



**Citation: O'Neil vs. Aviva General Insurance, 2024 ONLAT 21-014774/AABS**

**Licence Appeal Tribunal File Number: 21-014774/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:

**Troy O'Neil**

**Applicant**

and

**Aviva General Insurance**

**Respondent**

**DECISION**

**ADJUDICATOR: Kevin Yarde**

**APPEARANCES:**

For the Applicant: Troy O'Neil, Applicant  
Sarah Brown, Paralegal

For the Respondent: Ajay Shukla, Litigation Advisor  
Geoffrey Keating, Counsel  
Heena Kapoor, Counsel

**HEARD: In Writing**

## OVERVIEW

- [1] Troy Anthony Jameel O'Neil, the applicant, was involved in an automobile accident on February 26, 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 Canada, and applied to the Licence Appeal Tribunal - Automobile Accident Benefits Service (the "Tribunal") for resolution of the dispute.

## ISSUES

- [1] The issues in dispute are:
- i. Is the applicant entitled to \$1,423.60 for chiropractic treatment proposed by Dr. H. Naveri Chiropractic Professional Corporation in a treatment plan which was denied on August 3, 2017?
  - ii. Is the applicant entitled to \$5,639.50 for chiropractic treatment proposed by Abbey Lane Chiropractic Clinic in a treatment plan which was denied on February 1, 2021?
  - iii. Is the applicant entitled to \$4,657.12 for chiropractic treatment proposed by Activa Clinics Toronto East in a treatment plan which was denied January 25, 2021?
  - iv. Is the applicant entitled to an award for unreasonably withheld or delayed payments under section 10 of Regulation 664?
  - v. Is the applicant entitled to interest on any overdue payment of benefits?

## RESULT

- [2] The applicant is entitled to the amount of \$1,423.60 for chiropractic treatment plan denied August 3, 2017, plus interest pursuant to s. 51 of the *Schedule*.
- [3] The applicant is not entitled to any other treatment plans in dispute.

## ANALYSIS

### ***Treatment and Assessment Plans (OCF-18)***

- [4] To receive payment for a treatment and assessment plan under s. 15 and 16 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 is required to identify the goals of treatment, how the goals would be met to a reasonable degree and that the overall cost of achieving them are reasonable.

### ***Issue 1: Chiropractic Treatment***

- [5] The applicant is entitled to this treatment plan.
- [6] The applicant submits that he did not seek medical advice until five months after the accident on July 26, 2017. However, the Aviva letter dated August 3, 2017, titled "Notice of Examination" was a generic blank form. I find this is improper as the insurer failed to provide the written notification of denial and reasoning for the denial.
- [7] Given that the respondent's letter dated August 3, 2017, for insurer's examination details was blank, I find that the insurer did not request a s. 44 independent assessment for further determination within 10 business days of receiving the treatment plans as required under s. 38(8).
- [8] The effect of s.38(11) is that the applicant is entitled to any expenses incurred under the treatment plan starting from the 11<sup>th</sup> day after the plan was submitted. And since the Notice of Examination was blank, that was all that was provided by way of a denial. The insurer never cured their non-compliance with s.38. I find that this denial is insufficient. I do not need to engage in an analysis of whether the treatment plan is reasonable and necessary, because the respondent's failure to properly deny the plan within the time limit set out in s. 38 automatically entitles the applicant to the plan.

### ***Issues 2 and 3 Chiropractic Treatment***

- [9] The applicant is not entitled to these treatment plans.
- [10] The treatment plans are for chiropractic treatment.
- [11] The applicant submits that the plans are reasonable and necessary because of the extensive clinical notes and medical findings of his doctor Dr. Jason Smith from Doctors Urgent Care & Family Medicine, the report of Activa Clinics Chiropractic, Dr. Hooman Nageri, chiropractic, and Abbey Lane Chiropractic Clinic.
- [12] The applicant cites the clinical notes and records of these doctors on December 10, 2020, and January 20, 2021. These documents reveal dislocation, sprain and

strain of joints and ligaments of the shoulder girdle and persistent and complex complaints of shooting pain in his left leg, numbness in left hand/arm and depressive mood, injury to the shoulder joint, muscle wasting and atrophy, left deltoid and biceps.

