



Citation: Nano v. Coachman Insurance Company, 2023 ONLAT 20-013976/AABS

Licence Appeal Tribunal File Number: 20-013976/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:

Sami Nano

Applicant

and

Coachman Insurance Company

Respondent

DECISION

ADJUDICATOR: Janet Rowsell

APPEARANCES:

For the Applicant: Sami Nano, Applicant
Swetlana Vinokur, Paralegal

For the Respondent: Geoffrey Keating, Counsel

HEARD: By way of written submissions

OVERVIEW

- [1] Sami Nano, the applicant, was involved in an automobile accident on March 30, 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, Insurer, and applied to the Licence Appeal Tribunal - Automobile Accident Benefits Service (the “Tribunal”) for resolution of the dispute.
- [2] In correspondence from the respondent insurer dated December 9, 2020, the Minor Injury Guideline (MIG) was deemed to apply to Mr. Nano’s March 30, 2019, physical injuries, which Dr. Jacqueline Auguste diagnosed as lumbar strain/sprain and right shoulder strain/sprain with no impairments noted on orthopaedic testing. Following a section 44 IE assessment by Dr. Kelly McCutcheon, the respondent determined that the applicant was removed from the MIG for the purpose of psychological impairments, and the respondent insurer partially approved two treatment plans (OCF-18s) dated February 21, 2020, and May 1, 2020.
- [3] The parties agreed that, as a consequence of the respondent’s approval, a driver reintegration/rehabilitation assessment in the amount of \$2,200.00 would no longer be in dispute as listed previously in the case conference report and order.

ISSUES

- [4] The issues in dispute are:
 - i. Is the applicant entitled to \$763.90 (\$2,460.00 less \$1,696.10 approved) for a **psychological assessment**, proposed by Knead Wellness Clinic in a treatment plan/OCF-18 dated on February 21, 2020?
 - ii. Is the applicant entitled to \$1,300.00 for **physiotherapy services**, proposed by Knead Wellness Clinic in a treatment plan/OCF-18 dated on August 6, 2020?
 - iii. Is the applicant entitled to \$2,315.03 (\$4,534.77 less \$2,219.74 approved) for **psychological services**, proposed by Knead Wellness Clinic in a treatment plan/OCF-18 dated on May 1, 2020?
 - iv. Is the applicant entitled to \$2,695.00 for **physiotherapy services**, proposed by Knead Wellness Clinic in a treatment plan/OCF-18 dated on November 26, 2020?

- v. Is the applicant entitled to \$1,868.19 (\$4,085.93 less \$2,217.74 approved) for **psychological services**, proposed by Knead Wellness Clinic in a treatment plan/OCF-18 dated on December 9, 2020?
- vi. Is the applicant entitled to \$2,460.00 for **a chronic pain assessment**, proposed by Knead Wellness Clinic in a treatment plan/OCF-18 dated on December 2, 2020?
- vii. Is the applicant entitled to interest on any overdue payment of benefits?

RESULT

- [5] I find that the applicant is not entitled to the balance of any of the disputed treatment plans listed above because he has not satisfied me that any of them are reasonable and necessary. It follows that there is no interest owing. The application is dismissed.

ANALYSIS

- [6] Section 18(1) of the Schedule provides that medical and rehabilitation benefits are limited to \$3,500.00 if the insured person sustains impairments that meet the definition of a minor injury.
- [7] Section 3(1) defines “minor injury” as “one or more of a sprain, strain, whiplash associated disorder, contusion, abrasion, laceration or subluxation and includes any clinically associated sequelae to such injury.”
- [8] Individuals may be removed from the MIG if they can establish that their accident-related injuries fall outside of the definition of minor injury or, under section 18(2), that they have a documented pre-existing injury or condition combined with compelling medical evidence stating that the condition precludes recovery if they are kept within the confines of the MIG. The Tribunal has also determined that chronic pain with functional limitations or a psychological condition may warrant removal from the MIG. In all cases, the burden of proof lies with the applicant.

