Citation: Schindelheim v. TD General Insurance Company, 2023 ONLAT 22-003322/AABS

Licence Appeal Tribunal File Number: 22-003322/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:

Michael Schindelheim

Applicant

and

TD General Insurance Company

Respondent

DECISION

ADJUDICATOR: **Clive Forbes**

APPEARANCES:

For the Applicant:	Michael Schindelheim, Applicant Joseph Campisi, Counsel Jonathan Mertz, Counsel Ashu Ismail, Counsel
For the Respondent:	Melissa Molella, ADR Consultant Geoffrey Keating, Counsel
Court Reporters	Breanna Clancy & Guido Riccioni

HEARD: by Videoconference: August 8 to 11 and 14 to 15, 2023

OVERVIEW

[1] Michael Schindelheim, the applicant, was involved in an automobile accident on May 2, 1997, and sought benefits from the respondent, TD General Insurance Company, pursuant to the *Statutory Accident Benefits Schedule – Accidents on or after November 1, 1996* ("*1996 Schedule*").

[2] The issues in dispute are retroactive attendant care benefits ("ACBs"), retroactive housekeeping and home maintenance benefits ("HKHM"), occupational therapy services, chiropractic services, a s.10 award pursuant to O. Reg. 664, and interest.

[3] The applicant's position is that he is entitled to the benefits claimed. The respondent's position is that the benefits claimed are not reasonable and necessary and the retroactive benefits claimed were not due to urgency or impossibility or impracticability. The parties agreed that as a result of the accident, because of his brain injury, the applicant was determined to have had a catastrophic impairment according to the *1996 Schedule*.

[4] The accident occurred 13 years prior to the enactment of the current Statutory Accident Benefits Schedule. Accordingly, two versions of the Schedule apply to the Applicant's claim: *Accidents on or after November 1, 1996*, (O. Reg 403/96, the *"1996 Schedule"*) and the *Schedule Effective September 1, 2010*, (O. Reg 35/10, the *"2010 Schedule"*). As confirmed by the Divisional Court in *Morrissey v. Wawanesa Insurance Company*, 2022 ONSC 4398 (CanLII), in such cases, claimants receive the benefits available under Part V of the *1996 Schedule* (and in the amounts available under the *1996 Schedule*) but are governed by the procedures set out in the *2010 Schedule*.

ISSUES IN DISPUTE

[5] The issues to be decided in the hearing are:

1. Is the applicant entitled to ACBs in the amount of $10,113.60 per month as proposed on July 5, 2021, by Amina Shafi of Neuro-Rehab Services Inc. for the period of May 2, 1997, to May 30, 1997?

2. Is the applicant entitled to ACBs in the amount of $10,174.55 per month as proposed on July 5, 2021, by Amina Shafi of Neuro-Rehab Services Inc. for the period of May 30, 1997, to July 2, 1997?

3. Is the applicant entitled to ACBs in the amount of $2,017.21 per month as proposed on July 5, 2021, by Amina Shafi of Neuro-Rehab Services Inc. for the period of July 3, 1997, to July 2, 2008?

4. Is the applicant entitled to ACBs in the amount of $1,311.36 per month as proposed on July 5, 2021, by Amina Shafi of Neuro-Rehab Services for the period of July 3, 2008, to April 26, 2021?

5. Is the applicant entitled to HKHM in the amount of $100 plus HST/per week as proposed on October 13, 2022, for the period from May 1997 to December 2022?

6. Is the applicant entitled to $3,065.76 for chiropractic treatment proposed by Dr. Bertolo, Vaughan Wellness Clinic, in a treatment plan/OCF-18 (“plan”) dated October 18, 2022?

7. Is the applicant entitled to $8,110.30 for occupational therapy services proposed by Amina Shafi of Neuro-Rehab Services in a plan dated July 8, 2021?

8. Is the respondent liable to pay an award under s. 10 of O. Reg. 664 because it unreasonably withheld or delayed payments to the applicant?

9. Is the applicant entitled to interest on any overdue payment of benefits?

10. Is either party entitled to costs?

RESULT

[6] I find that:

1. The applicant is not entitled to retroactive ACBs in the amounts of $10,113.60 per month from May 2, 1997, to May 30, 1997; $10,174.55 per month from May 30, 1997, to July 2, 1997; $2,017.21 per month from July 3, 1997, to July 2, 2008, and $1,311.36 per month from July 3, 2008, to April 26, 2021.

