



**Citation: *Basian v. Aviva General Insurance Company*, 2023 ONLAT 20-011441/AABS**

**Licence Appeal Tribunal File Number: 20-011441/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:

**Carly M. Basian**

**Applicant**

and

**Aviva General Insurance Company**

**Respondent**

**DECISION AND ORDER**

**VICE-CHAIR:**

**Monica Ciriello**

**APPEARANCES:**

**For the Applicant:**

Kateryna Vlada, Paralegal

**For the Respondent:**

Jennifer Cosentino, Counsel

**HEARD:**

**By Way of Written Submissions**

## BACKGROUND

- [1] The applicant was involved in an automobile accident on July 4, 2016 and sought benefits pursuant to the *Statutory Accident Benefits Schedule - Effective September 1, 2010* (the “Schedule”).<sup>1</sup> The applicant was denied certain benefits by Aviva Insurance Company (the “respondent”), and submitted an application to the Licence Appeal Tribunal - Automobile Accident Benefits Service (the “Tribunal”).

## ISSUES

- [2] The following issues are to be decided:
- (a) Is the applicant entitled to a cost of examination in the outstanding amount of \$733.23 (\$2,204.95 submitted less \$1,471.69 approved) for a psychological assessment, proposed by Princeton Hills Medical Assessments in a treatment plan (“OCF-18”) dated December 24, 2018?
  - (b) Is the applicant entitled to cost of examinations in amount of \$2,260.00 for a chronic pain assessment, proposed by Princeton Hills Medical Assessments in an OCF-18 dated December 24, 2018?
  - (c) Is the applicant entitled to a medical benefit in the outstanding amount of \$10,129.01 (\$11,774.72 submitted less \$1,645.71 approved) for a chronic pain program, proposed by Princeton Hills Medical Assessments in an OCF-18 dated March 22, 2019?
  - (d) Is the applicant entitled to interest on any overdue payments of benefits?

## RESULT

- [3] I find that the applicant is not entitled to:
- a. \$733.23 for a psychological assessment;
  - b. \$2,260.00 for a chronic pain assessment;
  - c. \$10,129.01 for a chronic pain program; and
  - d. interest.

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

## ANALYSIS

### ***Are the Treatment Plans Reasonable or Necessary?***

- [4] Section 14, 15 and 16 of the *Schedule* provide that the insurer shall pay medical benefits to, or on behalf of, an applicant so long as the applicant sustains an impairment as a result of an accident and the medical benefit is a reasonable and necessary expense incurred by the applicant as a result of the accident.
- [5] The applicant bears the onus of proving entitlement to the proposed treatment by proving both OCF-18s are reasonable and necessary for the injuries sustained in the accident on a balance of probabilities.<sup>2</sup> To meet this burden, the applicant should identify the goals of the plan, how the goals are being met to a reasonable degree and whether the time and cost expended to achieve these goals is proportional to the benefit.

### ***\$733.23 for Psychological Assessment dated December 24, 2018,***

- [6] I find that the applicant is not entitled to the OCF-18 in the amount of \$733.23.
- [7] The applicant submits that the OCF-18 in dispute is reasonable and necessary to alleviate and treat her psychological impairments. The treatment plan is for a total of \$2,204.92, of which the respondent paid only \$1,471.69.
- [8] The applicant relies on the OCF-18 completed by Dr. Betty Kershner, Ph.D., psychologist at Princeton Hills Medical Assessments Inc. Dr. Kershner proposed a detailed psychological assessment of the applicant to provide diagnosis and future treatment recommendations. The OCF-18 provides that the applicant suffers flashbacks of the accident, sleep disturbances, repeat dreams of the accident and is afraid to drive or ride as a passenger in a vehicle.
- [9] The respondent relies on the March 26, 2019, section 44 assessment of Dr. Shahriar Moshiri, psychologist to partially approve the OCF-18 psychological assessment as reasonable and necessary. Dr. Moshiri opined that the applicant sustained an adjustment disorder, however suggested that there was a more reasonable cost of treatment than that proposed in the OCF-18.<sup>3</sup> This included an appropriate rate and time per activity that differed from that outlined in the OCF-18.

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<sup>2</sup> *Scarlett v. Belair Insurance*, 2015 ONSC 3635 (CanLII) at paras. 20-24.

<sup>3</sup> Insurer's Examination, Dr. Moshiri, dated April 8, 2019.

[10] I am not satisfied that the applicant met her burden of proof that the OCF-18 in dispute is reasonable and necessary. Particularly the applicant did not provide evidence demonstrating how the cost of the proposed OCF-18 in dispute was reasonable compared to Dr. Moshiri's proposed means. I acknowledge that the applicant requires a psychological assessment which is supported by Dr. Moshiri, but I am not persuaded that the applicant has met her burden to prove on a balance of probabilities that this treatment plan is reasonable and necessary. I accept this as contemporaneous evidence that supports the applicant's burden of proof that the OCF-18 in dispute is reasonable and necessary.

