

**LICENCE APPEAL
TRIBUNAL**

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



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

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

Citation: T.T.L.T. v. Aviva General Insurance Company 2020 ONLAT 18-011379/AABS

Tribunal File Number: 18-011379/AABS

In the matter of an Application pursuant to subsection 280(2) of the *Insurance Act*, R.S.O. 1990, c. I.8., in relation to statutory accident benefits.

Between:

T.T.L.T.

Applicant

and

Aviva General Insurance Company

Respondent

DECISION

ADJUDICATOR:

Patricia McQuaid, Vice-Chair

APPEARANCES:

For the Applicant:

Jessie V. Tran, Paralegal

For the Respondent:

Kristofer Angle, Counsel

HEARD In Writing:

January 13, 2020

OVERVIEW

- [1] T.T.L.T. (the "applicant") was injured in an automobile accident on **November 30, 2016** and sought benefits from Aviva General Insurance Company (the "respondent") pursuant to the *Statutory Accident Benefits Schedule - Effective September 1, 2010*¹ ("*Schedule*"). The applicant applied to the Licence Appeal Tribunal - Automobile Accident Benefits Service when the respondent denied her claim for benefits on the basis that the treatment plans and expenses in dispute are neither reasonable nor necessary.
- [2] When the application was submitted to this Tribunal, one of the issues listed was whether the applicant sustained predominantly minor injuries as defined under the *Schedule*. On February 11, 2020, the parties advised the Tribunal that the respondent had agreed to remove the applicant from the Minor Injury Guideline (the "MIG"). In addition, I note that since the application was filed, a disputed treatment plan, social work assessment and the cost of a disability certificate have been withdrawn by the applicant or approved by the respondent.

ISSUES TO BE DECIDED

- [3] The issues to be decided by me are as follows:
- i. Is the applicant entitled to a medical benefit for \$1250 for massage and chiropractic therapy provided by Pain Rehabilitation Clinic as set out in a treatment and assessment plan dated September 5, 2017 and denied by the respondent on September 18, 2017?
 - ii. Is the applicant entitled to a medical benefit for \$2600 for massage and chiropractic therapy provided by Pain Rehabilitation Clinic as set out in a treatment and assessment plan dated May 24, 2018 and denied by the respondent on June 7, 2018?
 - iii. Is the applicant entitled to a medical benefit for \$2600 for physiotherapy services provided by Pain Rehabilitation Clinic as set out in a treatment and assessment plan dated August 14, 2018 and denied by the respondent on August 14, 2018?
 - iv. Is the applicant entitled to the cost of an examination in the amount of \$1500 for a functional abilities evaluation provided by Pain Rehabilitation

¹ O. Reg. 34/10.

Clinic as set out in a treatment and assessment plan dated May 24, 2018 and denied by the respondent on June 7, 2018?

- v. Is the applicant entitled to the cost of a disability certificate (OCF-3) dated July 25, 2017 in the amount of \$200 provided by Pain Rehabilitation Clinic and denied by the respondent on August 10, 2017?
- vi. Is the applicant entitled to the cost of a disability certificate (OCF-3) dated May 16, 2018 in the amount of \$200 and denied by the respondent on June 14, 2018?
- vii. Is the applicant entitled to interest on any overdue payment of benefits?

RESULT

- [4] Based on the totality of the evidence before me and for the reasons that follow, I find:
- i. The applicant is entitled to the medical benefits in dispute for chiropractic and massage therapy in the amount of \$1250 and \$2600 and physiotherapy services in the amount of \$2600;
 - ii. The applicant is entitled to interest in accordance with the *Schedule* for any overdue payments of the above medical benefits;
 - iii. The applicant is not entitled to the cost of the examination for the functional abilities evaluation in the amount of \$1500; and
 - iv. The applicant is not entitled to the cost of the two disability certificates, each in the amount of \$200.

ANALYSIS

- [5] On November 30, 2016, the applicant was the front seat passenger in a vehicle driven by her nephew. Another vehicle collided into the passenger side of their vehicle. The applicant was taken to Trillium Health Partners, Mississauga Hospital, by ambulance. She was diagnosed with musculoskeletal chest pain, prescribed pain medication and discharged. The applicant saw her family doctor on December 5, 2016 at which time she complained of chest, back and neck pain related to the motor vehicle accident.

- [6] It is a well-established principle that an applicant has the onus of proving on a balance of probabilities that the disputed expenses are reasonable and necessary. I will review the three treatment plans together through that lens.