- [13] The applicant submits that these clinical notes and records of these doctors lay a strong foundation for a chiropractic treatment claim because they highlight the persistent nature of the injuries, the ongoing physical discomfort, and the need for continued medical attention.
- [14] The respondent submits that the applicant has failed to prove that the treatment plans in dispute are reasonable and necessary, and his claim should be dismissed. The respondent relies on the orthopaedic surgeon s. 44 report of Dr. Osama Suleiman Gharsaa dated April 28, 2021, concluding that he “failed to identify any objective signs of any ongoing orthopaedic or organic impairment of the applicant that can be attributed to the subject motor vehicle accident”.
- [15] According to the respondent IE assessment dated April 28, 2021, the applicant’s actual accident-related injuries are because of the soft tissue injuries sustained in the motor vehicle accident and the treatment plan is not reasonable and necessary.
- [16] The respondent also submitted that the applicant relies upon psychological findings to which their assessor Dr. Gharsaa as an orthopaedic surgeon is not qualified to speak. For this reason, I have found that there is sufficient evidence without considering the psychological reports, I have not relied upon those reports in making my findings.
- [17] I agree with the respondent when looking at the gap between the accident and the applicant seeking treatment as an issue to consider. While the applicant attended Doctors Urgent Care & Family Medicine on October 18, 2017, no treatment plans were submitted to the respondent until January 2021 which amounts to a substantial gap in treatment.
- [18] It was only when the applicant dislocated his shoulder in January 2021, which led to shoulder surgery, at which time treatment plans were submitted. I believe the applicant has failed to prove that the left shoulder injury from January 2021 was related to the accident. As Dr. Jason Smith opined on April 28, 2021 “the left shoulder injury cannot be related back to the subject accident without medical imagining from the subject accident”. At this point the Notice of Assessments were scheduled. The Notice of Assessment for a general practitioner examination with Dr. Neetan Alikhan on March 4, 2021, was not attended. This

was rescheduled multiple times at the request of the applicant or his counsel. The Notice of Assessment with Dr. Nikolas Harmantas on March 30, 2021, was also rescheduled.

- [19] The Notice of Assessment with Dr. Osama Suleiman Gharsaa orthopaedic surgeon was attended on April 5, 2021. Dr. Gharsaa also provided updated opinions in his addendum reports on April 28, 2021, June 15, 2021, and September 23, 2021. Dr. Gharsaa reports remained unchanged from his original report.
- [20] The applicant also submitted that the insurer assessor Dr. Gharsaa erred in his opinions when he stated that the applicant injured his left shoulder. The applicant states that what happened is that the applicant meant to say he re-injured his left shoulder. Thereby, concluding that Dr. Gharsaa report is inaccurate. I believe that Dr. Gharsaa did not err in his opinions, he only stated what the applicant had reported to him that he had “injured his left shoulder”. It would have been incorrect for Dr. Gharsaa to state otherwise.
- [21] According to the applicant he denied having any physical problems prior to the subject motor vehicle accident. The applicant had an MRI on his left shoulder on February 25, 2021. The result of this examination showed “focal irregularity on the anteroinferior labrum suspicious for very small superficial labral tear or possibly glenolabral articular disruption”. However, I am persuaded by Dr. Gharsaa s. 44 report of April 5, 2021, that there are no signs of ongoing orthopaedic or organic impairment of the applicant that can be attributed to the subject motor vehicle accident.
- [22] I have reviewed the record including the applicant’s assessment reports and the insurer examination reports, and I agree with the applicant’s submissions that the applicant suffers from a persistent and complex pattern of musculoskeletal complaints mainly focused on the left side of the body from the shoulder down to the leg. The applicant has undergone medical assessments, diagnostic imaging, and specialists’ consultations. However, I am not satisfied that these injuries can be attributed to the subject motor vehicle accident.
- [23] I have reviewed the chiropractic treatment plans and I find that the overall cost of the plans in seeking to achieve the goals is not reasonable and necessary and the applicant is not entitled to payment in respect of the services recommended in those plans.
- [24] The applicant is not entitled to these treatment plans in issue 2 and 3.

**Award**

- [25] The applicant sought an award under s. 10 of O. Reg. 664, arguing that the respondent unreasonably withheld or delayed payments.
- [26] The Tribunal assesses an award based on whether the insurer's behaviour is "excessive, imprudent, stubborn, inflexible, unyielding or immoderate," and may award up to 50% of the total benefits in dispute if it determines that the insurer unreasonably withheld or delayed benefit payments.
- [27] The applicant did not provide evidence to substantiate that the respondent unreasonably withheld or delayed payments.
- [28] Therefore, I find an award is not appropriate and the applicant is not entitled to any award.

**Interest**

- [29] The applicant is entitled to interest pursuant to s. 51 of the *Schedule* for chiropractic treatment in issue 1.

**ORDER**

- [30] The applicant is not entitled to chiropractic treatment in the treatment plan listed as issues 2 and 3.
- [31] The applicant is entitled to chiropractic treatment in the treatment plan listed as issue 1 and interest.

**Released:** May 28, 2024

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**Kevin Yarde**  
**Adjudicator**