

**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**



Citation: B.R. vs. Aviva General Insurance, 2020 ONLAT 19-006887/AABS

**Released Date: 08/27/2020
File Number: 19-006887/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:

B. R.

Applicant

and

Aviva General Insurance

Respondent

DECISION AND ORDER

ADJUDICATOR: Derek Grant

APPEARANCES:

For the Applicant: Kateryna Vlada, Paralegal

For the Respondent: Geoffrey Keating, Counsel

HEARD: By way of written submissions

OVERVIEW

- [1] The applicant, B.R., was involved in an automobile accident on June 23, 2018 (the “accident”) and sought benefits pursuant to the *Statutory Accident Benefits Schedule - Effective September 1, 2010*¹ (the “Schedule”). This dispute focuses on the respondent’s, Aviva, denial of B.R.’s entitlement to medical benefits.
- [2] B.R. submits that, as a result of injuries she sustained in the accident, the treatment she seeks is reasonable and necessary.
- [3] Aviva argues that B.R. has not established that the treatment plans are reasonable and necessary.

DISCUSSION

Objection to Reply Submissions

- [4] In correspondence to the Tribunal, Aviva raised objections to portions of B.R.’s Reply Submissions.
- [5] Aviva submits that the reply submissions include three pieces of evidence not included in either parties’ initial submissions – a printout from the College of Psychologists of Ontario Guidelines (tab 2)², clinical notes and records from Inline Rehabilitation (tab 7)³, and a letter from Counsel’s office (tab 8)⁴.
- [6] Aviva also submits that the reply submissions further include allegations without evidence. They indicate that B.R. had a desire to receive psychological treatment if available and that psychological treatment was beneficial to her recovery (paragraph 6).⁵
- [7] The submissions indicate that Dr. Chin on two occasions advised that B.R. continue with therapy. A review of these records suggest that what was written was “p continue therapy” and “p continue therapy + acupuncture”.
- [8] Aviva requests that paragraphs 6, 8, and 13 of the reply submissions be struck, and that the Tribunal not consider the records contained at tabs 2, 7, and 8.

¹ O. Reg. 34/10.

² Applicant Document Brief – Reply Submissions.

³ *Ibid.*

⁴ *Ibid.*

⁵ Applicant Reply Submissions.

- [9] B.R. did not respond to the email correspondence from Aviva regarding the objection.
- [10] After considering Aviva's request and having reviewed the evidence and submissions, I will allow the evidence referenced at tabs 2, 7, and 8 and submissions at paragraphs 6, 8, and 13. Despite this, I place little weight on both the evidence and submissions. I find there is sufficient medical evidence that I find persuasive, on which to base my decision.

ISSUES

- [11] In their submissions, the parties advised that some of the issues have been resolved. As a result, the remaining issues I am asked to determine are as follows:
- [12] Is the applicant entitled to receive medical benefits recommended by Inline Rehabilitation Centre Inc. as follows;
- a. \$3,416.68 for psychological services in a treatment plan ("OCF-18") submitted on October 17, 2018, denied by the respondent on January 18, 2019;
 - b. \$2,702.11 for massage therapy in an OCF-18 submitted on December 19, 2018, denied by the respondent on January 18, 2019; and,
 - c. \$2,212.97 for chiropractic services in an OCF-18 submitted on March 13, 2019, denied by the respondent on April 4, 2019?
 - d. Is the applicant entitled to interest on any overdue payment of benefits?

FINDING

- [13] Based on a review of the evidence, I find that:
- a. B.R. is not entitled to the OCF-18s, therefore interest is not payable.

LAW

- [14] Sections 14 and 15 of the *Schedule* provide that an insurer is only liable to pay for reasonable and necessary medical expenses incurred as a result of an

accident. The applicant bears the onus of proving on a balance of probabilities that any proposed treatment or assessment plan is reasonable and necessary.⁶

Issue 12 a. - OCF-18 for psychological treatment

- [15] B.R.'s claims that the treatment she seeks is reasonable and necessary; I find the medical evidence does not support her claim.
- [16] This OCF-18 is dated October 17, 2018 and was completed by supervising Psychologist Dr. Kleiman with Snezana Djuric listed as the psychometrist. It sought funding for 12 one-hour psychotherapy sessions, a psychotherapy progress report and a mental health test. The goals of this OCF-18 are to, "return to pre MVA status, stress reduction, relaxation, etc.," and a return to activities of normal living. The OCF-18 states that a full reassessment and report will be provided after the completion of the required sessions. The injury and sequelae information section list the following: adjustment disorder with depressed mood and specific car travel phobias.
- [17] Aviva denied this OCF-18 on January 18, 2019 as it determined it was not reasonable and necessary. Aviva relied upon Dr. Mor's December 6, 2018 Psychological insurer examination ("IE") report in which Dr. Mor opined that B.R. had no psychological impairment that would warrant a formal psychiatric diagnosis as a result of the accident.
- [18] Prior to Aviva's denial of the OCF-18, B.R. underwent an assessment which resulted in a Psychological Report dated on October 10, 2018.⁷ The October 10, 2018 report was signed by both Ms. Djuric and by Dr. Kleiman and was completed by Ms. Djuric under the supervision of Dr. Kleiman. The purpose of the report was to determine the nature and extent to which B.R. was suffering from psychological and emotional difficulties as a result of the accident. The report stated that, "the assessment included a clinical interview and the administration of 8 psychological self-report questionnaires," and confirmed that B.R.'s interview was conducted by Ms. Djuric. The report concludes B.R. "suffers from specific phobia, situational (driving and passenger related) and adjustment disorder with depressed mood" and recommends 12 counselling sessions.
- [19] I disagree with B.R. that the medical evidence sufficiently establishes that the psychological OCF-18 is reasonable and necessary as I am unable to assign weight to the October 10, 2018 report for the following reasons:

⁶ *Scarlett v. Belair Insurance*, 2015 ONSC 3635 (CanLII).