***\$2,260.00 for Chronic Pain Assessment dated December 24, 2018***

[11] I find that the applicant is not entitled to the OCF-18 in the amount of \$2,260.00.

[12] In order to show that an assessment is reasonable and necessary, the applicant must show objective medical evidence that indicates there is a condition to be investigated by the proposed assessment. The applicant does not need to demonstrate that a condition exists but needs to show that existing symptoms and past examination results require the proposed assessment.

[13] The applicant relies on *17-005791/AABS v. Aviva Insurance Canada*<sup>4</sup> suggesting that chronic pain is ongoing recurrent pain, lasting beyond the usual course of injury for more than 3 to 6 months, and adversely affects the individual's well-being.

[14] The applicant relies on the OCF-18 completed by Dr. Inese Robertus, physician, dated December 24, 2018, at Princeton Hills Medical Assessments Inc. The goals of the OCF-18 are to reduce pain, increase strength, increase range of motion and allow the applicant to return to activities of normal living. There were no comments in the OCF-18 that detailed specific goals or outcomes. The applicant relies on the Tribunal's decision in *17-003735 v. Certas*<sup>5</sup> in which it found that "pain reduction which increases strength is a reasonable treatment goal."

[15] To demonstrate recurrent pain the applicant relies on the clinical notes and records ("CNRs") of Dr. Danielle Manis, family physician dated July 8, 2016. The applicant reports that she might have torn her left shoulder.

[16] The applicant also saw Dr. Sanaz Zarinehbab, family physician, at the Ryerson Medical Centre. Dr. Zarinehbab referred the applicant for an MRI examination on

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<sup>4</sup> 2018 CarswellOnt 19848.

<sup>5</sup> 2018 CarswellOnt 7179.

August 23, 2016. The MRI examination revealed a grade 3 acromioclavicular separation, lateral acromion indents that trapezius with associated edema.<sup>6</sup> The applicant was referred to an independent orthopaedic assessment by Dr. Jihad Abouali. Dr. Abouali conducted physical examination of the applicant on September 5, 2016, and noted a “deformity and superior elevation of the distal clavicle on the left shoulder.”<sup>7</sup>

- [17] The applicant raises issue with the respondent’s denial of the OCF-18, referencing that the explanation of benefits mistakenly references a request for an *orthopaedic assessment* not a *chronic pain assessment*. The respondent acknowledges this error but suggests that it is inconsequential as the section 44 assessment of Dr. Oleg Safir identifies and breaks down the components of the OCF-18 as a chronic pain assessment. I find that the error is of little consequence, and that Dr. Safir was cognizant that the OCF-18 in dispute recommended a chronic pain assessment.
- [18] In response the respondent submits that the applicant has not established that the OCF-18 is reasonable and necessary. It submits that there is no compelling evidence of chronic pain syndrome. It refers to the lack of analysis engaging the six criteria used to determine whether an individual suffers from chronic pain syndrome, under the *American Medical Association, Guides to the Evaluation of Permanent Impairment, 6th ed.* (“AMA Guides”).
- [19] The respondent relies on the June 14, 2018, and March 27, 2019, section 44 assessment by Dr. Safir, orthopaedic surgeon. The applicant reported occasional neck and upper and lower back pain and left shoulder pain. Dr. Safir’s assessment indicates that he accepts that the applicant’s injuries included a grade 3 left acromioclavicular joint separation. Although she reported difficulty with arm movements, there were no movements or activities that the applicant could not perform. The applicant reported cleaning, performing laundry, and lawn care, removing garbage, caregiving, shopping and engaging in sports activities. She would take ibuprofen as needed and remained employed.<sup>8</sup> Dr. Safir opines that the applicant’s sole impairment was to the left AC joint, however in his opinion the applicant had received a substantial amount of formal facility based physical rehabilitation and achieved maximum therapeutic benefit from the care. Dr. Safir concluded that this OCF-18 was not reasonable and necessary.<sup>9</sup>

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<sup>6</sup> Mount Sinai Hospital Joint Department of Medical Imaging, dated August 23, 2016.

<sup>7</sup> Athlete’s Care, Sports Medicine Centres, Dr. Abouali, dated September 15, 2016.

<sup>8</sup> Insurer Examination, Dr. Safir, dated July 12, 2018.

<sup>9</sup> Insurers Examination, Dr. Safir, dated April 10, 2019.

