



Citation: Richards-Ross v. Unifund, 2022 ONLAT 20-013249/AABS

Licence Appeal Tribunal File Number: 20-013249/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:

Jadyn Richards-Ross

Applicant

and

Unifund

Respondent

DECISION

VICE-CHAIR:

Ian Maedel

APPEARANCES:

For the Applicant:

Sevda Guliyeva, Paralegal

For the Respondent:

Gina Nardella, Counsel

HEARD:

By Way of Written Submissions

BACKGROUND

- [1] The applicant was involved in an automobile accident on March 25, 2018 and sought benefits from the respondent, Unifund, pursuant to the Statutory Accident Benefits Schedule - *Effective September 1, 2010 (including amendments effective June 1, 2016)* ("Schedule"). The applicant was denied certain benefits by the respondent and submitted an application to the Licence Appeal Tribunal - Automobile Accident Benefits Service ("Tribunal").
- [2] The parties agree that the applicant's accident-related impairments do not fall within the definition of a minor injury, thus the applicant is not bound by the funding limit of the Minor Injury Guideline ("MIG").

ISSUES

- [3] The following issues are in dispute:
 - i. Is the applicant entitled to a medical benefit in the amount of \$3,645.49 for chiropractic treatment recommended by Scarborough Medical Centre in a treatment plan ("OCF-18") denied on July 6, 2020?
 - ii. Is the applicant entitled to a medical benefit in the amount of \$2,254.72 for a psychological assessment recommended by Q Medical in an OCF-18 denied on October 10, 2019?
 - iii. Is the applicant entitled to a medical benefit in the amount of \$1,564.50 for a functional abilities evaluation recommended by Q Medical in an OCF-18 denied February 25, 2020?
 - iv. Is the applicant entitled to a medical benefit in the amount of \$2,486.00 for a vocational assessment recommended by Q Medical in an OCF-18 denied February 25, 2020?
 - v. Is the applicant entitled to a medical benefit in the amount of \$2,356.00 for a labour market survey recommended by Q Medical in an OCF-18 denied March 10, 2020?
 - vi. Is the applicant entitled to an award pursuant to s. 10 of Ontario Regulation 664 because the respondent unreasonably withheld or delayed the payment of benefits?

- vii. Is the applicant entitled to interest on any overdue payment of benefits?
- viii. Is the respondent entitled to costs pursuant to Rule 19.1 of the Tribunal's *Common Rules of Practice & Procedure* ("Rules")?

RESULT

[4] I find:

- i. The psychological assessment in the amount of \$2,254.72 is not reasonable or necessary pursuant to the *Schedule*;
- ii. The functional abilities evaluation in the amount of \$1,564.50 is not reasonable or necessary pursuant to the *Schedule*;
- iii. The vocational assessment in the amount of \$2,486.00 is not reasonable or necessary pursuant to the *Schedule*;
- iv. The occupational therapy assessment in the amount of \$2,356.00 is not reasonable or necessary pursuant to the *Schedule*;
- v. The applicant is not entitled to an award pursuant to s. 10 of Ontario Regulation 664;
- vi. The applicant is not entitled to interest on any overdue payment of benefits;
- vii. The respondent is not entitled to costs pursuant to Rule 19.1 of the *Rules*.

[5] Resolved Issue: The OCF-18 for chiropractic treatment in the amount of \$3,645.49 was previously approved by the respondent. Thus, it is no longer an issue in dispute.

[6] Issue iv was incorrectly listed as an occupational therapy assessment in the previous Case Conference Report and Order ("CCRO"), the OCF-18 dated February 18, 2020 and denied on March 10, 2020 was for a labour market survey in the amount of \$2,356.00.

Procedural Issue – Submission Page Length

[7] The respondent submits that the applicant has failed to abide by the submission page limits set out in the previous CCRO. The CCRO indicates the applicant's and respondent's written submissions will be limited to 12 pages in length.

