

**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**



**Citation: L.J. vs. Allstate Insurance Company, 2019 ONLAT 18-007542/AABS**

**Tribunal File Number: 18-007542/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:

**L.J.**

**Applicant**

**and**

**Allstate Insurance Company**

**Respondent**

**DECISION**

**ADJUDICATOR: Lindsay Lake**

**APPEARANCES:**

For the Applicant: Kateryna Vlada, Paralegal

For the Respondent: Ryan Kirshenblatt, Counsel

**HEARD IN WRITING: May 27, 2019**

## OVERVIEW

- [1] The applicant, L.J., was injured in an automobile accident on November 23, 2014 (the “accident”) and sought benefits pursuant to the *Statutory Accident Benefits Schedule – Effective September 1, 2010* (the “Schedule”) from Allstate Insurance Company (“Allstate”), the respondent.
- [2] Allstate denied L.J.’s claim for two treatment plans and, as a result, L.J. submitted an application to the Licence Appeal Tribunal – Automobile Accident Benefits Service (the “Tribunal”).
- [3] A case conference was held on February 14, 2019 and the matter proceeded to a written hearing on May 27, 2019.

## PROCEDURAL ISSUE

- [4] As part of the written hearing, the parties were required to serve and submit their written submissions and evidence on each other, and file same with the Tribunal, according to the schedule outlined in the Tribunal’s February 14, 2019 Order.
- [5] After reviewing the parties’ written submissions and evidence, the treatment and assessment plan (OCF-18) in the amount of \$3,581.24 for psychological treatment submitted on June 4, 2016 was not filed with the Tribunal. As a result, I issued an order requesting submissions from both parties on whether or not L.J. should be allowed to submit the missing OCF-18 as evidence for the hearing. I also requested L.J. to submit a copy of the missing OCF-18 to the Tribunal.
- [6] On August 26, 2019, L.J. submitted an OCF-18 dated July 23, 2016 in the amount of \$3,581.24 for psychotherapy treatment. L.J.’s representative also sought clarification on the Tribunal’s order requesting submissions and the missing document noting that the July 23, 2016 OCF-18 “was never the evidence that neither party intended to rely on.”
- [7] On August 28, 2019, L.J.’s representative provided a further explanation to the Tribunal confirming that the July 23, 2016 OCF-18 for psychotherapy is the basis forming the dispute between the parties for the second issue in dispute outlined in the Tribunal’s February 14, 2019 Order.
- [8] As Allstate consented to L.J. filing the July 23, 2016 OCF-18 as evidence in this hearing, I order that the July 23, 2016 OCF-18 forms part of the evidence in this matter. Furthermore, as a result of the submission of the July 23, 2016 OCF-18, the issues in dispute have been amended from the Tribunal’s February 14, 2019 Order and are now correctly identified in paragraph [9] below.

## ISSUES IN DISPUTE

[9] The following issues are to be decided:

1. Is L.J. entitled to receive a medical benefit in the amount of \$3,581.24 for psychotherapy services recommended by Promed Rehabilitation Clinic in a treatment plan dated July 23, 2016, and denied by Allstate on August 11, 2016?
2. Is L.J. entitled to payment for the cost of an examination in the amount of \$1,765.20 for a chronic pain assessment, recommended by Promed Rehabilitation Clinic in a treatment plan dated June 9, 2016, and denied by Allstate on June 23, 2016?
3. Is L.J. entitled to interest on any overdue payment of benefits?

## RESULT

[10] I find that L.J. has proven on a balance of probabilities that the proposed treatment plan for psychotherapy is reasonable and necessary. As a result, she is entitled to this treatment plan along with interest in the prescribed amount under s. 51 of the *Schedule*. L.J. is not entitled to the treatment plan for the chronic pain assessment.