Pre-Existing Injuries & Causation of Physical Injuries

- [9] The test to determine causation is the “but for” test, which provides that causation is a factual determination made on a balance of probabilities: see *Sabadash v. State Farm et al*, 2019 ONSC 1121. The applicant must show that he would not have suffered the injuries “but for” the accident on March 30, 2019. In *Sabadash*, the Divisional Court held that the accident need not be the sole

cause of the impairment but must be a “necessary” cause. I find that the applicant has not met his onus to prove, on a balance of probabilities, that his pre-existing physical injuries do not preclude maximal recovery if the applicant is kept within the MIG, and, in addition, I find that the applicant’s physical injuries caused by the subject accident do not preclude his maximal recovery within the confines of the MIG. In IEs, Dr. Auguste physically examined the applicant and produced a report dated July 2, 2020, then a few months afterwards, Dr. Auguste conducted a paper review dated September 1, 2020, opining that the applicant has no objective physical impairments caused by the index accident.

- [10] In the event that the applicant’s injuries fall within the definition of minor injuries, the applicant can be removed from the MIG in accordance with section 18(2) of the Schedule. The applicant must meet all three of the following requirements in order to be removed from the MIG under this section:
- a. Have a pre-existing medical condition;
 - b. The pre-existing medical condition was documented by a health practitioner before the accident; and
 - c. The person’s treating health practitioner determines and provides compelling evidence that the pre-existing condition will prevent maximal recovery from the minor injury if the person is subject to the \$3500.00 limit under the MIG.
- [11] I find that the applicant has not satisfied his onus and has not provided submissions or evidence of pre-existing conditions that satisfy all the criteria in section 18(2) of the Schedule in order to be removed from the MIG. The applicant submits that he has pre-existing injuries as noted in the clinical notes and records from the family physician Dr. Sameera Benjamen. The existence of pre-existing injuries alone is not sufficient to satisfy the requirements of section 18(2) of the Schedule, since it is also required to demonstrate that the pre-existing injury will prevent maximal recovery if the applicant is subjected to the monetary limit under the MIG.
- [12] The applicant was involved in a previous motor vehicle accident on February 19, 2018, which was followed by physiotherapy and chiropractic care at the time of the index accident. In addition, the applicant submits that he had a pre-existing back condition documented by his family physician, Dr. Sameera Benjamen, starting on December 22, 2015, and mentioned in Dr. Benjamen’s clinical notes and records (CNR’s) dated March 31, 2016, and February 23, 2017. The applicant submits that he suffers from documented pre-existing back injuries,

which would prevent his maximal recovery from injuries sustained in the index accident, if he were kept within the MIG. For reasons which follow I find that the applicant's pre-existing physical injuries do not preclude maximal recovery if kept within the confines of the MIG, which according to the applicant's submissions has been exhausted.

- [13] The CNRs of Dr. Benjamin are for the most part illegible as they are written in long-hand. On December 22, 2015, it is noted that the applicant injured his lower back when hit by a "bob cat" vehicle at his workplace. There is a medical certificate for employment insurance benefits executed by Dr. Benjamin on the applicant's behalf which is dated February 23, 2017, that describes back pain radiating to the applicant's legs and the applicant having difficulty standing and walking; further, Dr. Benjamin notes that the applicant is taking pain medication. However, these described physical issues clearly resolved based on the IE examination and paper review of Dr. Auguste, who opined that there is no objective evidence that the accident on March 30, 2019, caused any physical impairment following a physical examination of the applicant in July 2020 and a thorough review of historic diagnostic tests and medical documentation.
- [14] Diagnostic imaging and x-rays taken in 2015 and 2018, of the applicant's lumbar and cervical spine, sacrum, coccyx and SI joint demonstrate that the applicant's vertebrae and disc spaces were well-maintained and in normal alignment with no spondylolysis or evidence of bony destruction. An x-ray of the applicant's lumbar spine and right shoulder dated October 9, 2020, show mild degenerative changes of the acromioclavicular joint, whereas biceps, subscapularis, infraspinatus and subacromial subdeltoid are unremarkable.
- [15] The applicant self-reported right shoulder pain to his family physician before the accident on February 26, 2019, and then, post-accident, again on September 17, 2019, and on October 1, 2020. As stated, the clinical notes and records of the family physician Dr. Benjamin, are written in long-hand and photocopied. As stated, the CNR's are for the most part illegible. As submitted by the respondent, the applicant did not seek medical attention from his family physician until almost six months following the accident. I find that the applicant's sporadic and infrequent attendance of physiotherapy and appointments with his family physician, addressing contended symptoms of post-accident pain and injury, do not sufficiently demonstrate, that the applicant was experiencing the submitted physical impairments caused by the accident in March 2019, for the purpose of the applicant meeting the onus of proof.

