LICENCE APPEAL TRIBUNAL

Safety, Licensing Appeals and Standards Tribunals Ontario

TRIBUNAL D'APPEL EN MATIÈRE DE PERMIS

Tribunaux de la sécurité, des appels en matière de permis et des normes Ontario

File Number: 18-012548/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:

Gabrielle Pereira

Applicant

and

Aviva Insurance Canada

Respondent

DECISION [AND ORDER]

VICE CHAIR: **Eleanor White**

APPEARANCES:

For the Applicant: Gabrielle Pereira, Applicant
Sevda Guliyeva, Paralegal

For the Respondent: Aviva Insurance Canada
Maria Cosentino, Counsel

HEARD: In Writing **August 8, 2019**

REASONS FOR DECISION AND ORDER

OVERVIEW

[1] The applicant was involved in an automobile accident on **February 21, 2017** and sought benefits pursuant to the *Statutory Accident Benefits Schedule - Effective September 1, 2010* (the "*Schedule*"). The applicant was denied certain benefits by the respondent and submitted an application to the Licence Application Tribunal - Automobile Accident Benefits Service ("Tribunal").

[2] The applicant was involved in an accident in which she rear-ended a vehicle in front of her. A third vehicle passed both the applicant and the vehicle in front of her and quickly pulled into the line of traffic in front of both, causing the first vehicle to quickly adjust and slow down. The applicant applied the brakes, but could not avoid the collision. Her vehicle was written off due to the accident. The applicant was then transported to the hospital, examined, x-rayed and discharged with a diagnosis of neck pain.

[3] The applicant sought treatment and income replacement benefits from her insurer. She was denied certain treatments and income replacement benefits, and subsequently applied to the Tribunal for dispute resolution. Prior to the hearing, the income replacement benefit issue was withdrawn, leaving the issues in dispute to the denial of two treatment plans for physical treatment. This decision examines the facts and evidence, and decides how the dispute is resolved.

ISSUES

[4] The issues are whether the applicant is entitled to two treatment plans for chiropractic, massage and modality treatment, both of which were recommended by Dr. Kuldip Rakkar of Mediwise Healthcare Clinic. The first plan, in the amount of $3,805.76, was submitted on April 25, 2017 and denied April 26, 2017 pending attendance at an insurer's examination. This plan (treatment plan #1) recommends 16 sessions of each of the following: muscle stimulation of the muscles of the head, neck and back, hyperthermy, manipulation, massage therapy and exercise (respiratory system and back muscles).

[5] The second plan, in the amount of $3,200.00, was submitted on July 26, 2017 and denied on August 10, 2017, relying on the insurer's examination reports. In this plan (treatment plan #2), Dr. Rakkar recommends 12 sessions each of laser therapy and shockwave therapy for pain relief, plus the cost of form completion.

RESULTS

[6] I find that treatment plan #1 recommending chiropractic and massage treatment in the amount of $3,805.76 to be reasonable and necessary and payable with any applicable interest.

[7] I do not find treatment plan #2 in the amount of $3,200.00 recommending treatment with laser and shock wave therapies to be reasonable and necessary.

LAW

[8] The insurer is liable to pay for reasonable and necessary medical expenses incurred as a result of the accident, pursuant to sections 14 and 15 of the *Schedule*. The applicant bears the onus of proving on a balance of probabilities that any proposed treatment or assessment plan is reasonable and necessary. Section 18 of the *Schedule* states that if the injuries sustained in the accident are consistent with the *Schedule's* definition of a 'minor injury' – essentially injuries that are described as sprains, strains, whiplash-associated disorder, generally affecting soft tissues – the injuries are treated under the Minor Injury Guideline (MIG). The MIG allows the provision of expedient treatment up to the amount of $3500.00.

[9] The insurer notified the applicant under s. 38(10) of the *Schedule* that it denied the first plan pending the findings of insurer's examinations (IEs). The applicant attended the assessments and the resulting reports supported the insurer's denial of the plan. The second treatment plan was also denied on the basis of the findings of the assessor. The applicant subsequently applied to the Tribunal for dispute resolution.

