

**LICENCE APPEAL
TRIBUNAL**

**Safety, Licensing Appeals and
Standards Tribunals Ontario**

**TRIBUNAL D'APPEL EN MATIÈRE
DE PERMIS**

**Tribunaux de la sécurité, des appels en
matière de permis et des normes Ontario**



Tribunal File Number: 17-006162/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:

Tina Brodsky

Applicant

and

Aviva Insurance Canada

Respondent

DECISION

ADJUDICATOR:

Sandeep Johal

APPEARANCES:

Representative for the Applicant:

Kateryna Vlada, Paralegal

Counsel for the Respondent:

Meredith A. Harper

Heard in writing on:

April 3, 2018

OVERVIEW

- [1] The applicant was injured in an automobile accident on September 16, 2015 and sought benefits pursuant to the *Statutory Accident Benefits Schedule – Effective September 1, 2010*¹ (the "Schedule").
- [2] The applicant applied for medical benefits that were denied by the respondent. The applicant disagreed with this decision and submitted an application for dispute resolution to the Licence Appeal Tribunal – Automobile Accident Benefits Service (the "Tribunal").

ISSUES TO BE DECIDED

- [3] The following are the issues to be decided as per the Tribunal's case conference order of February 9, 2018:
 - i. Is the applicant entitled to medical benefits recommended by Dr. Catherine Antoine for the following:
 - (a) \$1,292.17 for exercise equipment submitted on January 15, 2016?
and;
 - (b) \$1,185.32 for assistive devices submitted on January 19, 2016?
 - ii. Is the applicant entitled to the cost of a chronic pain assessment in the amount of \$2,000.00 recommended by Dr. Igor Wilderman, in a treatment plan submitted on June 20, 2016 and denied by the respondent on June 29, 2016?
 - iii. Is the applicant entitled to medical benefits recommended by Dr. Andrea Giaschi for the following:
 - (a) \$1,996.69 for chiropractic services submitted on August 3, 2016?
and;
 - (b) \$2,147.38 for chiropractic services submitted on July 28, 2016?
 - iv. Is the applicant entitled to an award for unreasonably held or delayed payments under Regulation 664?
 - v. Is the applicant entitled to interest on any overdue payment of benefits?

¹ O. Reg. 34/10.

RESULT

- [4] Based on the totality of the evidence before me, I find the applicant is not entitled to any of the benefits in dispute.

ANALYSIS

Is the applicant entitled to medical benefits for assistive devices?

- [5] I find that the applicant is not entitled to the request for exercise equipment and assistive devices because the applicant relies upon her self-reporting of her injuries to the insurer examination (“IE”) doctors to show that the treatment plans are reasonable and necessary. However, in my opinion, self-reporting of pain is not alone sufficient to show that such treatment is reasonable and necessary. Some form of medical documentation corroborating the applicant’s self-reporting is required. In this case, I have no medical documentation concerning the applicant’s condition other the respondent’s IE assessments.
- [6] With respect to the benefits for assistive devices, the applicant submits she requires the devices and exercise equipment to mitigate her injuries and become independent in her daily chores. The applicant relies upon Dr. Jugnundan’s IE report of August 17, 2017 in which she self-reports pain in her lower back, left shoulder and neck pain. However, Dr. Jugnundan recommends a self-directed home exercise program and does not find the request for the benefit to be reasonable and necessary.²
- [7] The applicant was also assessed by Occupational Therapist, Amy Hanes. In her report, Ms. Hanes notes that the applicant demonstrated sufficient functional mobility, strength and range of motion to complete all personal care tasks as well as dusting, floor cleaning, laundry and bathroom cleaning independently.³ Ms. Hanes goes on to conclude that “active resumption of [the applicant’s] activities of daily living is considered a reasonable and necessary component of her rehabilitation process...and she should be encouraged to increase her independence in her activities of daily living.”⁴ Ms. Hanes goes on to state that the request for equipment and assistive devices would promote unnecessary dependency on external supports which is not required in the course of the applicant’s rehabilitation.