⁷ Psychological Assessment Report – Dr. Valery Kleiman – Tab 24 – Applicant's Document Brief.

- i. It is unclear to me whose opinion is reflected in the report and who is diagnosing B.R. For example, the diagnoses above are based on B.R.'s overall presentation, based on clinical interview and self-report questionnaires. If Dr. Kleiman did not conduct the clinical interview, or even meet B.R. to observe her, I am unclear how he is making his diagnosis;
- ii. During the clinical interview, B.R. indicated that she continues to be distressed because of the various issues resulting from the accident including her "fear and anxiety when travelling in a vehicle, physical and emotional limitations, and changes in her mood, level of social activity, and concentration". It appears as though a significant amount of weight is placed upon the clinical interview in an effort to establish that B.R.'s psychological symptoms are more than minimal but it was not conducted by Dr. Kleiman;
- iii. B.R. had difficulty with comprehension and required the items to be read to her by the psychometrist, which may be an indication that the assessment was performed by Ms. Djuric and not Dr. Kleiman. The report does not indicate if Dr. Kleiman ever met B.R. on a one-on-one basis and how he assessed the information provided to him by Ms. Djuric; and
- iv. Aviva's assessor, Dr. Mor, assessed B.R. which generated a report dated December 6, 2018.⁸ B.R. reported that "she does not require treatment as she is coping and is determined to recover". B.R. also indicated she would rather continue taking medication, Cymbalta, rather than receive psychological treatment. B.R. additionally stated that she would prefer to use funds for physical treatment.

[20] I am also not persuaded that the clinical notes and records ("CNRs") of B.R.'s family doctor submitted as evidence prove that the OCF-18 is reasonable and necessary on a balance of probabilities. Although Family Physician, Dr. Maxwell Chin notes psychological complaints and prescribes medication, there is no recommendation for psychological treatment.

[21] B.R. failed to persuade me that the OCF-18 is reasonable and necessary.

Issues 12 b. and c. - OCF-18s for massage therapy and chiropractic treatment

⁸ Psychological Assessment – Dr. Shulamit Mor dated December 6, 2018 – Respondent Document Brief – Tab O.

- [22] B.R. relies on a Disability Certificate (“OCF-3”) by Dr. Joseph Csumrik, chiropractor, dated June 28, 2018. Dr. Csumrik diagnosed B.R. with the following accident-related injuries: headaches; other sprain and strain of cervical spine; sprain and strain of thoracic and lumbar spine; sprain and strain of shoulder joint; injury of muscle and tendon at hip and thigh level; nervousness; post-traumatic stress disorder; other sleep disorders; and temporomandibular joint disorders. In addition, B.R. relies on the records of Dr. Maxwell Chin, family physician, dated July to December 2018 and February to May 2019.
- [23] Regarding physical treatment, B.R. reported to Dr. Mor that she found temporary relief when she received physiotherapy treatment. The evidence from Ms. Djuric and Dr. Kleiman is that B.R. found the physiotherapy treatment helpful in temporarily relieving her pain.
- [24] Aside from the treatment plans, I do not find that there is persuasive evidence to support that the OCF-18s for chiropractic treatment and massage therapy are reasonable and necessary. There is no evidence that chiropractic treatment or massage therapy has provided the same relief to B.R. as she reported physiotherapy has. On the contrary, the evidence shows that physiotherapy treatment has at the very least, provided B.R. with temporary relief. I do not have a treatment plan before me for physiotherapy treatment, therefore I am unable to make a determination on the reasonableness and necessity of same.
- [25] B.R. relies on a chronic pain report⁹ as evidence of the reasonableness and necessity of both the chiropractic treatment and massage therapy OCF-18s. Although Dr. Robertus recommends a chronic pain program, this is not an OCF-18 that is in dispute before me. Further, although chiropractic treatment and massage therapy were recommended as part of the multi-modality chronic pain program, there is no evidence from Dr. Robertus demonstrating how these specific modalities would achieve the same level of pain relief as physiotherapy treatment reportedly has.
- [26] As such, I am not persuaded that B.R. has met her onus that the massage therapy and chiropractic OCF-18s are reasonable and necessary.

CONCLUSION

- [27] B.R. has not satisfied her onus to persuade me that the OCF-18s are reasonable and necessary. She is therefore not entitled to the benefits claimed and no interest is owing as there is no overdue payment of benefits.

⁹ Chronic Pain Assessment Report – Dr. Inese Robertus – September 22, 2019 – Applicant Document Brief – Tab 15.

[28] B.R.'s claim is dismissed.

Released: August 27, 2020

**Derek Grant
Adjudicator**

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