2. The applicant is not entitled to retroactive HKHM in the amount of $100 plus HST per week from May 1997 to December 2022.

3. The applicant is not entitled to the chiropractic treatment claimed.

4. The applicant is not entitled to the OT services claimed.

5. As there is no overdue payment of benefits, no interest is payable.

6. As no benefits were unreasonably withheld or delayed, an award is not payable.

7. Neither party is entitled to costs.

PROCEDURAL ISSUES

Exclusion of Pre-2006 Redacted Log Notes and Correspondence between Counsel

[7] Four days into the hearing, the applicant requested that the pre-2006 redacted log notes be entered as evidence because it was served after the production timeline and was not included in the applicant's document brief. The applicant also submits that it was an oversight to not make the request at the beginning of the hearing. However, since it was the respondent who provided these notes, the applicant does not believe the respondent would be prejudiced if the log notes were admitted. The respondent argues that the pre-2006 log notes were served before the hearing and the applicant had enough time and should have entered the log notes before or at the commencement of the hearing if he intended to rely on same. The respondent further submits that if the pre-2006 log notes are allowed into evidence it would be prejudiced because the respondent will be ill equipped to respond to the applicant's submissions regarding these notes.

[8] Also, on the last day of the hearing the respondent requested to have correspondence dated September 27, 2022, between respondent's counsel and applicant's prior counsel of the same law firm be entered as evidence. The respondent submits that it was not able to get a fulsome picture of the applicant's position because the applicant submitted his book of authorities the second to last day of the hearing and hence the late request. The applicant argues that the respondent should have included this correspondence in its document brief if it intended to rely on same and that it would be procedurally unfair to the applicant to admit the correspondence as evidence.

[9] Rule 3.1 of the *Licence Appeal Tribunal, Animal Care Review Board, and Fire Safety Commission Common Rules of Practice and Procedure, Version I (October 2, 2017) as amended (Rules)* requires the Tribunal to:

(a) facilitate a fair, open and accessible process and to allow effective participation by all parties, whether they are self-represented or have a representative;

(b) Ensure efficient, proportional and timely resolution of the merits of the proceedings before the Tribunal; and

(c) Ensure consistency with governing legislation and regulations.

[10] In addition, s. 15(1) of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22 (*SPPA*) allows for the admission of any relevant document that is not otherwise privileged or statutorily inadmissible. I do not agree that the respondent is significantly prejudiced because the applicant did not request that the relevant log notes be admitted as evidence earlier in the proceeding. Moreover, it is the respondent who produced these log notes. In any event, the onus is on the applicant to prove that he is entitled to the benefits claimed. Also, I do not agree with the applicant that it would be procedurally unfair to admit correspondence between his prior counsel and respondent's counsel because it is the same law firm that has had carriage of his file since 2021. As such, both the applicant and respondent's request to have the documents in question excluded because of lateness is denied. Furthermore, those documents that are produced late will be admitted into evidence and weight will be assigned to them accordingly.

ANALYSIS

No Retroactive ACBs and Retroactive HKHM

[11] I find that the applicant has failed to establish that submission of the retroactive Form 1 was due to urgency or impossibility or impracticability of compliance with the requirements of the *2010 Schedule* or whether expenses for attendant care services were incurred as defined by the *2010 Schedule*, and I find that he is not entitled to retroactive ACBs and HKHM expenses.

[12] Section 19 of the *2010 Schedule* states that an insurer shall pay for all reasonable and necessary expenses incurred by or on behalf of an insured person as a result of an accident for ACBs provided by an aide or attendant. Section 42(1) of the *2010 Schedule* provides that an application for ACBs must be in the form of, and contain the information required to be provided in the version of the document entitled Assessment of Attendant Care Needs ("Form-1").

[13] With respect to the HKHM claim, the applicant bears the onus to prove on a balance of probabilities that he has a substantial inability to perform HKHM services that he normally performed before the accident. In order for the applicant to satisfy his onus, he must provide compelling and contemporaneous evidence in support of his claim.

[14] Also, as confirmed by the Divisional Court in *Morrissey* the test for retroactive ACBs is whether there is evidence that the submitted retroactive Form 1 was due to urgency or impossibility or impracticability of compliance with the requirements of the *2010 Schedule* or whether expenses for attendant care services were incurred as defined by the *2010 Schedule*. I find that for the reasons given in *Morrissey*, the same test applies for retroactive HKHM.

