



Citation: Ho v. Allstate Insurance Company of Canada, 2025 ONLAT 22-013224/AABS

Licence Appeal Tribunal File Number: 22-013224/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:

Bang Ho

Applicant

and

Allstate Insurance Company of Canada

Respondent

DECISION

ADJUDICATOR: Robert Rock

APPEARANCES:

For the Applicant: Aylina Dhanji, Counsel

For the Respondent: Ryan Kirshenblatt, Counsel

HEARD: By way of written hearing

OVERVIEW

- [1] Bang Ho, the applicant, was involved in an automobile accident on June 18, 2021, 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, Allstate Insurance Company of Canada, 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 non-earner benefit (NEB) of \$185.00 per week from to July 17, 2021, to date and ongoing?
 - ii. Is the applicant entitled to \$3,989.56 for physiotherapy services, proposed by Total Recovery Rehab in a treatment plan/OCF-18 (plan) dated September 8, 2021?
 - iii. Is the applicant entitled to \$1,626.56 (\$3,989.88 less \$2,355.32 approved) for psychological services, proposed by Somatic Assessments & Treatment Clinic in a plan dated February 28, 2022?
 - iv. Is the applicant entitled to \$3,981.88 for psychological services, proposed by Somatic Assessments & Treatment Clinic in a plan dated June 22, 2022?
 - v. Is the applicant entitled to \$10.11 for medication, submitted on a claim form (OCF-6) dated August 8, 2022?
 - vi. Is the applicant entitled to \$2,200.00 for an attendant care assessment, proposed by Somatic Assessments & Treatment Clinic in a treatment plan dated February 7, 2022?
 - 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 an NEB.
- [4] The applicant has not proven on a balance of probabilities that he is entitled to any of the treatment plans or the OCF-6 in question.
- [5] As no payments are owing, no interest is due.
- [6] As no payment was unreasonably withheld, no award is due.

ANALYSIS

THE NON-EARNER BENEFIT (NEB)

- [7] I find that the applicant has not proven on a balance of probabilities that he is entitled to an NEB, as he has not proven he suffers from a complete inability to carry on a normal life as a result of the accident.
- [8] Section 12(1) of the *Schedule* provides that an insurer shall pay an NEB to an insured person who sustains an impairment because of the accident if the insured person suffers a complete inability to carry on a normal life as a result of and within 104 weeks after the accident. Section 3(7)(a) defines a “complete inability to carry on a normal life” as “an impairment that continuously prevents the person from engaging in substantially all of the activities in which the person ordinarily engaged before the accident.” The Court of Appeal set out the guiding principles for NEB entitlement in *Heath v. Economical Mut. Ins. Co.*, 2009 ONCA 391, which, generally, focuses on a comparison of the applicant’s pre- and post-accident activities.
- [9] To support his entitlement to an NEB, the applicant relies on an OCF-3 completed by Dr. Afifi on June 19, 2021, an OCF-18 completed by Dr. Afifi on August 18, 2021, an OCF-18 completed by Dr. Afifi on September 8, 2021, a psychological assessment by Dr. McDowall completed on February 13, 2022, and an OCF-12 completed on July 19, 2021.
- [10] I find that the OCF-3 created by Dr. Afifi indicates that the applicant suffers a complete ability to carry on a normal life. Dr. Afifi also indicates that the applicant’s injuries are affecting most of his activities of daily living. However, in the OCF-3, Dr. Afifi does not detail how he came to that determination, nor if any testing was completed in ascertaining that opinion.

- [11] I find that both OCF-18s completed by Dr. Afifi note that the applicant is having difficulties sleeping and with some housekeeping tasks, decreased sitting/standing and driving tolerance, and an inability to do tasks requiring heavy lifting or bending/twisting. Neither of the OCF-18s support the applicant's complete inability to carry on a normal life as they note difficulties or decreased tolerance, not inability.
- [12] I find that the psychological assessment by Dr. McDowall indicates that the applicant has reduced abilities, but not a complete inability to carry on a normal life. The report indicates that the applicant is unable to participate in many of the activities he once enjoyed, or that he derives little pleasure from participating in them. The report does not indicate that he has a complete inability to participate in them. Similarly with daily functioning, the report indicated these functions were adversely affected, but do not result in a complete inability to carry on a normal life.
- [13] I find that the OCF-12 does not support a complete inability to carry on a normal life. In the self-ranking of activities, the applicant indicated he could complete most activities either partially or with help. The applicant only indicated highly physical activities as unable to complete. Additionally, in the other information section, the applicant indicates that he has cut down on his social interactions, not eliminated them.
- [14] The respondent relies on a s. 44 psychiatry report completed by Dr. Cavaliere on December 2, 2021, and a psychological assessment report by Dr. Smith, psychologist, on January 11, 2022.
- [15] I find that the psychiatry report by Dr. Cavaliere does not support a complete inability to carry on a normal life. In the psychiatry report, the applicant indicates that he has improved 50% since the accident. Additionally, the applicant reports he can complete most of his normal housekeeping and home maintenance tasks, at a reduced frequency. Additionally, the applicant reports still socializing with his family. The finding of the report was that the applicant does not suffer a complete inability to carry on a normal life.
- [16] I find that the psychological assessment by Dr. Smith suggests that the applicant has suffered psychological distress from the accident, but he does not suffer a complete inability to carry on a normal life. In the report, the applicant indicates that he has some anxiety while driving, but he does not avoid driving entirely. The reporting on activities of normal living outlined in the assessment do not support a complete inability to carry on a normal life. The applicant reports an ability to make breakfast, perform chores, wash dishes, and take out the

garbage. He also reports getting groceries a few times a week and does most of the cooking.

