

**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: M.H. vs. Aviva General Insurance, 2020 ONLAT 19-005177/AABS**

**Released Date: June 9, 2020  
File Number: 19-005177/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:

**[M.H]  
(A minor by his litigation guardian, [S.H])**

**Applicant**

and

**Aviva General Insurance**

**Respondent**

**DECISION**

**ADJUDICATOR: Rebecca Hines, Member**

**APPEARANCES:**

For the Applicant: Barbara Opalinski, Counsel

For the Respondent: Geoffrey Keating, Counsel

**Heard by way of written submissions**

## OVERVIEW

- [1] [M. H] (the “applicant”) was involved in an automobile accident on January 24, 2017 and sought benefits from Aviva General Insurance (the “respondent”) pursuant to the *Statutory Accident Benefits Schedule - Effective September 1, 2010*<sup>1</sup> (“the *Schedule*”). The applicant was denied certain benefits by the respondent and submitted an application to the Licence Appeal Tribunal - Automobile Accident Benefits Service (the “Tribunal”).
- [2] The parties participated in a case conference, but they were unable to resolve the issues in dispute. The matter proceeded to this written hearing.

## ISSUES IN DISPUTE

- [3] I have been asked to decide the following issues:
- i. Is the applicant entitled to receive a medical benefit in the amount of \$1,025.99 for occupational therapy services, recommended by Essential Physio Rehabilitation Inc. in a treatment plan submitted on March 31, 2017, denied by the respondent on July 13, 2017?
  - ii. Is the applicant entitled to payments for the costs of examinations in the amount of \$1,998.00 for an orthopaedic assessment recommended by Dr. Tajedin Getahun in a treatment plan submitted on April 22, 2017, denied by the respondent on July 13, 2017?
  - iii. Is the applicant entitled to a medical benefit in the amount of \$3,979.46 for chiropractic services, recommended by Dr. Ashley Narula in a treatment plan submitted on May 19, 2017, denied by the respondent on July 13, 2017?
  - iv. Is the applicant entitled to interest on any overdue payment of benefits?

## RESULT

- [4] After reviewing the parties’ submissions and all the evidence, I find that the applicant is not entitled to any of the disputed treatment plans or interest as I do not find the treatment plans to be reasonable and necessary as a result of the applicant’s accident related impairments.

## BACKGROUND

- [5] On January 24, 2017, the applicant, who is now 12 years old was a passenger in a vehicle driven by his brother which was involved in a head on collision. The car

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<sup>1</sup> O. Reg. 34/10.

was deemed a total write off. He sustained a clavicle fracture to his shoulder and a psychological impairment as a result of the accident and missed two weeks of school.

## ANALYSIS

- [6] Section 14 and 15 of the Schedule provide that an insurer is only liable to pay for medical expenses that are reasonable and necessary as a result of an accident. The applicant bears the onus of proving on a balance of probabilities that any claimed medical expenses are reasonable and necessary.
- [7] The applicant argues that he is entitled to the disputed treatment plans because he was removed from the Minor Injury Guideline (“MIG”), and to date, he has not recovered from his physical injuries. Further, he requires the assistive devices and physical treatment to help alleviate his pain to allow him to function in his daily activities. He also submits that the orthopaedic assessment is reasonable and necessary because the respondent conducted an insurer examination (“IE”). Therefore, he is entitled to a second opinion. The applicant relied on the treatment plans, the psychological report of Dr. Waxer, a clinical note and record (“CNR”) of Dr. Oczachowski, family doctor, and hospital records, in support of his position that the treatment plans are reasonable and necessary.
- [8] The respondent submits that the applicant’s physical impairments have fully healed as he reported that he was pain free to IE assessor Dr. Caymen, orthopaedic surgeon. The respondent maintains that the applicant has not submitted any evidence in support of his position that he still suffers from any physical impairment. The respondent relied on the IE report of Dr. Caymen in support of its position that the treatment plans are not reasonable and necessary. For the reasons that follow, I agree with the respondent and do not find any of the treatment plans reasonable or necessary.
- [9] First, I do not find the evidence submitted by the applicant supports that he continues to suffer from any ongoing physical impairment that requires assistive devices or physical treatment. For example, the applicant relied on a CNR of [the hospital] dated February 7, 2017 which stated that his clavicle fracture was still widely displaced. However, two updated hospital CNRs dated February 21, 2017 and April 4, 2017 noted that his clavicle fracture had completely healed, he had excellent range of motion (“ROM”) and he had very little pain. I do not find these records support that that the applicant has any ongoing physical impairments which require further treatment or assistive devices.
- [10] In addition, I do not find the report of Dr. Waxer, psychologist, completed August 17, 2019 persuasive evidence that the disputed treatment plans are reasonable and necessary. The purpose of Dr. Waxer’s assessment was to address the