- [8] The applicant's submissions were 15 pages in length. The respondent submits the Tribunal should not consider any submissions in excess of the 12-page limit.
- [9] While I am live to the potential procedural fairness issues raised as a result of the applicant's breach of the previous CCRO, I am prepared to consider the full length of the applicant's 15-page written submissions.
- [10] Pursuant to ss. 23(1) and 25.0.1 of the *Statutory Powers Procedure Act*¹, it falls directly within my discretion to strike any submissions in excess of the 12-page limits laid out in the previous CCRO. However, in this case, I am prepared to admit these non-compliant submissions, and to assign them whatever weight I deem appropriate. However, this should not be viewed as tacit acceptance of a blatant breach of the Tribunal's previous Order. Clearly, the applicant made a tactical decision to breach the previous CCRO. Instead of risking potential exclusion, parties shall file a timely Notice of Motion and comply with Rule 15 if they seek to vary the written submission page limits.

ANALYSIS

- [11] Sections 14 and 15 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.
- [12] The applicant bears the onus of proving entitlement to the proposed treatment by proving that the OCF-18 is reasonable and necessary on a balance of probabilities.²
- [13] In determining whether an assessment is reasonable and necessary, it must also be noted that assessments, by their nature, are speculative. The purpose of an assessment is to determine if a condition exists. To establish that an assessment is reasonable and necessary the applicant must point to objective evidence that there are grounds to suspect the applicant has the condition for which he seeks the assessment.

Psychological Assessment - \$2,254.72

- [14] I am not persuaded this psychological assessment is reasonable or necessary pursuant to the *Schedule*.

¹ R.S.O. 1990, CHAPTER S.22.

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

- [15] The OCF-18 submitted by Dr. Doreen Payan, Chiropractor, dated October 7, 2019, states that the applicant's injuries include headache, insomnia, chronic post-traumatic headache, concussion, irritability and anger. Post-accident, the applicant was said to be experiencing reduced ability to concentrate, excessive fears, extreme mood changes, significant tiredness, low energy and problems sleeping with pain as a contributing factor. A full psychological assessment was required to identify goals contributing to the applicant's post-accident recovery.³
- [16] The applicant has not made any submissions specific to whether this assessment is reasonable and necessary pursuant to the *Schedule*. However, in review of the evidentiary record, including the clinical notes and records, it is clear that on March 30, 2020 Dr. Salma Remtulla, Neurologist, diagnosed the applicant with post-concussive syndrome, functional neurological symptom disorder (conversion disorder), and migraine following the subject accident.⁴ However, I am aware that this diagnosis was provided approximately seven months after this assessment in dispute. Otherwise, the applicant's main barriers to recovery appeared to revolve around his debilitating post-accident migraines.
- [17] The applicant relies on the Psychological Assessment Report by Dr. Vuyo B. Mpumlwana dated August 9, 2019. Dr. Mpumlwana indicated a diagnosis of irritability and anger, chronic pain due to trauma.⁵ Twelve sessions of psychological counselling were recommended, with continuation of physiotherapy and massage for his body pain.⁶ I note this diagnosis was based on the clinical interview conducted and the completion of the objective psychometric tests administered. Otherwise, it was based solely on the applicant's self-reporting, as Dr. Mpumlwana did not review any of the applicant's extensive clinical notes and records.
- [18] The Explanation of Benefits dated October 10, 2019 indicates this psychological assessment is duplicative of other approved treatment.⁷ The respondent submits that a psychological assessment was previously approved May 9, 2019 and funding for a further psychiatric progress and discharge report with counselling was approved August 22, 2019. The respondent submits this psychological assessment is not reasonable and necessary, as it does not specify what additional treatment would be required following the previous approved

³ Applicant's Book of Authorities, OCF-18 dated October 7, 2019, Tab 15(b).

⁴ Applicant's Book of Authorities, Notes from Pediatric Neurology Clinic, Dr. Salma Remtulla, March 30, 2020, Tab 7(1).

⁵ Applicant's Book of Authorities, Psychological Assessment Report, Dr. Vuyo B. Mpumlwana, August 9, 2019, Tab 17, pg. 9.

⁶ *Ibid.*

⁷ Respondent's Written Submissions, Explanation of Benefits, October 10, 2019, Tab 5.

treatment, nor does this current OCF-18 list any additional goals of an additional psychological assessment.

