

**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: 2018-08-21

Tribunal File Number: 17-006831/AABS

Case Name: 17-006831 v Aviva General Insurance

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 General Insurance

Respondent

DECISION

ADJUDICATOR: Robert Watt

APPEARANCES:

Counsel for the Applicant: Yousef Jabbour

Counsel for the Respondent: Ramandeep Pandher

HEARD in Writing: June 4, 2018

OVERVIEW

- [1] The applicant was injured in an automobile accident on May 28, 2015, and sought benefits pursuant to the *Statutory Accident Benefits Schedule - Effective September 1, 2010* (“*Schedule*”). The respondent determined that the applicant’s injuries are considered minor, as defined by the *Schedule*, and that the applicant is not entitled to attendant care benefits, and further denied the applicant’s request for treatment services and assessments.
- [2] The applicant appealed those decisions by submitting an application for dispute resolution services to the Licence Appeal Tribunal - Automobile Accident Benefits Service (“Tribunal”). The parties participated in settlement discussions at the case conference and were unable to resolve the issues in dispute.
- [3] I must now decide if the applicant if the applicant’s injures are defined as minor and if he is entitled to the denied benefits.

ISSUES IN DISPUTE

- [4] The following preliminary and substantive issues are in dispute:

Preliminary Issue

- i. Is the applicant statute barred from seeking attendant care benefits in the amount of \$1,103.54 per month for the period May 28, 2015, to May 28, 2017, pursuant to the time limitation in section 56 of the *Schedule*?

Issues in Dispute

- i. Do the applicant’s injuries fall within the Minor Injury Guideline?
- ii. Is the applicant entitled to attendant care benefits in the amount of \$1,103.54 per month for the period May 28, 2015 to May 28, 2017?
- iii. Is the applicant entitled to a medical benefit in the amount of \$909.62 for physiotherapy services, recommended by Complete Rehab Centre in a treatment plan dated October 5, 2015, denied by the Respondent on October 19, 2015?
- iv. Is the applicant entitled to a medical benefit in the amount of \$2,173.87 for physiotherapy services, recommended by Complete Rehab Centre in

a treatment plan dated January 22, 2016, denied by the Respondent on February 5, 2016?

- v. Is the applicant entitled to a medical benefit in the amount of \$1,948.25 for physiotherapy services, recommended by Complete Rehab Centre in a treatment plan dated March 13, 2017, denied by the Respondent on March 22, 2017?
- vi. Is the applicant entitled to a medical benefit in the amount of \$1,591.12 for physiotherapy services, recommended by Complete Rehab Centre in a treatment plan dated April 26, 2016, denied by the Respondent on May 5, 2017?
- vii. Is the applicant entitled to payments for the cost of examinations in the amount of \$2,248.90 for an in-home assessment, recommended by Complete Rehab Centre in a treatment plan dated October 23, 2015, denied by the Respondent on October 27, 2015?
- viii. Is the applicant entitled to payments for the cost of examinations in the amount of \$2,460.00 for a psychological assessment, recommended by Complete Rehab Centre in a treatment plan dated February 9, 2016, denied by the Respondent on February 25, 2016?
- ix. Is the applicant entitled to interest on any overdue payment of benefits?

RESULTS

- [5] The applicant is statute barred from seeking attendant care benefits in the amount of \$1,103.54 per month, for the period May 28, 2015, to May 28, 2017.
- [6] The applicant sustained predominantly minor injuries that fall within MIG, and therefore, has exhausted the medical benefit available to him, and thus is not entitled to the requested treatment and assessments.
- [7] The applicant is not entitled to interest.

BACKGROUND

- [8] The applicant is a 48 year old woman that was sitting in the front passenger seat of a vehicle stopped at a railway crossing, on May 28, 2015. Her car was rear ended. She complained after the accident of neck pain and upper back pain. No

ambulance was called. The applicant returned to work as a physician's assistant. The applicant had no pre-existing medical issues.

