



**Citation: Bagasin v. Aviva Insurance Company, 2023 ONLAT 20-015409/AABS**

**Licence Appeal Tribunal File Number: 20-015409/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:

**Enard Bagasin**

**Applicant**

and

**Aviva Insurance Company**

**Respondent**

## **DECISION**

**ADJUDICATOR:** Janet Rowsell

**APPEARANCES:**

For the Applicant: Enard Bagasin, Applicant  
Arthur Semko, Paralegal

For the Respondent: Aviva Insurance Company  
Jennifer Cosentino, Counsel

**HEARD:** By way of written submissions

## OVERVIEW

- [1] Enard Bagasin, the applicant, was involved in an automobile accident on February 15, 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 the respondent, Insurer, and applied to the Licence Appeal Tribunal - Automobile Accident Benefits Service (the "Tribunal") for resolution of the dispute.
- [2] The applicant was involved in a rear-end collision. He did not require hospitalization. The applicant attended his family physician, Dr. Rajinder Atwal's office the same day as the accident, where he related experiencing paracervical muscle tenderness, a reduced range of motion in his neck and headache following hitting his head on the headrest. The applicant returned to his family physician to discuss the effects of the accident on February 20, 2019, March 9, 2019, April 30, 2019, June 18, 2019, and July, 29, 2019, in addition to other later dates.
- [3] The applicant held a position at a bakery as a scaler/ mixer at the time of the accident. The applicant's family physician Dr. Rajinder Atwal prepared a report dated February 17, 2021, wherein she described that as a result of the accident the applicant returned to full-time modified lighter duties as he was unable to participate in heavy and repetitive lifting.
- [4] It is agreed by the parties on consent that the issue of an award under section 10 of O. Reg. 664 is withdrawn as an issue by the applicant.

## ISSUES

- [5] The issues in dispute are:
  - i. Is the applicant entitled to \$2,000.00, for a Chronic Pain Assessment, proposed by Dr. Igor Wilderman in a Treatment Plan/ OCF-18, dated on April 23, 2020?
  - ii. Is the applicant entitled to \$1,419.68 for physiotherapy, proposed by Way to Health in a Treatment Plan/OCF-18, dated on June 21, 2021?
  - iii. Is the applicant entitled to interest on any overdue payment of benefits?

## RESULT

- [6] The applicant is entitled to \$2,000.00, for a Chronic Pain Assessment, proposed by Dr. Igor Wilderman in a Treatment Plan/ OCF-18, dated on April 23, 2020.
- [7] The applicant is not entitled to \$1,419.68 for physiotherapy, proposed by Way to Health in a Treatment Plan/ OCF-18, dated on June 21, 2021.
- [8] The applicant is entitled to interest on any overdue payment of benefits respecting the Treatment Plan/ OCF-18 for \$2,000.00 proposed by Dr. Igor Wilderman dated April 23, 2020.

## PROCEDURAL ISSUES

- [9] The respondent has brought a motion to strike the applicant's submissions in excess of the ten-page limit specified as the appropriate number of pages, in the case conference report and order. The Licence Appeal Tribunal (LAT) Rules of Practice and Procedure, Version 1 (April 1, 2016), Rule 3.1 provides that the rules maybe liberally interpreted and applied, and maybe varied on the Tribunal's own initiative to facilitate a fair, open, proportionate, and accessible process and to permit the participation of the parties.
- [10] It is important that Rule 9.4 is followed respecting disclosure of documents and submissions of the parties. When the case conference orders are not followed in terms of the agreed and ordered length of submissions, it may lead to challenges to the administrative proceedings making them less fair, less expeditious and not proportionate. For that reason, I will not strike the submissions by the applicant following page 10, but rather I will place less weight on the applicant's submissions beyond the ten pages stipulated in the case conference report and order.

## ANALYSIS

### ***The Treatment Plan for physiotherapy services, proposed by Mackenzie Medical Rehabilitation Centre in the amount of \$1,384.70 dated December 11, 2018?***

- [11] Section 14 and 15 of the Schedule state that an insurer shall pay medical benefits to, or on behalf of an applicant so long as said person sustains an impairment as a result of an accident, and that the medical benefit in dispute is a reasonable and necessary expense incurred by the applicant as a result of the accident. The applicant bears the onus of proving on a balance of probabilities that the proposed treatment plans are reasonable and necessary.