[19] I agree with the respondent. The applicant has the onus to establish this assessment is reasonable and necessary pursuant to the *Schedule*. Clearly, a previous psychological assessment was approved in May 2019 and a subsequent progress report, and additional counselling were approved less than eight weeks prior to this OCF-18. This OCF-18 was filed by a chiropractor, and it would be beyond the scope of her practice to diagnose psychological accident-related impairments. Similarly, there was no statement by a qualified health practitioner pursuant to s. 38(3)(c) of the *Schedule* stating the psychological assessment was reasonable and necessary. The OCF-18 at issue also fails to provide any goals of this assessment, nor has it specified how this assessment would differ from the psychological assessment previously funded. Finally, the applicant failed to provide any submissions with regard to this assessment and I cannot infer how the proposed treatment specified in Dr. Mpumlwana's report differs from the counselling previously approved on August 22, 2019.

[20] Given the evidence tendered with regard to this proposed psychological assessment, I am not persuaded it is reasonable and necessary pursuant to the *Schedule*.

Functional Abilities Evaluation - \$1,564.50

[21] I am not persuaded the functional abilities evaluation ("FAE") in the amount of \$1,564.50 is reasonable and necessary pursuant to the *Schedule*.

[22] The OCF-18 submitted by Dr. Doreen Payan, Chiropractor, dated February 14, 2020 indicates the goals of the FAE are to identify legitimate barriers such as excessive pain or movement restriction, to proper functions. This assessment was aimed at determining disability or impairment levels to assist with the approach for active rehabilitation.⁸

[23] Again, the applicant failed to provide any submissions regarding why this FAE was reasonable and necessary pursuant to the *Schedule*. Otherwise, there has been no evidentiary connection made to link the proposed FAE and the medical evidence provided.

[24] The respondent relies on the FAE Report by Mr. Danny Monck, Kinesiologist dated August 7, 2020. In preparation for this report related to an income

⁸ Applicant's Book of Authorities, OCF-18 dated February 14, 2020, Tab 15(f).

replacement benefit (“IRB”), Mr. Monck reviewed previous clinical notes and records, other assessment reports, diagnostic imaging, and the OHIP summary. Following the assessment, he concluded it was safe to complete functional testing, as the applicant was able to stand and walk without limitation.⁹ He noted full range of motion in the applicant’s neck, shoulders, and lumbar spine and that the applicant was independent with personal care and housekeeping tasks.¹⁰ I place significant weight upon this report because it speaks directly to the treatment plan in dispute and involved a comprehensive review of the applicant’s medical record.

[25] The respondent submits that the goal of this assessment was to determine if the applicant was entitled to an IRB. The respondent submits this FAE is not reasonable and necessary because the applicant was entitled to an IRB at the time this assessment was proposed. He remained entitled to an IRB following this s. 44 assessment. Therefore, this OCF-18 was properly denied as duplicative and not reasonable and necessary pursuant to the *Schedule*.

[26] Given the applicant’s failure to provide any submissions with regard to this proposed FAE, the strength of the FAE provided by the respondent, and the ongoing entitlement to an IRB, I am not persuaded this FAE is reasonable and necessary pursuant to the *Schedule*.

Vocation Assessment - \$2,486.00 and Labour Market Survey - \$2,356.00

[27] I am not persuaded the vocational assessment in the amount of \$2,486.00, nor a labour market survey in the amount of \$2,356.00 are reasonable and necessary pursuant to the *Schedule*.

[28] In the OCF-18 prepared by Dr. Doreen Payan, Chiropractor, dated February 14, 2020, the applicant sought a comprehensive evaluation of his vocational and potential work prospects post-MVA.¹¹

[29] Similarly, in the OCF-18 prepared by Dr. Doreen Payan, Chiropractor, dated February 18, 2020, the applicant sought a labour market survey, not an occupational therapy assessment as originally listed in the issues in dispute and

⁹ Respondent’s Written Submissions, Functional Abilities Evaluation Report, Mr. Danny Monck, August 7, 2020, Tab 15, pg. 6.

¹⁰ *Ibid.*, pg. 8.

