological well-being no doubt has an impact on his physical recovery – and the speed of recovery. In fact, as noted by Dr. Sodhi, the barriers to treatment include limited functional and postural tolerances due to pain, multiple injury sites, ***psychological issues***, work demands and pre-existing injuries.
- [20] I also note that Dr. Auguste never concluded that the applicant does not suffer from any pain or injury. Rather, her opinion is that the applicant's sprain/pain falls within the MIG. In her addendum report, she noted the clinical notes from Dr. Robin Lee, the applicant's physician, who reported the applicant's complaints of back pain, sleep problems and some anxiety. Dr. Lee gave the applicant a diagnosis of myofascial pain syndrome, among other issues.
- [21] I reject the respondent's argument that Dr. Sodhi did not conduct a thorough and proper examination. While it may be true that Dr. Sodhi focused his assessment only on cervical and lumbar spine, while Dr. Auguste did a full body examination, the treatment plan in question is reasonably tied to Dr. Sodhi's assessment of the applicant's cervical and lumbar spine, and other related issues (such as neck pain, and radiating pain to the applicant's thigh, etc.)
- [22] In conclusion, I find the proposed treatment plan by Dr. Sodhi to be reasonable and necessary and as such the applicant is entitled to medical benefits in the amount of \$4,261.25 for physiotherapy, chiropractic and massage therapy treatment.

***Issue 2: Is the applicant entitled to payment for a cost of an examination expense in the amount of \$200.00 for psychological assessment (\$2,200.00 less \$2,000 approved) recommended by Pilowsky Psychology Professional Corporation dated January 13, 2017 and denied on March 29, 2017?***

- [23] The applicant was seen by Dr. Judith Pilowsky, a psychologist. Dr. Pilowsky diagnosed the applicant with major depressive disorder, single episode, moderate, post-traumatic stress disorder with vehicular anxiety/avoidance, persistent, moderate somatic symptom disorder with predominant pain. Dr. Pilowsky proposed an assessment and mental health and addictions plan in the amount of \$2,200.00. The respondent agreed to pay all but \$200.00 of the treatment plan.
- [24] The respondent's partial denial is based on the psychological assessment of Dr. Jonathan Siegal, also a psychologist, dated January 27, 2017. After interviewing the applicant, whom Dr. Siegal found to be a "reliable historian", Dr. Siegal conducted several tests. Based on his assessment, Dr. Siegal concluded that the applicant presented with "an Adjustment Disorder with mixed symptoms of Depression and Anxiety, and this is a direct consequence of the indexed motor vehicle accident". Dr. Siegal further noted in his report that the applicant "continues to report problems with sleep, including sleep onset delay and nocturnal awakenings, as well as problems with appetite, weight loss and mood difficulties."
- [25] When asked about the proposed assessment plan by Dr. Pilowsky, Dr. Siegal noted that "Dr. Pilowsky did not specify the psychological tests to be administered". He estimated that a total of 10 hours can be set aside for the entire assessment plan for a total fee of \$1496.10. But he also noted that Dr. Pilowsky has referenced adjustment disorder and "will be able to provide a psychological assessment for the specific purpose of treatment planning".
- [26] While I note that Dr. Pilowsky may not have specified the psychological test to be administered, she has noted that the proposed assessment will focus on "gathering information to diagnose this patient's conditions and guide treatment". Dr. Pilowsky recommended \$2,000.00 for assessment, and \$200.00 for documentation.
- [27] It would thus appear that the dispute is over whether Dr. Pilowsky would need 10 hours (as noted by Dr. Siegal) or more to complete the assessment.
- [28] I find that the assessment plan is necessary, a finding that is in fact supported by the respondent's own IE, and confirmed by the respondent's partial approval of

the plan. The only remaining question is whether the extra \$200.00 is reasonable under the circumstances; my answer is also yes.

[29] The case law<sup>3</sup> relied on by the respondent is not relevant as the applicant in that case required extra psychotherapy sessions but failed to prove that the extra sessions were reasonable and necessary. Here, the respondent's own IE assessor agreed that the assessment plan is necessary but offered a different opinion about the amount of hours that would be required to complete it, and the difference is, quite simply, insignificant.

[30] In conclusion, I find the applicant entitled to the remaining \$200 for the psychological assessment plan.

***Issue 3: Is the applicant entitled to interest on the overdue payment of benefits?***

[31] The applicant is entitled to interest on the overdue payment of benefits at the prescribed rate in accordance with s. 51 of the *Schedule*.

***Issue 4: Is the applicant entitled to an award under Ontario Regulation 664 because the respondent unreasonably withheld or delayed the payment of benefits?***

[32] Section 10 of Regulation 664 empowers the Licence Appeal Tribunal to award a lump sum of up to 50 per cent of the amount to which the person was entitled at the time of the award together with interest on all amounts then owing if the Tribunal finds that an insurer has "unreasonably withheld or delayed payments".

[33] The applicant argued that the respondent acted in bad faith when adjusting his claims, and that all the denials subject to this appeal were not done in accordance with s. 38(8) of the *Schedule*. As a result of the denial, the applicant submitted that his condition has deteriorated significantly to the point where he is having difficulty with "his vocation, family and the rest of society." Finally, the applicant submitted that by not removing him from MIG after the collision, by failing to comply with the *Schedule*, and by failing to review all available medical evidence when making its determination, the respondent engaged in frivolous and vexatious behaviour, which entitles the applicant to an award equivalent to 50 per cent of the amount of all the benefits in dispute.

[34] The applicant did not provide any specific examples of how the respondent has "unreasonably withheld or delayed payments" or otherwise acted in bad faith.

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<sup>3</sup> 17-001146 v. Aviva Insurance Canada, 2017 CanLII 69449 (ON LAT)

While the respondent may not have agreed to pay the applicant benefits fully after he submitted his claims, the act of denial by itself does not constitute unreasonable conduct or action in bad faith. I note that the respondent had in fact decided to take the applicant out of the MIG as early as March 2017, notwithstanding a contrary opinion in one of their IEs by Dr. Auguste. This suggests that the respondent did in fact review and consider the medical evidence submitted by the applicant.

- [35] The respondent also did agree to grant partial benefits to the applicant with respect to the psychological assessment plan. While one could reasonably question the efficacy of the respondent's decision to withhold \$200 of the \$2,200.00 assessment plan, the decision was consistent with the opinion from the IE by Dr. Siegel.
- [36] In short, while the applicant is understandably upset by the decisions made by the respondent over his claims, which may well have resulted in the delay of his treatment, there is insufficient evidence for me to find that the respondent has acted in a manner that will justify the issuance of an award pursuant to Regulation 664.

## **ORDER**

- [37] The Tribunal finds the applicant is entitled to:
- (a) Medical benefits in the amount of \$4,261.25 for physiotherapy, chiropractic and massage therapy treatment;
  - (b) The outstanding cost of an examination expense in the amount of \$200.00 for a psychological assessment; and
  - (c) Interest on any overdue payment of benefits.
- [38] The Tribunal further finds the applicant is not entitled to an award under Ontario Regulation 664.

**Released: August 10, 2018**

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**Avvy Go, Adjudicator**