- [12] The respondent draws attention to paragraph four of the Tribunal decision *Hina v. Aviva General Insurance Company*, 2022 CanLII 2768 (ON LAT), where the Tribunal stated the general principle in the assessment of treatment plans that: “To receive payment for a treatment plan under 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. 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 same are reasonable.”
- [13] Dr. Igor Wilderman proposed a Chronic Pain Assessment in a Treatment Plan/ OCF-18, in the amount of \$2,000.00, dated April 23, 2020, to address injury and sequelae identified in Part 6, including headache, subluxation complex, dislocation of lumbar vertebra, cervicalgia, sprain/strain of joints and ligaments of thorax, sprain and strain of shoulder joint, dislocation of shoulder girdle and thoracic vertebrae. The goals of the treatment plan, as stated in the OCF-18, are the applicant’s return to the activities of normal living and the provision of the applicant’s functional restoration. The assessment is proposed over a one-week period including preparation, testing, documentation, and support activities.
- [14] In the Explanation of Benefits issued by the respondent insurer dated August 19, 2020, it is stated that following IE examinations, there is not enough compelling medical evidence that the treatment plan/ OCF-18 for a chronic pain assessment by Dr. Igor Wilderman is reasonable and necessary. The respondent offered submissions that the treatment at issue and as set forth in the OCF-18, is not identified, which I disagree with since the goal is stated as returning the applicant to the activities of normal living, and the provision of the applicant’s functional restoration. In addition, the respondent submits that there are no medical records demonstrating that the applicant is experiencing chronic pain which would attract a diagnosis of chronic pain syndrome, which I disagree with, for reasons which follow. The respondent submits that the applicant does not provide compelling evidence of reduced functionality, which I disagree with for reasons which follow.
- [15] Dr. Rajinder Atwal, the applicant’s family physician prepared a medical report dated February 17, 2021, wherein she described that the applicant has been a patient of hers since 2009; and in addition, she describes the immediate effects of the accident on the applicant, from a physical and psychological perspective. Dr. Atwal opines that, as a direct result of the accident, the applicant will require ongoing multidisciplinary rehabilitation, which consists of physiotherapy, chiropractic treatment, massage therapy and stretching and strengthening exercises. The CNR’s (clinical notes and records) written in long-hand by Dr.

Atwal on April 30, 2019, describe the applicant attending physiotherapy once weekly. She opines that it is probable that the applicant's injuries may leave him with ongoing symptoms and some functional limitations. She states that as of February 2021, which is two years following the accident, the applicant has not arrived at what was his pre-accident level of functioning. Dr. Atwal states that the applicant may require a referral to a chronic pain clinic to help reduce his physical pain.

- [16] Dr. Atwal prepared a medical report dated May 31, 2022, where she opines specifically in relation to the utility of a chronic pain assessment, since the applicant continues to experience lower back pain as a result of the accident. She states in her expert opinion, as the applicant's family physician, that the applicant would benefit from a chronic pain assessment to determine if he suffers from chronic pain syndrome.
- [17] Dr. Jennifer Gordon, prepared an IE Physiatry Assessment opining in relation to the Treatment Plan/ OCF-18 dated April 23, 2020, respecting the reasonableness and necessity of the chronic pain assessment proposed by Dr. Igor Wilderman in the amount of \$2,000.00. Dr. Gordon describes that the applicant's lumbar range of motion on examination showed a 30 to 40 percent reduction in flexion and a 15 to 20 percent reduction in extension. She states that from a musculoskeletal perspective, the applicant sustained an impairment of the cervical and lumbar spine ranges of motion. Dr. Gordon opined that the applicant had not yet reached maximum medical improvement following the accident on the date of her IE assessment, December 2, 2020, which is less than one year following the accident, however, Dr. Gordon opined that a chronic pain assessment was not warranted without explaining the basis for her opinion which does not assist the Tribunal in making any finding based on her expert report.
- [18] The applicant submits that Dr. Gordon failed in her IE assessment to provide reasons why the treatment plan proposing a chronic pain assessment, is not reasonable and necessary. The applicant submits that Dr. Gordon failed to provide an analysis explaining why the pain and functional limitations of the applicant persist after two years. I agree with the applicant in regard to the deficiency in the IE assessment respecting a rationale or reasons that will assist the Tribunal in making a procedurally fair determination. Dr. Gordon stated in her report that the applicant had noted impairments, but that the chronic pain assessment was not warranted without detailing the basis for the finding. The result of failing to explain the basis for the finding is that I place less weight on Dr. Gordon's section 44 assessment than on the report of the family physician Dr. Rajinder Atwal, which recommends the benefit of conducting a chronic pain

assessment after a lengthy description of the physical effects of the accident on the applicant and his experience of ongoing symptoms of pain.