ISSUES 1, 2 and 3: Is the applicant entitled to the medical benefits for massage and chiropractic therapy of \$1250 and \$2600 and physiotherapy services of \$2600 provided by Pain Rehabilitation Clinic in the treatment plans dated September 5, 2017, May 24 and August 14, 2018?

- [7] The applicant has provided records of her visits to her family doctor, which document her reported injuries. As noted above, the applicant first saw her family doctor on December 5, 2016, at which time Dr. Hang recommended massage and physiotherapy treatment and told her to follow up if she felt worse. The applicant saw Dr. Hang again on December 30, 2016. Dr. Hang noted chest wall pain, shoulder pain and neck sprain, and prescribed massage therapy for the soft tissue sprain resulting from the accident. On January 15, 2017, Dr. Hang noted that the applicant was complaining of worse chest wall pain and right shoulder pain if she had to push her right arm and right hand repetitively in her work as a nail technician. She also noted that the applicant did not want to be off from her job. Dr. Hang noted that she had a long discussion with the applicant about healing time for muscle sprain, work modification and massage therapy. On January 24, 2017, Dr. Hang noted that the applicant had chronic right chest wall pain and right shoulder pain with heavy lifting or using her right arm and right hand repetitively since the accident.²
- [8] The applicant has pursued treatment for these injuries. The applicant's submissions include the record of her attendance at the Pain Rehabilitation Clinic. She attended 45 times between February 1, 2017 and July 17, 2019.³ It is a reasonable inference that the attendances from early 2017 flowed from the recommendation of Dr. Hang as noted above. In the first of the treatment plans, Dr. Bui, a chiropractor, recommended rehabilitation treatment to aid the applicant's recovery of her shoulder joint, and thoracic, lumbar and cervical spine. The goals were stated as pain reduction, increased range of motion and an increase in strength.⁴ Seven treatment sessions were recommended and the attendance record shows, for example, that the applicant attended on seven occasions between August 30 and October 17, 2017, attendances which by reasonable inference were further to that plan.

² Applicant's submissions, Tabs 5-8, Clinical notes of Dr. Hang.

³ Applicant's submissions, Tab 9, Pain Rehabilitation Clinic sign in sheets.

⁴ Applicant's submissions, Tab 14, OCF 18 from the Pain Rehabilitation Clinic.

- [9] Reviewing the three treatment plans, it is apparent that they were formulated to address the continuing post-accident complaints noted by Dr. Hang. At her August 11, 2017 visit to Dr. Hang, the applicant still complained of pain in her right chest. The treatment modalities and objectives are consistent across each plan and, as apparent from the attendance records, the applicant continued to attend for treatment.
- [10] The applicant attended a functional abilities evaluation with Dr. Bui in May 2018. Entitlement to the cost of that examination will be addressed below; however, at the evaluation, the applicant stated that treatments were helping to alleviate some of the pain she was experiencing on a daily basis and that she wanted to continue the treatments.⁵
- [11] Based on the evidence provided in the clinical notes of Dr. Hang, as well as the applicant's statements to Dr. Bui in May 2018, I find the applicant's reports of post-accident injuries and pain and the benefit of treatment to be consistent, credible and ongoing and, therefore, that the disputed treatment plans are reasonable and necessary.
- [12] In assessing the reasonableness and necessity of the treatments, I have also considered the report of Dr. Tu, who assessed the applicant in August 2019, at the insurer's request.⁶ Dr. Tu's primary focus appears to have been on an assessment of whether the applicant fell within the MIG, which seems to have informed her overall assessment, including the need for the treatment plans. She concluded that the applicant did fall within the MIG, though as noted above, the respondent no longer takes that position. Dr. Tu noted that the applicant was attending for regular therapy about twice a week and stated that the applicant reported to her that her pain symptoms were worsening. Dr. Tu concluded that there was no evidence in the literature for ongoing facility-based therapy 33 months after an uncomplicated strain and soft tissue injury.
- [13] However, what is in issue here is whether the treatment plans were reasonable and necessary, and not whether future treatment is required. The respondent in its submissions stated that, even if the treatment plans are deemed to be reasonable and necessary (which it denies), the applicant has failed to provide any evidence whatsoever that the recommended treatment contained in the disputed treatment plans have been incurred. This assertion is not correct. The attendance sheets that have been provided indicate attendances consistent both

⁵ Applicant's submissions, Tab 1, Functional Abilities Evaluation, Dr. Bui.