ANALYSIS

Is Treatment Plan #1 in the amount of $3,805.76 considered reasonable and necessary and therefore payable?

[10] Dr. Rakkar, having treated the applicant since the accident, in a treatment plan in the amount of $1,280.00 under the MIG, prescribed 16 facility-based treatments over an 8-week period. The proposed treatment included further assessment, muscle stimulation, heat treatment, chiropractic manipulation, massage therapy and stretching exercises. Other treatments (psychological) had been approved and consumed some of the available funding under the MIG. The insurer was invoiced for treatment as it was consumed.

[11] The applicant submits that she had no pre-existing musculo-skeletal problems, despite her history of IBS (Irritable Bowel Syndrome) and PCOS (Poly-cystic Ovary Syndrome). The applicant has a confusing inclusion of family doctor's records in that there are no notes arising from visits themselves, however there is evidence of lab results, imaging reports; all procedures that would require the doctor's direction. Nevertheless, the treating facility has provided communications between the treating chiropractor, Dr. Rakkar, and Dr. Kamran The communication appears in Tab 15 of the applicant's submissions. The respondent argues that the lack of clinical visit notes shows the applicant did not attend her family doctor in the time period after the accident.

[12] The applicant argues that Dr. Kamran's completion of a checklist, sent by Dr. Rakkar for his consideration during an office visit with the applicant on March 8, 2017 gives further evidence of her follow-up with her doctor. Dr. Kamran added notes to the checklist, indicating that his patient had worsening headaches, neck and back pain, driving anxiety and a mild concussion. He thought counselling may help. He ruled out depression. The applicant failed to comment in her submissions on the missing record of office visits.

[13] The applicant argued that she needed continued care and disputed the findings in the three IE assessors' reports. The applicant submitted that Dr. Ian Denby, neurologist, found no need of treatment, due to neurological deficits. The applicant also argued that although Dr. Getsos, in his IE for Function Abilities Examination, found similar deficits in range of motion of the spine as did the treating chiropractor; he did not support the treatment recommended in the disputed plan. Dr. Khalad found the applicant's injuries to be consistent with the definition of 'minor injuries' in the *Schedule* and found the plan to be not reasonable and necessary and to be treatable within the limits of the MIG ($3,500.00).

[14] The respondent submitted that the reports of the IE assessors supported the denial of the two treatment plans. In his report dated November 20, 2017, Dr. Khalad wrote that the applicant had sustained 'minor injuries' limited to soft tissue injuries as a result of a Whiplash type 2 injury and that this diagnosis fell properly within the MIG. There were no relevant pre-existing impairments that would render the limitations of the MIG insufficient for her treatment.

[15] Dr. Getsos was asked to assess the applicant for her entitlement to income replacement benefits. He was unable to garner valid testing results due to the applicant's refusal to perform many of the tests or, likewise, her limited efforts due her fear of self-harm. He respectfully did not comment on the results of his

testing, due to the inability to establish validity in the test results. The respondent also submitted that the report from the neurologist, Dr. Derby, did not find the treatment plan in dispute to be reasonable and necessary as he found no neurological impairment and thus no basis for treatment.

[16] I note that all of the assessments took place in September and October of 2017 and were reported in November of that year, about 7 months after the accident. The treatment plan in dispute was the second plan submitted to the insurer, 2 months after the accident, having already consumed one treatment plan in the amount of $1,280.00. The applicant, her treating chiropractor, and family physician all indicated she was still having headaches and pain in her neck as well as her upper and lower back.

[17] Subsequent to the IEs, the applicant was removed from the MIG because she was found to have a psychological impairment as a result of the accident. The decision to remove the applicant due to psychological impairment is not segmental – that is, it does not limit the applicant to only psychological treatment, but instead is the reason to breach the threshold and access further reasonable and necessary treatment. With the increased coverage, it is important to recall the caution in the psychologist's IE report in which she reminds the respondent that much of the applicant's anxiety is tied to her perception of pain. It is also wise to consider Dr. Khalad's comment in his report that most of minor injuries resolve in a 9 to 12- week period. This disputed treatment plan, was dated April 25, 2017 just 8 weeks after the accident.

