

**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: R.O.O. vs. Aviva Insurance Canada, 2019 ONLAT 18-008653/AABS

**Released Date: December 23, 2019
File Number: 18-008653/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:

R.O.O.

Applicant

and

Aviva Insurance Canada

Respondent

DECISION

PANEL:

Melody Maleki-Yazdi, Adjudicator

APPEARANCES:

Paralegal for the Applicant:

Jeton Memeti

Counsel for the Respondent:

Ramandeep Pandher

Heard in writing:

June 17, 2019

OVERVIEW

- [1] R.O.O. (“the applicant”) was involved in an automobile accident on May 18, 2017, and sought and received benefits pursuant to the *Statutory Accident Benefits Schedule - Effective September 1, 2010*¹ (the “*Schedule*”). She applied for benefits from the respondent and then applied to the Licence Appeal Tribunal - Automobile Accident Benefits Service (the “Tribunal”) when the disputed benefits were denied.
- [2] There are two main areas of dispute between the parties: a dispute over an auto insurance standard invoice (OCF-21) for psychological services and a dispute over two treatment plans (OCF-18) for chiropractic services.
- [3] With respect to the psychological services, the applicant submits that, despite the fact that the respondent approved the OCF-21 and that he has received these services, the respondent has not yet paid for them. Further, the applicant argues that this delay in payment is unreasonable and should attract an award of 50% of the value of the invoice plus higher interest. The respondent submits that, pursuant to s. 55 of the *Schedule*, the applicant is barred from proceeding with this issue and the Tribunal does not have jurisdiction to hear this issue. The respondent submits that although it agreed to fund the OCF-21, the applicant is not entitled to payment of this amount because its service provider failed to fully respond to a request for information.
- [4] The respondent denied the two treatment plans for chiropractic services on the basis that they are not reasonable and necessary. The applicant disputes this finding and asks me to find that the treatment plans are reasonable and necessary, and that the respondent is obliged to pay for them.

ISSUES

- [5] The following issues are in dispute for this hearing:

Preliminary issue

1. Pursuant to s. 55 of the *Schedule*, does the Tribunal have jurisdiction to hear the issue related to the applicant’s entitlement to receive a medical benefit in the amount of \$3,990.70 for psychological services, recommended by Horizon Diagnostic Inc. and denied by the respondent on October 31, 2017, on the grounds that the respondent requested information from the treatment provider and it is unable to determine its liability for the amount payable

¹ O. Reg. 34/10.

because the provider has not complied with the respondent's request in whole or in part?

Substantive issues

2. Is the applicant entitled to receive a medical benefit in the amount of \$1,779.60 for chiropractic services, recommended by Mackenzie Medical Rehabilitation Centre Inc. in a treatment plan denied by the respondent on August 26, 2018?
3. Is the applicant entitled to receive a medical benefit in the amount of \$1,384.70 for chiropractic services recommended by Mackenzie Medical Rehabilitation Centre Inc. in a treatment plan denied by the respondent on June 26, 2018?
4. Is the applicant entitled to an award under Ontario Regulation 664 because the respondent unreasonably withheld or delayed the payment of benefits?
5. Is the applicant entitled to interest on any overdue payment of benefits?

RESULT

- [6] I find that the OCF-21 for psychological services is payable in the amount of \$3,990.70. The applicant is entitled to a 25% award on this OCF-21 in the amount of \$3,990.70, together with interest at a rate of 2% per month, compounded monthly, from September 20, 2018. The applicant is also entitled to interest on this OCF-21 in the amount of \$3,990.70.
- [7] The applicant is not entitled to the two treatment plans for chiropractic services in the amounts of \$1,779.60 and \$1,384.70.

ANALYSIS

Preliminary issue regarding the OCF-21 for psychological services

Background

- [8] The applicant submitted to the respondent an auto insurance standard invoice (OCF-21) in the amount of \$3,990.70 for psychological services recommended by Horizon Diagnostic Inc. By letter dated September 3, 2018, the respondent wrote to the provider, Dr. Tony Toneatto (psychologist), acknowledging receipt of the OCF-21 and requesting information pursuant to s. 46.2 of the *Schedule* to help it determine if the invoice is payable. The letter also states that, once the respondent receives the requested documents, it can reconsider payment of the invoice. Ultimately, the respondent submits that it agreed to fund the OCF-21.