[15] The applicant argues that the respondent should not be allowed to rely on *Morrissey* because he was not aware that he is required to provide a reason for the delay in filing a retroactive Form 1 or that a reason should be provided to explain the urgency, impossibility and impracticality of compliance with section 42(5) of the *2010 Schedule* and that it would be raised by the respondent. He relies on *Midland Resources Holding Ltd. v. Shtaif*, 2017 ONCA 320, at para 110 and *Vadnais v. Leq'a:mel First Nation*, 2022 CHRT 38, at para 30 in support of his position. The applicant also submits that had he known that *Morrissey* was being relied on by the respondent he could have arranged to have his former counsel from 1998 speak to whether he assisted him on his statutory accident benefits claims.

[16] The respondent submits that in correspondence dated September 27, 2022, and denial letter dated November 14, 2022, both the applicant and applicant's prior counsel of the same law firm were made aware of its intention to rely on the *Morrissey* decision with regards to the applicant's claim for retroactive ACBs and retroactive HKHM. I agree with the respondent that both the correspondence dated September 27, 2022, between applicant's counsel and respondent's counsel, and the denial letter dated November 14, 2022, made it clear that the respondent would be relying on the *Morrissey* decision. Furthermore, parties are expected to know the current state of the law that applies, and *Morrissey* was released by the Divisional Court more than one year prior to this hearing. *Morrissey* is binding on the parties and the Tribunal.

[17] I also agree with the respondent that the decision in *Midland* was based on Rule 25.07(4) of the *Rules of Civil Procedure*, and this does not apply to the Tribunal. Furthermore, Rule 20.2 and 20.3 of the *Rules*, only require the respondent to clearly detail any jurisdictional issues that it seeks to have considered by the Tribunal and this was not the case in this matter. In addition, *Vadnais* decision is a Human Rights Tribunal decision and does not apply in this hearing.

[18] The applicant submits that he is entitled to retroactive ACBs from May 2, 1997, to April 26, 2021, and for retroactive HKHM from May 1997 to December 2022. He submits that he did not claim for ACB and HKHM from the time of the accident

because he and his family did not know that they could claim for ACB and HKHM. He argues that in 1997 at the time of the accident when he was a minor, his family was only provided with a standard letter and a series of forms that omitted the requisite Form-1. He also submits that in 2004 he was given a copy of the *1996 Schedule* by the respondent without any explanation. The applicant's mother also testified that no one told her she could claim for ACBs and had she known she would have claimed for it. However, I was not directed to any evidence to support incurred ACBs or HKHM.

[19] The respondent submits that since the applicant was a minor at the time of the accident, he was not the one responsible for administering his accident benefits claim and it was his father who assumed that responsibility until he reached the age of 18 in October 1998. The respondent further submits that it was the applicant's father who completed the accident benefits package, and he was the one the respondent corresponded with. In fact, a review of the medical and documentary evidence revealed that within a few months after the accident, the applicant's father was given a copy of the *1996 Schedule*, notice of the availability of a number of benefits, including attendant care and housekeeping benefits, which were explained, and the applicant's father took active steps to apply for some of the benefits but not ACB, HKHM and others.

[20] Moreover, the applicant has not provided any submissions or pointed me to any evidence on what the urgency, impossibility, impracticability was in not complying with the *1996 Schedule* at that time. The applicant's father was made aware in respondent's letter dated May 29, 1997, that the applicant was entitled to the highest amount of optional medical, rehabilitation and ACB, specifically $1,000,000 or $2,000,000 if the impairment is considered catastrophic. In addition, in a letter dated March 25, 1998, to the respondent from Mr. William Scott, counsel, he confirmed that he was representing the applicant, and the applicant's mother and father in connection to the subject accident. Mr. Scott also requested that the respondent provide him with copies of all applications for statutory accident benefits submitted to them as well as copies of any medical and rehabilitation reports and records contained in the respondent's file.