- [16] The respondent submits, and I agree, that the applicant attended physiotherapy on an inconsistent basis, after the previous accident in February 2018. The applicant's sporadic and inconsistent attendance is circumstantial evidence undermining the applicant's submission that further massage therapy, chiropractic treatment and physiotherapy sessions are reasonable and necessary for the purpose of reducing pain, improving the applicant's range of motion or are required to return the applicant to the activities of normal life. The attendance records from Knead Wellness Clinic show that the applicant attended physiotherapy treatment on four to five occasions in both the months of February and March 2018, then on a few occasions in April 2018; however, he did not return for physiotherapy treatment until a year later in May 2019, followed by physiotherapy attendance in June and July 2019. The applicant did not return for physiotherapy treatment until approximately seven months later on February 11, 2020.
- [17] Dr. Auguste examined the applicant on July 2, 2020, for the purpose of assessment of eligibility for non-earner benefits. Dr. Auguste lists the documentation reviewed including diagnostic imaging of the cervical spine, lumbar spine, sacrum, coccyx and SI joint, which were completed both before and subsequent to the accident. In addition, Dr. Auguste considered the CNR's of the family physician Dr. Benjamen. As described, Dr. Auguste opined that the applicant did not display any substantive musculoligamentous, osseous or neurological impairment on clinical testing casually linked to the subject accident.
- [18] For the reasons stated, I find that the applicant has not met his onus to prove, on a balance of probabilities, that his pre-existing physical injuries do not preclude maximal recovery if kept within the confines of the MIG, and, in addition, I find that the applicant's physical injuries caused by the subject accident do not preclude his maximal recovery if the applicant is kept within the limits of the MIG. I base my findings on the described consideration of the physiotherapy records, the CNR's of the family physician Dr. S. Benjamen, which are legible, based on noted diagnostic testing and finally, based on the IE section 44 paper review if Dr. J. Auguste.

The applicant is not entitled to any of the claimed treatment plans for physiotherapy services

- [19] I find on a balance of probabilities, for the reasons previously stated, that the applicant is not entitled to the treatment plans for physiotherapy services since the applicant's pre-existing physical injuries do not preclude maximal recovery within the confines of the MIG, and in addition, I find that the applicant's physical

injuries caused by the subject accident do not preclude his maximal recovery if the applicant is kept within the MIG. The applicant submits that the MIG has been exhausted. I find based on a review of the evidence that the applicant does not have an objective physical impairment caused by the subject accident. I have already discussed the relevant medical evidence, above.

- [20] Dr. Robert Bilow, chiropractor, prepared a treatment plan dated August 6, 2020, to address whiplash associated disorders of the neck, sprain/strain of thoracic spine, lumbar spine, shoulder joint and pain and multiple injuries to shoulder and upper arm. The goals of the treatment plan are pain reduction and increased range of motion, while proposing massage therapy sessions, chiropractic manipulation, physiotherapy and a charge for the completion of the OCF-18. The duration proposed for treatment is an eight-week period at a cost of \$1,300.00. The treatment plan was denied by the respondent on the basis of no objective medical documentation being advanced to justify the reasonableness and necessity of the treatment plan proposing ongoing facility-based therapy services sixteen months following the accident.
- [21] Dr. Bilow also prepared an OCF-18 dated November 26, 2020, to address whiplash associated disorders of the neck, sprain/strain of thoracic spine, lumbar spine, shoulder joint and pain and multiple injuries to shoulder and upper arm. The goals of the treatment plan are pain reduction, increase in range of motion, and a return to the activities of daily living. The treatment plan proposes massage therapy, chiropractic manipulation, physiotherapy and a charge for the completion of the OCF-18. The duration of the treatment plan is eleven weeks at a cost of \$2,625.00. The treatment plan was denied by the respondent on the basis of no objective medical documentation being advanced to justify the reasonableness and necessity of the treatment plan proposing ongoing facility-based therapy services.
- [22] Within a few hours of the accident, the applicant submits that he had symptoms of neck pain, right shoulder pain and pain in his lower back. The applicant submits that he developed insomnia, headaches, photophobia and nausea. As stated, an x-ray of the applicant's lumbar spine and right shoulder dated October 9, 2020, show mild degenerative changes of the acromioclavicular joint, whereas biceps, subscapularis and infraspinatus and subacromial subdeltoid are noted as unremarkable. As previously described, diagnostic tests of the applicant's lumbar and cervical spine, sacrum, coccyx and SI joint in 2015 and 2018, were normal. I find as stated that the clinical notes and records of Dr. Sameera Benjamen are almost entirely illegible as they are written in long-hand. Although the applicant might have obtained legible correspondence from the family

