Citation: Areola v. Aviva Insurance Company of Canada, 2024 ONLAT 22-004239/AABS

Licence Appeal Tribunal File Number: 22-004239/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:

Mustapha Areola

Applicant

and

Aviva Insurance Company of Canada

Respondent

DECISION

VICE-CHAIR: **Julian DiBattista**

APPEARANCES:

For the Applicant: Rohan Haté, Counsel

For the Respondent: Geoffrey Keating, Counsel

HEARD: **By way of written submissions**

OVERVIEW

[1] Mustapha Areola, the applicant, was involved in an automobile accident on November 16, 2017, 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 Insurance Company of Canada, and applied to the Licence Appeal Tribunal - Automobile Accident Benefits Service (the "Tribunal") for resolution of the dispute.

ISSUES

[2] The issues in dispute are:

i. Is the applicant entitled to $1,563.72 for chiropractic services, in a treatment plan/OCF-18 ("plan") submitted June 3, 2021 and denied June 7, 2021?

ii. Is the applicant entitled to $1,563.72 for shockwave therapy, in a plan submitted November 29, 2021 and denied December 14, 2021?

iii. Is the applicant entitled to $1,926.47 for massage, chiropractic, and acupuncture services, in a plan submitted November 29, 2021 and denied December 14, 2021?

iv. Is the applicant entitled to $5,976.06 for massage, chiropractic, and acupuncture services, in a plan submitted January 1, 2022 and denied January 31, 2022?

v. Is the applicant entitled to $1,606.16 for massage, chiropractic, and acupuncture services, in a plan dated August 11, 2022 and denied August 22, 2022?

vi. Is the applicant entitled to $2,200.00 for a psychological assessment, in a plan dated July 28, 2022 and denied August 9, 2022?

vii. 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?

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

RESULT

[3] The applicant has not proven entitlement to any of the benefits in dispute.

[4] As there is no entitlement to benefits there is no basis to consider interest or an award under *Regulation 664.*

PROCEDURAL ISSUES

[5] The respondent has raised two procedural issues:

i. The applicant has submitted 15 pages of written submissions in contravention of the 10-page limit ordered by the Tribunal on January 12, 2023.

ii. The applicant has submitted a sworn affidavit that was not disclosed per paragraph six of the Case Conference Report and Order issued by the Tribunal on January 12, 2023.

Ordered page limits were exceeded

[6] On January 12, 2023 a case conference was held between the applicant and respondent. This case conference was attended by both parties to the dispute and their counsel. During this case conference, the issues in dispute were confirmed and a written hearing was ordered. All orders were issued on the consent of both parties and the issues in dispute as outlined at the case conference have not changed.

[7] In this case conference, the Tribunal ordered a page limit of 10 pages for each parties' initial submissions and a page limit of five pages for the applicant's reply.

[8] The Tribunal further ordered:

> The page limits are exclusive of evidence and case law. The hearing adjudicator may choose not to consider submissions which exceed the page limits.

[9] On September 20, 2023 the applicant served their submissions and evidence to the respondent and the Tribunal. The applicant's written submissions in this brief consisted of 14 pages. I will note that while the respondent identified written submissions at 15 pages, I consider written submissions in this context to begin on page five of the applicant's submission brief and not include page four which is the standard cover page.

[10] On October 6, 2023 the respondent served their submissions and evidence to the applicant and the Tribunal. The respondent's written submissions consisted of 11 pages. It should be noted that the entirety of page two of the respondent's submissions deal with the two procedural issues being addressed.

[11] The applicant submitted their reply to both the respondent and the Tribunal on October 12, 2023. The reply contained four pages of written submissions.

[12] The respondent submits that pages 11-14 of the applicant's submissions should not be considered in this hearing as the applicant failed to comply with the order issued by the Tribunal. The respondent notes it would be procedurally unfair to allow the applicant an additional four pages of submissions.

[13] In reply, the applicant notes that the second page of their main submissions is nearly all a reproduction of the issues as articulated in the case conference report and order, and that the volume of submissions as expressed by word count is 3,297 words for the respondent and 3,491 for the applicant.

[14] The order of the Tribunal was clear and unambiguous. The order was made with the consent of both parties.

[15] The applicant's submissions exceeded the allowable limit set out in the Order by 40 percent. The limit provided was one based on page length, as such, there is no merit to the applicant's submissions referencing word counts.

[16] As such, I will only be considering ten pages of the applicant's submissions in accordance with the Tribunal's order.

<u>The disputed affidavit is not referenced in the applicant's submissions.</u>

[17] The respondent has raised an issue with the applicant submitting a sworn affidavit as evidence in this hearing. The respondent notes that the affidavit in question was not disclosed prior to the document production deadline set by the Tribunal and should be excluded.

[18] I note that this point is moot. The affidavit in question is not referenced in any of the applicant's submissions concerning the issues in dispute. As I was not directed to this piece of evidence by the applicant in support of their submissions, I will not be considering it.

ANALYSIS

The applicant has not proven entitlement to any of the disputed treatment plans.

[19] To receive payment for a treatment and assessment plan under s. 15 of the *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.