## ANALYSIS

### The Treatment Plans

- [11] Sections 14 and 15 of the *Schedule* provide that the insurer shall pay medical benefits to, or on behalf of, an applicant so long as the applicant sustains an impairment as a result of an accident and the medical benefit is a reasonable and necessary expense incurred by the applicant as a result of the accident.
- [12] L.J. bears the onus of proving her entitlement to the claimed psychotherapy services and chronic pain assessment by proving they are both reasonable and necessary on a balance of probabilities.<sup>1</sup>

#### a) *Psychotherapy Services*

- [13] The July 23, 2016 OCF-18 sought funding for psychotherapy services, educational material/handouts, progress report, consultation with others and

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<sup>1</sup> *Scarlett v. Belair Insurance*, 2015 ONSC 3635 (CanLII) at paras. 20-24.

completion of the OCF-18. This OCF-18 was completed by Dr. Romeo Vitelli, psychologist, and noted the following under the injury and sequelae information: reaction to severe stress and adjustment disorders; adjustment disorders; state of emotional shock and stress, unspecified; irritability and anger; malaise and fatigue; other sleep disorders; and headache. The goals of the treatment plan were pain reduction and the OCF-18 states, "please refer to the report." There were no attachments or additional pages to this treatment plan.

- [14] Allstate denied this treatment plan by way of an Explanation of Benefits (OCF-9) dated August 11, 2016 following a Psychological Insurer's Examination (IE) that occurred on August 3, 2016. L.J. was notified at this time that the OCF-18 would be reviewed under s. 44 of the Schedule by way of a paper review.
- [15] L.J. submits that the proposed psychotherapy treatment was previously approved and merely re-submitted by a different facility. L.J. submits that Allstate had previously approved over \$10,000.00 worth of counselling services and that the last approved OCF-18 was not incurred because the previous service provider ceased operating. L.J. submits that a former accident benefit adjuster with Allstate withdrew the last approved treatment plan for counselling and requested L.J. to re-submit it through another service provider. L.J. submits that she did not incur the previously approved psychological sessions with her former provider and that this treatment plan in dispute was merely a transfer of the approved sessions to another facility. L.J. maintains that there was no duplication of services.
- [16] Allstate submits that this OCF-18 was duplicative of a previously approved treatment plan. Allstate submitted a December 7, 2016 OCF-9 in which a series of instructions were given to L.J., including receipt of a written withdrawal of any outstanding psychological services that Allstate approved but were not yet provided by Nicole McCance, L.J.'s former treating psychologist, in order to allow "further consideration" of this treatment plan in dispute. Allstate maintains that L.J. never communicated her withdrawal of the previously approved treatment plan which "handcuffed" Allstate from considering the OCF-18 in dispute to avoid L.J.'s benefits being tied up in duplicative treatment plans.
- [17] In reply, L.J. argues that Allstate is incorrect that it disregarded the request to withdraw the previously approved treatment plan as L.J. was provided with an OCF-9 dated December 16, 2017 which indicated that the approval of a treatment plan in the amount of \$3,062.25 recommended by Nicole McCance, psychologist, had been withdrawn as a result of Nicole McCance not personally providing psychological services to L.J. as L.J. was instead meeting with

unregulated providers. L.J. also submitted correspondence to Allstate that included a request to discuss the withdrawal of approval by Allstate when it had requested L.J. to do so previously.

