Financial Services Commission of Ontario

Commission des services financiers de l'Ontario

Ontario

FSCO A14-005621 and A15-000354

BETWEEN:

MISHAL RAFI

Applicant

and

AVIVA CANADA INC.

Insurer

REASONS FOR DECISION

Before: Arbitrator Marshall Schnapp

Heard: In Hamilton on April 4, 5, 6 and May, 10, 2017, and by written submissions completed on June 16, 2017

Appearances: Mr. Paul Barrafato and Mr. Tamur Shah participated for Ms. Mishal Rafi
Mr. Paul Belanger and Mr. James Schmidt participated for Aviva

Issues:

The Applicant, Ms. Mishal Rafi, was injured in two motor vehicle accidents—the first on May 12, 2012 and the second on October 2, 2012—and sought accident benefits from Aviva Canada Inc. ("Aviva"), payable under the *Schedule*.[1] The parties were unable to resolve their disputes through mediation, and Ms. Rafi, through her representative, applied for arbitration at the Financial Services Commission of Ontario under the *Insurance Act*, R.S.O. 1990, c. I.8, as amended.

The issues in this Hearing are:

[1] *The Statutory Accident Benefits Schedule - Effective September 1, 2010*, Ontario Regulation 34/10, as amended.

1. Is Ms. Rafi entitled to receive non-earner benefits from November 12, 2013 to the present and ongoing?
2. Is Ms. Rafi entitled to the following medical benefits:

   i. $3,103.00 for chiropractic care submitted by Health Medica, treatment plan dated May 19, 2012;

   ii. $1,918.58 for a psychological treatment submitted by West Side Diagnostics in a treatment plan dated May 24, 2012; and

   iii. $3,130.00 for manipulation and exercise submitted by Heather Voisin dated October 9, 2012?
3. Is Ms. Rafi entitled to the following cost of examinations:

   i. $978.50 submitted by West Side Diagnostics dated June 4, 2012;

   ii. $1,300.25 submitted by West Side Diagnostics dated June 29, 2012 for an In-Home Assessment;

   iii. $1,705.22 for an ultrasound submitted by West Side Diagnostics in a treatment plan dated July 31, 2012; and

   iv. $1,950.00 submitted by West Side Diagnostics dated September 14, 2012 for Chronic Pain Assessment?
4. Is Ms. Rafi is entitled to interest on the amounts outstanding in accordance with the *Schedule*?
5. Is either party entitled to its expenses of the Hearing?

Result:

1. Ms. Rafi is not entitled to receive a non-earner benefit.
2. Ms. Rafi is not entitled to receive the medical benefits being claimed.
3. Ms. Rafi is not entitled to the cost of examinations being claimed.
4. Ms. Rafi is not entitled to interest for any overdue payments of benefits.
5. If the parties are unable to agree on the entitlement to, or quantum of, the expenses of this matter, the parties may request an appointment with me for determination of same in accordance with Rules 75 to 79 of the *Dispute Resolution Practice Code*.

EVIDENCE AND ANALYSIS:

Preliminary Motion

The Applicant provided new evidence with her closing reply submissions on June 2, 2017. The new evidence provided was an OCF-3 dated May 19, 2012. The Insurer brought a motion to exclude this OCF-3 due to non-compliance with Rule 39 of the *Dispute Resolution Practice Code* (the "*Code*"). I requested written submissions from both parties on the Motion.

In addition to questioning the authenticity of the OCF-3, which had been asked for several times over a period of years, Aviva submitted that like in the *Amidi*[2] decision, where I excluded the majority of the Applicant's Arbitration Brief for failing to comply with Rule 39, I should do so in this case. The Insurer submitted that as the OCF-3 was not admitted into evidence by way of joint agreement, direct evidence, evidence on cross-examination, or by way of redirect examination, in the course of this Arbitration, it was improper to refer to it in reply submissions.

The Applicant's submissions dealt with the authenticity of the OCF-3 and the fact that the Insurer was aware the Applicant elected non-earner benefits. The Applicant submitted that the only error was that the OCF-3 did not make it into the joint document brief. The Applicant submitted that based on section 25.0.1 of the *Statutory Powers Procedure Act*, that allows a tribunal the power to determine its own procedures and practices, and Rule 81 of the *Code*, which allows an arbitrator to set aside any time limit or rule in respect of a proceeding, I should do so in this matter and permit the OCF-3 into evidence.