- [9] That said, the preliminary issue focuses on the fact that despite the respondent's initial agreement to fund these services, it changed its mind after. It claims, Dr. Toneatto failed to comply with its information request. For that reason, it argues, the Tribunal does not have the jurisdiction to hear this issue pursuant to s. 55 of the *Schedule*. The respondent submits that s. 55 of the *Schedule* applies to this matter and that the applicant is barred from proceeding with this issue because the provider did not provide full answers to the questions he was sent by the respondent, which in turn did not allow the respondent to determine its liability for the sum payable on the OCF-21.
- [10] The applicant submits that the respondent received the requested information from the provider and willingly withheld payment of the psychological services despite these services being approved and incurred.

Relevant sections of the *Schedule*

- [11] Section 46.2(1)1 of the *Schedule* sets out that an insurer may request from a service provider "any information required to assist the insurer, acting reasonably, to determine its liability for the payment, including access to inspect and copy the originals of any treatment confirmation form, treatment and assessment plan, assessment of attendant care needs and other documents giving rise to the claim for payment."
- [12] Pursuant to s. 46.2(1)2, the insurer may request the service provider to submit "a statutory declaration as to the circumstances that gave rise to the invoice, including particulars of the goods and services provided." Pursuant to s. 46.2(2), this information must be provided to the insurer within 10 business days after receiving the request.
- [13] Section 55(3) of the *Schedule* bars an insured person from applying to this Tribunal if, among other circumstances, "the issue in dispute relates to the insurer's denial of liability to pay an amount under an invoice on the grounds that (i) the insurer requested information from a provider under subsection 46.2(1), and (ii) the insurer is unable, acting reasonably, to determine its liability for the amount payable under the invoice because the provider has not complied with the request in whole or in part."

Tribunal's jurisdiction

- [14] The respondent submits that, pursuant to s. 55 of the *Schedule*, the applicant is barred from proceeding with this issue and the Tribunal does not have jurisdiction to hear this issue. The applicant's submissions do not address whether the Tribunal has jurisdiction to hear the issue. It is apparent from the parties' submissions that there is a dispute about the amount payable for the OCF-21.

- [15] Pursuant to s. 280(1) of the *Insurance Act*, the Tribunal has jurisdiction to deal with disputes over entitlement and quantum of benefits. Therefore, I find I have jurisdiction to address this issue because there is a dispute over the quantum of benefits.

Analysis

- [16] As noted above, in its letter of September 3, 2018, the respondent requested the following information from the provider, Dr. Toneatto: all original treatment plan (OCF-18) forms; all clinical notes and records, medical notes and correspondence in addition to the billing records on file; all client-related supervisory records; the client's attendance records and/or sign-in sheets; and a statutory declaration completed by him.
- [17] The provider provided the respondent with information, including a statutory declaration.
- [18] The respondent takes issue in particular with the following information that, it submits, does not allow it to determine its liability for the amount payable under the invoice:
- a. The OCF-21 indicates that the only treatment provider who provided services to the applicant was Dr. Toneatto; however, this is contradictory to his statutory declaration. In the statutory declaration, Dr. Toneatto advises that both he and Dr. Arshad Mahmood provided services to the applicant.
 - b. In the statutory declaration, Dr. Toneatto is asked if he ever met with the applicant. He lists only one date, December 29, 2017. This is an issue because, as the respondent suggests, how could Dr. Toneatto have provided all of the applicant's psychological sessions if he only met her once?
 - c. In the statutory declaration, Dr. Toneatto is asked to provide the exact start and end time for his services. Instead, Dr. Toneatto provides a sign-in sheet, which only lists start times, but does not list end times.
- [19] I must determine whether the provider has failed to comply with the request in whole or in part such that the respondent is unable, acting reasonably, to determine its liability for the amount payable under the invoice.
- [20] To determine whether or not the information requested by the respondent is reasonably required and, if so, whether it has been provided, I begin my analysis by looking at the information contained within the OCF-21. The OCF-21 lists the

provider as Dr. Tony Toneatto. The date of services and description of services are the following:

- a. April 24, 2018: documentation, support activity for claim form (e.g. for insurance, third party payor, worker's compensation).
- b. May 8, 2018: educational material – e.g. hand-outs, books.
- c. May 8, 2018; May 10, 2018; May 17, 2018; May 24, 2018; May 31, 2018; June 7, 2018; June 15, 2018; June 21, 2018; June 28, 2018; July 12, 2018; July 19, 2018; July 25, 2018: therapy, mental health and addictions.
- d. July 25, 2018: documentation, support activity.
- e. July 27, 2018: assessment, service.