ANALYSIS

Is the applicant entitled to an Attendant Care Benefit?

Preliminary Issue

- [9] I must first determine if the applicant is statute barred from seeking attendant care benefits in the amount of \$1,103.54 per month for the period May 28, 2015, to May 28, 2017, pursuant to section 56 of the *Schedule*.
- [10] The applicant's application for attendant care benefits was filed with the Tribunal on October 6, 2017. The respondent had advised the applicant on July 23, 2015, by way of Explanation of Benefits letter that there was no entitlement to the attendant care benefit, as her injuries fell within the MIG. The applicant had two years to submit her application in accordance with the *Schedule* and failed to do so.¹ There is no information before me as to why the application was submitted beyond the two year period, credible merits of the application for attendant care benefits, or reasons why the Tribunal should exercise its discretion to extend the time period for filing the application.
- [11] I find that the applicant is statute barred from seeking attendant care benefits.

Alternative findings for Attendant Care Benefits

- [12] The applicant has not provided any evidence that attendant care expenses have been incurred, or that family members or professionals were required to assist her in her activities of daily living and care, as required by the *Schedule*.² Thus, even if she had submitted her application within the time limits, her lack of evidence would also bar her from receiving attendant care benefits.
- [13] In the Roland-Morris Disability Questionnaire (RMDQ) dated February 15, 2018, which she filled out during an Insurer's Examination, the applicant states "that she does not get dressed more slowly than usual because of her back, she does not have trouble putting on her socks and she does not require assistance

¹ Sec 56 of the *Schedule*

² Sec 19(1)(4)

getting dressed due to her pain”.³ In the Neck Disability Index form (NDIF) that the applicant filled out on February 15, 2018, she indicated that she can look after herself normally, but this causes extra pain. She indicated that she does not need help to manage her normal personal care, or most aspects of self-care and that she can do most of her usual work, but no more”⁴

- [14] The applicant’s self-reporting on her functional abilities in the RMDQ and in the NDIF conflicts with the In-Home Assessment Report by Elhaam R. Tharoo (OT) dated November 1, 2015. Dr. Tharoo’s report indicated that the applicant needed housekeeper assistance and care giving assistance. I prefer the self-reporting evidence of the applicant and the fact that the applicant was back at work and reported no problems functioning at work.
- [15] The applicant in her own verbal report to Dr. Mula during an Insurer’s Examination (IE), set out in the IE report dated February 12, 2016, reported that she is able to and has resumed the following activities: meal preparation, cleaning, laundry; personal hygiene, grooming, dressing and undressing, self-feeding.⁵ Dr. Mula further stated that additional chiropractic treatment is unlikely to lead to any further significant long term improvement. He also concluded that the “signs and symptoms are consistent with myofascial strains only, and that the applicant had good motion in all areas.”
- [16] The *Schedule* requires all attendant care benefits to be reasonable and necessary.⁶ There is no evidence before me that the claim for attendant care benefits is reasonable and necessary. The evidence in fact shows that the applicant does not need attendant care benefits, as she is self-sufficient in her daily personal activities.
- [17] I therefore find that the attendant care benefits sought are not reasonable and necessary, as required by the *Schedule*,⁷ even if she had submitted her application within the time limits.
- [18] I also find that she is not entitled to attendant case benefit, for a third reason. As stated below, I also found that the injuries that the applicant suffered are within the MIG. Attendant care benefits are not available for injuries found to be within

³ Roland-Morris Disability Questionnaire. Respondent Brief Tab 7

⁴ Neck Disability Index form-dated November 10, 2017 and dated February 15, 2018 Respondent Brief Tabs 9, 20

⁵ Dr. Mula’s Report-Respondent Brief of Documents Tab 10

⁶ Sec 19(1) *Schedule*

⁷ Secs 15(1), 16(1) of the *Schedule*

the MIG. This finding then would also bar the applicant from receiving attendant care benefits, if she had submitted her application within the time limits.