Based on the facts and submissions from counsel, I am not allowing the OCF-3 into evidence for this matter. The language in Rule 39 is clear and states documents "must be served on the other party at least 30 days before the first day of the hearing". It is also noted that the Applicant's submissions provided no details on any "extraordinary circumstances" that existed that would assist me in allowing late service as required by Rule 39. I also find that it would be unfair and

[2] *Amidi and State Farm Mutual Automobile Insurance Company* (FSCO A13-002558) March 21, 2016.

prejudicial to the Insurer to allow new evidence to be presented in reply submissions that could not be challenged by the Insurer during the Hearing and in its closing submissions.

The Accidents

On May 12, 2012, the Applicant, Mishal Rafi, (hereinafter the "Applicant") was involved in a motor vehicle accident. At the time of the accident the Applicant was a driving to a grocery store with her father. The vehicle was stopped at a red light, when it was rear-ended by a van. Police attended after the accident, but no ambulance was called. On October 2, 2012, the Applicant was driving when a van failed to stop at the stop sign and impacted her car on the passenger side. This pushed her vehicle and she ended up a couple of metres away from a tree.

Witnesses

Ms. Rafi

The Applicant gave her evidence in a straight-forward and direct manner. She came across as a credible witness. The Applicant is 22 years old and presently resides with her husband and his family. She has lived there since July 2016. At the time of the accident on May 12, 2012, she was attending high school. The Applicant recalls after the accident she was in shock and scared; she and her father gave statements to the police. The Applicant described the following complaints after the accident: her head and neck were hurting right away, her lower and mid-back started hurting throughout the night, and she felt soreness and tight.

The Applicant testified that prior to a January 2010 accident her health was 100% perfect. The Applicant testified that as a result of the 2010 accident she experienced headaches for the first time, had neck and back pain, became cranky, agitated, and tired, never wanted to go to school, and school became more difficult. She received psychotherapy and massage therapy and was prescribed pain meditation. The Applicant testified that it affected her memory and ability to concentrate in school, which never changed. This led to a decrease in her school marks. The Applicant testified that prior to the May 2012 accident she was getting better, but had not

recovered from being in the previous motor vehicle accident in January 2010. The Applicant did not recall if she was taking any medication prior to the May 2012 accident. She believed she had 70% recovered from the January 2010 accident. She recalls she started socializing more with friends, attending at the mosque, and helping her mother around the house.

After the May 2012 accident, the Applicant testified she was always getting headaches, experiencing back pain, wanted to be alone, and did not want to attend school. The Applicant believes she missed a lot of school because some days she could not deal with anyone. She also believes the May 2012 accident had a significant impact on her social activities. She became distant from everyone. She lost a lot of friends because she could not maintain friendships and didn't take part in any social activities.

The Applicant testified that she was also involved in motor vehicle accidents on October 2, 2012 and January 24, 2014. The Applicant believes there was no change in her condition between the May 2012 and October 2012 accidents.

The Applicant testified that she was employed part-time as a sales associate at Marshall's during high school; she worked there from February 2012 to August 2013. As a result of the 2012 accidents, she decreased her work hours from two days to one day per week. She was still able to do the job and interact with customers. She kept working because it got her out of her house, allowed her to socialize and believed it would help her in the future. Later in her testimony, she said some weeks she worked one day and others two days.

She is presently studying HR management at Humber College; technically, she should be in fourth year, but she is doing all her third-year classes as she had to withdraw from the program for a year because she was put on academic probation. She attributes her issues with school to her concentration issues and always feeling tired. She is also having challenges with depression.

The Applicant was asked what doctors she was seeing around 2013. She testified that she was not seeing any doctors because no treatment was approved and she couldn't afford to go to any doctors that could help her. She went on to explain that it was hard to see her family doctor

because of the time constraints now that she is attending Humber, and her family doctor reduced her schedule to two days per week. She recalls last receiving massage therapy in 2014 and chiropractic treatment in 2016.

With respect to employment while at Humber, she continued to work at Marshall's but indicated she was working two or three days per week. The Applicant advised that in January 2016 she resigned, as she believed she could no longer balance the demands of school and work. The Applicant also testified that her most recent accident in January 2014 played a role in her stopping work, as it aggravated all her injuries and made her feel worse and she has not been able to recover.

When asked about her current plans for future medical treatment, the Applicant testified that she wants anything to improve her physical and mental health. She is not sure if she can graduate or accomplish anything. She believes the 2012 accidents affected her familial relationships; she lost the bonds with her siblings; it increased family arguments and she became very negative to be around. When asked about her current health, she said she experiences multiple headaches daily, has neck and back pain, and also has wrist pain at times. She has a lot of anxiety when she drives, as she always expects to get into another accident. The Applicant is concerned about school and her career, and fears she will not graduate and will be a failure.