- [18] I find that Allstate withdrew its approval of a treatment plan in the amount of \$3,062.25 recommended by Nicole McCance on December 16, 2017 via an OCF-9. As a result, I do not agree with Allstate's argument that it was "handcuffed" from considering the OCF-18 in dispute to avoid L.J.'s benefits being tied up in duplicative treatment plans. I also find that L.J. was not required to communicate her withdrawal of the previously approved treatment plan, as argued by Allstate, because Allstate had already withdrawn its approval for same.
- [19] However, I disagree with L.J. that the withdrawal of the previously approved treatment plan, which was never put before the Tribunal, automatically meant that the treatment plan in dispute would be approved by Allstate. At no time in the correspondence before me was this representation made to L.J. In fact, the December 7, 2016 OCF-9 stated that the withdrawal was required in order to allow "further consideration" of the treatment plan in dispute. Therefore, I must consider the reasonableness and necessity of this treatment plan as I do not agree with L.J. that it was merely a transfer of services.
- [20] L.J. submitted an unsigned Psychological Consultation Report dated May 29, 2018 from an assessment of L.J. on June 9, 2016. This report lists the psychologist as Dr. Romeo Vitelli and a psychometrist as Nadira Srosh. In this report, L.J. is diagnosed with Major Depressive Episode, Generalized Anxiety Disorder, Somatoform Disorder and Posttraumatic Stress Disorder. A recommendation is made for 12 psychotherapy sessions with a psychotherapist and a chronic pain assessment. The goal of this course of treatment was to increase L.J.'s functional level to normal life activities.
- [21] I place very little weight on the May 29, 2018 Psychological Consultation Report in determining L.J.'s entitlement to the treatment plan in dispute for several reasons. First, even though the assessment took place on June 9, 2016, the report was not completed until May 29, 2018. As a result, it is unclear when the recommendations contained in the report were made (at the time of the assessment or at the time the report was completed). Second, the report is unsigned. Third, the report was not in existence at the time the treatment plan was submitted to Allstate for consideration and was completed approximately two years later. Fourth, I agree with Allstate that no medical documents were reviewed prior to the assessment being completed. Finally, the report also has

internal inconsistencies. For example, L.J. scored a moderate level of depression and anxiety on the Beck Inventory tests and a below-average range of depression and average range of depression on the P-3 Pain Patient Profile. However, L.J. is diagnosed with *Major* Depressive Episode, Generalized Anxiety Disorder, Somatoform Disorder and Posttraumatic stress. There is no discussion in the report as to how these diagnoses were arrived at given L.J.'s test scores of moderate, below-average and average ranges.

- [22] L.J. relied upon no other evidence in support of the reasonableness and necessity of this treatment plan. Instead, she requests that the Tribunal reject the finding of Dr. Alan Chan, psychologist, in his September 7, 2016 IE Psychology Paper Review Report<sup>2</sup> that the proposed OCF-18 was not reasonable and necessary. Despite conceding that L.J. had an Adjustment Disorder with Anxiety (driving reluctance), Generalized Anxiety Disorder (pre-existing) and Avoidant Personality Traits (pre-existing), Dr. Chan concluded that there was no need for duplication of psychological services that had already been approved. Dr. Chan noted that even though L.J. was previously approved to continue psychological treatment with her existing psychologist on December 29, 2015, she indicated that she had yet to resume treatment as of August 3, 2016. Dr. Chan, however, concluded following his previous August 3, 2016 in-person assessment of L.J. that she would be “at maximal psychological recovery after completion of an approved psychological treatment plan.”<sup>3</sup>
- [23] It is undisputed that L.J. did not receive treatment originally approved under the treatment plan in the amount of \$3,062.25 that was recommended by Nicole McCance. It is also undisputed that Allstate’s approval was only withdrawn as a result of concerns over who was providing services to L.J., not as a result of her need for treatment. Clearly, Dr. Chan diagnosed L.J. with at least one psychological condition, adjustment disorder with anxiety (driving reluctance), that he did not note as “pre-existing” in his report that was created in or about the time that L.J. submitted this treatment plan to Allstate for consideration. Additionally, I find that that Dr. Chan’s report *supports* L.J.’s need for psychological treatment, as he noted that she would only be at maximal psychological recovery *after* completion of further treatment. Furthermore, the only reason that Dr. Chan provided for denying the treatment plan was that it was duplicitous and not for any medical reasons. Primarily as a result of Dr. Chan’s report, I find that L.J. has proven on a balance of probabilities that at the time the

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<sup>2</sup> Document Brief of the Respondent, tab 10.

<sup>3</sup> *Ibid.* at page 5.

OCF-18 was submitted to Allstate that it was both reasonable and necessary. Therefore, L.J. is entitled to this treatment plan.

