



Citation: Dhanji v. Aviva Insurance Company of Canada, 2021 ONLAT 19-010138/AABS

**Released Date: 03/05/2021
File Number: 19-010138/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:

Hanif Dhanji

Applicant

and

Aviva Insurance Company of Canada

Respondent

DECISION

ADJUDICATOR: Lindsay Lake

APPEARANCES:

For the Applicant: Joseph Falconeri, Counsel
Bryan Rumble, Counsel

For the Respondent: Geoffrey Keating, Counsel

HEARD BY WAY OF WRITTEN SUBMISSIONS

OVERVIEW

- [1] The applicant, Hanif Dhanji (“Mr. Dhanji”), was injured in an automobile accident on September 30, 2016 and sought benefits pursuant to the *Statutory Accident Benefits Schedule – Effective September 1, 2010*¹ from Aviva Insurance Company of Canada (“Aviva”), the respondent.
- [2] Aviva denied Mr. Dhanji’s claims for attendant care benefits, dental services, various medication expenses, psychological services and occupational therapy services. As a result, Mr. Dhanji submitted an application to the Licence Appeal Tribunal – Automobile Accident Benefits Service (the “Tribunal”).
- [3] A case conference was held on April 8, 2020 and the matter was scheduled for a combination hearing. The oral component of the hearing was cancelled, however, as the parties resolved the issue of attendant care benefits as well as Mr. Dhanji’s claims for various medications and occupational therapy services. The remaining issues in dispute proceeded to a written hearing.

ISSUES IN DISPUTE

- [4] The following issues are to be decided:
- (i) Is Mr. Dhanji entitled to \$937.00 for dental services recommended by Dr. Jeffrey Farber, submitted on March 30, 2017, and denied on September 13, 2017?
 - (ii) Is Mr. Dhanji entitled to \$1,751.76 (\$4,385.27 less \$2,633.51 approved) for psychological services recommended by York Region Psychological Services in a treatment plan (“OCF-18”) dated April 27, 2018, and denied on June 26, 2018?
 - (iii) Is Aviva liable to pay an award under *O. Reg. 664* because it unreasonably withheld or delayed payments to Mr. Dhanji?
 - (iv) Is Mr. Dhanji entitled to interest on any overdue payment of benefits?

RESULT

- [5] I find that Mr. Dhanji is not entitled to the proposed dental services or to the unapproved portion of the April 27, 2018 OCF-18. As there are no payment of

¹ O. Reg. 34/10 (the “Schedule”).

benefits or costs owing, there is no basis upon which to consider an award in this matter and interest is not payable.

ANALYSIS

- [6] Sections 14 and 15 of the *Schedule* provide that the insurer shall pay medical benefits to, or on behalf of, an applicant so long as the applicant sustains an impairment as a result of an accident and the medical benefit is a reasonable and necessary expense incurred by the applicant as a result of the accident.
- [7] I find that Mr. Dhanji is not entitled to the proposed dental services as he has failed to prove on a balance of probabilities that his tooth issue that required the dental services arose as a result of the accident. I also find that Mr. Dhanji is not entitled to the unapproved portion of the April 27, 2018 OCF-18 for psychological services.

Dental Services

- [8] No OCF-18 was submitted to Aviva for the proposed dental services. Instead, Mr. Dhanji submitted a document entitled, "Treatment Plan Estimate and Payment," dated February 23, 2017.² This document provided an estimate for treatment that included a specific area examination, panoramic radiograph, surgical removal of tooth #48, general anaesthesia and intravenous drug injection for a total amount of \$937.00.
- [9] Mr. Dhanji also submitted an undated one page letter from Dr. Jeffrey Farber, dental surgeon, which provided a further explanation of the proposed treatment.³ Dr. Farber noted that he evaluated Mr. Dhanji on February 23, 2017 with respect to pain associated with his lower right wisdom tooth (tooth #48). Mr. Dhanji reported to Dr. Farber that this tooth was broken during the accident and requested that the tooth be extracted. Dr. Farber diagnosed Mr. Dhanji with pulpal necrosis with periapical periodontitis following his evaluation and noted that radiographically, there was evidence of "either a large fracture or decay."⁴ In the end, Dr. Farber reported that Mr. Dhanji was scheduled to have tooth #48 extracted under general anesthesia.
- [10] Aviva denied funding for the proposed dental services by way of correspondence dated September 13, 2017. Aviva's denial was based on the August 30, 2017 insurer's examination ("IE") Dental Assessment report by Dr. Aviv Ouanounou,

² Applicant's LAT Hearing Brief, tab D2.