Cross-Examination

The Applicant testified that she was doing pretty well in school prior to her January 2010 accident. When questioned more about her January 2010 accident, the Applicant testified that it was a severe accident—she sustained a head injury, and had issues with memory, concentration, anxiety, and depression after that accident. She believes it affected her academics. The Applicant testified that her depressive symptoms started after the January 2010 accident; she always wanted to be alone in a dark space and not have to talk with anyone.

The Applicant testified that after the May 2012 accident helping around the house almost became impossible for her, but she would still try.

The Applicant testified that after the October 2012 accident her injuries became more aggravated, she experienced more frequent and stronger pain in her neck, back and head. The Applicant testified that she was not sure which of her four accidents made her life not normal, meaning not being able to go to school, not being able to do well in her program, and not being able to have a good relationship with everyone in her life.

When questioned about her religious activities and attending mosque, the Applicant testified that she had difficulty attending mosque after the January 2010 accident and before that accident she went pretty regularly but she did not remember how regularly. She describes the difficulty as the prayers require physical activity, and being at mosque means being around a lot of people.

The Applicant believes her relationship with her father and her entire family deteriorated due to all her accidents; she became distant from her family.

Counsel noted that the Applicant checked off ADD (Attention Deficit Disorder) or ADHD (Attention Deficit Hyperactivity Disorder) in her Learning Services File.[3] The Applicant said she could not remember when or if she was ever diagnosed with ADD or ADHD, and could not remember why she put it down as her disability. She agreed the form noted that her depression started after May 2010.

The Applicant confirmed that after the May 2012 accident she was able to return to school and write her final exams. The Applicant testified that she moved on her own into a one-bedroom condominium in January 2014.

The Applicant disagreed with a January 31, 2014 Disability Certificate completed by Dr. Boudram, who found the Applicant did not suffer a complete inability to carry on a normal life.[4] At that time the Applicant was working part-time at Winners and sleeping 6 to 7 hours nightly.

[3] Humber College Learning Services File.
[4] January 31, 2014 Disability Certificate completed by Dr. Boudram.

The Applicant testified that everything she has told insurance assessors is true and she always tells the truth.

When questioned, the Applicant confirmed that after the May 2012 accident she continued high school and graduated in 2013, continued working until August 2013, began college in September 2013, stopped treatment in December 2013, moved out of her family home, and lived on her own in January 2014, where she took on more limited housekeeping responsibilities, became more independent with personal care, returned to some driving, took public transit, took on a new job at Winners (where she worked for 22 months), retuned to Humber College in 2015, began a relationship, got married in 2016, and began living with her husband and his family.

When asked if she ever submitted a Disability Certificate for the 2012 accident, the Applicant advised she did not know.

The Applicant's Position

The Applicant was involved in a total of 4 motor vehicle accidents: January 28, 2010, May 12, 2012 (subject accident for A14-005621), October 2, 2012 (subject accident for A15-000354), and January 24, 2014. The Applicant submitted that her condition after the January 28, 2010 accident should provide a baseline and evidentiary record of her injuries; this would be the starting point to conduct an analysis of her entitlement to a non-earner benefit, by comparing her activities of daily living at this point to what they were after the May 12, 2012 accident.

With respect to causation, the Applicant submitted she is not required to prove that the accident was the only cause of her injuries, but only required to prove the accident significantly contributed to an impairment that "continuously prevents" her from engaging in substantially all activities in which she ordinarily engaged before the accident.[5] According to the Applicant, she suffered impairments; otherwise the Insurer would not have paid for treatment. The Applicant submitted that her evidence shows her condition became progressively worse after each accident, as a result of her injuries and the resulting cumulative impact on her life.

[5] *Mulhall and Wawanesa* (FSCO Appeal P06-00002, October 15, 2007), pp. 3-4.

The Applicant submitted her prior consistent statements made to multiple assessors should help assess her credibility.[6] The Applicant relied on her statements in the assessing and treating records of Dr. Lorenz, Dr. Khaled, Dr. Valentin, Dr. Mills, and Dr. Lee, which she says have always remained consistent.

