



Citation: Marrello v. Aviva General Insurance Company, 2025 ONLAT 22-014064/AABS

Licence Appeal Tribunal File Number: 22-014064/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:

Dakk Marrello

Applicant

and

Aviva General Insurance Company

Respondent

DECISION

ADJUDICATOR: Robert Rock

APPEARANCES:

For the Applicant: Dino Ranchan Pius, Counsel

For the Respondent: Christina Chiu, Counsel

HEARD: By way of written hearing

OVERVIEW

[1] Dakk Marrello, the applicant, was involved in an automobile accident on December 5, 2019, and sought benefits pursuant to the *Statutory Accident Benefits Schedule - Effective September 1, 2010 (including amendments effective June 1, 2016)* (the “Schedule”). The applicant was denied benefits by the respondent, Aviva General Insurance Company, 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 \$2,091.01 for chiropractic services, proposed by Tandem Health in a treatment plan/OCF-18 (“plan”) dated October 21, 2022?
- ii. Is the applicant entitled to \$2,684.49 (\$4,164.74 less \$1,480.25 approved) for psychological services, proposed by All Health Medical in a plan dated April 20, 2021?
- iii. Is the applicant entitled to \$280.63 for pillow, massage mat with heat and wireless hand-held massager, submitted on a claim form (OCF-6) dated September 19, 2022?
- iv. Is the applicant entitled to \$233.20 for neck stretcher, submitted on a claim form (OCF-6) dated March 15, 2023?
- v. Is the applicant entitled to \$2,259.99 for bike, submitted on a claim form (OCF-6) dated May 15, 2023?
- vi. Is the applicant entitled to \$3,050.93 for mattress/boxspring, submitted on a claim form (OCF-6) dated May 16, 2023?
- vii. Is the respondent liable to pay an award under s. 10 of 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 on a balance of probabilities that he is entitled to the treatment plan for chiropractic services in dispute.

- [4] The applicant has not proven on a balance of probabilities that he is entitled to the outstanding balance for the psychological services treatment plan in dispute.
- [5] The applicant has not proven on a balance of probabilities that he is entitled to the various OCF-6 expenses in dispute.
- [6] As there are no unreasonably withheld or delayed payments, no award is due.
- [7] As no outstanding benefit payments are owed, no interest is due.

ANALYSIS

Treatment Plans

- [8] 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 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.
 - a) *The applicant is not entitled to the chiropractic services treatment plan.***
- [9] The applicant has not proven on a balance of probabilities that the treatment plan for chiropractic services is reasonable and necessary.
- [10] The treatment plan is comprised of 5 sessions of chiropractic treatment, 12 sessions of manual therapy treatment, 2 sessions of active therapy treatment, and documentation.
- [11] The goals of the treatment plan are pain reduction, increased range of motion, increase in strength and return to activities of normal living.
- [12] The applicant submits that the treatment plan is reasonable and necessary because he claims the evidence establishes that these treatments are needed to return to normal functioning. The applicant relies on a chronic pain assessment report by Dr. Wilderman, GP and pain management consultant, dated August 28, 2023.
- [13] I find that the chronic pain assessment by Dr. Wilderman does support chiropractic treatments. During this assessment, Dr. Wilderman diagnosed the applicant with chronic pain. In the recommended treatment section, Dr. Wilderman outlines a variety of potential treatment modalities, with chiropractic

treatment being one potential treatment. In his findings, Dr. Wilderman appears to put increased emphasis on other treatment modalities such as aqua-fit, exercising at a gym, stretch and spray, dry needling, and acupuncture, by providing more insight into those treatments.

- [14] The respondent relies on a musculoskeletal assessment report by Dr. Silver, Forensic professional and member of the Ontario Medical Association's chronic pain section, completed on December 1, 2022.
- [15] I find that the musculoskeletal assessment report by Dr. Silver does not support chiropractic services as reasonable and necessary. Based on Dr. Silver's physical examination, and review of available documentation, the doctor concluded that there was not objective evidence of an ongoing, accident-related musculoskeletal impairment. Dr. Silver also noted that the applicant's ongoing pain complaints are not directly attributable to the subject accident. Additionally, Dr. Silver concluded that the applicant had reached maximum medical recovery from his accident-related injuries.
- [16] In comparing the two expert reports, I place more weight on Dr. Silver's report. Dr. Silver focused his report on the question of efficacy of chiropractic services, while Dr. Wilderman's assessment's main focus was on a chronic pain assessment. Dr. Silver notes that there is little evidence to attribute the applicant's current pain reporting to the accident as opposed to his pre-existing back pain. Dr. Silver concluded that the applicant had reached maximal medical recovery and that chiropractic services were not reasonable and necessary. Dr. Wilderman placed more focus on other treatment modalities such as aqua-fit, which matches the applicant's reporting to his doctor that swimming virtually every day had helped his back pain. I am not persuaded by Dr. Wilderman's assessment that chiropractic treatment is reasonable and necessary to meet the established goals of the treatment plan.
- [17] The applicant has not proven on a balance of probabilities that chiropractic services are reasonable and necessary.

b) The applicant is not entitled to the outstanding balance for the psychological services treatment plan.

- [18] The applicant has not proven on a balance of probabilities that the outstanding balance for the psychological services treatment plan is reasonable and necessary.