³ Applicant's LAT Hearing Brief, tab D1.

⁴ *Ibid.*

dental surgeon.⁵ In this report, Dr. Ouanounou opined that the proposed dental services were not reasonable and necessary as there was no evidence that Mr. Dhanji's tooth was damaged as a result of the accident.⁶ Dr. Ouanounou noted that no pre-accident or post-accident x-rays or records were provided to him and that Mr. Dhanji reported to him that he realized "sometime at the end of December"⁷ that his tooth was broken. Dr. Ouanounou also stated that if Mr. Dhanji had broken his tooth during the accident, "the claimant should consult his dentist immediately."⁸ However, Mr. Dhanji failed to attend his dentist, Dr. Minaz Karim, until January 3, 2017, over three months post-accident, to report his tooth issue and was then subsequently referred to Dr. Farber. Dr. Ouanounou concluded, "it is my impression from the review of the documents, the mechanism of the trauma presented and explanation by the claimant himself and the clinical examination that no damage occurred to the claimant's teeth and thus damage to tooth 4.8 [tooth #48 as referenced by Dr. Farber] would not be related to the accident."⁹ Dr. Ouanounou opined that there was no applicable oral or maxillofacial diagnosis as a result of the accident.¹⁰

- [11] Mr. Dhanji submitted that greater weight should be given to Dr. Farber's letter over that of Dr. Ouanounou's report in determining Mr. Dhanji's entitlement to the proposed dental services. Mr. Dhanji submitted, "the only basis upon which the IME doctor [Dr. Ouanounou] found that this was an inappropriate expense, was that he felt that the claimant had not sought treatment soon enough after the accident. This is not an appropriate basis upon which to deny the treatment in this case."¹¹ Mr. Dhanji also submitted that there are potentially many reasons why a person would not attend the dentist immediately following an accident, such as difficulty obtaining an appointment, a fear of dentists, etc., and that none of these possibilities were taken into consideration by Dr. Ouanounou.
- [12] I disagree with Mr. Dhanji's submissions to support his position that greater weight should be placed on Dr. Farber's letter over Dr. Ouanounou's report. Dr. Ouanounou's opinion that the proposed dental services were not reasonable and necessary was not solely based on Mr. Dhanji's delay in seeking dental treatment post-accident. Dr. Ouanounou clearly stated in his report that his opinion was based on his review of documents, the mechanism of the trauma presented, his clinical examination of Mr. Dhanji and Mr. Dhanji's own

⁵ Written Submissions of the Respondent, tab D.

⁶ *Ibid.* at page 6.

⁷ *Ibid.* at page 4.

⁸ *Ibid.* at page 6.

⁹ *Ibid.*

¹⁰ *Ibid.* at page 7.

¹¹ Written Submissions of the Applicant, page 3.

explanation. Furthermore, I agree with Dr. Ouanounou's observation that no reasons were provided for Mr. Dhanji not seeking out dental treatment until three months post-accident. While Mr. Dhanji proposed a number of possible explanations for this delay in his submissions, there is no evidence before me to support a finding that any of these propositions apply in this matter.