¹¹ Applicant’s Book of Authorities, OCF-18 dated February 14, 2020, Tab 15(e).

previous CCRO.¹² This was the treatment plan denied in the Explanation of Benefits provided by the respondent on March 10, 2020.¹³

- [30] To clear up any confusion, the OCF-18 dated February 27, 2020 sought an additional psychiatric assessment in the amount of \$2,500.¹⁴ The issue of a psychiatric assessment was addressed above, and I found it was not reasonable and necessary given the evidence tendered and the previous approved assessment. Regardless, this OCF-18 was not listed as an issue in dispute.
- [31] Again, the applicant failed to make any direct submissions regarding how these two OCF-18s were reasonable and necessary. Otherwise, the applicant failed to establish a link between these assessments and the evidence tendered.
- [32] The respondent relies on the Vocational Assessment and Transferrable Skills Analysis Report provided by Ms. Kelly-Ann Smith, vocational rehabilitation specialist, dated August 7, 2020. Based on the applicant's medical concerns, educational requirements, and current labour market trends Ms. Smith provided a number of occupations identified for the applicant's consideration.¹⁵
- [33] Similarly, the respondent relies on a Labour Market Survey Report also provided by Ms. Smith, vocational rehabilitation specialist, dated August 7, 2020. This listed alternative employment opportunities within the areas surrounding Mississauga, Ontario for which the applicant was suited by education, training, and experience.¹⁶
- [34] I place significant weight on both of these reports prepared by Ms. Smith. The respondent submits that again, both of these reports were prepared regarding the IRB in dispute. A vocational assessment and labour market survey were otherwise duplicative, as the applicant was entitled to an IRB both before and after the s. 44 assessments were completed. Given an IRB was never in dispute and given a vocational and labour market survey were conducted by the respondent, I do not find an expense for either of these assessments reasonable and necessary pursuant to the *Schedule*.

¹² Applicant's Book of Authorities, OCF-18 dated February 18, 2020, Tab 15(h).

¹³ Respondent's Written Submissions, Explanation of Benefits, March 10, 2020, Tab 12.

¹⁴ Applicant's Book of Authorities, OCF-18 dated February 27, 2020, Tab 15(j).

¹⁵ Respondent's Written Submissions, Vocational Assessment including Transferrable Skills Analysis Report by Kelly-Ann Smith, August 7, 2020, Tab 16.

¹⁶ Respondent's Written Submissions, Labour Market Survey Report by Kelly-Ann Smith, August 7, 2020, Tab 17.

Award and Interest

- [35] Given that no benefits are payable, the respondent cannot be found to have unreasonably withheld or delayed payment of benefits pursuant to s. 10 of Regulation 664. Thus, no award is payable.
- [36] Given there are no overdue payment of benefits, the applicant is not entitled to interest pursuant to s. 51 of the *Schedule*.

Costs


- [37] The respondent's request for costs is denied.
- [38] Costs are a discretionary remedy imposed when a party has acted unreasonably, frivolously, vexatiously, or in bad faith pursuant to Rule 19.1 of the *Rules*. The threshold for costs is high, and they are rarely awarded. Although, the applicant was unsuccessful in establishing these OCF-18s were reasonable and necessary pursuant to the *Schedule*, it has not been demonstrated this application was filed in bad faith nor for any other reason that would attract costs. Otherwise, I am not persuaded the threshold for costs has been met, thus no costs shall be awarded.

ORDER

- [39] The application is dismissed, and I find:
- i. The psychological assessment in the amount of \$2,254.72 is not reasonable or necessary pursuant to the *Schedule*;
 - ii. The functional abilities evaluation in the amount of \$1,564.50 is not reasonable or necessary pursuant to the *Schedule*;
 - iii. The vocational assessment in the amount of \$2,486.00 is not reasonable or necessary pursuant to the *Schedule*;
 - iv. The occupational therapy assessment in the amount of \$2,356.00 is not reasonable or necessary pursuant to the *Schedule*;
 - v. The applicant is not entitled to an award pursuant to s. 10 of Ontario Regulation 664;
 - vi. The applicant is not entitled to interest on any overdue payment of benefits;

vii. The respondent is not entitled to costs pursuant to Rule 19.1 of the *Rules*.

Released: December 19, 2022



Ian Maedel
Vice-Chair