

**LICENCE APPEAL
TRIBUNAL**

**TRIBUNAL D'APPEL EN MATIÈRE
DE PERMIS**



**Safety, Licensing Appeals and
Standards Tribunals Ontario**

**Tribunaux de la sécurité, des appels en
matière de permis et des normes Ontario**

Tribunal File Number: 17-003575/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:

A.S.

Applicant

and

Aviva Insurance Canada

Respondent

DECISION

Adjudicator

Melody Maleki-Yazdi

APPEARANCES:

Applicant:

A.S.

Counsel for Applicant:

Kalin Stoykov

Counsel for the Respondent:

Emma Duggan

Heard In-Writing:

January 22, 2018

OVERVIEW

- [1] The applicant was involved in an automobile accident on July 23, 2014 and sought benefits pursuant to the *Statutory Accident Benefits Schedule - Effective September 1, 2010*¹ (the “Schedule”).
- [2] The respondent refused to pay for the cost of examinations for a neurological assessment and partially approved the cost of examinations for a driving evaluation assessment. As a result, the applicant applied to the Licence Appeal Tribunal - Automobile Accident Benefits Service (the “Tribunal”) for resolution of this dispute.
- [3] A case conference held on October 10, 2017 failed to fully resolve the issues disputed by the parties. As a result, a written hearing was ordered to be conducted in this matter.

ISSUES

- [4] The following are the issues to be decided:
1. Is the applicant entitled to payments for the cost of examinations in the amount of \$2,000.00 for a neurological assessment, recommended by Auxilium Wellness Centre in a treatment plan dated December 9, 2015, denied by the respondent on March 23, 2016?
 2. Is the applicant entitled to payments for the cost of examinations in the amount of \$800.43 (\$2,221.73 less partially approved amount of \$1,421.30) for a driving evaluation assessment, recommended by Auxilium Wellness Centre in a treatment plan dated May 6, 2016, denied by the respondent on September 21, 2016?

RESULT

- [5] Based on the totality of evidence before me, I find that:
1. The applicant is not entitled to receive payments for the cost of examinations in the amount of \$2,000.00 for a neurological assessment, recommended by Auxilium Wellness Centre in a treatment plan dated December 9, 2015, denied by the respondent on March 23, 2016.
 2. The applicant is entitled to receive payments for the cost of examinations for a driving evaluation assessment, recommended by Auxilium Wellness Centre in a treatment plan dated May 6, 2016, denied by the respondent on September 21, 2016, less the cost of counselling for mental health and less the cost of the treatment provider’s mileage.

¹ O. Reg. 34/10.

- [6] The applicant is entitled to interest on any overdue amounts incurred to date, pursuant to section 51 of the *Schedule*.

REASONS

Is the applicant entitled to a neurological assessment?

- [7] The treatment plan in dispute is in the amount of \$2,000.00 for a neurological assessment, recommended by Auxilium Wellness Centre. The treatment plan is dated December 9, 2015 and was denied by the respondent on March 23, 2016.
- [8] The applicant bears the onus of proving on a balance of probabilities that the cost of examination he claims for a neurological assessment is reasonable and necessary, pursuant to section 25(1)(3) of the *Schedule*.
- [9] The cost of one assessment or examination is capped at \$2,000.00, pursuant to section 25(5)(a) of the *Schedule*. The *Professional Services Guideline* (the "*Guideline*")² sets out that the cap on any one assessment or examination excludes the addition of HST.
- [10] Dr. Paul Ranalli, neurologist, conducted an insurer's examination ("IE") dated March 22, 2016. Dr. Ranalli examined the applicant on March 14, 2016 and concluded in the corresponding report that the applicant had no specific neurological diagnosis related to the accident. Dr. Ranalli described the applicant's injuries as entirely soft tissue in nature and that the applicant had likely experienced a rear-impact strain/sprain injury to the cervical and axial soft tissues, which may have aggravated his pre-existing chronic headaches and which may now be perpetuated by a medication-overuse syndrome. Dr. Ranalli further indicated that the applicant had a normal neurological examination, that there was no significant neurological injury or impairment as a direct result of the accident and there was no concussive closed head injury.
- [11] The applicant submits that Dr. Ranalli did not conclude that the applicant sustained no neurological injury or impairment; rather, he concluded that the applicant had sustained no significant neurological injury or impairment. The applicant's position is that Dr. Ranalli did not provide a compelling explanation for his reasoning.
- [12] In denying the applicant's claim, the respondent submits that the applicant has not provided any medical opinion from a treating practitioner supporting the reasonableness or necessity of the proposed neurological assessment.
- [13] The applicant submitted clinical notes and records from Women's College Hospital on July 28, 2014 (five days after the accident) that indicate that there was no airbag deployed in the vehicle and the applicant did not hit his head on