- [17] In reviewing the evidence, I find that the applicant has not proven on a balance of probabilities that he suffers a complete inability to carry on a normal life. Section 3(7)(a) defines a “complete inability to carry on a normal life” as “an impairment that continuously prevents the person from engaging in substantially all of the activities in which the person ordinarily engaged before the accident.” The applicant’s self reporting in the OCF-12, and the reporting taken from the psychiatry report and psychological assessment, all speak to the applicant not being able to engage in activities that he had engaged in prior to the accident. However, in all three of these documents, the applicant consistently endorses that he has some diminished capabilities regarding his daily activities, but not a complete inability to carry on a normal life” as “an impairment that continuously prevents the person from engaging in substantially all of the activities in which the person ordinarily engaged before the accident.
- [18] The applicant has not proven on a balance of probabilities that he sustained a complete inability to carry on a normal life, and, as such, he is not entitled to an NEB.

Treatment Plans

- [19] 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 physiotherapy services.

- [20] I find that the applicant has not proven on a balance of probabilities that he is entitled to the physiotherapy services treatment plan dated September 8, 2021.
- [21] The goals of the treatment plan are pain reduction, increased range of motion, increase in strength, and return to activities of normal living.
- [22] The treatment plan includes physiotherapy, active therapy, massage therapy, travel assistance, and reporting.
- [23] The applicant relies on pain reporting in the clinical notes and records (CNRs) of Sunnybrook Hospital and Dr. Mah, as well as pain reporting in the psychological

assessment of Dr. McDowall to demonstrate that the plan is reasonable and necessary.

- [24] Reviewing the CNRs of Sunnybrook Hospital, I did not find evidence in the medical imaging or reporting that would support the physiotherapy services as reasonable and necessary. The medical imaging undertaken included CT scans of the chest, abdomen and pelvis, whole spine, brain, and both knees. An orthopaedic surgeon completed a second review of all imaging and noted “no injuries identified clinically or radiographically” on June 18, 2021.
- [25] The CNRs of Dr. Mah were not included in the submitted evidence for my review.
- [26] I place little weight on the psychological report by Dr. McDowall. While this report does include pain reporting, no physical examination was undertaken to substantiate the severity of the pain or that physiotherapy was reasonable and necessary.
- [27] The respondent relies on the physiatry report by Dr. Cavaliere which concluded that the applicant suffers minor physical injuries as defined by the *Minor Injury Guideline*. Dr. Cavaliere noted that he did not believe the applicant had yet achieved maximum medical recovery but noted that this conclusion was related the amount of time post injury rather than the severity of the injuries, and that the applicant’s prognosis was excellent for recovery. The report concluded that no further facility-based treatments were required, and the remaining recovery could be completed with home-based exercises.
- [28] I find that the applicant has not proven on a balance of probabilities that the treatment plan for physiotherapy is reasonable or necessary. I placed more weight on the physiatry report completed by Dr. Cavaliere, as it included a thorough physical examination. This conclusion was supported by the CNRs of Sunnybrook Hospital that reported no injuries identified clinically or radiographically.
- [29] I find that the applicant has not proven on a balance of probabilities that the treatment plan for physiotherapy is reasonable and necessary.

b) The applicant is not entitled to the outstanding amount for psychological services.

- [30] I find that the applicant has not proven, on a balance of probabilities, the reasonableness or necessity of the outstanding amount for psychological services.

- [31] The goals of the treatment plan are to reduce negative thought patterns and return to activities of normal living.
- [32] The treatment plan included therapy sessions, documentation, and transportation.
- [33] The outstanding amount of \$1,626.56 represents a difference in the length of the therapy sessions between one-and-a-half-hour sessions versus one-hour sessions, and transportation to the sessions.
- [34] The applicant makes no submissions to address the discrepancies in the outstanding amount of the psychological services. The applicant instead relies on s. 38(11) contending that the respondent did not provide their refusal in the appropriate timeframes. The *Schedule* states:

(11) If the insurer fails to give a notice in accordance with subsection (8) in connection with a treatment and assessment plan, the following rules apply:

1) The insurer is prohibited from taking the position that the insured person has an impairment to which the Minor Injury Guideline applies.

2) The insurer shall pay for all goods, services, assessments and examinations described in the treatment and assessment plan that relate to the period starting on the 11th business day after the day the insurer received the application and ending on the day the insurer gives a notice described in subsection (8). O. Reg. 34/10, s. 38 (11).