[19] The Tribunal has adopted the American Medical Association (AMA) Guide as an interpretative tool for evaluating chronic pain claims in the absence of a formal diagnosis. The AMA Guide states that at least three of the following six criteria must be present for a diagnosis of chronic pain syndrome to be established:

- (i) Use of prescription drugs beyond the recommended duration and/or abuse of or dependence on prescription drugs or other substances;
- (ii) Excessive dependence on health care providers, spouse, or family;
- (iii) Secondary physical deconditioning due to disuse and or fear-avoidance of physical activity due to pain;
- (iv) Withdrawal from social milieu, including work, recreation, or other social contacts;
- (v) Failure to restore pre-injury function after a period of disability, such that the physical capacity is insufficient to pursue work, family or recreational need; and;
- (vi) Development of psychosocial sequelae after the initial incident, including anxiety, fear-avoidance, depression, or nonorganic illness behaviors.

[20] The applicant raised the issue for consideration of the American Medical Association (AMA) Guides.

[21] The applicant is not described as taking prescribed pain medication following the accident; however, Dr. Amena Syed in her Psychology IE Assessment describes the psychological effects of the accident on the applicant, which she opines remove him from the Minor Injury Guideline by reason of psychological impairments. Dr. Syed's IE psychological assessment is dated July 19, 2019. The applicant described to Dr. Syed, ongoing pain in his neck, shoulders, lower back and experiencing headaches. Based on medical documentation and in relation to the enumerated criteria above-noted and numbered (iii), (v) and (vi) of the AMA Guide, the criteria applies to the applicant as follows: (v) a failure to restore pre-injury function, such that the physical capacity is insufficient to pursue work, family or recreational need, in addition, (vi) the development of psychosocial sequelae, including anxiety, fear-avoidance, depression, or nonorganic illness behaviors and, finally, (iii) physical deconditioning due to disuse and or fear-avoidance of physical activity due to pain.

- [22] The applicant described the following which I find places him within the noted criteria: That he continues to work full-time out of necessity to earn a livelihood; a fear and avoidance of driving and a fear and avoidance of road travel generally because of anxieties about careless driving. The applicant described avoiding exercise that he previously engaged in, including “jogging” because of the symptoms of pain triggered by the exercise. In addition, the applicant described his relationship with his wife deteriorating following the accident based on anxiety and the physical pain he was experiencing. Considering the interpretive tool of the American Medical Association (AMA) Guide as a tool for evaluating chronic pain claims, I note that the applicant’s circumstances appear to fall within criteria iii, v, and vi as described of the AMA Guide.
- [23] The applicant completed a pain catastrophizing test with Dr. Syed which showed on the pain catastrophizing scale, that he was at high risk in terms of rumination, magnification, and a sense of helplessness. Dr. Syed opined that the applicant’s diminished level of functioning appears causally related to the accident.
- [24] In *Z.K. v. Allstate Insurance Company Canada*, 2020 CanLII 106429 (ON LAT), the Tribunal set forth in relation to the test of whether a chronic pain assessment was determined reasonable and necessary: “In order to find whether a cost of examination is reasonable and necessary, all that is required is some evidence of a need to investigate what the assessment is seeking. In the case of a chronic pain assessment, proof of a chronic pain diagnosis or chronic pain syndrome is not required but evidence that the condition may be prevalent would be sufficient to warrant an assessment.”
- [25] I find that the applicant has met the onus of demonstrating on a balance of probabilities, the reasonableness and necessity of the treatment plan for a chronic pain assessment, based on the recommendation by his family physician Dr. Rajinder Atwal, in her report dated May 31, 2022; and in addition, based on the applicant meeting three of the AMA guide’s criteria listed above and referenced relating to failure to resume pre-injury function in pursuing family needs; an excessive dependence on health care providers; and, finally, a withdrawal from social contact with his spouse, and, in addition, the development of psychosocial sequelae, including anxiety, fear-avoidance, and depression developing following the accident.

