



**Citation: Corridon vs. Aviva Insurance Company, 2021 ONLAT  
20-003097/AABS**

**Released Date: 05/13/2021  
File Number: 20-003097/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:

**Keenan Corridon**

**Applicant**

and

**Aviva Insurance Company**

**Respondent**

**DECISION**

**ADJUDICATOR: Derek Grant**

**APPEARANCES:**

For the Applicant: Arthur Semko, Paralegal

For the Respondent: Michael McChesney, Counsel

**HEARD: Via written submissions**

## OVERVIEW

- [1] The applicant, K.C., was involved in an automobile accident on February 6, 2019, and sought benefits from the respondent, Aviva, pursuant to the *Statutory Accident Benefits Schedule - Effective September 1, 2010*<sup>1</sup> (the "*Schedule*"). Aviva denied the benefits in dispute on the basis that it determined that they were not reasonable and necessary. K.C. disagreed and applied to the Tribunal for resolution of the dispute.

## ISSUES IN DISPUTE

- [2] The following issues are in dispute as set out in the July 27, 2020 Tribunal Order:
- a. Is K.C. entitled to the medical benefits and assessment recommended by Knead Wellness, as follows:
    - i. \$2,535.00 for physiotherapy services, in a treatment plan (OCF-18) submitted on October 22, 2019;
    - ii. \$2,570.00 for physiotherapy services, in an OCF-18 submitted on May 9, 2019;
    - iii. \$2,550.00 for physiotherapy services, in an OCF-18 submitted on July 12, 2019; and,
    - iv. \$2,460.00 for a chronic pain assessment, in an OCF-18 submitted on December 20, 2019?
  - b. Is K.C. entitled to interest on any overdue payment of benefits?

## FINDING

- [3] K.C. is entitled to the OCF-18s for physiotherapy.
- [4] K.C. is not entitled to the OCF-18 for chronic pain.

## ANALYSIS

### ***Are the treatment plans reasonable and necessary?***

- [5] For an insured to be entitled to a medical benefit or cost of examination expense under sections 15 and 25 of the *Schedule*, the onus is on the applicant to prove

---

<sup>1</sup> O. Reg. 34/10.

on a balance of probabilities that the claimed treatment is reasonable and necessary. The treatment goals should be reasonable, the goals of the treatment should be met to a reasonable degree and the overall costs (financial and time investment) of achieving the goals of treatment should be reasonable.

- [6] The OCF-18s for physiotherapy recommend treatment sessions for muscle release/soft tissue therapy (31), manipulation/chiro (33), and physiotherapy (33). The goals of the OCF18s are similar and essentially have a goal to return K.C. to his activities of normal living. I note that K.C. has incurred the costs of the OCF-18s for physiotherapy. K.C. also claims entitlement to a chronic pain assessment to assess his ongoing post-accident pain complaints.
- [7] K.C. submits the goals of the OCF-18s are reasonable for someone who sustained injuries<sup>2</sup> in a car accident. K.C. further submits that based on his injuries he was advised to continue with physiotherapy. Physiotherapy was recommended again after he experienced lower back pain while lifting heavy objects at his place of employment. Nurse practitioner Ms. Keane, in her record dated February 21, 2019 noted that K.C. was receiving physiotherapy services twice a week and he reported improvement in his neck pain. On January 20, 2020, Ms. Keane noted that K.C. is pain free, has returned to his pre-employment duties; therefore, he submits the goals are being met to a reasonable degree. Lastly, K.C. submits the costs of the OCF-18s are within the FSCO guidelines, and thus reasonable because his documented improvement supports the degree of success that the OCF-18s have achieved.
- [8] In its response, Aviva submits that K.C. has not established that his accident-related injuries require further facility-based treatment. Aviva's position is that K.C. has not produced compelling medical evidence to justify ongoing accident-related impairment for which the claimed treatment is reasonable and necessary.
- [9] Aviva relies on the January 30, 2020 findings in the report of its s. 44 assessor, Dr. Kruger, who opined on each of the disputed OCF-18s. Dr. Kruger came to the following conclusions:

---

<sup>2</sup> OCF-3 dated February 8, 2019 lists the following injuries: whiplash associated disorder (WADII) with complaint of neck pain with musculoskeletal signs, superficial injury of the neck, sprain and strain of thoracic spine, pain in thoracic spine, sprain and strain of shoulder joint, sprain and strain of other parts of shoulder girdle, injury of muscle(s) and tendon(s) of the rotator cuff of shoulder, superficial injury of shoulder and upper arm, sprain and strain of shoulder joint, rotator cuff capsule, wrist, finger (s), injury of muscle and tendon at wrist and hand level, sprain and strain of jaw, mixed anxiety and depressive disorder, post-traumatic stress disorder, nervousness, restlessness and agitation, acute pain, malaise and fatigue, non-organic insomnia, migraine, tension-type headache, chronic post-traumatic headache.