² Superintendent's Guideline, No. 03/14 (September 2014).

the dashboard during the accident. The applicant reported that he had a headache after the accident and back pain. He had no visual changes or dizziness.

- [14] The respondent's submissions address that the applicant had a MRI of the head dated March 28, 2016 with non-specific findings. I note that the applicant's submissions are silent regarding this MRI. Furthermore, the MRI report was not before me in evidence.
- [15] The parties' submissions refer to how the applicant was referred to a neurological assessment pre-accident by his general practitioners, but did not attend. There has been no neurological report provided as evidence. There is also no evidence submitted by the applicant from a treating neurologist. I therefore do not have a report or notes from an expert of the same qualifications as Dr. Ranalli to contest his opinion that the applicant's injuries were entirely soft tissue in nature, that the applicant had a normal neurological exam and that there was no significant neurological injury.
- [16] With the exception of the treatment plan, no further medical evidence was provided which would support the applicant's need for a neurological assessment. Absent corroborating evidence, the treatment plan by itself is not enough to support whether the neurological assessment is reasonable and necessary. Accordingly, I find that the neurological assessment is not reasonable and necessary.

Is the cost of the partially approved driving evaluation assessment reasonable?

- [17] Prior to the proposed driving evaluation assessment, the respondent approved a psychological assessment that was prepared by Dr. Ilya Gladshyeyn, psychologist, dated December 11, 2015. The applicant underwent this psychological assessment at Auxilium Wellness Centre in advance of the driving evaluation assessment at issue.
- [18] The respondent has acknowledged the applicant's need for a driving evaluation assessment by partially approving the assessment recommended by Dr. Nina Belyakova, psychologist, at Auxilium Wellness Centre. The treatment plan is dated May 6, 2016 and was denied by the respondent on September 21, 2016.
- [19] The driving evaluation assessment included the following breakdown of services: preparation service in the amount of \$299.22; documentation support activity in the amount of \$299.22; assessment, mental health and addictions in the amount of \$374.03; provider travel time, provider to treatment in the amount of \$149.61; 120 km of provider mileage to treatment in the amount of \$96.00; test, mental health and addictions in the amount of \$149.61; documentation support activity in the amount of \$448.83 and counselling, mental health and addictions in the

amount of \$149.61. The total amount of the treatment plan, including tax, is \$2,221.73.

- [20] The respondent approved \$1,421.30 for the cost of examinations for a driving evaluation assessment, leaving \$800.43 in dispute. The remaining services in dispute are with respect to the fees for preparation services, the treatment provider's mileage and counselling, mental health and addictions (which for simplicity will be referred to as counselling for mental health).
- [21] The respondent relied on the IE report of Dr. Arpita Biswas, psychologist, dated September 12, 2016, in which the doctor:
- i. Noted that the proposed preparation service in the amount of \$299.22, as well as counselling for mental health in the amount of \$149.61, duplicated other services because the applicant had already undergone a detailed psychological assessment for psychological treatment from the same treatment facility;
 - ii. Noted that the proposed treatment provider's mileage in the amount of \$96.00 was no longer an approved item under the *Guideline*; and
 - iii. Proposed a reduced amount of \$1,421.30 for the assessment's cost.
- [22] The respondent contends that the applicant has failed to provide any evidence supporting the excess cost of the proposed driving assessment. In particular, the respondent submits that the applicant has not produced any expert opinion regarding the reasonableness and the necessity of the excess cost of the examination.
- [23] The applicant denies that the cost of Dr. Belyakova's assessment is redundant or excessive. The applicant submits that Dr. Biswas fails to substantiate why preparation services are considered redundant when the preparation services are being completed by a different doctor. The applicant also submits that Dr. Biswas fails to substantiate why counselling for mental health is considered redundant, especially when Dr. Biswas concludes earlier in her report that the applicant's symptoms continue to remain within the DSM-5 diagnosis of Adjustment Disorder with Mixed Anxiety and Depressed Mood, Specific Phobia and Somatic Symptom Disorder – with predominant pain.
- [24] In reviewing the disputed driving evaluation assessment by Dr. Belyakova and the approved psychological assessment by Dr. Gladshteyn, I make the following observations:
- (i) The psychological assessment completed by Dr. Gladshteyn is a general psychological assessment with the applicant's provisional diagnosis being Acute Adjustment Disorder with Mixed Anxiety and Depressed Mood,