applicant's accident related psychological complaints. While the applicant reported to Dr. Waxer that he still suffers from some pain the report notes that the applicant was able to sit through the assessment with no signs of physical distress. He was not pain focussed, has not been prescribed any pain medication and he does not have any problems with sleep. Likewise, I did not find the one CNR of Dr. Oczachowski supported the applicant's position. The CNR dated May 3, 2017 was a referral to the Centre of Addiction and Mental Health ("CAMH"). The CNR states "9 year old boy in mva 2017 with anxiety, driving and nightmares since accident." In my view, Dr. Waxer's report and the one CNR of his family doctor relate to the applicant's accident related psychological impairment. Therefore, I have assigned these documents very little weight.

- [11] Finally, the purpose of all three treatment plans are to address the applicant's ongoing physical impairments. However, as highlighted above the applicant did not submit any persuasive evidence that supports that he has any ongoing physical impairment. The first treatment plan authored by Jag Dhirayain, occupational therapist, in the amount of \$1,025.99 recommended various assistive devices (a sleep roll, exercise equipment, TENs unit, ergonomic mat, cervical pillow, bio freeze anageltic gel and dumbwell weight). Under Part 8 of the treatment plan it states that the applicant is not participating in recess or sports. The goals of the treatment plan are for pain reduction, increased ROM and to return the applicant to his pre-accident activities of daily living. However, other than the treatment plan authored by Ashely Narula, there are no references to any functional limitations in any of the other records. Further, no reference was made to these limitations in Dr. Waxer's psychological report and the applicant reported to Dr. Caymen that he had resumed playing soccer three months post-accident. In my view, relying on the treatment plans on their own is insufficient where there are contradicting inconsistencies in the other evidence.
- [12] The second treatment plan authored by Dr. Getahun, orthopaedic surgeon, in the amount of \$1,998.00 states that the goal of the orthopaedic assessment is "to repair the structure of the body long term through corrective exercise and stretch tight muscles that have shut down." The applicant submitted the LAT decision *16-003821 v Co-operators General Insurance Company*, 2018 CanLII 13192 ("16-003821") in support of his position that since the respondent conducted an orthopaedic IE, he is entitled to a second opinion. I find the present case distinguishable from 16-003821 as the applicant did not submit sufficient evidence that he was suffering from ongoing pain or link evidence of any accident related impairment to the assessment being requested. In addition, I find the goal identified by Dr. Getahun to be premature as he recommends treatment as a goal before assessing whether the applicant has any ongoing physical impairments.

- [13] The third treatment plan authored by Ashely Narula, chiropractor, in the amount of \$3,797.46 recommends 18 sessions each of massage, physiotherapy and exercise. The goals of the treatment plan are for pain reduction, increase in strength and ROM. As already highlighted, no evidence was submitted by the applicant to support that he has any restrictions with his ROM. In fact, the hospital records submitted by the applicant support that he had little pain and excellent ROM three months post-accident.
- [14] By contrast the respondent relied on the IE report of Dr. Caymen dated July 12, 2017. The doctor's report notes that the applicant reported being pain free and that he had resumed playing soccer three months post-accident. His physical examination revealed no tenderness along the clavicle, full abduction without pain, full forward flexion without shoulder pain and full strength in shoulders bilaterally. Dr. Caymen determined that the applicant's physical impairments had resolved and that all three treatment plans were not reasonable and necessary. The applicant disputes that he reported being pain free to Dr. Caymen. However, I find Dr. Caymen's assessment to be consistent with the rest of the evidence before me.
- [15] The applicant has not met his onus on proving on a balance of probabilities that the three disputed treatment plans are reasonable and necessary as a result of his accident-related impairments.

## **ORDER**

- [16] Based on all the above reasons, I order as follows:
- i. The applicant is not entitled to any of the three disputed treatment plans.
  - ii. Interest is not payable as I do not find that any payment is overdue.
  - iii. The application is dismissed.

**Released: June 9, 2020**

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**Rebecca Hines  
Adjudicator**