physician, that evidence is not before the Tribunal for consideration. The notes from September 12, 2019, mention knee pain but I can otherwise not make out the information written in long-hand By Dr. Benjamin.

- [23] The respondent submits that the two treatment plans for chiropractic care, massage and physiotherapy are not reasonable and necessary based on the opinion of Dr. J. Auguste indicating that the applicant did not display any substantive musculoligamentous, osseous or neurological impairment on clinical testing causally linked to the subject accident. I have already stated my findings based Dr. Auguste's examinations and reports, above. I note that Dr. Auguste undertook the paper review dated September 1, 2020, for the purpose of offering an opinion on the OCF-18 completed by Dr. Bilow, dated August 6, 2020. Based on the examination of the applicant a few months before the paper review, approximately one year and three months following the accident, including reviews of the medical documentation and diagnostic imaging, I find Dr. Auguste's opinions persuasive and reliable that the treatment plans dated August 6, 2020, and November 26, 2020, are neither reasonable nor necessary.
- [24] The applicant's submission is that the respondent has an obligation to pay the benefits for physiotherapy and chiropractic treatment simply based on the applicant already receiving benefits in excess of the MIG limit of \$3,500.00 by reason of psychological impairments. In addition, as stated, the applicant submits that he had documented pre-existing issues with his back and spine that would prevent maximal recovery if he were kept within the MIG. However, I find based on the inconsistent attendance of physiotherapy by the applicant, and having reviewed the section 44 Orthopaedic paper review by Dr. J. Auguste, in addition, the legible sections of the clinical notes and records of the family physician Dr. Sameera Benjamin, that the two treatment plans/ OCF-18's dated August 6, 2020, and November 26, 2020, are neither reasonable nor necessary for the reasons earlier described.
- [25] For reasons stated, I find that the applicant has not met his onus to prove, on a balance of probabilities, that his pre-existing physical injuries do not preclude maximal recovery if the applicant is kept within the confines of the MIG, which has been exhausted. In addition, I find that the applicant's physical injuries caused by the subject accident do not preclude his maximal recovery if the applicant is kept within the confines of the MIG.
- [26] I am persuaded by the Tribunal's decision in *A.A. v. Aviva General Insurance Company*, 2020 CanLII 34491, where the applicant had been removed from the MIG on the basis of psychological impairments. In that case, medical evidence

from the applicant's family doctor, in addition to Insurance Examination reports, indicated the physical impairments were largely sprain and strain injuries within the MIG, similar to the within case. At paragraph 12 of the decision, the Tribunal stated:

"It is not reasonable to rely on the treatment plans as evidence that they are de facto reasonable and necessary. There must be an analysis on why the specific treatment is required to address the specific impairment, and especially so where the physical injuries identified are minor and the applicant has been removed from the MIG for psychological reasons."

- [27] I am not persuaded that the applicant's submission that removal from the MIG for the purpose of psychological impairments has any relationship to the MIG determination relating to physical injuries. The applicant has failed to provide persuasive and reliable evidence to meet the onus to demonstrate, on a balance of probabilities, that the two treatment plans for physiotherapy services are reasonable and necessary. The submission that removal from the MIG for the purpose of psychological injuries demands the same finding of removal from the MIG by reason of physical injuries, is not persuasive.