[21] Furthermore, I find that the respondent has met its obligations because the records also revealed that the terms "attendant care" and "housekeeping" have been put to the applicant by several sources on a number of occasions prior to 2021 and even while participating in different medical assessments. For example, in the s. 44 future care report of Ms. Tanya Beatty, occupational therapist ("OT"), dated April 5, 2004, she stated that through review of file documentation, in-person meeting and discussions with the applicant, it was her

opinion that he did not have any attendant care needs now or in the future and that he is capable of completing normal housekeeping and home maintenance tasks. She also indicated that given that the applicant does experience fatigue as a consequence of his brain injury, pacing techniques are recommended for completion of housekeeping and home maintenance activities. In addition, Ms. Amina Shafi, OT, in her s. 44 in-home OT report dated September 16, 2015, mentioned that the applicant is fully independent with his self-care and personal care needs and is able to contribute with his share of the chores as related to the housekeeping tasks. The applicant argues that the respondent knew that shortly after the accident his family had provided round the clock care for him and yet it did not conduct an attendant care assessment nor complete an OCF-26 form concerning his hospital discharge.

[22] The onus is on the applicant to provide a reason for the delay in filing a retroactive Form-1 and to explain the urgency, impossibility or impracticability of compliance with the *2010 Schedule*. I am not convinced on a balance of probabilities that urgency or impossibility or impracticability prevented the applicant from complying section 42(5) of the *2010 Schedule*. As such, I am not persuaded that the applicant has established his entitlement to retroactive ACB to April 26, 2021, and retroactive HKHM to December 2022.

No Incurred ACBs and HKHM Services

[23] I find that expenses for ACBs and HKHM have not been incurred and that, as a result, the applicant is not entitled to recovery of those expenses from the respondent.

[24] As confirmed in *Morrissey*, in order to establish entitlement, the applicant is required to show that ACB was incurred in accordance with s. 3(7)(e) of the *2010 Schedule*. Also as mentioned earlier, I find that for the reasons given in *Morrissey*, the applicant is required to show that HKHM services were incurred pursuant to s. 3(7)(e) of the *2010 Schedule*.

[25] The applicant submits that *Morrissey* was wrongly decided on the issue of “incurred” expenses and that a change in the definition of “incurred” is a substantive and not a procedural change and therefore does not apply retrospectively. The applicant also argues that the ACB and HKHM expenses should be deemed to be incurred pursuant to s. 3(8) of the *2010 Schedule* because the respondent unreasonably withheld or delayed payment of ACB and HKHM when they knew or ought to have known that he was entitled to it.

[26] I find that the decision of the Divisional Court in *Morrissey* is binding on the Tribunal, and I am required to follow it.

[27] The applicant testified that since the accident his mother, father, sister and wife have provided attendant care and housekeeping assistance. His mother, sister and wife also testified that since the accident they have provided him with attendant care and housekeeping assistance at different times. However, I was not directed to any documentary evidence that established that the applicant's family members provided these services in a professional capacity. In addition, I was not directed to any documentary evidence that indicated that the applicant's mother, sister or wife sustained an economic loss as a result of providing ACB and HKHM services to the applicant. Moreover, I was not directed to any detailed invoices, indicating the specific dates ACB or HKHM services were provided, what services were provided on which dates and who provided the services. In fact, an OCF-3 disability certificate was only completed by Ms. Shafi on behalf on the applicant on August 2, 2022. Pursuant to s. 36(3) of the *2010 Schedule*, an applicant who fails to submit a completed disability certificate is not entitled to a specified benefit such as HKHM for any period before the completed disability certificate is submitted.

[28] The applicant further submits that the respondent acted in bad faith and unreasonably withheld or delayed payment of ACB and HKHM because in May 1997, all he received was a standard letter that mentioned the words "attendant care", but the letter did not define them. He argues that the respondent breached the *1996 Schedule* and failed to inform him and his family of the attendant care benefits. He also submits that the respondent's failure to conduct a proper attendant care assessment when they knew of his condition amounted to a breach of their duty of good faith and willful withholding of a benefit, meaning the expenses should be deemed incurred under s. 3(8).

[29] I do not agree that the respondent acted in bad faith and unreasonably withheld or delayed the payment of ACB and HKHM benefits as this is not supported by the totality of the contemporaneous medical and documentary evidence. The records reveal that shortly after the accident the applicant's father was given a copy of the accident benefits application package which included a cover letter detailing the benefits the applicant may be entitled to, including ACB and payment of other expenses, and his father completed the package. The applicant's prior counsel Mr. Scott was in contact with the respondent from March 1998 as it relates to his accident benefits file. Also, the applicant participated in different medical assessments where ACB and HKHM needs were discussed.

