Citation: Ramesh v Aviva General Insurance, 2023 ONLAT 20-011365/AABS

Licence Appeal Tribunal File Number: 20-011365/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:

Kerthana Ramesh

Applicant

and

Aviva General Insurance

Respondent

DECISION

ADJUDICATOR: **Sancia Pinto**

APPEARANCES:

For the Applicant: Linda To, Paralegal

For the Respondent: Bhavpreet Saini, Counsel

HEARD: **By Way of Written Submissions**

OVERVIEW

[1] Kerthana Ramesh ("the applicant"), was involved in an automobile accident on February 2, 2019, and sought benefits pursuant to the *Statutory Accident Benefits Schedule - Effective September 1, 2010 (including amendments effective June 1, 2016)* (the "*Schedule*"). The applicant was denied benefits by the respondent, Aviva, and applied to the Licence Appeal Tribunal - Automobile Accident Benefits Service (the "Tribunal") for resolution of the dispute.

[2] Issues [2](I) and (II)(c) listed in the case conference report and order are noted as resolved in the applicant's and respondent's submissions. As a result, they have been omitted here. By way of motion order dated May 13, 2022, issue [3](v) has been added as an issue in dispute for the hearing.

ISSUES

[3] The issues in dispute are:

i. Is the applicant entitled to $152.59 ($1,252.29 less $1,100.00 approved for physical therapy, recommend by Complete Rehab Centre, in a treatment plan (OCF-18) dated June 3, 2019?

ii. Is the applicant entitled to $1,803.73 for physical therapy, recommended by Complete Rehab Centre, in a treatment plan (OCF-18) dated September 23, 2020?

iii. Is the applicant entitled to $1,578.11 for physical therapy, recommended by Complete Rehab Centre, in a treatment plan (OCF-18) dated August 12, 2021?

iv. Is the applicant entitled to $2,460.00 for a chronic pain assessment, recommended by Complete Rehab Centre, in a treatment plan (OCF-18) dated August 26, 2020?

v. Is the applicant entitled to $3,218.14, (less $1,995.32 approved), for psychological services, recommended by Complete Rehab Centre, in a treatment plan (OCF-18) dated February 25, 2022?

vi. Is the Applicant entitled to an award under Ontario Regulation 664 because the Respondent unreasonably withheld or delayed payments to the Applicant?

vii. Is the Applicant entitled to interest on any overdue payment of benefits?

RESULT

[4] I find that:

i. The applicant is not entitled to any of the disputed treatment plans listed above because she has not satisfied me that any of them are reasonable and necessary.

ii. The applicant is not entitled to an award, nor interest.

ANALYSIS

Entitlement to treatment plans

[5] To receive payment for a treatment and assessment plan under s. 15 and s. 16 of the *Schedule*, the onus is on the applicant to demonstrate on a balance of probabilities that the benefit is reasonable and necessary as a result of the accident. The applicant should identify the goals of the treatment plan, how the goals would be met to a reasonable degree and that the costs of achieving them are reasonable.

The applicant is not entitled to the physical therapy treatment plans

[6] The three physical treatment plans (dated June 3, 2019, September 23, 2020, and August 12, 2021) in dispute were all completed by chiropractor Rahim Jessa and are for a combination of chiropractic and massage therapy treatments. While the number of recommended sessions may vary, the treatment goals generally remain the same across the plans. I have analyzed the treatment plan goals, the barriers to successful treatment and the treatment plan activities to determine whether the treatment plans meet the reasonable and necessary test.

[7] With regard to the OCF-18 treatment plans for physiotherapy, the applicant submits that the respondent's responses dated October 7, 2019, and October 8, 2020, do not comply with the stringent notice requirements as required under s. 38(8) of the *Schedule*.

[8] Under s. 38(8) of the *Schedule*, the respondent must notify the applicant within 10 business days whether it will pay for the goods and services requested. If the respondent refuses to pay for them, it must provide the medical and other reasons explaining why it considers the goods and services not to be reasonable and necessary.