The applicant is not entitled to any of the claimed treatment plans for psychological services

- [28] I find that the applicant is not entitled to the remaining amounts for psychological treatment and an assessment. The applicant submits that because the respondent insurer partially allowed the treatment plans for psychological services and the assessment, that the treatment plans should be paid fully based on the original stipulated services in the OCF-18/ treatment plans. The applicant requests consideration of the Financial Services Commission of Ontario ("FSCO") Superintendent Guideline No 03/14 ("Guideline"), as does the Respondent insurer.
- [29] Section 268.3(3) of the Insurance Act provides that the Guideline should be taken into consideration when it comes to interpreting the Schedule. The Guideline sets out the maximum hourly rates service providers can charge and provides that an insurer is only liable to pay \$200.00 for the completion of the treatment plan as an administrative fee. Further, the Guideline states that hourly rates for professional services include the following:

All administration costs, overhead, and related costs, fees, expenses, charges and surcharges. Insurers are not liable for any administration or other costs, overhead, fees, expenses, charges or surcharges that have the result of

increasing the effective hourly rates, or the maximum fees payable for completing forms, beyond what is permitted under the Professional Services Guideline.

- [30] In my view, the hourly rate for professional services includes activities described by Dr. Mandeep Kaur Singh in the OCF-18's as documentation support activity; planning and preparation; service charges and service planning charges; and support activity charges. Without further explanation from the applicant, I agree with Dr. McCutcheon's opinions expressed in the section 44 IE assessments respecting the charges for the described services in the OCF-18's as being excessive. For these reasons and considering the section 44 IE assessments of Dr. Kelly McCutcheon, I do not find the balance of the three treatment plans to be reasonable and necessary.
- [31] Dr. Mandeep Kaur Singh, psychologist, prepared a treatment plan dated May 1, 2020, listing the injuries and sequelae of the applicant including post-traumatic stress disorder, specific phobias, mixed anxiety, problems with life management, mood disorders, driver anxiety, insomnia, depressive disorder and adjustment disorder. The goals of the proposed psychological treatment are stated as reduction of the applicant's pain, psychological distress and restoration of the applicant to his pre-accident level of functioning. The proposed treatment consists of 16 sessions of cognitive behaviour therapy and mental health and addiction counselling, which Dr. Singh states that the applicant would benefit from to improve his awareness and understanding of the links between negative mood states, pain and somatic symptoms. The OCF-18 includes a charge for the completion of the OCF-18, documentation support activity, planning and preparation with the total cost amounting to \$4,534.77. In her section 44 psychological assessment, Dr. McCutcheon concluded that this OCF-18 was partially reasonable with the total cost not to exceed \$2,219.74.
- [32] Dr. Singh also prepared a treatment plan dated December 9, 2020, listing the injuries and sequelae of the applicant including post-traumatic stress disorder, specific phobias, mixed anxiety, depressive disorder, problems with life management, mood disorders, driver anxiety, insomnia, and adjustment disorder. The goals of the psychological treatment proposed are stated as pain reduction. The proposed treatment plan recommended fourteen 90-minute psychological therapy sessions, a charge for the preparation of the OCF-18 of \$200.00, a service charge of \$149.61 and a charge for the preparation of support activity documentation in the amount of \$444.83.
- [33] The total cost for goods and services proposed in the OCF-18 by Dr. Singh and dated December 9, 2020, amounted to \$4,085.93. The respondent partially

approved the claim at \$2,217.74 based on Dr. Kelly McCutcheon opining that the OCF-18 proposed by Dr. Singh was excessive; that twelve sessions of counselling was proportional in addressing the applicant's diagnosis of an adjustment disorder with mixed anxiety and depressed mood as a result of the motor vehicle accident. Dr. McCutcheon opined that documentation, support activity for claim form (e.g. for insurance, third party payor, worker's compensation) and one progress/discharge report (\$222.42) was sufficient, reasonable and necessary and the total cost partially approved for the treatment plan dated December 9, 2020, should be no more than \$2,217.74.