- [35] The respondent relies on a psychological assessment completed by Dr. Smith, psychologist. In his report, Dr. Smith recommends a course of 12 individual weekly one-hour sessions. Dr. Smith did not note approval for transportation to and from those sessions, as the applicant reported that he was driving during the assessment.
- [36] In addition, the respondent relies on [Thorner v Aviva Insurance Company of Canada, 2023 CanLII 9244 \(ON LAT\)](#) to dispute payment of the treatment plan based on its failure to meet the 10-day notice period. The respondent admits that it did not provide notice of the denial until March 15, 2022, which was 11 days after the OCF-18 was submitted. In the case that the respondent relies on, the adjudicator found “only those goods and services that are incurred during the shall-pay period by an applicant are payable by an insurer following a noncompliant denial”. The respondent submits that no treatments were provided on March 15, 2022, so they are not liable to pay for the treatment plan.

[37] As the only argument the applicant made on the outstanding balance for psychological services is regarding s. 38(11), the applicant has not met their burden to demonstrate that the remaining balance is reasonable and necessary. The respondent is correct that only costs incurred during the “shall-pay period” are owed and that applicant has not shown that he incurred any costs during that period.

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

c) The applicant is not entitled to the treatment plan for psychological services.

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

[40] The goals of the treatment plan are to reduce negative thought patterns and return to activities of normal living.

[41] The treatment plan included six therapy sessions, documentation, and transportation.

[42] The applicant makes no submissions as to why additional psychological services were reasonable and necessary beyond the partially approved psychological treatment plan. The applicant instead relies on s. 38(11) of the *Schedule*, arguing what???

[43] The respondent asserts that this treatment plan was not reasonable and necessary, as it had already partially funded a treatment plan for psychotherapy, and the applicant has not provided any compelling documentation or progress reports from the psychologist to justify further treatment.

[44] In addition, the respondent denies non-compliance with s. 38(8). It asserts that it responded to the applicant on the 10th business day, not the 11th. The treatment plan was submitted on June 22, 2022. In the calculation of business days, July 1, 2022, would not be considered a business day, meaning that the 10th business day would be July 7, 2022, not July 6, so it is compliant with s.38(8).

[45] I find that the respondent was compliant with s. 38(8) based on July 1st being a national holiday in Canada and not a business day.

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

d) The applicant is not entitled to the attendant care assessment.

- [47] The applicant has not proven on a balance of probabilities that the attendant care assessment is reasonable and necessary.
- [48] The applicant argues that, based on the medical evidence provided, the attendant care assessment is reasonable and necessary. The applicant does not direct me to which elements of the submitted evidence support the attendant care as reasonable and necessary.
- [49] I find that on a review of the evidence submitted, I do not find any evidence that supports or mentions an attendant care assessment as reasonable or necessary.
- [50] The respondent relies on the psychiatry report by Dr. Cavaliere and the psychological assessment by Dr. Smith. In both, the applicant reports being independent with his personal care.
- [51] In review of the evidence, I am not directed to evidence that supports the attendant care assessment as reasonable and necessary. The reports by Dr. Cavaliere and Dr. Smith contain reporting by the applicant that he is independent with his personal care. Conversely, the applicant has not submitted any medical evidence that directly supports the need for the attendant care assessment.
- [52] The applicant has not proven on a balance of probabilities that the attendant care assessment is reasonable and necessary.

e) The applicant is not entitled to the OCF-6 for medication.

- [53] The applicant has not proven on a balance of probabilities that he is entitled to the OCF-6 for medication.
- [54] The OCF-6 is for a prescription of Naproxen.
- [55] The applicant argues that the submitted prescription expense does not represent a duplicate prescription, but rather represents two separate prescriptions. The applicant also argues entitlement on the basis of non-compliance with s.38(8) and (11). The applicant indicates that the OCF-6 was submitted on August 8, 2022, but not denied until September 13, 2022.
- [56] The respondent argues that this receipt represents a duplicate of the submitted medication.

[57] Reviewing the two prescription receipts submitted by the applicant, I find they are for the same medication, filled by the same pharmacy, on the same day, for the same cost. While there appears to be two separate signatures at the bottom of the receipts by the authorized pharmacy agent, I focused on the prescription number at the top of the receipt, which is the same, to determine that this is a duplicate receipt.

[58] The applicant has not proven on a balance of probabilities that he is entitled to the OCF-6 for medication.

Interest

[59] Interest applies on the payment of any overdue benefits pursuant to s. 51 of the *Schedule*. As no payments are overdue, no interest is owing.

Award

[60] 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 are payable, no award is due.

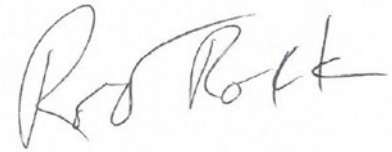
ORDER

[61] For the above reasons, I find:

- i. The applicant is not entitled to an NEB.
- ii. The applicant is not entitled to the various treatment plans or OCF-6 in dispute.

- iv. As no payments are owing, no interest is due.
- v. As no payments were unreasonably withheld, no award is due.
- vi. The application is dismissed.

Released: February 5, 2025

A handwritten signature in black ink that reads "Robert Rock". The signature is written in a cursive, flowing style.

Robert Rock
Adjudicator