[9] In reviewing the reasons for the denials, I find that the October 7, 2019, response provided sufficient details why the respondent considered the treatment plan, amounting to $1,252.49, not reasonable and necessary. The respondent referenced the reliance on the treating health practitioners' medical opinion to form the basis that the applicant's injuries were confined to the Minor Injury Guideline ("MIG"), which I find to be a valid medical reason. The reasons provided in the response dated October 8, 2020, regarding the treatment plan in the amount of $1,803.73, addressed the medical opinion of the applicant's chiropractor, Rahim Jessa, and noted that the injuries identified appeared to be predominantly minor, which I find to be a valid medical reason. The applicant's written submissions on this matter were limited and did not persuade me that the reasons given for denying the various treatment plans fell short of the stringent notice requirements under s. 38(8). Additionally, the applicant did not provide an explanation or any specific details that directly addressed the respondent's failure to meet the test under s. 38(8) as it pertains to the OCF-18 in the amount of $1,578.11. Accordingly, I find that denial to be proper as well.

[10] In support of the treatment plans completed by Rahim Jessa for chiropractic and massage therapy, the applicant argues that upon completion of the musculoskeletal assessment reports of physician Dr. Lee, the respondent had compelling medical evidence that the applicant should have been taken outside of the MIG prior to the removal that occurred after December 13, 2021. The applicant further submits that further physical treatment is necessary and that her misclassification prior to being removed from the MIG is grounds to support the reasonableness and necessity of the physical treatment plans.

[11] The applicant underwent a virtual assessment by Dr. Karmy, who noted in his report that the applicant found the rehabilitation program helpful in temporarily alleviating her pain, but it did not result in long-term improvement of her symptoms and functionality. Dr. Karmy recommends that the applicant participate in a chronic pain program, but he does not directly address the reasonableness or necessity of the physical treatment plans.

[12] I consider Dr. Karmy's report to be insubstantial as I am not convinced, based on the other medical evidence before me, that the applicant is experiencing ongoing chronic pain. Upon reviewing Dr. Karmy's report, it is noted that the applicant's range of motion was full in all directions, and that she is not using any prescription medications for any pain management. The report heavily relies on reciting the self-reported complaints of the applicant. Additionally, Dr. Karmy's report fails to specify how the applicant meets the criteria as noted in the *American Medical*

Association, Guides to the Evaluation of Permanent Impairment, 6th Edition and whether she meets any criteria at all.

[13] Furthermore, the records from the family doctor have limited entries regarding complaints of physical pain, providing limited support for a chronic pain diagnosis. There is no recommendation from the family doctor for any physical treatment. Consequently, I find that the applicant has failed to persuade me that the treatment goals as identified in the treatment plans are reasonable.

[14] I find the initial and subsequent report provided by the respondent's assessor, Dr. Lee, to be more persuasive. Dr. Lee had access to an updated and complete copy of the applicant's medical records for review. Additionally, Dr. Lee conducted an in person musculoskeletal examination of the applicant to assess the nature and consequence of injuries sustained in the accident, as they relate to the physical treatment plans in dispute. The applicant informed Dr. Lee that the physical treatment received thus far has provided her with 0% improvement and that she has reached a plateau. Dr. Lee determined that the applicant sustained soft tissue injuries, including whiplash associated disorders II, thoracic myofascial sprain/strain, lumbar myofascial sprain/strain, and left ankle sprain/strain. Furthermore, Dr. Lee concluded that the applicant's soft tissue physical injuries resulting from the accident had been resolved. I find that the applicant has not met her onus in explaining how the treatment plans in dispute are reasonable and necessary based on the medical evidence before me.

The applicant is not entitled to the chronic pain assessment

[15] The applicant relies on the chronic pain assessment conducted on January 14, 2021, by Dr. Karmy and the subsequent report, and submits that the applicant's psychological injuries relate to and add to the chronicity of the applicant's physical injuries, thereby justifying the reasonableness and necessity of this treatment plan.