- [34] Dr. Singh also prepared a treatment plan dated February 21, 2020, proposing a psychological assessment, where the injuries and sequela of the applicant include post traumatic stress disorder, specific phobias, mixed anxiety, depressive disorder, mood disorders and chronic pain. The treatment plan proposed assessment, mental health and addictions documentation, and a support activity claim form. The respondent approved the treatment plan as partially reasonable in the amount of \$1,696.10 less \$763.90, proposed in the treatment plan. Dr. McCutcheon found that ten hours of clinical time was reasonable and sufficient to perform the assessment, finding that the goods and services originally proposed by Dr. Singh were excessive.
- [35] The applicant submits that pre-existing injuries as a result of a motor vehicle accident on February 19, 2018, demonstrate entitlement by the applicant to the entire amount proposed in the three treatment plans for psychological services without evidence in support of the submission. The applicant submits that he suffered psychological impairments following both the accident in 2018 and the index accident of 2019, which the applicant submits are verified in the CNRs of Dr. Benjamen. The applicant submits that the IE psychological assessments verify that the applicant has both pre-existing psychological impairments and accident-specific psychological impairments affecting his recovery and that warrant removing him from the MIG. As stated, I find despite the submission by the applicant that the clinical notes and records of Dr. Sameera Benjamen are supportive of the applicant's case, that the CNR's of Dr. Benjamen are almost entirely illegible as they are written in long-hand. Although the applicant might have obtained legible correspondence relating the information in the CNR's from the family physician, that evidence is not before the Tribunal. The CNR's of Dr. Benjamen, from June 22, 2021, relate the applicant reporting being depressed, anxious and worried. There is a referral to a psychiatrist dated July 14, 2021.
- [36] Dr. McCutcheon assessed the applicant on August 19, 2020, and prepared an IE psychological report dated September 1, 2020, respecting the two disputed

treatment and assessment plans proposed by Dr. Singh, dated February 21, 2020 (the assessment) and May 1, 2020 (a treatment). Dr. McCutcheon conducted in-person testing of the applicant and opined that he met the criteria for adjustment disorder with mixed anxiety and depressed mood as a result of the index accident on March 30, 2019.

- [37] For the OCF-18 dated February 21, 2020, Dr. McCutcheon opined that ten hours of clinical time was sufficient to perform an assessment, and therefore this OCF-18 is partially reasonable and necessary, i.e. the cost for the proposed assessment to be at \$1,496.10 plus fees for preparation, for a total cost of \$1,696.10.
- [38] Dr. McCutcheon opined that the OCF-18 dated May 1, 2020, which proposed 16 psychological therapy sessions was excessive, and that 12 one-hour sessions of counselling, one progress/discharge report (\$224.42), and documentation, support activity for the claim form (e.g. insurance, third party payor, worker's compensation of \$200.00) are sufficient, reasonable and necessary services. As stated, the applicant has offered no evidence or submissions to meet his onus to show that the entirety of the two disputed treatment plans are reasonable and necessary. Further, it is not enough to assert that a treatment plan should be funded in its entirety merely because the respondent partially approved it. I accept the opinion of Dr. McCutcheon in her section 44 IE assessment that a 12-week period; a charge for completion of the OCF-18; a "service preparation" charge; a "service planning charge"; and a charge for completion of the claim form are reasonable and necessary.
- [39] I find Dr. Mandeep Kaur's psychological report dated May 1, 2020, to be less reliable than the psychological report of Dr. Kelly McCutcheon, for the following reasons: Dr. Kaur Singh completes psychometric testing with the applicant, but she does not indicate in her report, a review of the breadth of documentation considered by Dr. McCutcheon, appendicized to Dr. McCutcheon's report. Dr. Kaur Singh relies on the self-reports by the applicant and the applicant failed to mention to Dr. Kaur Singh the accident in 2018, which caused what is described in the applicant's submissions as pre-existing injuries. In addition, Dr. Kaur Singh describes the applicant's diagnosis as pertaining to another third party in her report as opposed to the applicant himself, stating that this third party has adjustment disorder with mixed anxiety and depressed mood, persistent phobia, situational type, which makes it unclear if the described diagnosis has any connection to the applicant. Dr. Kaur Singh recommends sixteen (16) sessions of cognitive-behavioural oriented psychotherapy, however, for the reasons stated I find the opinion offered by Dr. Kelly McCutcheon respecting what is reasonable

and necessary as treatment for the applicant to be more reliable as stated in the IE section 44 report than the opinion offered by Dr. Mandeep Kaur Singh.