- [13] Even if I were to place greater weight on Dr. Farber's letter over Dr. Ouanounou's report, as requested by Mr. Dhanji, I find that Dr. Farber's letter does not assist Mr. Dhanji in discharging his onus of proving, on a balance of probabilities, that his dental issue was caused by the accident. The applicable test in making this determination is the "but for" test: whether Mr. Dhanji would have had his dental issue but for the accident.¹² The accident is not required to have been "the cause" – that is, the accident need not be the sole cause or have been sufficient in itself to have caused the impairments at issue. Rather, the accident need only to have been a "necessary cause."¹³
- [14] I give little weight to Dr. Farber's letter in determining the cause of Mr. Dhanji's tooth issue because:
- (i) Dr. Farber does not opine on or conclude that Mr. Dhanji's tooth issue was caused by the accident in his letter. Rather, his letter only stated that this is what Mr. Dhanji reported to him and there is no further discussion or analysis on this point; and
 - (ii) Dr. Farber does not conclude that Mr. Dhanji's tooth was indeed fractured, as Dr. Farber noted that the radiographs showed either a fracture *or* decay. Therefore, it is uncertain from Dr. Farber's letter whether a fracture led to Mr. Dhanji's tooth issues or if his tooth issues were caused by decay, which would not be attributable to the accident.
- [15] Therefore, as I have given little weight to Dr. Farber's letter for the reasons set out above, and the only other opinion regarding causation of Mr. Dhanji's tooth issues before me is from Dr. Ouanounou, which was that there was no evidence that Mr. Dhanji's tooth was damaged as a result of the accident, I find that Mr. Dhanji has failed to prove on a balance of probabilities that but for the accident, his tooth issue would not have occurred. Therefore, I find that Mr. Dhanji is not entitled to the proposed dental services.

¹² *Sabadash v. State Farm et al.*, 2019 ONSC 1121 (CanLII).

¹³ *Ibid.* at para. 39.

Psychological Services

- [16] The April 27, 2018 OCF-18 was completed by Dr. Hanna Rockman, psychologist, and sought funding for her completion of the OCF-18 (\$50.00), her liaison/file review/coordination (\$112.21) and for her completion of a progress discharge report (\$448.83). The OCF-18 also sought funding for sixteen 90-minute therapy sessions with Allan Silver, regulated psychotherapist, at a rate of \$149.61 per hour (\$3,590.72), one 1-hour re-assessment/testing with Mr. Silver (\$149.61) and \$30.00 for psychological materials, if needed.
- [17] On June 26, 2018, Aviva partially approved the April 27, 2018 OCF-18 in the amount of \$2,633.51. Aviva advised that, “fees that can be billed for treatment by a psychotherapist is \$58.19/hour,” but that it agreed in good faith to fund Mr. Dhanji’s treatment with Mr. Silver at a rate of \$100.00 per hour. Aviva also denied the funds sought by Dr. Rockman for her liaison/file review/coordination because, in Aviva’s opinion, such services were covered under the fee for a prior assessment and also the fee for the completion of the OCF-18. Aviva also denied funding for the completion of a progress discharge report noting that if additional treatment is required, then the completion of an OCF-18 “will provide updated progress information.”
- [18] For the reasons that follow, I find that Mr. Dhanji is not entitled to the unapproved portion of the April 27, 2018 OCF-18.

Mr. Silver’s Hourly Rate

- [19] Mr. Dhanji submitted that Mr. Silver, as a psychotherapist, should be paid at a rate of \$149.61 per hour based upon the Tribunal’s decision in *J.V. v. Intact Insurance Company*.¹⁴ Mr. Dhanji submitted that because Mr. Silver has his Masters and PhD in Applied Psychology, he is registered with the College of Registered Psychotherapists and he has been working in the field since 2007, that the hourly rate of \$149.61 is reasonable as Mr. Silver’s qualifications are significantly better than the psychotherapist in *J.V. v. Intact*.
- [20] Aviva relied upon several Tribunal decisions that have distinguished *J.V. v. Intact* and found that the applicable hourly rate for a psychotherapist was \$58.19 per

¹⁴ 2019 CanLII 76995 (ON LAT) (“*J.V. v. Intact*”), upheld upon reconsideration see: 2019 CanLII 130366 (ON LAT).

hour.¹⁵ I also find that *J.V. v. Intact* is distinguishable from the facts in this matter for the following reasons:

- (i) I disagree with Mr. Dhanji's submission that Mr. Silver has "both his Masters and PhD in Applied Psychology."¹⁶ Mr. Silver's one page curriculum vitae shows that he holds a Masters in Education and an "Ed. D." in applied psychology;
- (ii) While Mr. Silver has an extensive educational background, he holds himself out as a psychometrist and psychotherapist in his curriculum vitae;
- (iii) Mr. Dhanji has led no evidence that Mr. Silver specializes in cognitive behavioural therapy ("CBT") which is dissimilar to the psychotherapist in *J.V. v. Intact*. Further, the psychotherapist's specialization in CBT was one of the reasons for the Tribunal's finding that an hourly rate of \$149.61 was reasonable in that matter; and
- (iv) The April 27, 2018 OCF-18 does not propose to provide any CBT treatment which is also unlike the OCF-18 at issue in *J.V. v. Intact*. Although the April 27, 2018 OCF-18 referenced the Psychological Treatment Progress Report #2 dated April 27, 2018,¹⁷ this report only recommended sixteen 90-minute additional sessions of counselling and does not mention CBT. The absence of CBT in both the April 27, 2018 OCF-18 and in the April 27, 2018 progress report is significant given that another reason that the Tribunal found that the hourly rate of \$149.61 was reasonable for the psychotherapist in *J.V. v. Intact* was because the psychotherapist in that matter was providing CBT treatment which was a service aligned with treatment provided by psychologists and psychological associates.

[21] As the facts of this matter are distinguishable from *J.V. v. Intact* for the reasons set out above, I find that Mr. Dhanji has failed to prove that the difference between the hourly rate proposed by Aviva of \$100.00 and the hourly rate of \$149.61 for Mr. Silver's services was reasonable and necessary and, therefore, Mr. Dhanji is not entitled to the difference. I also find that Aviva agreed to pay a reasonable hourly rate of \$100.00 for Mr. Silver's services as a psychotherapist

¹⁵ *S.K. v Aviva General Insurance*, 2010 CanLII 151087 (ON LAT) ("*S.K. v Aviva*"); *J.A. vs. Aviva Insurance Company*, 2020 CanLII 12726 (ON LAT); and *S.M.Z. vs. Aviva Insurance Company*, 2020 CanLII 27401 (ON LAT).

¹⁶ Written Submissions of the Applicant, page 8.

¹⁷ Applicant's LAT Hearing Brief, tab B3.

in light of the various Tribunal decisions that Aviva relied upon wherein the Tribunal determined that the appropriate hourly rate payable was \$58.19.

Dr. Rockman's Liaison/file review/coordination and Progress Discharge Report

[22] Neither party provided any submissions or directed me to any evidence regarding the reasonableness and necessity of the funds sought for Dr. Rockman's liaison/file review/coordination and her completion of the progress discharge report. There is also no mention or discussion of these expenses in the April 27, 2018 Psychological Treatment Progress Report #2. Therefore, I find that Mr. Dhanji has failed to prove that these remaining unapproved services on the April 27, 2018 OCF-18 are reasonable and necessary on a balance of probabilities.

Award

[23] Section 10 of *O. Reg. 664* provides that, if the Tribunal finds that an insurer has unreasonably withheld or delayed payment of benefits, the Tribunal may award a lump sum of up to 50 per cent of the amount in which the person was entitled.

[24] As I have found that there are no payment of benefits or costs owing, there is no basis upon which to consider an award in this matter.

Interest

[25] As there are no benefits owing, no interest is payable.

ORDER

[26] For the reasons outlined above, I find that:

- (i) Mr. Dhanji is not entitled to the proposed dental services in the amount of \$937.00;
- (ii) Mr. Dhanji is not entitled to the unapproved portion of the April 27, 2018 OCF-18;
- (iii) Mr. Dhanji is not entitled to an award under *O. Reg. 664*;
- (iv) No interest is payable; and

(v) This application is dismissed.

Released: March 5, 2021

**Lindsay Lake
Adjudicator**