² Dr. Jugnundan IE report dated August 17, 2017 at page 13.

³ Amy Hanes, OT, IE report dated February 3, 2016 at page 11.

⁴ Supra note 3 at page 11.

- [8] I am inclined to agree with the respondent's medical evidence which summarizes that the treatment plan is not reasonable and necessary as the applicant has not adduced any objective evidence from any of her medical doctors in order to assess whether or not the exercise equipment and assistive devices are reasonable and necessary. The applicant has not satisfied her onus on a balance of probabilities that the treatment plan is reasonable and necessary.

Is the applicant entitled to the cost of a chronic pain assessment?

- [9] I do not find the applicant to be entitled to the cost of a chronic pain assessment for the following reasons.
- [10] The applicant submits her pain has persisted for over two years, which is well beyond the six-month period accepted by medical practitioners in defining a chronic pain condition. However, and again, the applicant has not directed me to any medical documentation evidencing that she has chronic pain or chronic pain syndrome.
- [11] The applicant relies upon her self-reporting to Dr. Jugnundan, the respondent's IE assessor that she continues to experience ongoing pain. However, Dr. Jugnundan does not confirm whether indeed she has chronic pain or chronic pain syndrome.
- [12] The applicant was assessed by Dr. Loritz and Dr. Nikkhou in a chronic pain IE assessment completed September 8, 2016. The report concludes that a chronic pain assessment is not considered appropriate for management of the applicant's residual symptoms. Rather, the report opines that the applicant's symptoms are consistent with residual myofascial pain in relation to her usual activities of daily living, and that a resumption of these activities is a necessary component in her rehabilitation.⁵
- [13] I am not presented with medical evidence to support the applicant's assertion that her pain has developed into chronic pain or chronic pain syndrome. I prefer the medical evidence of the respondent's assessors who conclude that she suffers from residual myofascial pain in relation to her usual activities of daily living and the assessors have not concluded she may be suffering from chronic pain or chronic pain syndrome. As a result, I find that the chronic pain assessment is not reasonable and necessary.

⁵ Dr. Loritz and Dr. Nikkhou IE Report dated September 8, 2016 at page 8.

Is the applicant entitled to a medical benefit for chiropractic services?

- [14] I do not find the applicant to be entitled to medical benefits for chiropractic services for the following reasons.
- [15] The applicant submits that she should be entitled to the chiropractic treatment because she has found them to be helpful with her recovery and would benefit from additional sessions. However, I have not been directed to any evidence to corroborate her submissions other than her self-reporting to the respondent's IE assessor Dr. Jugnundan.
- [16] Further, the applicant has stated that there has been a 80%-90% improvement in her physical condition⁶ and Dr. Jugnundan opines that ongoing formal facility based therapy would not be of any significant added benefit to the applicant and he finds the request for chiropractic treatment not reasonable and necessary.
- [17] Without any evidence from the applicant's medical assessor's to refute the IE assessments, I find myself in agreement with the IE assessors that the treatment plans for chiropractic treatment are not reasonable and necessary.

Is the applicant entitled to an award for unreasonably withheld or delayed payments and interest on any outstanding payments?

- [18] As I have found the treatment plans and cost of examinations not to be reasonable and necessary and no payments owing there is no need for me to conduct an analysis on whether an award or interest is payable.


ORDER

- [19] For the reasons outlined above, I find that the applicant is not entitled to any of the medical benefits in dispute and the cost of examination for the chronic pain assessment.

⁶ Cathy Notarfonzo, Psychologist IE Report dated March 23, 2016 at page 11.

[20] As I have found the applicant it not entitled to the benefits in dispute, therefore no interest or award is payable and the application is dismissed.

Released: September 28, 2018



Sandeep Johal, Adjudicator