- [40] Dr. McCutcheon determined that the May 1, 2020, treatment plan proposal is partially reasonable and necessary with the total cost not to exceed \$2,219.74, comprising 12 one-hour sessions with a rehabilitation psychologist or psychological associate (\$1,795.32 representing 12 hours at the rate of \$149.61 hourly, in conformity with the Professional Services Guideline), in addition to payment for the cost of one progress/discharge report (\$224.42) and for the completion of the OCF-18 claim form (\$200.00). Based on the IE psychological report of Dr. McCutcheon, the respondent agreed to partially fund the May 1, 2020, OCF-18 in the amount of \$2,219.74.
- [41] I find Dr. McCutcheon's IE assessment persuasive given that her report includes a comprehensive review of the relevant medical and psychological clinical notes and records, in addition to the CNRs of Dr. Benjamin; comprehensive psychometric testing; and an in-person psychological assessment of the applicant.
- [42] I agree with the respondent that Dr. McCutcheon provides reliable medical evidence supportive of the partial approvals for the two treatment plans dated May 1, 2020, and February 21, 2020, and that the applicant has failed to meet his onus to provide an explanation or present evidence supportive of a complete approval for the two proposed treatment plans.
- [43] Lastly, the respondent denied the OCF-18 dated December 9, 2020, which recommended fourteen 90-minute psychological therapy sessions, a \$200.00 charge for the preparation of the OCF-18, a service charge of \$149.61, and a charge for the preparation of support activity documentation in the amount of \$444.83. The total cost for goods and services proposed in the OCF-18 amounted to \$4,085.93. Dr. McCutcheon opined that the OCF-18 proposed by Dr. Singh was excessive and that twelve sessions of counselling was proportional in addressing the applicant's diagnosis of an adjustment disorder with mixed anxiety and a depressed mood as a result of the motor vehicle accident. On top of the twelve, one-hour sessions, Dr. McCutcheon opined that documentation, support activity for claim form (e.g. for insurance, third party payor, worker's compensation) and one progress/discharge report (\$222.42) was sufficient, reasonable and necessary and the total cost partially approved for the treatment plan dated December 9, 2020, should be no more than \$2,217.74.
- [44] I find Dr. McCutcheon's IE assessment persuasive and reliable given that her report includes a comprehensive review of the most current and relevant medical

and psychological clinical notes and records, administering psychometric testing; and a further in-person psychological assessment of the applicant.

- [45] It is well-established that it is the applicant's burden to prove that treatment and assessment plans are reasonable and necessary. I find that the applicant has failed to satisfy the onus on a balance of probabilities, demonstrating that the remaining amounts for each of the three treatment plans proposed by Dr. Singh are reasonable and necessary.

The applicant is not entitled to the chronic pain assessment

- [46] I find on a balance of probabilities that the applicant is not entitled to the treatment plan proposed by Dr. Igor Wilderman, chronic pain specialist, for a chronic pain assessment, firstly, on the basis that the applicant does not have an objective physical impairment caused by the subject accident (referring to the findings of Dr. Auguste and Dr. Alborz Oshidari) and, secondly, Dr. Alborz Oshidari in his Physical Medicine and Rehabilitation Specialist assessment dated January 15, 2021, opines that he was unable to detect any structural or physiological abnormality with respect to the applicant requiring further assessment by Dr. Wilderman, chronic pain specialist. I find the IE section 44 report of Dr. Auguste and Dr. Oshidari, reliable and persuasive evidence that the chronic pain assessment is neither reasonable nor necessary. As stated, and previously described, Dr. Auguste physically examined the applicant in July 2020, and subsequently conducted a paper review dated September 1, 2020, opining that the applicant has no objective physical impairments caused by the index accident.
- [47] Dr. Oshidari is qualified and certified by the College of Physicians and Surgeons to opine on matters of Physiatry. Dr. Oshidari prepared a section 44, IE assessment for the purpose of opining on the reasonableness and necessity of the OCF-18 dated December 2, 2020. Dr. Oshidari opines in his IE specialist report dated January 15, 2021, that a review of the documentation did not reveal that the applicant suffers pain associated with physiological factors and that the applicant is generally in good medical condition. The applicant refers to the psychological assessment of Dr. Arpita Biswa, as diagnosing the applicant with a somatic disorder, however, I do not find that the opinion in Dr. Biswa's report dated January 22, 2022, included the diagnosis submitted by the applicant, rather the applicant self reports to Dr. Biswa a somatic disorder and subsequent to psychometric testing, Dr. Biswa opines that the applicant significantly catastrophizes his pain symptoms with a tendency to magnify pain.