[16] Although Dr. Karmy's chronic pain assessment report diagnosed the applicant with a chronic pain condition, there are limited indications in the applicant's treatment records, including the family doctor's records, that suggest the symptoms warrant such an investigation. The family doctor's records prior to and after the submission of this treatment plan do not document ongoing pain complaints related to the accident, indicating that the applicant is not suffering from a chronic pain condition. Furthermore, the medical records, including the prescription summaries submitted by the applicant, confirm that no prescription medications have been filled to assist with pain management of any ongoing physical pain resulting from this accident.

[17] Apart from Dr. Karmy's report, the applicant's medical records and assessments fail to persuade me that this treatment plan is reasonable or necessary. Furthermore, I find that this treatment plan is a duplication of services as the applicant underwent a chronic pain assessment by Dr. Karmy just a few months after the submitting the currently disputed OCF-18. I concur with the respondent's argument that there is no justification for a second chronic pain assessments in these circumstances.

The applicant is not entitled to the balance of the psychological services treatment plan

[18] The applicant seeks payment for the remaining unapproved portion of a treatment plan in the amount of $1,222.82 ($3,218.14 less $1,995.32 approved). This represents the difference between the recommendation of the applicant's psychologist, Dr. Brunshaw, who recommended fourteen 75-minute sessions of psychotherapy with a psychotherapy progress report, and the recommendation of the respondent's psychologist, Dr. Day, who recommended 12 one-hour sessions of psychotherapy.

[19] To support the treatment plan, the applicant relies on the report from Dr. Brunshaw and the medical records of her family doctor, Dr. Murthy. The records from the treating family doctor do note some limited entries of the applicant's struggles with her psychological symptoms. The applicant submits that a single assessment with Dr. Day should carry limited weight over her history of care provided by her family doctor.

[20] While I accept that the applicant is experiencing various psychological symptomology that requires treatment, I prefer the evidence provided by the respondent. I find that Dr. Brunshaw's assessment of the applicant does not support the added level of treatment, and at this juncture, I am not persuaded that a progress report is reasonable or warranted. Dr. Brunshaw's report does not offer any comment or explanation as to why the duration of the sessions should be beyond the one-hour sessions or why 14 sessions are reasonable or necessary in the circumstances. Dr. Brunshaw simply recommends 14 seventy five-minute sessions without accompanying specifics of what this treatment would entail to warrant why this course of action should be considered instead of the 12 one-hour sessions recommended by Dr. Day. Furthermore, Dr. Brunshaw did not have the benefit of reviewing the applicant's medical records, unlike Dr. Day. Dr. Brunshaw's findings are based solely on the clinical interview and the applicant's self-reports.

[21] The onus is on the applicant to demonstrate that the treatment plan sought is reasonable and necessary. After considering the evidence pertaining to the applicant's psychological condition, I am not convinced that the psychological impairment resulting from the accident is so severe as to warrant treatment beyond the 12 one-hour sessions approved by the respondent in the amount of $1,995.32.

Interest

[22] Interest applies on the payment of any overdue benefits pursuant to s. 51 of the *Schedule.* In this case, the applicant is not entitled to interest because no payment is due from the insurer.

Award

[23] The applicant sought an award under s. 10 of Reg. 664. Under s. 10, the Tribunal may grant an award of up to 50 per cent of the total benefits payable if it finds that an insurer unreasonably withheld or delayed the payment of benefits. Having concluded that no benefits are outstanding, the applicant is not entitled to interest or an award.

ORDER

[24] For the reasons outlined above, I find that:

i. The applicant is not entitled to the physical treatment plans.

ii. The applicant is not entitled to the chronic pain assessment.

iii. The applicant is not entitled to balance of the psychological treatment plan.

iv. The applicant is not entitled to an award under Regulation 664.

v. The applicant is not entitled to interest.

Released: June 20, 2023

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Sancia Pinto
Adjudicator