- [19] The outstanding balance for the psychological services is comprised of a disagreement on the rate to be paid for a psychotherapist, as well as requests for funding based on treatment planning and a re-assessment report.
- [20] The rates for service providers are outlined in the Professional Services Guideline. A psychologist's maximum hourly rate is listed at \$149.62. In the Guideline, there is no specific rate for a psychotherapist. The Guideline outlines a rate for services provided by health care professional/providers that are not covered by the Guideline. This hourly rate is \$58.19.
- [21] The applicant relies on *J.V. v Intact Insurance Company*, 2019 CanLII 76995 (ON LAT). In that case, Adjudicator Parish found that the psychotherapist had specialized training in Cognitive Behavioural Therapy, and so it warranted her to be paid at the rate of a psychologist. In the applicant's case, I have not been provided evidence in Ms. Zhukova's CV that she specializes in Cognitive Behavioural Therapy, or any other specialized training that would warrant her receiving the same rate as a psychologist.
- [22] I find that the applicant has not provided sufficient evidence to substantiate why Ms. Zhukova's rate should be beyond the stated rate for professionals not listed in the Guideline. I find that the hourly rate for Ms. Zhukova's services should be \$58.19.
- [23] On the question of the re-assessment report, the applicant has made no direct submissions as to the need for the re-assessment as listed in the treatment plan. The applicant argues that this would be a progress report and necessary to decide on whether more psychological intervention is needed. I am not directed to why a separate re-assessment or progress report would be needed or provide more insight into the applicant's progress above ongoing session notes.
- [24] I find that the applicant has not proven on a balance of probabilities that he is owed the outstanding balance for the psychological services treatment plan.

c) Various OCF-6 Expenses

- [25] I find that the applicant has not proven on a balance of probabilities that he is entitled to the various OCF-6 expenses at issue.
- [26] The OCF-6 expenses include a pillow, massage mat with heat, wireless hand-held massager, a bike, a mattress/boxspring, and a neck stretcher.
- [27] The applicant argues that these purchases have been reasonable and necessary to assist in his recovery and to return to normal functioning. The applicant's family physician did note in his CNRs that the mattress was helping the applicant with his back pain but was not helping with his neck pain. While I agree that the

various purchases may be assisting the applicant, he has not directed me to any medical evidence to support the purchase of these items. I find no direction from the applicant's family physician, nor any other medical specialist indicating the need for these items to be purchased to assist the applicant in his recovery.

- [28] I find that the applicant has not proven on a balance of probabilities that he is entitled to payment for the various OCF-6 expenses at issue.

PROCEDURAL ISSUES

Exceeding page length

- [29] I find that the applicant has exceeded the allowable page length of his written submission as set by the case conference report and order (CCRO) from August 31, 2023.
- [30] The respondent alleges that the applicant has exceeded the page limits for his written submission as set out in the CCRO. The allegations stem from the particulars for a special award claim being submitted separately from the rest of the written submissions.
- [31] The applicant contends that he has not exceeded the allowable page length in his written submissions. The applicant makes no direct submissions as to why the particulars of the special award claim were not included in the body of his written submissions.
- [32] Reviewing the written submissions, I agree with the respondent. The expectation by the Tribunal is that the applicant's written submissions should include the particulars for a special award claim in the body of the written submissions and be subject to the page limits set out in the CCRO.
- [33] I find that the applicant has exceeded the allowable page length of his written submissions as set out in the CCRO, and the particulars of the special award claim will be struck.

Document exchange deadline

- [34] I find that the applicant has not met the production timelines set by the CCRO.
- [35] The respondent alleges that the applicant has not complied with the timelines set out in the CCRO. The final document exchange deadline was November 17, 2023. The respondent submits that an x-ray of the applicant's cervical spine and the resume of Ms. Natalia Zhukova, psychotherapist, were not produced by the final document exchange deadline and should be struck from evidence. The

respondent states that these missed deadlines affect procedural fairness to provide each party the opportunity to be heard and respond to the position taken against it.

[36] The applicant submits that the respondent did not request any productions from him in the CCRO. Additionally, the x-ray of the applicant's cervical spine was not undertaken until November 14, 2023, and was not available to share on the deadline of November 17, 2023. As to the resume, the applicant contends that the respondent knew the issues in dispute and should have made the appropriate production requests.

[37] I find that the applicant did not meet the timelines set out in the CCRO, but I do not agree with the respondent that the x-ray and resume of Ms. Zhukova would prejudice it if allowed into evidence. The respondent had discounted Ms. Zhukova's rate due to her title in the explanation of benefits, so if the respondent knew that this was an issue in dispute, it could have requested Ms. Zhukova's resume as a document request in the CCRO. That the x-ray was not available at the time of the deadline is not an issue of the applicant being non compliant, rather it is an issue of timing. The respondent has not made a sufficient argument to outline how it would be prejudiced or how it would be affected by procedural fairness by allowing the x-ray and resume into evidence.

[38] The x-ray and resume of Ms. Zhukova will be admitted to evidence.

Interest

[39] As there are no outstanding payments of benefits, no interest is due.

Award

[40] The applicant sought an award under s. 10 of Reg. 664. Under s. 10, the Tribunal may grant an award of up to 50 per cent of the total benefits payable if it finds that an insurer unreasonably withheld or delayed the payment of benefits. As no benefits have been unreasonably withheld or delayed, no award is due.

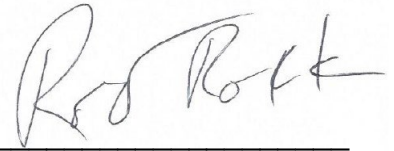
ORDER

[41] For the above reasons, I find:

- i. The applicant is not entitled to payment for the chiropractic services treatment plan.
- ii. The applicant is not entitled to payment for the outstanding balance for the psychological services treatment plan.

- iii. The applicant is not entitled to payment for the various OCF-6 expenses at issue.
- iv. The applicant is not entitled to interest.
- v. The applicant is not entitled to an award.
- vi. The application is dismissed.

Released: January 31, 2025

A handwritten signature in black ink, appearing to read "Robert Rock", written in a cursive style.

Robert Rock
Adjudicator