[30] Moreover, in the correspondence between the applicant's counsel and respondent's counsel dated September 27, 2022, the respondent requested that the applicant provide particulars relating to incurred expenses with respect to his retroactive ACB claims up to January 1, 2022, and HKHM claims up to December 2022, and evidence to support said particulars. In addition, the respondent in its letter to the applicant dated November 14, 2022, indicated that in light of the *Morrissey* decision, proof of incurred retroactive HKHM expenses were being requested. The applicant was also advised in said letter that current ACB and HKHM expenses were suspended because he failed to attend a scheduled Examination Under Oath in accordance with s. 33 of the *2010 Schedule*. Furthermore, as per the Case Conference Report and Order dated February 17, 2023, the applicant was required to produce particulars of the incurred ACB and HKHM claims 60 calendar days from the date of the case conference on January 12, 2023. The applicant never produced the requested particulars relating to the incurred retroactive ACB expenses and retroactive HKHM claims.

[31] Given all of the above, the applicant has not met his onus to prove that any of his family members sustained an economic loss or that expenses relating to the provision of ACB and HKHM services have been incurred by anyone for the retroactive time periods in dispute. Similarly, there is no basis to deem the expenses incurred because the respondent did not unreasonably withhold or delay payment of ACB and HKHM.

Treatment and Assessment Plans (OCF-18s)

[32] To receive payment for a treatment and assessment plan under s. 15 and 16 of the *2010 Schedule*, the applicant bears the burden of demonstrating on a balance of probabilities that the benefit is reasonable and necessary as a result of the accident. To do so, the applicant should identify the goals of treatment, how the goals would be met to a reasonable degree and that the overall costs of achieving them are reasonable.

Chiropractic Services

[33] I find that the applicant has failed to establish entitlement to the chiropractic services claimed.

[34] The applicant submits that he is entitled to $3,065.76 in a plan dated October 18, 2022, proposed by Dr. Duilio Bertolo, chiropractor, for 15 weeks of chiropractic services for the purposes of pain reduction, increased range of motion ("ROM"), and increase strength with a view to returning to activities of normal living. Dr.

Bertolo testified that he has been treating the applicant for nearly 10 years and that the proposed treatment plan has been most effective to temporarily alleviate the applicant's pain. Dr. Bertolo further stated that the applicant has not achieved maximum therapeutic benefit and the proposed plan would help alleviate some of his chronic pain.

[35] In its denial letter dated June 22, 2023, the respondent relied on the findings of Dr. Maria Nesterenko, general practitioner, in her s. 44 report dated June 16, 2023. Dr. Nesterenko stated that based on her physical examination of the applicant on May 30, 2023, he did not demonstrate any ongoing objective musculoskeletal impairment attributable to the accident-related injuries and he had functional ROM in his cervical and thoracolumbar spine as well as both shoulders. Dr. Nesterenko also indicated that the applicant has already had the benefit of formal facility-based physical rehabilitation and, it was her opinion that he has achieved maximum therapeutic benefit from such care.

[36] I agree with Dr. Nesterenko's conclusion that in the absence of any ongoing objective musculoskeletal impairment attributable to the accident-related injuries, there would be no clinical indication for the provision of any clinical assessments or for any further formal facility based physical rehabilitation, either active or passive in nature. I find that Dr. Nesterenko's opinion is more consistent with the bulk of the other evidence. In addition, the testimony of an author of an OCF-18 is not sufficient on its own to prove that the treatment is reasonable and necessary. There needs to be contemporaneous evidence in support of the OCF-18, and I have not been directed to evidence to support that the applicant requires this treatment. Furthermore, a review of the contemporaneous medical and documentary evidence does not reveal a diagnosis of chronic pain by any of the applicant's treating physicians.

[37] Given all of the above, I am not convinced that the chiropractic treatment plan in dispute is reasonable and necessary.

Occupational Therapy Services

[38] I find that the applicant has not demonstrated that a one-year golf membership is reasonable or necessary as the result of the accident and he is not entitled to payment of that expense under the *2010 Schedule*.

[39] The applicant submits that he is entitled to $8,110.30 for a one-year golf membership recommended by Ms. Amina Shafi, OT, of Neuro-Rehab Services Inc. in a plan dated July 8, 2021. He argues that the goal of the treatment plan is

to provide a venue for him to de-stress and relax as well as provide an opportunity for leisure pursuits.

