



**Citation: Doyle v. Pembridge Insurance Company, 2023 ONLAT 21-005213/AABS**

**Licence Appeal Tribunal File Number: 21-005213/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:

**Susan Doyle**

**Applicant**

and

**Pembridge Insurance Company**

**Respondent**

**DECISION**

**ADJUDICATOR: Kate Grieves**

**APPEARANCES:**

For the Applicant: Charles Gluckstein, Counsel

For the Respondent: Ryan Kirshenblatt, Counsel

**HEARD: By Way of Written Submissions**

## OVERVIEW

- [1] Susan Doyle, the Applicant, was involved in an automobile accident on September 2, 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 Pembridge Insurance Company, the Respondent, 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 a medical benefit in the amount of \$4,080.31 for occupational therapy services in a treatment plan submitted January 9, 2021?
  - i. Is the Applicant entitled to a medical benefit in the amount of \$1,669.21 for chiropractic services in a treatment plan submitted April 28, 2021?
  - ii. Is the Applicant entitled to a medical benefit in the amount of \$4,746.00 for Botox injections in a treatment plan submitted April 19, 2021?
  - iii. Is the Applicant entitled to interest on any overdue payment of benefits?

## RESULT

- [3] The Applicant is not entitled to the treatment plans in dispute. As there is no overdue payment of benefits, no interest is payable.

## BACKGROUND

- [4] The Applicant was a passenger in a vehicle struck head-on, while traveling on a highway. She hit her head, broke her nose, and experienced amnesia. She also sustained a laceration on her face resulting in nerve damage, rib fractures, a collapsed lung, L5 transverse process fracture and a sacral fracture.
- [5] The Respondent accepted her application for accident benefits, and the Applicant participated in physiotherapy, occupational therapy, and psychotherapy for her injuries. The Applicant took approximately four months off work as an administrative assistant for a wealth management company following the accident and returned around January 2020.

[6] In 2021 a dispute arose regarding the above-noted plans for further treatment.

## **ANALYSIS**

[7] Sections 14 and 15 of the *Schedule* provide that the insurer shall pay medical benefits to, or on behalf of, an insured person so long as the insured person sustains an impairment as a result of an accident, and the medical benefit is a “reasonable and necessary” expense incurred as a result of the accident.

[8] The Applicant bears the onus of proving entitlement to the proposed treatment by proving the OCF-18s are reasonable and necessary on a balance of probabilities

### ***Occupational Therapy Services***

[9] I find the Applicant is not entitled to the plan for occupational therapy services because it is not reasonable and necessary.

[10] The plan at issue was prepared by Ayden Meilleur, occupational therapist. The goals of the proposed occupational therapy treatment included (1) increased participation in driving activities, (2) implementation of sleep hygiene strategies (3) implementation of relaxation strategies, and (4) to improve work productivity.

[11] The Applicant submits that while she has made some progress on these goals, further treatment would provide additional improvement. The Respondent submits that the treatment plan is not reasonable or necessary as she was already able to meet these goals. I agree with the Respondent.

[12] With respect to participating in driving activities, during the Insurer’s Examination (“IE”) Occupational Therapy Assessment with Ms. Oh, on December 12, 2019, the Applicant reported having resumed driving two weeks prior. Ms. Beacock, OT, assessed the Applicant on March 1, 2021 and she reported that she was able to drive without difficulty. No issues with driving were identified by the Applicant’s neurological assessment with Dr. Parekh in his report of May 26, 2021. The Applicant reported no difficulty with driving to Dr. Robinson, orthopedic surgeon, in August 2021.

[13] With respect to sleep hygiene strategies, the Applicant reported to Ms. Beacock that she went to sleep around 11:00pm, would sleep until 1:00 or 2:00am, and was typically able to fall back to sleep and wake between 7:30 and 8:00am. In August 2021 the Applicant also reported to Dr. Robinson that she had recently started on Amitriptyline with good results and a better sleep pattern.

- [14] The third goal of the treatment plan, implementation of at least one relaxation strategy, had already been achieved prior to the submission of this plan. As Ms. Beacock noted in her March 2021 report, the medical documentation indicated that the Applicant had been participating in psychotherapy treatment since March 2020 focusing on this area of need. Psychotherapy progress reports from April 2021 indicate that she participated in sessions developing strategies for coping with pain and managing fatigue.
- [15] With respect to improving her work productivity, before the plan was submitted the Applicant reported that she was already working full-time, from 9:00am to 5:00pm Monday to Friday. The Applicant reported to Ms. Beacock in March 2021 that this time of year was busy at work, but that she was also doing her friends' taxes as well. She reported to Dr. Parekh that she made up for taking sick days by working overtime on other days. I find that the fourth goal of this plan had already been met since the Applicant was able to not only complete her full-time employment but do taxes for her friends as well.
- [16] Overall, I am not persuaded that the treatment plan for further occupational therapy sessions was reasonable or necessary. The goals of the treatment plan had already largely been met.