[18] I find the applicant's consistent report of upper thoracic and cervical pain with concomitant headaches to be consistent with the nature of her injury, predominantly that of a whiplash associated disorder type 2 as described by her treating chiropractor and the assessors. Given her young age and driving inexperience and the fact that she was diagnosed with an anxiety issue, it is not unreasonable to suspect she may require more than the initial approved treatment plan in the amount of $1,280.00. I am persuaded by the reports of both Dr. Derby and Dr. Khalad that her injuries are predominantly 'minor' in nature. Dr. Khalad's sensible views on average recovery time for an uncomplicated whiplash injury to not exclude at least the full resources of the MIG funding. The applicant is now 'out of the MIG' and unrestricted by the $3,500.00 limitation. Simply, the applicant had access to only one treatment plan for physical injuries, as her psychological assessment and treatment consumed the remainder of the MIG funds available. Once deemed out of the MIG due to psychological impairment, and with ongoing complaints of physical pain and its

relevance to her psychological impairment as reported by the IE psychological assessor, I find the treatment plan is reasonable and necessary.

Is the OCF-18 in the amount of $3,200.00 considered reasonable and necessary and therefore payable?

[19] Dr. Rakkar proposed 12 facility-based treatments over an 8-week period. The proposed treatment included both shock wave therapy at the fee of $150 per session and laser therapy at the fee of $100 per session, in order to reduce pain.

[20] Dr. Rakkar states in his treatment plan that the patient has had mild-to-moderate improvement over the last two treatment plans. He refers to co-management with the family physician. He does not specify the relationship of his diagnoses to his recommendations for his patient. He submits two boilerplate descriptions about the benefits of the therapies, and from the description of laser therapy, the application of this therapy is somewhat untimely as he suggests its application is much more effective if applied as close to the time of injury as possible. Dr. Rakkar states in the OCF-18 that the applicant needs to develop strength and endurance to be able to maintain any prolonged postures such as sitting or standing. The treatment plan is not well supported in the treatment provider's comments.

[21] The applicant submitted that the denial process on this treatment plan was faulty, first denied due to a lack of compliance in providing information regarding another benefit, her claim for an income replacement benefit. The eventual denial in January 27, 2019 relied on the assessment report of Dr. Khalad, who found her injuries to be minor in nature and treatable within the MIG, although the applicant had now been taken out of the limitation of the MIG. I find the applicant's submissions not persuasive. Dr. Khalad's assessment was not untimely. At the time of his assessment, the applicant had not yet been removed from the confines of the MIG.

[22] The respondent submitted there was inadequate medical evidence for the support of this plan and the previous one. Although the applicant submitted lab reports, referrals and prescriptions for pharmacies and imaging, she did not send any office visit notes. Regardless, this is not necessary for the attending chiropractor to propose a treatment offered in his office which lies within his scope of practice should he propose its applicability to the applicant's benefit.

[23] I do not have enough persuasive information about the applicability and timeliness of this treatment to find it reasonable and necessary. The treatment provider has not updated the applicant's current condition and diagnosis to

support the change in treatment. The applicant has not met her onus in establishing the treatment is reasonable and necessary.

CONCLUSION

[24] The minor injury guideline was introduced to allow the applicant speedy access to treatment in the case of minor injuries as defined in the *Schedule*. This case highlighted the problems that can exist when psychological and physical issues merge early in the claim. However, whether within or without the limitations of the guideline, approved treatment must be reasonable and necessary. In this file, one of the treatment plans was caught in the dilemma of shared funding within the MIG initially and was denied. I find the applicant is entitled to treatment plan #1, in the amount of $3,805.76 as the proposed plan is reasonable and necessary.

[25] I do not find the applicant to be entitled to treatment plan #2, dated July 26, 2017, in the amount of $3,200.00, as the proposed plan is not shown to be reasonable and necessary.

ORDER

[26] The applicant is entitled to the treatment submitted by Mediwise Healthcare Clinic in the treatment plan dated April 25, 2017, in the amount of $3,808.76 as the proposed plan is reasonable and necessary, plus applicable interest in accordance with s. 51 of the *Schedule*.

Released: April 20, 2020

Eleanor White
Vice Chair