[21] Next, I look to the information that has been provided by the provider, Dr. Toneatto and, in particular, his statutory declaration. In Dr. Toneatto's statutory declaration, the following questions and answers are of particular significance:

- a. At question 5, he is asked whether he provided goods and/or services exactly as listed on the referenced OCF-21 invoice (including dates, duration, details of service and claimant) or not. Dr. Toneatto responds yes and that Dr. Mahmood provided sessions under his supervision. He responds that he also personally met the applicant.
- b. At question 6, he is asked to list all components related to the goods and/or services listed in the referenced OCF-21 including a description, the exact start and completion times (e.g. 1:00 pm to 3:00 pm) and who completed each component. Dr. Toneatto responded to please see the sign sheet. He responds that the session was provided exactly as invoiced.
- c. At question 8, he is asked whether he provided any client-related supervision services for any of the components above. At question 8(a), he indicates that he supervised Dr. Mahmood, a Doctor of Psychology (Psy.D). At question 8(b), he indicates that the client-related supervision was completed in person and about half an hour each time. At question 8(c), he responds the following to the question of the exact start and completion time (in minutes) of the client-related supervision services including the date(s): April 20, 2018; May 24, 2018; June 3, 2018; July 3, 2018 and July 24, 2018.

- d. At Appendix A, Dr. Toneatto states that he is licenced in the province of Ontario pursuant to the legislation and regulations relevant to the psychological services, which he and those individuals who are under supervision (supervisees) may provide or render. His supervision is conducted according to the applicable laws, regulations and standard, including the College of Psychologists of Ontario's Standards of Professional Conduct (2017) and the Canadian Code of Ethics for Psychologists. As part of such supervision, Dr. Toneatto meets with supervisees to review client files. He also meets with patients directly. As a duly licenced member of the College of Psychologists of Ontario, Dr. Toneatto is permitted to supervise both regulated and non-regulated providers. In doing so, Dr. Toneatto assumes professional responsibility and accountability for any services provided under his supervision. All clients are considered to be the patients of Dr. Toneatto's practice. As such, Dr. Toneatto is permitted to determine what fee will be charged. Accordingly, where services are rendered pursuant to his supervisory authority, Dr. Toneatto charges his normal rate of at least \$149.61 per hour.
- e. At Appendix B, Dr. Toneatto states that each session was one and a half hours as outlined in the OCF. He does not record session start and end time as it has no relevance to the care of the patient. He indicated to please see the sign in sheet for dates attended.

[22] Based on my review of the evidence, I find in favour of the applicant on this issue. I find that the provider complied with the respondent's request and that the respondent had the necessary information to determine its liability for the amount payable under the invoice. Therefore, I find that the OCF-21 is payable.

[23] I am able to determine from the evidence that Dr. Toneatto supervised Dr. Mahmood, who provided the applicant with psychological services. As set out by the College of Psychologists of Ontario's Standards of Professional Conduct (2017),² it is permitted for members of the College to supervise psychological service providers.

[24] I disagree with the respondent that it did not have information about the exact end time for the psychological services. Dr. Toneatto provided a sign-in sheet, which, the respondent acknowledges, lists start times, while the OCF-21 indicates that each session was 1.5 hours. Therefore, from this information, the respondent could have determined the end time for these sessions.

² The College of Psychologists of Ontario. (September 1, 2017). Standards of Professional Conduct (2017). Retrieved from http://www.cpo.on.ca/Standards_of_Professional_Conduct.aspx

- [25] I find that the provider provided the requested information to the respondent and that the respondent had the necessary information to determine its liability for the amount payable under the invoice. The OCF-21 for psychological services is payable in the amount of \$3,990.70.

Are the two treatment plans for chiropractic services reasonable and necessary?