- a. November 26, 2019 OCF-18: K.C. suffered soft tissue injuries and there are no objective signs of ongoing impairment. Based on the medical documentation, K.C. returned to work, Ms. Keane's records confirmed he had full strength and range of motion. Dr. Kruger noted that housekeeping limitations were questionable given the physical demands of his job as an electrician. Dr. Kruger concluded that the goals of the OCF-18 has been substantially achieved at the time it was submitted;
- b. May 10, 2019 OCF-18: Dr. Kruger opined that the goals of the OCF-18 were similar to the previous treatment plan and had been substantially accomplished at the time the OCF-18 was submitted. Dr. Kruger did not find any evidence of ongoing physical symptoms and concluded that the treatment plan was not reasonable and necessary;
- c. July 15, 2019 OCF-18: Dr. Kruger noted that at the time of this treatment plan, K.C. had returned to work, had not had many pain complaints in approximately 10 months and objectively demonstrated full strength and range of motion. Based on his examination, Dr. Kruger concluded that the OCF-18 was not reasonable and necessary; and
- d. December 20, 2019 OCF-18: Dr. Kruger found no evidence of any neurological or radicular findings. Dr. Kruger noted that from a musculoskeletal perspective, K.C. suffered soft tissue injuries, and there were no objective signs of ongoing impairment. Dr. Kruger concluded that the OCF-18 was not reasonable and necessary.

[10] On the evidence, I partially agree with K.C. I find the OCF-18s for physiotherapy are reasonable and necessary. Despite the evidence from Dr. Kruger, I am persuaded by the evidence of Ms. Keane for the following reasons. First, Dr. Kruger's s. 44 report is contradictory as the doctor finds that K.C. had achieved the goals in the treatment plans but finds that they are not reasonable and necessary. Second, K.C. reported improvement to Dr. Kruger, which was noted to be after the treatment plans for physical treatment were incurred; thus, the treatment was reasonable and necessary to treat his accident-related injuries. Further, K.C. returned to work and had not made any pain complaints in approximately 10 months, indicative of improvement in his pain symptoms and post-accident abilities after treatment, making the goals of the treatment being met to a reasonable degree. Lastly, there is no dispute that the costs of the OCF-18s for physical treatment were above the FSCO guidelines, therefore the fees are considered reasonable.

- [11] Despite my finding regarding the OCF-18s for physiotherapy, I must still address the OCF-18 for the chronic pain assessment. For the reasons set out below, K.C. has not met his onus on a balance of probabilities in proving that the chronic pain assessment is reasonable and necessary.
- [12] K.C. submits that his pain complaints satisfy the test set out in *16-001934*<sup>3</sup> for a chronic pain assessment. In *16-001934*, at paragraph 13, the Executive Chair set out the following test:
- a. Whether there is a reasonable possibility that the insured person has the condition that the assessment will then investigate; and
  - b. Whether, on the balance of probabilities, the evidence demonstrates that the assessment claimed is reasonable and necessary.
- [13] The Executive Chair clarified the test at paragraph 16, where she states, “The relevant test is whether, on a balance of probabilities the assessment (i.e., an examination to determine whether in fact the possible or suspected condition exists) is reasonable and necessary.
- [14] Aviva submits that “the Tribunal has routinely found that a finding of chronic pain syndrome requires that the applicant meet three of the six criteria set out in the *AMA Guides*.” I disagree that the *AMA Guides* are applicable, as the chronic pain assessment was to determine whether K.C. suffers from chronic pain or chronic pain syndrome as a result of the accident. Until such a determination is made, Aviva cannot rely on K.C.’s failure to meet any of the criteria set out in the *AMA Guides*. In this matter, I find the appropriate test for whether the chronic pain assessment is reasonable and necessary is set out in *16-001934*.
- [15] Despite Aviva’s position on K.C. failing to satisfy at least three of the criteria in the *AMA Guides*, I am not persuaded that K.C. has met the test set out by the Executive Chair in *16-001934*.
- [16] As set out in paragraph 9d. above, Dr. Kruger notes that there was no objective evidence of ongoing impairment. This is consistent with K.C not making any pain complaints in the last 10 months leading up to the assessment with Dr. Kruger. K.C. showed signs of improvement as noted by Dr. Kruger. Further, K.C. has returned to his pre-accident activities doing a physically demanding job. In addition, there is nothing in the medical evidence that references ongoing pain or chronic pain or recommend an assessment or treatment for chronic pain. This

---

<sup>3</sup> *16-001934 v Aviva Insurance Company of Canada*, 2017 CanLII 59514 (ON LAT)

evidence does not support that a chronic pain assessment is reasonable and necessary.

- [17] The purpose of an assessment is to determine whether a condition exists. Putting aside the speculative nature of assessments, K.C. still bears the onus of establishing on a balance of probabilities that the assessment he seeks is reasonable and necessary. In order to satisfy this onus, K.C. must direct me to objective evidence that he may have the condition for which he seeks the assessment.
- [18] On the evidence, K.C. has not established on a balance of probabilities that he has the condition that the chronic pain assessment is intended to investigate. The evidence does not demonstrate that the claimed assessment is reasonable and necessary. Consequently, I find that K.C. is not entitled to the OCF-18 for a chronic pain assessment as he has not proven that it is reasonable and necessary.

#### **ORDER**

- [19] K.C. has demonstrated that the incurred OCF-18s for physiotherapy are reasonable and necessary. Interest is payable pursuant to s. 51 of the *Schedule*.
- [20] K.C. has not demonstrated that the disputed OCF-18 for a chronic pain assessment is reasonable and necessary. As no benefit is payable, interest does not apply.

**Released: May 13, 2021**

---

**Derek Grant  
Adjudicator**