- [20] Furthermore, the respondent submits that beyond the July 12, July 16 and August 26, 2016, CNRs from Ryerson Medical Centre, the other entries<sup>10</sup> do not reference the accident or any accident-related injuries.
- [21] The applicant has the onus to show objective medical evidence that there is a condition to be investigated by the proposed assessment. I accept the evidence of Dr. Manis, Dr. Abouali and Dr. Zarinehbaaf that the applicant was injured, and may be suffering ongoing pain; however, the lack of corroborative evidence of a chronic pain does not satisfy her onus that on a balance of probabilities, the disputed OCF-18 is reasonable and necessary. By its very nature, chronic pain is distinctly different from ongoing pain, as it is considered pain that debilitates and severely limits one's engagement in activities. The applicant's submissions do not support that she suffers significant functional limitations as referenced in Dr. Safir and the Ryerson Medical Centre the applicant is engaging in daily activities.
- [22] I am persuaded by the respondents' submissions on the *AMA Guides*. This Tribunal has often used the *AMA Guides* chronic pain criteria as an assistive tool to evaluate chronic pain complaints where there is no diagnosis of chronic pain. I find that the applicant has not provided evidence to demonstrate functional impairment under the *AMA Guides*.
- [23] The applicant did not meet the onus that the treatment sought is reasonable and necessary, she failed to establish that the treatment goals are reasonable, that the goals are being met to a reasonable degree and that overall cost of achieving the goals is reasonable.
- [24] As a result, I am persuaded that the applicant has not met her burden to prove on a balance of probabilities that this treatment plan is reasonable and necessary.

***\$10,129.01 for Chronic Pain Program dated March 22, 2019***

- [25] I find that the applicant is not entitled to the OCF-18 in the amount of \$10,129.01.
- [26] The applicant submits that the OCF-18 in dispute is reasonable and necessary to treat her reoccurring left shoulder pain. The treatment plan recommends 32 counts of physical rehabilitation, 16 counts of mental health treatment, 2 counts of documentation/support activity, 2 counts of total body assessment and 1 count to complete the OCF-18 form, for a total cost of \$11,774.72. The respondent partially approved the OCF-18, having paid \$1,645.71.

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<sup>10</sup> March 10, May 5, July 31, November 2017 and August 16, 2019.

- [27] The applicant relies on the OCF-18 completed by Dr. Robertus, physician, dated March 22, 2019, at Princeton Hills Medical Assessments Inc. Dr. Robertus recommended the applicant participate in a comprehensive multidisciplinary chronic pain program with CBI therapy, individual counselling, biofeedback, stress management, dialectical behavioural therapy, socialization in a group setting, functional exercise program, chiropractor and physiotherapy treatment, as well as seminars to teach the methods of stress and pain management. The goals of the OCF-18 are to address pain reduction increased strength, increase range of motion, and a return to normal activities as the goals of the treatment contemplated.
- [28] The respondent relies on the section 44 assessments of Dr. Safir<sup>11</sup> and Dr. Moshiri.<sup>12</sup> Dr. Safir opined the applicant has an impaired left shoulder, but there is no further medical evidence to suggest a musculoskeletal impairment that would require ongoing facility-based treatment.<sup>13</sup> Relying on Dr. Safir, the respondent denied the physical components recommended as not reasonable and necessary. Dr. Moshiri opined that the mental health and progress report were reasonable and necessary<sup>14</sup>, resulting in the respondent paying \$1,645.71.
- [29] No further evidence was presented to distinguish the applicant from ongoing pain to chronic pain. As such, I am persuaded by the conclusion of Dr. Safir that the OCF-18 for the physical components recommended is not reasonable and necessary. I find that the applicant failed to submit medical evidence to support the need for the proposed treatment, beyond the OCF-18 itself.
- [30] As a result, I am persuaded that the applicant has not met her burden to prove on a balance of probabilities that this treatment plan is reasonable and necessary.

### ***Interest***

- [31] The applicant is not entitled to interest in accordance with section 51 of the *Schedule* for the psychological assessment.

### **ORDER**

- [32] I find that the applicant is not entitled to:

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<sup>11</sup> Insurers Examination, Dr. Safir, dated April 10, 2019.

<sup>12</sup> Insurers Examination, Dr. Moshiri, dated April 8, 2019.

<sup>13</sup> Insurers Examination, Dr. Safir, dated April 10, 2019.

<sup>14</sup> Insurers Examination, Dr. Moshiri, dated April 8, 2019.

- a. \$733.23 for a psychological assessment
- b. \$2,260.00 for a chronic pain assessment
- c. \$10,129.01 for a chronic pain program: and
- d. Interest

**Released: February 7, 2023**



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**Monica Ciriello  
Vice-Chair**