

**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: 19-005449/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:

**Nadia Dhanraj**

**Applicant**

and

**Aviva Insurance Canada**

**Respondent**

**MOTION ORDER**

**Order made by: Terry Hunter, Vice Chair**

**Date of Order: July 29, 2020**

**Appearances:**

**Applicant: Jeton Memeti, Paralegal**

**Respondent: Surina Sud, Counsel**

**Motion heard by teleconference: July 28, 2020**

## OVERVIEW

- [1] The applicant was injured in an automobile accident on **Saturday, July 9, 2016**, and sought benefits pursuant to the Statutory Accident Benefits Schedule - Effective September 1, 2010 (the "Schedule").
- [2] The applicant was denied certain benefits and applied to the Licence Appeal Tribunal - Automobile Accident Benefits Service ("Tribunal").
- [3] A case conference took place on **Tuesday, January 28, 2020** and an order was issued dated **January 28, 2020**.
- [4] The accident of July 9, 2016 has produced 3 applications to the Tribunal. The common elements in the three applications are treatment plans for physiotherapy and other physical therapy.
- [5] The first application File No: 17-007514 was to proceed to a written hearing on June 11, 2018. On May 16, 2018, after failing to file her submissions the applicant withdrew the application.
- [6] On October 4, 2018 the applicant submitted application File No: 18-009345. The two treatment plans in dispute for physical therapy were duplicates from the first application withdrawn on May 16, 2018.
- [7] A written hearing was held on June 24, 2019.
- [8] A third LAT Application dated May 23, 2019 comprised of one treatment plan for physiotherapy and chiropractic therapy was filed by the applicant. This application 19-005449 is the current application.
- [9] December 11, 2019, the Tribunal released its decision on second application finding that further physical therapy was not reasonable or necessary.
- [10] A case conference was held in the current application on January 28, 2020. The applicant refused to withdraw the application and it was set for a written hearing with the application's submissions due July 3, 2020. The respondent requested the issue of costs be added to the issues in dispute for the hearing.
- [11] On July 3, 2020 the applicant withdrew the third application.
- [12] On July 6, 2020, the LAT closed its file. July 10, 2020 the respondent requested the file be revived to hear the respondent's cost application. The cost issue came before me by way of a motion on July 28, 2020
- [13] The respondent's submission is the applicant in refusing to withdraw this third application after the ruling in the second application wherein the adjudicator found further physical therapy was not reasonable and necessary constitutes unreasonable conduct deserving of an award of costs to the respondent.

[14] The respondent provides a bill of costs in the amount of \$4,524.50 for defending the third application. In the alternative the respondent requests a cost award of \$1,000.00 per day for the respondent's costs in attending the case conference and this motion.

[15] The applicant raises several issues negating a cost award. They are as follows:

- I. The disputed treatment plan in the third application for physical therapy was not formulated by the applicant but by a health care professional.
- II. The prior applications are on a without prejudice basis and should not influence the decision-making process in this application.
- III. The cost of defending this application is the cost of doing business for the respondent.
- IV. An award of costs sets a bad precedent impairing access to justice.

## RESULT

[16] The respondent's motion is granted. Costs are awarded in the amount of \$200.00 for the unreasonable conduct of the applicant in pursuing the third application for physical therapy when such services had been found to be neither reasonable or necessary in the second application, file no:18-009345.

## REASONS


[17] The applicant had been advised by Adjudicator Grieves that, "the issues in dispute at the hearing (2<sup>nd</sup> application) are substantially similar to the issues in dispute in the third application." The applicant had both notice and opportunity to withdraw the third application on a timely basis. They chose not to. I adopt the reasoning of Adjudicator Kowal in *J.R. v. Certas Home and Auto Insurance*<sup>1</sup>. I do not accept the submissions of the applicant raised as issues i, ii and iii.

[18] Cost awards are to deter conduct that is unreasonable. Cost awards are not compensatory, and the respondent's bill of costs is not a factor in my decision. In determining quantum, I am guided by Rule 19 which sets a limit of \$1000.00 dollars per day. I am also mindful of the applicant's submission that cost award can produce a chilling effect which should not be the goal of a consumer-focused process. I find that an award of \$200.00 is in line with prior Tribunal cost awards and enough to censure the applicant's conduct.

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<sup>1</sup> [2020 CanLII 30367 \(ONLAT\)](#)

**Date of Issue: July 29, 2020**



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**Terry Hunter  
Vice Chair**