***Treatment Plan in the amount of \$1,419.68 for physiotherapy, proposed by Way to Health, dated on June 21, 2021.***

- [26] Kaivan Sadeghi, Chiropractor, on behalf of Way to Health Clinic Incorporated proposed a Treatment Plan/ OCF-18 dated on June 21, 2021, in the amount of \$1,419.68. The purpose of the treatment plan is to address the injuries listed in Part 6 of the OCF-18, including chronic post-traumatic headaches, subluxation complex, dislocation of lumbar vertebrae, cervicgia, sprain/strain of joints and ligaments of thorax, sprain and strain of shoulder joint, dislocation of shoulder girdle and thoracic vertebrae. Additional symptoms listed include nonorganic insomnia, dizziness, malaise and fatigue. The goal of the treatment plan is pain reduction, increase in strength and increased range of motion, and a return to the activities of normal living. The proposed eight-week treatment includes stimulation of the muscles of the back, manipulation of multiple body sites, exercise of multiple body sites and documentation of support activities.
- [27] As stated above, Dr. Rajinder Atwal, the applicant's family physician prepared a medical report dated February 17, 2021, wherein she described the effects of the accident on the applicant. Dr. Atwal opines that as a direct result of the accident, the applicant requires ongoing multidisciplinary rehabilitation, which consists of physiotherapy, chiropractic treatment, massage therapy, stretching and strengthening exercises. The CNR's (clinical notes and records) written in long-hand by Dr. Atwal on April 30, 2019, describe the applicant attending physiotherapy once weekly. She opines that it is probable that the applicant's injuries may leave him with ongoing symptoms and some functional limitations.
- [28] Dr. Atwal prepared a medical report dated May 31, 2022, wherein she refers to a treatment plan/OCF-18 dated July 5, 2021, as opposed to the treatment plan dated June 21, 2021, referenced in paragraph 26, therefore, I can not place any weight on Dr. Atwal's comment at the end of her report, as it pertains to an unidentified treatment plan as opposed to addressing the treatment plan proposed by Kaivan Sadeghi, dated June 21, 2021. The applicant submits that the treatment plan addressed at the end of Dr. Atwal's report is the treatment plan in dispute dated June 21, 2021, but, it is not identified as such in Dr. Atwal's report, therefore, I can not extrapolate anything other than what is written in Dr. Atwal's report itself. Furthermore, I can not place any weight on Dr. Atwal's opinion in her assessment of the reasonableness and necessity of the treatment plan dated June 21, 2021, based on her medical report dated May 31, 2022 for the reasons described.
- [29] Dr. Jennifer Gordon, prepared a section 44, IE Physiatry Assessment dated August 12, 2021, wherein she opines that the treatment plan/ OCF-18 proposed



by Kaivan Sadeghi, Chiropractor, on behalf of Way to Health Clinic Incorporated, dated June 21, 2021, is neither reasonable nor necessary since it had been over two years since the accident, and the applicant in her expert opinion had already benefitted from facility-based treatment, and further treatment was not expected to provide additional benefit. Dr. Gordon opines that the applicant would benefit more from home-based, self-directed exercise. Based on the explanation provided by Dr. Gordon as the basis for her expert opinion, I agree that the treatment plan of Kaivan Sadeghi, Chiropractor, on behalf of Way to Health Clinic Incorporated, is neither reasonable or necessary.

[30] In addition, I am persuaded by the opinion of Dr. Jennifer Gordon following her physical examination of the applicant, her review of medical documentation in Appendix A of her report, and by reason of her expertise and specialization as a Rehabilitation Specialist and expert in Physical Medicine. She describes in her professional qualifications that she completed a residency program at the University of Toronto specializing in Physical Medicine and Rehabilitation, as well as additional experiences that qualify her to opine on matters of Physical Medicine and Rehabilitation. Furthermore Dr. Gordon explains the basis for her opinion why the treatment plan for physiotherapy treatment is not reasonable and necessary, as opposed to the circumstance where she did not offer an explanation or opinion for her finding in relation to the chronic pain assessment. For the noted reasons, I find that the applicant has not met his burden showing that the treatment plan recommended by Kaivan Sadeghi, Chiropractor, on behalf of Way to Health Clinic Incorporated dated on June 21, 2021, in the amount of \$1,419.68, is reasonable and necessary.

## **INTEREST**

[31] Interest applies on the payment of any overdue benefits pursuant to s. 51 of the Schedule. As I find that the applicant is entitled to one of the treatment plans for a Chronic Pain Assessment, interest is payable by the respondent in relation to that treatment plan.

## **ORDER**

- [32] The applicant is entitled to a Chronic Pain Assessment, in the amount of \$2,000.00 proposed by Dr. Igor Wilderman in a Treatment Plan/ OCF-18, dated on April 23, 2020.
- [33] The applicant is not entitled to \$1,419.68 for physiotherapy, proposed by Way to Health in a Treatment Plan/ OCF-18, dated on June 21, 2021.

[34] The applicant is entitled to interest on any overdue payment of benefits respecting the Treatment Plan/ OCF-18 for \$2,000.00 proposed by Dr. Igor Wilderman dated April 23, 2020.

**Released: June 29, 2023**



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**Janet Rowsell  
Adjudicator**