- [26] I find that the two treatment plans for chiropractic services in the amounts of \$1,779.60 and \$1,384.70 are not reasonable and necessary, and the applicant is not entitled to these treatment plans.
- [27] The treatment plan in the amount of \$1,779.60 recommends a combination of chiropractic and massage therapy with the goals of pain reduction, increase in strength, increased range of motion and return to activities of normal living.
- [28] The treatment plan in the amount of \$1,384.70 recommends a combination of chiropractic and massage therapy with the goals of pain reduction, increase in strength, increased range of motion and return to activities of normal living.
- [29] I find that the applicant's accident-related injuries had resolved by the time she submitted these two plans and that she did not require any additional chiropractic or massage therapy treatment. Therefore, these two treatment plans are not reasonable and necessary. I have come to these findings based on the evidence before me, including as follows:
- i. I have reviewed the progress notes from the applicant's treatment sessions at Mackenzie Medical Rehabilitation Centre. The treatment sessions include a combination of chiropractic, active therapy, massage therapy and physiotherapy treatment. The treatment plans are dated March 1, 2018 and April 12, 2018. The progress notes written by the applicant's treatment providers from around this time indicate either that the applicant was "feeling good" or that she had no voiced concerns:
 - a. On February 23, 2018; March 1, 2018; April 5, 2018; April 10, 2018; April 17, 2018; April 19, 2018; April 24, 2018; May 3, 2018 and May 4, 2018: the notes indicate that the applicant expressed that she was "feeling good".
 - b. On April 3, 2018; April 5, 2018; April 19, 2018 and May 3, 2018: the notes indicate that the applicant had no voiced concerns.
 - ii. The applicant completed a chiropractic assessment insurer's examination ("IE") with Dr. Dimitrios Polyvos (chiropractor) on June 7, 2018 (report dated June 21, 2018). Dr. Polyvos opined that the applicant has reached

maximal medical improvement for her soft tissue injuries and that her sprain/strain injuries as a result of the accident have since resolved.

- iii. During the assessment with Dr. Polyvos, the applicant reported that she did not find the treatment sessions, comprised of hot and cold pack application, massage and exercises, to be helpful anymore.

- [30] Furthermore, I find that the treatment plan dated April 12, 2018 in the amount of \$1,384.70 is also not reasonable and necessary because it is a duplication of service. This treatment plan proposes the same treatment and goals as the treatment plan submitted approximately one month prior on March 1, 2018, in the amount of \$1,779.60.
- [31] Therefore, I find that the applicant is not entitled to the two treatment plans for chiropractic services in the amounts of \$1,779.60 and \$1,384.70.

Is the applicant entitled to an award under Regulation 664?

- [32] Pursuant to s. 10 of Ontario Regulation 664, if an insurer has unreasonably withheld or delayed payments, the Tribunal may award a lump sum of up to 50 percent of the amount to which the insured was entitled at the time of the award, together with interest on all amounts then owing.
- [33] On the facts and evidence before the Tribunal, I find that an award is warranted.
- [34] The applicant submits that the respondent acted in bad faith when adjusting her claim. Specifically, she submits that an award is justified because the respondent failed to make payment on the psychological services claim even though it has been provided with all requested documentation.
- [35] As noted above, I have found that the applicant is entitled to payment for the psychological services claim because the provider provided the respondent with the requested information in order to determine the payable amount. The provider submitted this information, his statutory declaration, on September 20, 2018. I find that the respondent was unreasonable in its failure to fully read the information provided by the service provider and, instead, insisted that the information had to be provided in the format it requested. As noted above, the respondent requested information about the exact start time and end time for psychological services. The service provider provided this information in full, although not in the format the respondent requested, yet the respondent submits that it was not provided with the exact end time for psychological services. This was unreasonable.

- [36] I find that as of September 20, 2018, the respondent had the necessary information to pay the OCF-21 amount. Therefore, there was an unreasonable delay from September 20, 2018 onwards.
- [37] I find that the OCF-21 for psychological services became payable on September 20, 2018. Therefore, an award will be granted to the applicant for 25% of the total value of the OCF-21 amount, owing as of September 20, 2018. I am not awarding a full award because the respondent has continued adjusting the file and, as noted in the applicant's submissions, the respondent has approved and paid certain treatment plans that were previously denied. A 50% award would require the most egregious behaviour, which was not demonstrated in this case, and the award is therefore reduced to 25%.
- [38] In conclusion, the applicant is entitled to a 25% award on the OCF-21 in the amount of \$3,990.70, together with interest at a rate of 2% per month, compounded monthly, from September 20, 2018.

CONCLUSION

- [39] For the reasons above, I find that the OCF-21 for psychological services is payable in the amount of \$3,990.70. The applicant is entitled to a 25% award on this OCF-21 in the amount of \$3,990.70, together with interest at a rate of 2% per month, compounded monthly, from September 20, 2018. The applicant is also entitled to interest on this OCF-21 in the amount of \$3,990.70.
- [40] The applicant is not entitled to the two treatment plans for chiropractic services in the amounts of \$1,779.60 and \$1,384.70.

Released: December 23, 2019

Melody Maleki-Yazdi
Adjudicator