

**LICENCE APPEAL
TRIBUNAL**

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



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

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

Citation: **N.D. v. Aviva Insurance Company, 2019 ONLAT 18-009345/AABS**

**Date: December 11, 2019
File Number: 18-009345/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:

N.D.

Applicant

and

Aviva Insurance Company

Respondent

DECISION AND ORDER

PANEL: **Marisa Victor, Adjudicator**

APPEARANCES:

For the Applicant: **Jeton Memeti, Paralegal**

For the Respondent: **Surina Sud, Counsel**

HEARD: **In writing June 24, 2019**

OVERVIEW

- [1] The applicant, N.D., was involved in an automobile accident on July 9, 2016, and sought accident benefits pursuant to the *Statutory Accident Benefits Schedule - Effective September 1, 2010 (the "Schedule")*. The applicant was denied certain benefits by the respondent ("Aviva") and submitted an application to the Licence Appeals Tribunal - Automobile Accident Benefits Service (the "Tribunal").
- [2] Aviva denied N.D.'s claims on the basis that the psychology and physiotherapy treatment plans are not reasonable and necessary to treat her injuries.

ISSUES

- [3] The following are the issues in dispute:
- i. Is the applicant entitled to a medical and rehabilitation benefit in the amount of \$2,830.26 minus amounts paid, for psychological treatment recommended by Dr. Pilowsky in a treatment plan (OCF-18) dated June 13, 2017, and denied on December 13, 2017?
 - ii. Is the applicant entitled to a medical and rehabilitation benefit in the amount of \$1,727.00 for physiotherapy services provided by Health Plus Rehab Center in a treatment plan (OCF-18) dated March 17, 2017, and denied on October 12, 2017?
 - iii. Is the applicant entitled to a medical and rehabilitation benefit in the amount of \$1,500.00 for physiotherapy services provided by Health Plus Rehab Center in a treatment plan (OCF-18) dated June 27, 2017, and denied on October 12, 2017?
 - iv. Is the applicant entitled to interest on any overdue payment of benefits?
 - v. Is the applicant entitled to an award under *Ontario Regulation 664* because the respondent unreasonably withheld or delayed the payment of benefits?

RESULT

- [4] The applicant is not entitled to either the psychological or physiotherapy services, as the evidence fails to establish that these plans are reasonable and necessary.

[5] As there are no overdue payment of benefits, the applicant is not entitled to interest on any overdue amounts.

[6] There will be no award under Ontario Regulation 664.

ISSUE I – NO ENTITLEMENT TO \$2,830.26, MINUS AMOUNTS PAID, FOR PSYCHOLOGICAL TREATMENT

[7] I find that the applicant has not shown that it is reasonable and necessary to approve the remaining \$264.11 as part of this treatment plan. This is based on the applicant's failure to produce enough evidence to support the approval of the remainder of this plan.

[8] The treatment plan of \$2830.26 was partially approved by the respondent, based on an Insurer's Examination (IE) by Dr. Lee, denying just \$264.11. The plan was for 12 therapy sessions, three planning sessions, one reassessment, one educational book and one form fee. The respondent did not believe that the remaining \$264.11 in planning fees and an additional assessment were reasonable and necessary as the treatment plan was presumed to be based on the initial psychological evaluation and re-assessments previously approved.

[9] The applicant submits that the entire plan should be approved because Dr. Lee found that the applicant should receive psychological treatment. However, the applicant submits that Dr. Lee should not have commented on the cost of the treatment plan and, for that reason, the plan should be approved.

[10] The respondent states that Dr. Lee pointed out significant inconsistencies in the applicant's psychological reassessment report. Further, the onus lies with the applicant to show that the remaining treatment is reasonable and necessary. The respondent states that the applicant has failed to adduce any evidence that the remaining \$264.11 in dispute is reasonable and necessary. Finally, not all of the approved amounts have been spent and the applicant has no explanation as to why some of the approved amounts remain unused.

[11] I agree with the respondent's position. The applicant has failed to adduce enough evidence to support that the remaining \$264.11 in the proposed treatment plan is reasonable and necessary, especially given that not all of the approved amounts have been spent many years after those amounts were approved. Further, in the IE conducted by Dr. Lee, it appeared that the applicant was no longer suffering from some of the psychological concerns, notably PTSD, that she had reported earlier. The applicant's recall of her psychological treatment to date was vague and lacking detail in what she did and how it

assisted her. Finally, Dr. Lee expressed doubt as to the need for three planning sessions as included in the treatment plan (he recommended two planning sessions).