⁶ Respondent's submissions, Tab 18, s. 44 Physician Assessment Report.

in number and timing with the treatment plans.⁷ Indeed Dr. Tu's report also supports the conclusion that treatment was being received by the applicant on a regular and ongoing basis and the treatment referenced by Dr. Tu, appears likely to have been further to the treatment plans in issue, based on the evidence before me.

ISSUE 4: Is the applicant entitled to the cost of an examination in the amount of \$1500 for the functional abilities evaluation provided by Pain Rehabilitation Clinic dated May 18, 2018?

- [14] This assessment by Dr. Bui was conducted on May 16, 2018 and submitted to the respondent on May 28, 2018.⁸ My review of the assessment shows it to be, to great extent, reiterative of the prior evaluations of the applicant by Dr. Bui and Dr. Rastogi. Dr. Bui did, as part of his conclusion, opine that the applicant could not be treated within the MIG. There was no change of any note indicated, and he concluded that she should continue with her ongoing and active and passive rehabilitation program.
- [15] There is insufficient evidence before me to support a finding that this evaluation was reasonable or necessary in order for the applicant and her insurer to understand the level and nature of her impairment. That was, at this point, already well-documented.
- [16] The respondent submits, in any event, it is not liable to pay this expense because it was incurred before the OCF-18 was submitted. The evaluation occurred on May 16, 2018 and the OCF-18 bears a date of submission to the insurer of May 24, 2018, eight days after the evaluation was done.⁹ The respondent cites s. 38(2) of the *Schedule*, which states that an insurer is not liable to pay an expense in respect of an examination or assessment that was incurred before the insured submits a treatment and assessment plan. There are exceptions listed in the section; however, I agree with the respondent that there is no evidence that an exception applies on these facts. Therefore, even if I had not found that this evaluation was neither reasonable or necessary, I would conclude that the respondent is not liable to pay this expense by virtue of s. 38(2).

⁷ *Supra* note 3.

⁸ *Supra* note 5.

⁹ Respondent's submissions, Tab 30, OCF-18.

ISSUES 5 and 6: Is the applicant entitled to the cost of the disability certificates dated July 25, 2017 and May 16, 2018, each in the amount of \$200?

- [17] I find that the applicant is not entitled to the cost of these disability certificates. The respondent did pay for the initial OCF-3 dated February 1, 2017. I agree with the applicant's submission that a disability certificate is the document by which an applicant claims a specific benefit, and it may be required to notify or update the insurer about an applicant's injuries.¹⁰ However, here, there is no convincing evidence before me that the applicant's injuries changed to any extent such that it was necessary to notify the respondent of new injuries or impairments. There is no evidence that the respondent requested any additional OCF-3 nor were they required.¹¹ A review of these two disability certificates indicates that they do not add in any appreciable way to the existing information already on file regarding the applicant's injuries and impairments. The respondent is not liable to pay these expenses.

ISSUE 7: Interest

- [18] Having decided that the treatments plans were reasonable and necessary, the applicant is entitled to interest on these medical benefits in accordance with the *Schedule*.

ORDER

- [19] For the reasons outlined above, I find that the applicant is entitled to:
- i. a medical benefit for \$1250 for massage and chiropractic therapy provided by Pain Rehabilitation Clinic as set out in a treatment and assessment plan dated September 5, 2017
 - ii. a medical benefit for \$2600 for massage and chiropractic therapy provided by Pain Rehabilitation Clinic as set out in a treatment and assessment plan dated May 24, 2018
 - iii. a medical benefit for \$2600 for physiotherapy services provided by Pain Rehabilitation Clinic as set out in a treatment and assessment plan dated August 14, 2018
 - iv. interest in accordance with the *Schedule* on the medical benefits set out above

¹⁰ *Applicant v. Wawanese Mutual Insurance*, 2018 CanLII 83505 (ONLAT).

¹¹ *A.K. v. Aviva Insurance Canada*, 2018 CanLII 39477 (ONLAT).

[20] Also, for the reasons outlined above, I find that the applicant is not entitled to:

- i. the cost of an examination in the amount of \$1500 for a functional abilities evaluation provided by Pain Rehabilitation Clinic as set out in a treatment and assessment plan dated May 24, 2018
- ii. the cost of a disability certificate (OCF-3) dated July 25, 2017 in the amount of \$200 provided by Pain Rehabilitation Clinic
- iii. the cost of a disability certificate (OCF-3) dated May 16, 2018 in the amount of \$200

Released: March 23, 2020



Patricia McQuaid
Vice-Chair