The Applicant believes it is important to note her evidence that she improved to a point after her 2010 accident, that she became employed at Marshall's in February 2012, and testified she was around 70% better at the time of the second accident of May 12, 2012. This is important as it shows had it not been for the May 12, 2012 accident she would have resumed her life and achieved her goals.

The Applicant highlights that even in 2015, assessors for the Insurer, in relation to the May 2012 accident, recommended ongoing psychological and psycho-educational assistance, which was consequently funded.

In support of the non-earner benefit, the Applicant relies on Dr. Valentin's report completed in August 2016, which was prepared in relation to the January 2014 accident.[7] The doctor's findings were as follows:

> her current psychological problems are accumulative results of her four accidents… she suffered from pre-existed psychological problems that exacerbated her symptoms during her fourth, index accident…
>
> …adjustment disorder with mixed anxiety and depressed mood (exacerbated by the index accident), Severe post-traumatic stress disorder (exacerbated by the index accident) and Cognitive Disorder…

[6] *R. v. Khan*, 2017 ONCA 114.
[7] Tab 36.

> Ms. Rafi does suffer a complete inability to carry on a normal life as a direct result of the subject accident from a psychological viewpoint.

The Applicant submitted she meets the test for the May 12, 2012 accident, and that it was a cumulative effect of all accidents that resulted in her current situation. The opinion of Dr. Valentin in August 2016 confirmed the Applicant's complete inability to live a normal life, and did not necessarily state that the 2014 accident was the sole cause. The Applicant also relied on the final evaluation of Dr. Valentin which concluded her trajectory was altered by these accidents. The Applicant took the position that the May 12, 2012 accident prevented her from going to university—she never received the marks required for university and went to college. Further, the Applicant argues, as a result of the accidents in January 2010, May 2012 and October 2012, her ability to achieve a successful college education was impacted.

The Applicant noted that to date she is not employed, has not completed her college education, is on probation and on student disability. As well, the Applicant believes her marriage should be put in perspective—she is living with her husband's family in a basement apartment, and her husband and in-laws take care of all the household duties.

Further, consistent with the decisions of *M.R. and Aviva Insurance*,[8] *D.S. and Certas*[9] and *Hasan and Allstate*,[10] it is the Applicant's position that there is no requirement for a Disability Certificate to be completed for an Applicant to obtain the non-earner benefit. An insurer cannot simply rely on an OCF-3 as the entire basis for its denial. It must look at the total context of the situation and evidence presented to it. Its role is to continually adjust the file in a fair and even handed manner.

Medical Benefits and Cost of Examinations

The Applicant submitted an arbitrator can determine if the cost of examination and treatment plans are reasonable and necessary without having an expert opinion on that point.[11]

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[8] *M.R. and Aviva Insurance* (LAT Tribunal File No. 16-001379/AABS).
[9] *D.S. and Certas Insurance* (LAT Tribunal File No. 16-000279/AABS).
[10] *Hassan and Allstate* (LAT Tribunal File No. 16-00289/AABS).
[11] *British Columbia (Workers' Compensation Appeal Tribunal) v. Fraser Health Authority*, 2016 SCC 25.

Insurer's Position

The Insurer submitted that the Applicant does not meet the stringent test for the non-earner benefit, and she has not proven on a balance of probabilities that the cost of exams and treatment plans in dispute are reasonable, necessary and incurred.

The Insurer submitted that these claims arise out of the May 12, 2012 accident. It is important to differentiate the very limited effects from this accident from those sustained in the very serious 2010 MVA, as well as those sustained in the accidents of October 2, 2012 and January 24, 2014. The claim for non-earner benefits requires a comparison of the Applicant's activities before and after the May 12, 2012 accident. According to the Insurer, the Applicant was significantly limited prior to the May 12, 2012 accident, and aside from some initial setback, she has fared quite well since.

The Insurer relies on Delegate Blackman's decision in *Hernandez and TTC Insurance Company Limited* that upheld the principle that an adverse inference may be drawn in the non-earner benefit context when an Applicant fails to disclose material records.[12]

The Insurer also relies on s. 36(3) of the *Schedule,* which states that an applicant who fails to submit a completed Disability Certificate is not entitled to a specified benefit for any period before the completed Disability Certificate is submitted.

The Applicant failed to submit a Disability Certificate pertaining to the May 12, 2012 accident, despite requests and in the face of warnings regarding suspension of benefits. The case law relied on by the Applicant is distinguishable from this matter, as in all of those cases a Disability Certificate was eventually submitted. In this case, none was submitted and it is now over five years since the 2012 accident. If the Applicant's argument that a Disability Certificate isn't necessary is accepted, it would render section 36(3) of the *Schedule* meaningless. Thus pursuant to section 36(3) of the *Schedule*, the Applicant is precluded from receiving a non-earner benefit.