*b) Chronic Pain Assessment*

- [24] The June 9, 2016 OCF-18 was completed by Vrajesh Modi, physiotherapist, and sought funding for a chronic pain assessment. The goals of the treatment plan were pain reduction, return to activities of normal living and to determine the mechanisms of pain through documentation of pain location, intensity, quality and onset/duration of pain. The functional goal was to gain information regarding L.J.'s physical functioning and coping patterns, course of the injury and response to any previous treatment, prior and/or present complaints regarding impairment and functional limitations, medical history including relevant, prior and concurrent conditions, barriers to recovery or stressors and present supports available. Additionally, the OCF-18 noted that the evaluation of pain is necessary for successful pain management program. L.J.'s injuries are listed as other chronic pain, headache, pain in joint, low back pain, pain in limb, other sleep disorders, reaction to severe stress and adjustment disorders, dizziness and giddiness, malaises and fatigue.
- [25] Allstate initially denied this treatment plan on June 23, 2018 via an OCF-9 in which Allstate provided notice to L.J. that she was required to attend an IE. In fact, L.J. attended three IEs in relation to this treatment plan on August 2, 2016 (orthopaedic in-person examination), August 3, 2016 (psychological in-person examination) and on August 4, 2016 (general practitioner in-person examination). There was a consensus among the three IE assessors that the proposed chronic pain assessment was not reasonable and necessary.
- [26] In support of the proposed chronic pain assessment, L.J. relies upon the clinical notes and records (CNRs) of Dr. Sheldon Turner, L.J.'s family doctor, to demonstrate her ongoing pain complaints. There were only three entries post-accident dated November 15, 2014, December 29, 2014 and January 9, 2015 in the CNRs that noted any accident related complaints. Additionally, the CNRs of Dr. Turner showed no visits between January 13, 2016 and October 19, 2016. Even at these two visits, there is no mention of the accident. A headache is reported on March 24, 2017 with a referral made to a neurologist that states, "new onset [of] severe headaches (my emphasis added)." I agree that there are additional future reports of nausea with headaches, but these complaints in the CNRs are not attributed to the accident. Additionally, L.J. reports ongoing stress with her workplace and anxiety throughout 2017, but again, there is no mention

of the accident. L.J. submits that Dr. Turner has diagnosed her with chronic pain; however, I was not directed to a specific CNR entry reflecting this diagnosis.

- [27] L.J. also submitted CNRs from Heal Sports Medicine Clinic. These CNRs show a large gap in treatment from December 5, 2015 to November 29, 2016, which covers the time that the treatment plan for the chronic pain assessment was submitted to Allstate. Additionally, there were only eight attendances for treatment from October 26, 2015 to December 23, 2016.
- [28] L.J. also relied upon the CNRs from Brampton Physiotherapy Institute. I place little weight on these CNRs as they are dated from November 9, 2017 to December 9, 2017, well after the treatment plan was submitted to Allstate for consideration. Even if I did place weight on these CNRs, they show another large gap in treatment from December 2016 to almost one year later. Further, there is no mention of the accident throughout the CNRs which note injury dates in November and December 2017. Nowhere in the CNRs is the accident date of November 23, 2014 listed as the date of injury.
- [29] Finally, L.J. relies upon the September 21, 2018 Consultation Report by Dr. Mohamed Abunaji. The report, which was dated almost 2 years after the treatment plan was submitted to Allstate, noted that L.J. had onset of headaches since the age of 16 but finds that L.J. has been suffering from chronic persistent headaches for only the last 4 years. Dr. Abunaji states:
- her headaches and the associated clinical features are most consistent with migraine headaches that is *possibly* aggravated by brain concussion in the MVA. The plan is to treat the acute episodes with Aleve and Tylenol. She is advised to take magnesium supplements daily (my emphasis added).
- [30] Dr. Abunaji prescribed medication and counselled L.J. about life style modifications needed for headache management including optimal hydration, regular meals, sleep hygiene, relaxation techniques, etc. Dr. Abunaji also noted that L.J. would be seen for follow-up after 4 months but no further records or reports from Dr. Abunaji were submitted.
- [31] Allstate submits that the chronic pain assessment was neither reasonable nor necessary because there is no persuasive evidence that L.J. suffers from chronic pain. Allstate argues that at the time the treatment plan was submitted, L.J. had already returned to full-time employment, she was not attending her family doctor for any accident-related issues and was not receiving any ongoing physical therapy. Allstate submits that Mr. Modi, in completing the OCF-18, did not take a



fulsome history of L.J.'s condition before recommending the chronic pain assessment as he responded "unknown" to whether or not L.J.'s impairments affect her ability to carry out her tasks of employment even though L.J. returned to work full-time three days after the accident.