Do the applicant's injuries fall within the MIG?

- [19] The Schedule defines a “minor injury” as one or more of a sprain, strain, whiplash associated disorder, contusion, abrasion, laceration or subluxation, and includes any clinically associated sequelae to such injury. Section 18(1) limits the amount to be paid for medical and rehabilitation benefits to \$3,500.00, minus any payments paid under MIG. The applicant claims that she does not have minor injuries as she suffered both a shoulder tear and psychological injuries from the accident.
- [20] Following the accident, the applicant attended at Dr. Okafor's walk-in clinic (family physician) five times in 2015, and once in 2016, complaining of neck pain. Dr. Okafor diagnosed her on May 28, 2015, with whiplash, and advised her to attend physiotherapy twice a week.⁸
- [21] Dr. Parimoo, a family physician, saw the applicant four times in 2017, and noted that the applicant complained of right shoulder pain and elbow pain. Dr. Parimoo noted mild tenderness in the right shoulder and sent the applicant for an MRI. The MRI showed two tears in the right shoulder. There was no indication by the doctor that the tears were related to the accident.⁹
- [22] The applicant was referred by Dr. Parimoo to specialist Dr. Aheer, who gave the applicant a cortisone shot to the right shoulder on July 16, 2017. The applicant was seen by Dr. Aher again on August 3, 2017, and on December 7, 2017, when the applicant was given another cortisone shot. Dr. Aher recommended that she continue with physiotherapy. On August 3, 2017, he also noted that she was feeling better, but still experienced pain that bothered her at night and that her shoulder was 50% better. Dr. Aheer never opined that the shoulder pain was related to the motor vehicle accident.¹⁰
- [23] On March 7, 2016, the applicant underwent a psychological assessment by Dr. Mills. He recommended a minimum of 10 sessions of psychotherapy to help the applicant with what he addresses as “adjustment disorder with mixed anxiety, depressed mood and somatic symptom disorder.” He reported that the applicant

⁸ Clinical Records and Notes from Dr. Okafor-Applicant's Brief of Documents-Tab J

⁹ Clinical Records and Notes from Dr. Parimoo-Applicant's Document Brief Tab K

¹⁰ Clinical Records and Notes from Dr. Aheer-Applicant's Document Brief at Tab M

struggles to carry out her normal daily activities, such as cooking, cleaning and maintenance at home, and cannot do all the chores in her home as she once did.

- [24] In reviewing the history, I find it important that Dr. Okafor and Dr. Parimoo assessed the applicant with minor injuries. The two tears in the shoulder could take the injuries out of the minor injuries category. The applicant complained once about the right shoulder on July 13, 2015 when she saw Dr. Okafor. There are no further complaints until two years later after the accident. The two tears have not been tied to the accident by any medical report. The *Schedule* requires payments only to be made in respects of “accidents”, for any benefit to be paid.¹¹
- [25] I find that the applicant’s self-reporting to Dr. Mula in February 2016, and her answers on both the NDIF and RMDQ, contradicts her self-reporting as to her functionality to Dr. Mills one month later. I accept therefore the evidence of Dr. Okafor, Dr. Parimoo, Dr. Mula and the self-reporting evidence of the applicant on the NDIF and on the RMDQ that the applicant had minor injuries.
- [26] There is no evidence before me that the applicant took sessions of psychotherapy after March 2016, or that after this period of time, those sessions were needed. I find therefore that the applicant has no psychological impairments that would take her out of the MIG.
- [27] I find that the applicant’s injuries fall within the MIG.

Other Medical/Rehabilitation Benefits

- [28] The applicant’s sustained predominantly minor injuries that fall within the MIG. Accordingly, she is not entitled to the treatment plans claimed in her applications that exceed in total the \$3,500.00 limit, minus whatever she had received.
- [29] I find that there is no interest owing as there are no overdue payments of benefits.

Released: August 21, 2018

Robert Watt, Adjudicator

¹¹ Sec 2)3) of the *Schedule*