- [12] The evidence fails to support on a balance of probabilities that the disputed amount in the applicant's psychological treatment plan is reasonable and necessary.

ISSUES II & III – NO ENTITLEMENT TO BENEFITS FOR PHYSIOTHERAPY SERVICES

OCF-18 dated March 17, 2017 for \$1,727.00 in physiotherapy services

- [13] I find that the applicant has not shown that this plan is reasonable and necessary. This is based on the applicant's medical documentation and IE evidence that the applicant has full range of motion and has recovered from her injuries.
- [14] The applicant submitted a treatment plan on March 17, 2019 seeking benefits of \$1,727 for 10 sessions of "active functional restoration," five hours of massage therapy, a hand massager and a reassessment. The treatment plan states that the goal of the program is to reduce pain, increase strength and increase range of motion.
- [15] In her submissions and during the IE, the applicant complained of the following injuries: a closed and non-displaced 4th left fracture of the metacarpal bone, whiplash associated disorder 2 (WAD 2), neck pain, mid-low back pain, shoulder pain and muscle strain.
- [16] In her submissions, the applicant also states that she was forced to quit working due to her injuries and, as a result, moved back with her family.
- [17] The respondent states that the treatment is not reasonable and necessary because the applicant has no residual impairment from her injuries.
- [18] The respondent states that the applicant's fracture has healed. This is based on the applicant's treatment with a splint which was removed one month post-accident and declared healed.
- [19] The respondent also states that the applicant's documentation fails to support on-going complaints. The applicant's family doctor recommended an x-ray of her back and neck in August 2017, but the applicant failed to complete these assessments. Only two complaints were made to the family doctor, the last

being two years ago. The family doctor did not refer the applicant to physiotherapy, massage therapy or medication.

- [20] In addition, the respondent filed evidence to support that the applicant went back to one of her two jobs three days post-accident, and her second job two and half months post-accident. In contrast to the applicant's submissions, the respondent's evidence supports that the applicant has returned to full employment and she now earns more than she did pre-accident. This evidence does not support the applicant's submissions that her injuries are continuing to affect her work life.
- [21] The respondent sought an IE to assess the applicant. After missing scheduled IEs, the applicant saw Dr. Dessouki, orthopedic surgeon, on September 29, 2017. Dr. Dessouki found the applicant had a functional range of motion in all areas complained of and no tenderness over the area of the fracture. In his opinion, there is no objective evidence of residual musculoskeletal impairment attributable to the injuries. The respondent supports this evidence with surveillance evidence of the applicant over two days in 2017. This evidence purports to show the applicant has full range of motion, is unafraid of driving, and lives a normal life.
- [22] Finally, the respondent states there is no explanation as to what an active functional restoration program is and no evidence as to why it is reasonable and necessary.
- [23] The applicant has failed to show that she continues to suffer from injuries that require the proposed treatment plan. The IE and the applicant's medical documentation supports that the fracture has fully healed. The applicant's other complaints are not well-documented in the medical reports, nor did the applicant follow-up with an x-ray assessment as recommended by her family doctor. The IE supports that the applicant has full range of motion and is able to participate in activities of daily living. This is supported by her return to work and the surveillance evidence. The totality of the evidence presented fails to show evidence of on-going complaints that would benefit from the proposed treatment plan. Therefore, the evidence fails to support on a balance of probabilities that the plan is reasonable and necessary.

OCF-18 dated June 27, 2017 for \$1,500.00 in physiotherapy services

- [24] The applicant submitted a second treatment plan for \$1500 for 15 more hours of active functional restoration and a reassessment.

[25] The evidence for this treatment plan and that of Issue II are identical. Therefore, based on the evidence and analysis above, I find that the totality of the evidence presented fails to show evidence of on-going complaints that would benefit from the proposed treatment plan. Therefore, the evidence fails to support that the plan is reasonable and necessary.

ISSUES IV & V – NO ENTITLEMENT TO INTEREST OR AN AWARD

[26] As there are no overdue payment of benefits, the applicant is not entitled to interest.

[27] As the respondent has not unreasonably withheld or delayed the payment of benefits, there will be no award under Ontario Regulation 664.

CONCLUSION

[28] The applicant has failed to establish on a balance of probabilities that the denied treatment plans are reasonable and necessary.

[29] As there are no overdue payment of benefits, the applicant is not entitled to interest on any overdue amounts.

[30] As the respondent has not unreasonably withheld or delayed the payment of benefits, there will be no award under Ontario Regulation 664.

Released: December 11, 2019



**Marisa Victor
Adjudicator**