### ***Chiropractic Services***

- [17] I find the treatment plan submitted on April 28, 2021 for chiropractic services is not reasonable or necessary. This treatment plan alone is not compelling evidence in support of the proposed treatment. The evidence does not support how the proposed treatment is reasonable and necessary to address the physical impairments.
- [18] The treatment plan in the amount of \$1,669.21 was prepared by Ms. A. Grube, physiotherapist, and Dr. D. Chambers, chiropractor, and proposed 26 sessions of physiotherapy, chiropractic, and massage therapy. The stated goals of the plan were pain reduction, increased range of motion, return to activities of normal living and pre-accident work activities. The Applicant submits that she experienced persistent headaches since the accident, and that massage therapy and other related services had been helpful in managing and relieving pain.
- [19] The psychological progress report dated April 2021 indicates that the Applicant reported having largely recovered from her physical injuries, other than headaches. She reported independence with her activities of daily living and having returned to work. The Applicant reported to Ms. Beacock at the March 15,

2021 OT assessment that she felt well physically, and that her primary concern was headaches.

- [20] In the neurological report by Dr. Parekh, dated May 26, 2021, the Applicant reported ongoing headaches, numbness on the left side of her forehead, neck pain and stiffness about two days a week, and tingling in her right hand. The Applicant was independent with her personal care, driving, meal preparation, shopping, housework, and had returned to work full time. Dr. Parekh made no recommendations for the physical treatments proposed – he made recommendations for limiting her current use of analgesics and suggested she implement Amitriptyline or Topiramate. He also suggested referral to a pain specialist or neurologist for management of her headaches.
- [21] The Applicant’s submissions do not direct me to any other evidence that address the need for further physiotherapy, chiropractic, or massage therapy treatment.
- [22] I place weight upon the Respondent’s insurer’s examination assessments. Orthopaedic surgeon, Dr. Robinson, examined the Applicant on August 23, 2021 at which time she reported ongoing headaches, and occasional mild discomfort at the base of her neck that she did not feel was significant. She further reported that her other musculoskeletal injuries had healed with no significant ongoing symptoms. Dr. Robinson opined that the Applicant’s headaches were unlikely to be cervicogenic in nature. I note also that both Ms. Beacock and Dr. Robinson found the Applicant’s ranges of motion to be within normal limits. To the neurological assessor, Dr. N. Yahmad, the Applicant reported complaints of ongoing neck pain and headaches, and that the headaches were better with taking Rizatriptan. On examination, there was no significant neurological impairment. He suggested she obtain a nerve conduction study for the sake of completeness.
- [23] While I do not dispute that the Applicant may still experience headaches as a result of her accident-related injuries, I have been provided little compelling evidence to demonstrate that the Applicant will obtain any therapeutic benefit from additional facility-based treatment for her physical accident-related impairments.
- [24] Having considered the totality of the evidence provided, I am not persuaded on a balance of probabilities that the plan for further chiropractic services is reasonable and necessary, pursuant to the *Schedule*.

### ***Botox Injections***

- [25] I find that the applicant is not entitled to this treatment plan because the Applicant has not provided sufficient evidence to meet her burden of proof that it is reasonable and necessary.
- [26] According to the occupational therapist's notes, it appears that the treatment plan for Botox injections was made at the suggestion of the Applicant's lawyer. A referral was then made to HeadWay Clinic, and Ashley May, social worker, prepared a report dated April 9, 2021, in which she suggested that the Applicant receive Botox injections to help with her headaches/migraines. Not only was the treatment plan recommended by a social worker without the necessary qualifications, the medical evidence also does not support that Botox injections were reasonable or necessary.
- [27] The Applicant underwent a s. 25 neurological assessment with Dr. Parekh, neurologist. In the report dated May 26, 2021, Dr. Parekh determined that she was suffering from persistent headache attributed to traumatic injury to the head, with probable superimposed medication overuse headache. With respect to treatment, he recommended that she limit her use of current analgesics (Ibuprofen, Rizatriptan and Percocet), use nutraceuticals (Riboflavin, Magnesium Citrate, and Coenzyme Q10), and implement either Topiramate or Amitriptyline before resorting to Botox.
- [28] Therefore, I find the Applicant is not entitled to this treatment plan, because she has not provided sufficient evidence to prove that it was reasonable and necessary.

### ***Interest***

- [29] Given that there are no overdue payments, no interest is payable.

### **CONCLUSION AND ORDER**

- [30] For the reasons outlined above, the Applicant is not entitled to the three treatment plans in dispute. As there are no overdue payment, no interest is payable. The Applicant's claim is dismissed.

**Released:** June 28, 2023

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**Kate Grieves  
Adjudicator**