[40] The respondent submits that the one-year golf membership is not reasonable and necessary and relies on the s. 44 report of Dr. Arash Sasani, OT, dated October 13, 2021. Dr. Sasani noted that the proposed treatment plan is for a ClubLink golf membership, and he did not believe it was reasonable and necessary.

[41] I agree with the findings of Dr. Sasani that the applicant is able to participate in golf on public courses and does not require a CubLink level membership in order to receive the benefit of the sport for his stress and anxiety management. In addition, a review of the contemporaneous medical evidence does not reveal any recommendation of golf club membership as part of the applicant's stress and anxiety management from any of his treating psychologists, neuropsychologist or neurologists. As such, I am not persuaded that this OT treatment plan is reasonable and necessary.

Award

[42] The applicant also sought an award under s. 10 of Regulation 664, submitting that the respondent has deliberately ignored the medical evidence supporting the retroactive ACBs, retroactive HKHM claims and the OT and chiropractic treatment plans in dispute. Under s. 10, the Tribunal may award up to 50% of the total benefits payable if it determines that the insurer unreasonably withheld or delayed the payment of benefits.

[43] I find an award is not appropriate. As the applicant is not entitled to retroactive ACBs, retroactive HKHM, OT services, chiropractic services and no benefits are overdue, it follows that the Tribunal cannot order an award.

Interest

[44] Interest is payable on the overdue payment of benefits in accordance with s. 51 of the *2010 Schedule* on any overdue payment of benefits. As there were no overdue payments found, no interest is payable under s. 51.

Costs

[45] Pursuant to Rule 19.1, costs may be requested where a party believes another party has acted unreasonably, frivolously, vexatiously, or in bad faith. Rule 19.5 gives the Tribunal the authority to deny or grant the request for costs or award a different amount. Pursuant to Rule 19.6, the amount of costs shall not exceed

$1,000.00 for each full day of attendance at a motion, case conference, or hearing. Both parties sought costs in this matter.

[46] As stated by the Tribunal in *16-000075 v Wawanesa Mutual Insurance Company*, 2017 CanLII 35323 (ON LAT), “costs are to deter conduct that threatens the orderly and civil resolution of an application, and to ensure that the Tribunal’s process and the other participants are respected.”

[47] The respondent asked that costs be awarded in the sum of $6,000.00. It submits that the applicant acted vexatiously because 57 witnesses were identified on July 7, 2023, for a 7-day hearing with 10 witnesses only confirmed by the end of the first day of the hearing. The respondent further argues that over 18,000- pages of evidence was submitted by the applicant, and that late notification given of reliance upon the pre-2006 redacted log notes and case law were supplied one day before the hearing ended. It also alleges that several authorities were not highlighted by the applicant, giving the respondent no indication as to what principles the applicant would be attempting to draw from them.

[48] Notwithstanding that the applicant provided a witness list before the hearing with 57 witnesses, I find that the applicant made significant effort to reduce the list to 10 witnesses at the end of the first day of the hearing; four of which were lay witnesses and two adjusters who were previously summoned. Also, I am not persuaded that the respondent was significantly prejudiced by the late admission as evidence of the pre-2006 redacted log notes, as these notes were previously served by the respondent and in its possession. I also agree with the applicant that the evidence submitted was voluminous because it was covering over 26 years since the accident. Furthermore, even though I agree with the respondent that the cases that were not highlighted by the applicant in his book of authorities somewhat hindered the respondent in preparing for closing, I do not believe it was conduct that threatened the orderly and civil resolution of an application. As such, the respondent request for costs is denied.

[49] The applicant also asked that costs be awarded in the sum of $6,000.00. He submits that the respondent acted in bad faith and unreasonably withheld or delayed payment of ACBs and HKHM when it knew or ought to have known that he was entitled to these benefits. For the reasons already mentioned in my decision I do not find that the respondent acted in bad faith and unreasonably withheld or delayed payment of any benefit. Therefore, the applicant’s request for costs is denied.

ORDER

[50] I find that:

1. The applicant is not entitled to retroactive ACBs.
2. The applicant is not entitled to retroactive HKHM services.
3. The applicant is not entitled to the chiropractic services claimed.
4. The applicant is not entitled to the OT services claimed.
5. No interest is payable.
6. No award is payable.
7. Neither party is entitled to cost.

[51] The application is dismissed.

Released: September 15, 2023

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Clive Forbes
Adjudicator