The applicant is not entitled to chiropractic services proposed on June 3, 2021

[20] I find that the applicant has not proven entitlement to chiropractic services.

[21] The applicant's submissions concerning this treatment plan are contained in paragraph 25 of their written submissions and reproduced in their entirety below:

> On June 3, 2021, a plan was submitted for $1,563.72 for chiropractic services. It was denied June 7, 2021. This plan notes the treatment goals as: pain reduction, increase in strength, increased range of motion, restoration of core stability and full spine flexibility, return to activities of normal living, return to pre-accident work activities, and return to modified work activities.

[22] It is well accepted that determining the entitlement for a treatment plan requires that the applicant identify the goals of the treatment, how the goals would be met to a reasonable degree and that the overall costs of achieving them are reasonable.

[23] While the applicant has stated the goals of this treatment plan, there is no mention of how the goals would be met or how the overall costs of achieving them are reasonable.

[24] Therefore, the applicant has failed to establish why the treatment plan in dispute is reasonable or necessary.

[25] I find that the applicant has not proven, on the balance of probabilities, that they are entitled to chiropractic treatment as outlined in the treatment plan.

The applicant has not proven entitlement to shockwave therapy as proposed on November 29, 2021.

[26] I find that the applicant has not proven entitlement to shockwave therapy.

[27] The applicant's submissions concerning this treatment plan are contained in paragraph 26 of their written submissions and reproduced in their entirety below:

> On November 29, 2021, a plan was submitted for $1,563.72 for shock wave therapy. It was denied December 14, 2021.

[28] Shock wave therapy is only mentioned twice in the applicant's submissions, firstly when they state the issue in dispute, and the secondly in the paragraph reproduced above.

[29] The applicant has not identified the goals of shock wave therapy, how the goals would be met to a reasonable degree and how the overall costs of achieving them are reasonable.

[30] Given that the applicant has not made any submissions that address the legal test, I find it unnecessary to consider the respondent's submissions on this point.

[31] I find that the applicant has not proven, on the balance of probabilities, that they are entitled to shock wave therapy as outlined in the treatment plan.

The applicant has not proven entitlement to any of the treatment plans for massage, chiropractic and acupuncture services

[32] The applicant has not proven entitlement to any of the disputed treatment plans for massage, chiropractic, and acupuncture services.

[33] The applicant has submitted three treatment plans for massage, chiropractic and acupuncture services on November 29, 2021, January 1, 2022, and August 11, 2022.

[34] The applicant submits that they should be entitled to the disputed treatment plans as they have proven injuries beyond the minor injury guideline (MIG).

[35] They also submit that a recommendation made by Dr. J. Kwok, orthopaedic surgeon from an assessment on January 19, 2021 supports the reasonableness of these treatment plans. I disagree with this.

[36] The respondent submits that the applicant has provided no evidence to suggest that ongoing treatment will assist in recovery and that no attempt was made to explain how the disputed treatment plan will achieve the stated goals.

[37] I agree with the respondent's submissions that there were no submissions made explaining what the goals of the disputed treatment plans are and how the disputed treatment plans will meet those goals.

[38] Dr. Kwok did provide a recommendation for massage in January of 2021, however, there has been no submissions made on the progression of the applicant's condition between January of 2021 and dates of the disputed treatment plans. Being diagnosed with an accident-related injury does not entitle the applicant to treatment for an indefinite period.

[39] For these reasons I find that the applicant has not proven the disputed treatment plans to be reasonable or necessary.

The applicant is not entitled to a psychological evaluation

[40] The applicant has not proven an entitlement to a psychological evaluation.

[41] The applicant has submitted that a psychological assessment is reasonable and necessary based on an assessment conducted by Dr. J. Brunshaw, psychologist and Ms. S. Ramnaraine, psychotherapist, on August 15, 2022.

[42] The respondent submits that the applicant has failed to state what the goals of this assessment are, and that the s. 44 assessment of Dr. R. Ratti, psychologist, conducted on March 4, 2022 does not suggest the existence of a clinically significant psychological impairment.

[43] I agree with the respondent, the applicant has not made any submissions on the goals of the psychological assessment, and how the assessment will help meet those goals.

[44] Submitting a copy of a psychological assessment as evidence does not create the entitlement that the respondent will reimburse the cost of that assessment.

[45] For a treatment plan to be reasonable and necessary, the goals of the assessment must be stated along with how the proposed assessment will meet those goals, and how the proposed treatment does so in a cost-effective manner. This was not done.

[46] Therefore, for the reasons above, I find that the applicant is not entitled to the proposed psychological assessment.

Interest

[47] As there are no overdue benefits, there is no entitlement to interest.

Award

[48] As no submissions were made referencing an award under s.10 of Reg.664, there is no basis upon which to consider an award in this matter.

ORDER

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

i. The applicant is not entitled to any of the disputed treatment plans;

ii. Is not entitled to an award under Regulation 664;

iii. No interest is payable; and

iv. This application is dismissed.

Released: June 12, 2024

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Julian DiBattista
Vice-Chair