- [32] Allstate also relies upon the three in-person IEs that were conducted. In his General Practitioner In-Person IE report dated August 25, 2016,<sup>4</sup> Dr. Gregory Gelman, Family Physician, opined that although L.J. sustained sprain and strain injuries to her cervical and lumbar spine, shoulder girdle musculature and left knee, there was no indication that she required further rehabilitation treatments for her soft tissue injuries.<sup>5</sup> Dr. Gelman recommended L.J. perform a self-directed exercise program.<sup>6</sup>
- [33] In his August 16, 2016 Orthopaedic In-Person IE Report,<sup>7</sup> Dr. Ramunas Saplys, orthopaedic surgeon, opined that as a result of the accident, L.J. sustained soft tissue injuries including musculoligamentous strains to the paracervical and paralumbar structures and a left knee strain. Dr. Saplys opined that the chronic pain assessment was not reasonable or necessary as L.J. already attended approximately 14 months of facility-based treatment and there was no further indication of any accident related musculoskeletal impairment.<sup>8</sup>
- [34] In the August 17, 2016 Psychology In-Person IE Report,<sup>9</sup> Dr. Chan opined that the chronic pain assessment was not reasonable and necessary as a direct result of the injuries sustained in the index accident from a psychological perspective. Dr. Chan noted that although L.J. is reporting difficulties with persistent pain, there do not appear to be significant psychological factors impacting her pain presentation.<sup>10</sup>
- [35] I agree with Allstate that at the time the treatment plan was submitted, L.J. had already returned to full-time employment which is important, as one of the goals of the treatment plan was to return L.J. to activities of daily living. It is unclear from the evidence what activities she had not returned to at the time she sought funding for a chronic pain assessment. Further, I also agree with Allstate that L.J. did not make any accident-related pain complaints to her family doctor and there were large gaps in time in which she was receiving physical therapy. The

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<sup>4</sup> Document Brief of the Respondent, tab 4.

<sup>5</sup> *Ibid.* at page 10.

<sup>6</sup> *Ibid.* at page 12.

<sup>7</sup> Document Brief of the Respondent, tab 5.

<sup>8</sup> *Ibid.* at page 9.

<sup>9</sup> Document Brief of the Respondent, tab 6.

<sup>10</sup> *Ibid.* at page 18.

evidence is also inconsistent regarding L.J.'s headache complaints. For example, the CNRs of L.J.'s family doctor note on March 24, 2017 reports a "new onset" of severe headaches but Dr. Abunaji finds that L.J. has been suffering from "chronic persistent headaches" since 2014. However, no further follow-up reports were provided by Dr. Abunaji and it is unclear if L.J. ever reattended as instructed. Dr. Abunaji also only suggests that L.J.'s headache complaints were *possibly* as a result of the accident.

- [36] In weighing the evidence before me, I am more persuaded by the three IE reports submitted by Allstate that were completed in or about the time the treatment plan was submitted for consideration. As a result, I find that L.J. has failed to prove on a balance of probabilities that the chronic pain assessment was reasonable and necessary and, therefore, she is not entitled to this treatment plan.

### **Interest**

- [37] L.J. is entitled to interest for the treatment plan for psychotherapy services in accordance with s. 51 of the *Schedule*.

### **CONCLUSION**

- [38] For the reasons outlined above, I find:
- (i) L.J. is entitled to the treatment plan for psychotherapy along with interest in the prescribed amount under s. 51 of the *Schedule* as she has proven on a balance of probabilities that the proposed treatment plan is reasonable and necessary. I also find that this treatment plan was not a duplication of services; and
  - (ii) L.J. is not entitled to the treatment plan for the chronic pain assessment as she has failed to prove on a balance of probabilities its reasonableness and necessity.

**Released: October 22, 2019**

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**Lindsay Lake  
Adjudicator**