[12] *Hernandez and TTC Insurance Company* (FSCO Appeal P14-00044) July 3, 2015.

Regarding the alternative argument, the Applicant was in a very serious MVA on January 24, 2010, which left her permanently and seriously impaired. The Insurer submitted the Applicant's pre-May 2012 accident trajectory did not include attaining a GPA suitable for entry to university, then law school, and then the Bar. The evidence was clear that the 2010 accident made such a trajectory impossible.

The Insurer submitted that the evidence showed after the May 2012 accident the Applicant continued carrying on with a normal life. She continued school and working part-time at Marshall's. She continued to drive. She graduated high school in June 2013, and started college in September 2013. She stopped physical and emotional treatment in December 2013. She moved out on her own in January 2014, and took on more of the housekeeping and became independent with her personal care. She took public transportation to school. In April 2014, she took on a new job at Winners, and stayed there for 22 months. She did not seek accommodations at school until 2015. She began a romantic relationship in 2015 and was married in July 2016 when she moved in with her new family that same month. She went to the Dominican Republic in August 2016. She now shares close relationships with her parents, sister-in-law and niece. She lives in a stable home with her husband and her in-laws.

The Insurer submitted on the totality of the evidence, the Applicant has failed to prove, on a balance of probabilities, that she suffered a complete inability to carry on a normal life as a result of the May 12, 2012 accident.

In addition, the Insurer submitted that there is significant missing documentation in the evidentiary record. At the Pre-Hearing on February 19, 2016, Arbitrator DeGuire required that numerous productions be made available in 30 days. As of the Hearing, the employment files from Winners and Marshall's, unredacted records from Dr. Saeed, OHIP records, tax returns, and updated Humber College records all had not been produced. The Insurer submitted that an adverse inference is in order to infer that these records would show pre-accident ongoing limitation/injury/relevant health issues, while the post-accident records would not.

Medical Benefits & Cost of Examinations

The Insurer submitted that the various treatment plans and assessments submitted for this Applicant mirror those submitted for her family member in the companion arbitration. To the Insurer, this raises an issue as to how much thought and assessment of what was reasonable and necessary was put into drafting these plans.

The Insurer submitted the Applicant failed to provide any evidence to suggest that the exams and/or treatment in dispute will provide any benefit. The Applicant did not lead evidence to establish that any treatment goals in regards to the disputed benefits were identified, reasonable, or being met. Thus the Applicant failed to comply with the case law requirements of establishing the reasonableness and necessity of the disputed exams or treatment,[13] and has not met the onus of establishing that the disputed benefits are reasonable and necessary.[14]

Findings

Non-Earner Benefit

I agree with the Insurer that the Applicant is not entitled to a non-earner benefit due to her failure to submit a Disability Certificate pertaining to the May 12, 2012 accident. I also agree with the Insurer that the case law relied on by the Applicant is distinguishable from this matter, as in those cases a Disability Certificate was eventually submitted, and in some of them the question determined was whether or not a the Disability Certificate submitted was complete.

I also find it telling that we are now over five years post-accident, with the Applicant having been under the care of several health care practitioners and having been assessed by a multitude of others. Not one of those health care practitioners has completed an OCF-3 or made the finding in a report that the Applicant suffered a complete inability to carry on a normal life as a result of the May 12, 2012 accident.

[13] *General Accident Insurance Company and Violi* (Appeal P99-00047, September 27, 2000), p. 5.
[14] *Ali and Ferozuddin and Certas* (FSCO A13-002459, March 23, 201 6), para. 42.

I do not technically need to discuss her entitlement any further, but I think it is important to make the finding that even if she had provided a completed OCF-3 to the Insurer, based on her own evidence and the documentation before me, I would still find that the Applicant is not entitled to receive a non-earner benefit.

The only witness who provided evidence in support of this benefit was the Applicant. There is significant medical documentation, as well as the Applicant's own testimony, that demonstrates that it was the 2010 accident that was the most severe accident, that contributed to the Applicant's health issues, and that caused her challenges in school and caused her to curtail certain activities.

With respect to the alleged academic issues, again it is not clear from the Applicant's testimony and the documentation that these issues were a result of the May 12, 2012 accident. Rather, it appears her challenges were the result of her 2010 motor vehicle accident. As well, the challenges may have been due to her having ADD and ADHD. These conditions were noted in her Humber file but the Applicant was unsure when or if she was ever diagnosed with these conditions.