- [48] In the OCF-18 dated December 2, 2020, Dr. Wilderman proposes that the purpose of the chronic pain assessment proposed is to evaluate the applicant's level of psychological and psychosocial signs of chronic pain condition, functional limitation and disability to determine the applicant's consistency of rehabilitation and provide further rehabilitation recommendations. Dr. Wilderman describes that his evaluation is proposed to include the applicant's patient history and that he will commence the assessment in a timely manner to avoid permanent and destructive consequences for the applicant's wellbeing.
- [49] The applicant submits that he suffers chronic back pain and psychological impairments following the accident in 2018 and 2019, submitted to be verified in the CNRs of Dr. Benjamen. I find the CNR's of Dr. Sameera Benjamen, are for the most part, illegible, and although the applicant might have obtained legible correspondence from Dr. Benjamen, relating the contents of the CNR's, that evidence is not available to the Tribunal. The applicant submits that the IE assessments verify that he has both pre-existing impairments and accident-specific impairments which impact his recovery and result in the proposed chronic pain assessment being both reasonable and necessary.
- [50] The respondent submits that the chronic pain assessment proposed is neither reasonable nor necessary based on the IE assessment by Dr. Oshidari dated January 15, 2021, and the section 44, IE paper review of Dr. J. Auguste, Orthopaedic Surgeon, dated September 1, 2020, where she opined that the medical documentation does not support the applicant suffering a pain disorder.
- [51] As stated, Dr. Oshidari prepared a physical medicine and rehabilitation specialist assessment dated January 15, 2021, and opined that the applicant did not suffer from any pain disorder associated with both psychological factors and a general medical condition. Dr. Oshidari examined the applicant and found that there was no sign to suggest active tendonitis, bursitis, tenosynovitis, or impingement syndrome in the shoulder. Therefore, Dr. Oshidari opined that the chronic pain assessment proposed by Dr. Wilderman was not reasonable and necessary.
- [52] Having reviewed the chronic pain assessment of Dr. Igor Wilderman dated January 20, 2021, I agree with the respondent, that the applicant's description of the effects of the 2018 accident, differ from his previous statements. The applicant stated to Dr. Wilderman, that the 2018 accident happened two years earlier than the March 2019 accident; in addition, that the 2018 accident had no physical effect on him, which is not consistent with the applicant's submissions relating to pre-existing injuries, or to when the applicant received treatment from Knead Wellness Clinic for the physical effects of the 2018 accident. Dr.

Wilderman states in his report that the applicant described being in satisfactory physical and mental condition before the accident on March 30, 2019, and that the applicant denied musculoskeletal or neuromuscular complaints prior to the 2019 accident.

- [53] Dr. Wilderman refers to the American Medical Association (AMA) Guide 4th Edition, but his diagnosis based on the AMA Guide, exclusively is founded on the applicant's self reports as opposed to referencing diagnostic imaging, test results, or medical records which do not form the basis for Dr. Wilderman's opinions in the chronic pain assessment. By reason of the noted credibility gap between the applicant's submissions and evidence offered to other medical experts regarding the effects of the accident on February 18, 2018, and importantly by reason of Dr. Wilderman relying on the applicant's self-reports as opposed to referencing diagnostic testing or medical documentation, I place much less weight on Dr. Wilderman's opinion in the chronic pain assessment in preference to the IE reports of Dr. Alborz Oshidari, and the paper review of Dr. J. Auguste, which were informed by a thorough review of diagnostic testing and imaging reports as well as a complete review of medical documentation and records.
- [54] I find that the chronic pain assessment is neither reasonable nor necessary by reason of the findings of Dr. Alborz Oshidari in his Physical Medicine and Rehabilitation Specialist Assessment Report dated January 15, 2021, and taking into consideration the IE paper review of Dr. J. Auguste, Orthopaedic Surgeon. I find that the applicant has failed to provide medical evidence supportive of the Chronic Pain Assessment being reasonable and necessary, which is the burden and onus on the applicant.

INTEREST

- [55] Interest applies on the payment of any overdue benefits pursuant to s. 51 of the *Schedule*. As I find that the applicant is not entitled to the treatment plans, none of them are overdue and therefore no interest is payable by the respondent.

ORDER

- [56] I find that the applicant is not entitled to any treatment plans in dispute.
- [57] Given that there are no benefits owed, the applicant is not entitled to interest pursuant to s. 51 of the Schedule.
- [58] The application is dismissed.

Released: May 19, 2023

**Janet Rowsell
Adjudicator**