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Ontario

RECONSIDERATION DECISION

Citation: G. F. vs. Aviva Insurance Company, 2020 ONLAT 18-007850/AABS

Before: Brian Norris, Adjudicator

Date: August 28, 2020

File: 18-007850/AABS

Case Name: G. F. and Aviva Insurance Company

Written Submissions by:

For the Applicant: Marc Golding

For the Respondent: Geoffrey Keating

OVERVIEW

[1] G.F., the applicant, filed this request for reconsideration. It arises out of a decision in which I found the applicant to suffer injuries outside the *Minor Injury Guideline* (the "MIG"), entitled to some psychological treatment plans, but not to the physical treatment plans.

[2] The applicant makes this request pursuant to Rule 18.2(b) of *Common Rules of Practice and Procedure, October 2, 2017* ("the *Rules*"). He submits that I erred in law and in fact such that I would likely have reached a different decision had the errors not been made.

[3] The applicant submits that I erred in law and fact by omitting crucial and substantial testimony and facts and by misinterpreting the statutory requirements of the *Schedule.*

[4] The respondent submits that the applicant identifies no statutory requirements that were misinterpreted and concludes that his reconsideration submissions amount to a request that the Tribunal reweigh the evidence, which is not the purpose of reconsideration[1].

RESULT

[5] The applicant's request for reconsideration is denied.

BACKGROUND

[6] The applicant was involved in a motor vehicle accident and, as a result, suffered soft-tissue injuries to the neck and back, as well as depression and anxiety. The respondent characterized the applicant's injuries as falling within the minor injury definition and subject to the MIG and the $3,500.00 treatment funding limit provided by section 18 of the *Schedule*. As a result, the respondent denied several treatment and assessment plans which address his physical and psychological injuries.

[7] I found unmistakable evidence that the applicant suffered psychological injuries as a result of the accident, that his psychological injuries fell outside the minor injury definition, and that he was not subject to the MIG and the $3,500.00 funding limit. I found that the psychological assessment plan and two psychological treatment plans were reasonable and necessary for the applicant's

1 *17-002993 v TD Insurance Meloche Monnex*, 2019 CanLII 72230 (ON LAT).

accident-related injuries, despite his failure to individually address the treatment and assessment plans in his submissions or include them in his evidence.

[8] I found that the applicant led no evidence or submissions in favour of finding the remaining physical treatment plans reasonable and necessary. I reviewed the applicant's submissions and evidence and found no compelling evidence clearly in favour of the physical treatment plans. Thus, the plans were not reasonable and necessary.

[9] The applicant requests a reconsideration of the decision as it relates to physical treatment plans dated November 18, 2016, June 27, 2017, and September 6, 2017. He submits that evidence was overlooked or outright discounted. He further submits that he presented his evidence in favour of the physical treatment plans in the same fashion as his evidence in favour of the psychological treatment plans and infers that this evidence supports a finding that the physical treatment plans are reasonable and necessary.

[10] I find no error in law or fact in the decision and dismiss the applicant's reconsideration request for the following reasons.

ANALYSIS

[11] The applicant failed to meet his onus to prove entitlement to the physical treatment plans. Each treatment plan must be assessed on its individual merit and the onus is on the applicant to establish that treatment plans are reasonable and necessary. Despite his assertions, the applicant has never identified any specific components of the physical treatment plans such as the modality proposed, the service provider, the number of treatment sessions, nor the costing for the treatment plan. In fact, the applicant never submitted the physical treatment plans for the hearing. Further, my written request for the applicant to provide the disputed treatment plans went unfulfilled.

[12] The applicant's submissions for the initial hearing were not overlooked. He highlighted some physical issues such as pre-existing knee and back pain in 2013, degenerative spondylosis noted in an October 2016 x-ray report, and neck pain and decreased right shoulder range of motion prompting a prescription for pain medication in February 2017. However, noting such medical issues does not automatically entitle the applicant to physical treatment, particularly when there is no information as to what physical treatment is requested.

[13] I find no error of law or fact in my analysis of the applicant's evidence. As submitted by the respondent, presenting evidence in a similar fashion for two or

more issues does not necessitate that entitlement to those issues must be decided in the same way. The applicant provides no legislative or precedential authority for this position. As noted previously, the applicant's evidence in the initial hearing included unmistakable evidence that he suffered psychological injuries as a result of the accident which required treatment however, this was not the case with respect to his physical injuries.

CONCLUSION

[14] The applicant has not identified any significant legal or evidentiary error that would have led to a different outcome. His claims that certain submissions or evidence was overlooked fail to explain how such evidence would lead to a finding that the physical treatment plans are reasonable and necessary.

[15] For these reasons and the details noted above, I deny the applicant's request for reconsideration.

Released: August 28, 2020

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Brian Norris
Adjudicator