It is unclear from the evidence the degree to which the May 12, 2012 accident caused the Applicant challenges with school, or to be unable to carry on certain activities, including attending mosque and maintaining close relationships with her family and friends. While I found the Applicant credible, I believe I required corroborating evidence to gain a better picture and understanding of the difference in her activity level after the May 2012 accident.

The Applicant did not prove on a balance of probabilities that she suffered a complete inability to carry on a normal life as a result of the May 12, 2012 accident.

After the May 12, 2012 accident, she continued to carry on a normal life and engage in almost all of the same activities she was doing prior to the accident. The evidence shows the Applicant continued attending school and working part-time, continued to drive, graduated high school and started college in 2013, moved out on her own in January 2014, took on a new job at Winners and

stayed there for 22 months, began a romantic relationship in 2015, and was married and moved in with her new family in July 2016.

I come to this conclusion keeping in mind the cases on entitlement to a non-earner benefit referred to by the Applicant: *Heath v. Economical*,[15] *Galdamez v. Allstate*,[16] *Mulhall and Wawanesa*,[17]and *Bobeta and Aviva Canada*.[18] Specifically, with respect to the analysis outlined in *Heath*, the Applicant has not proven her injuries sustained in the accident prevented her from engaging in substantially all of the activities in which she ordinarily engaged before the accident. From the evidence, it appears the Applicant is in fact engaging in almost all of the same activities, as well as others, in terms of her personal growth and relationships. I note that in *Bobeta*, the Applicant suffered much more severe injuries and was diagnosed with a complicated closed head injury and mild Traumatic Brain Injury, and continued to experience residual deficits as a result of the brain injury. As well, she required speech and occupational therapy as a result of her impairments. Several witnesses provided corroborating evidence on the significant differences in her activity level post-accident.

While it appears the cumulative effect of the four accidents on the Applicant has been significant, affected her abilities in school, and for a time impacted her interpersonal relationships with family and friends, I cannot find that the impairment resulted in complete inability to carry on a normal life as a result of an accident, as required by the *Schedule*.

Medical Benefits & Cost of Examinations

The Applicant did not provide any specific evidence relating to any of the medical benefits and cost of examinations in dispute. The Applicant indicated that she stopped going to treatment when the Insurer stopped funding it, and testified that she would like more treatment.

[15] *Heath v. Economical Mutual Insurance Company*, (2009). 5 O.R. (3d) 785.
[16] *Galdamez v. Allstate Insurance Company of Canada*, 2012 ONCA 508.
[17] *Mulhall and Wawanesa* (FSCO Appeal P06-00002) October 15, 2007.
[18] *Bobeta and Aviva Canada* (FSCO A14-006479) October 31, 2016.

I agree with the Insurer that the Applicant failed to establish the reasonableness and necessity of the disputed exams and treatment, and has not met the onus of establishing that the disputed benefits are reasonable and necessary.

EXPENSES:

The parties are encouraged to resolve the issue of expenses for this matter on their own. If they are unable to do so, they may schedule an Expense Hearing in writing before me according to the provisions of Rules 75 to 79 of the *Dispute Resolution Practice Code*.

Marshall Schnapp
Arbitrator

September 6, 2017
Date

Financial Services Commission of Ontario

Commission des services financiers de l'Ontario

Ontario

FSCO A14-005621 and A15-000354

BETWEEN:

MISHAL RAFI

Applicant

and

AVIVA CANADA INC.

Insurer

ARBITRATION ORDER

Under section 282 of the *Insurance Act*, R.S.O. 1990, c. I.8, as it read immediately before being amended by Schedule 3 to the *Fighting Fraud and Reducing Automobile Insurance Rates Act*, 2014, and Ontario *Regulation 664*, as amended, it is ordered that:

1. Ms. Rafi is not entitled to receive a non-earner benefit.
2. Ms. Rafi is not entitled to receive the medical benefits being claimed.
3. Ms. Rafi is not entitled to the cost of examinations being claimed.
4. Ms. Rafi is not entitled to interest for any overdue payments of benefits.
5. If the parties are unable to agree on the entitlement to, or quantum of, the expenses of this matter, the parties may request an appointment with me for determination of same in accordance with Rules 75 to 79 of the *Dispute Resolution Practice Code*.

Marshall Schnapp
Arbitrator

September 6, 2017
Date