Persistent and Specific Phobia, Situational Type (driver/passenger related). The proposed driving evaluation assessment is focused on the applicant's Specific Phobia, Situational Type.

- (ii) The goal of the psychological assessment is to help with the applicant's pain reduction, return to activities of normal living and return to pre-accident level of psychological functioning. The driving evaluation assessment sets out goals to reduce the applicant's anxiety, fear and avoidance, and other symptoms of Specific Phobia, Situational Type via systematic desensitisation, guided imagery, relaxation training and other techniques.
- (iii) The driving evaluation assessment's details provide evidence that its therapeutic approach is more specific than the approach of the psychological assessment because the driving evaluation assessment includes a comprehensive in-vehicle assessment and a comprehensive driving evaluation.

Preparation services

[25] As noted above, Dr. Gladshiteyn prepared the psychological assessment and Dr. Belyakova prepared the driving evaluation assessment. The driving evaluation assessment includes a comprehensive in-vehicle assessment and a comprehensive driving evaluation, while the psychological assessment does not. It is reasonable and necessary that a different psychologist looking at different aspects of the applicant's psychological well-being would require time towards preparation services.

[26] I find that the applicant is entitled to payment for the preparation services.

Counselling for mental health

[27] Both the psychological assessment and the driving evaluation assessment include services for counselling for mental health.

[28] In the psychological assessment, Dr. Gladshiteyn provisionally diagnosed the applicant as having Specific Phobia, Situational Type (driver/passenger related).

[29] In the driving evaluation assessment, Dr. Belyakova also found that the applicant presented with a symptom pattern that is consistent with Specific Phobia, Situational Type.

[30] The applicant provided a Psychological Assessment Report dated April 7, 2016, where the applicant was assessed by Mursal Srosh, psychometrist, and supervised by Dr. Gladshiteyn. Dr. Gladshiteyn made a diagnosis that the applicant had Adjustment Disorder with Mixed Anxiety and Depressed Mood, Persistent and Specific Phobia, Situational Type (passenger).

- [31] The Psychological Assessment Report includes a recommendation that the applicant receive 10 sessions of cognitive behavioural-oriented psychotherapy. The goal of the therapy is to address psychological distress and restore pre-accident level of psychological functioning. These would be addressed via cognitive-behavioural techniques, such as substituting dysfunctional thoughts, engaging in relaxation strategies and more. The Report states that the applicant's sessions would address his in-vehicular anxiety.
- [32] Therefore, since the counselling would include a focus on automobile-related phobia, I conclude that the counselling for mental health service in the driving evaluation assessment duplicates the counselling for mental health service in the psychological assessment.
- [33] I find that the applicant is not entitled to payment for counselling for mental health as part of the driving evaluation assessment.

Treatment provider's mileage

- [34] There are also disputed travel costs for the treatment provider's mileage. The respondent did not agree to pay for these travel costs. I refer to section 15(1)(g) of the *Schedule* where it provides for "transportation for the insured person to and from treatment sessions" as well as transportation for the insured person's aide or attendant. There is no mention of a requirement to provide transportation costs for the treatment provider.
- [35] The respondent references the *FSCO Property and Casualty – Auto Bulletin A-14/14* (December 1, 2014), which addresses the issue of mileage claims by health care service providers:
- "[...] some health care providers are submitting mileage expenses to insurers to travel to an injured accident victim's location when providing services. Insurers are reminded that 'authorized transportation expenses', as defined in the SABS³, are intended to apply to expenses incurred by the insured person and an aide for travel to and from treatment sessions, subject to the Superintendent's Transportation Expense Guideline."
- [36] I agree with the adjudicator in *16-000009 v Intact Insurance Company*, 2016 CanLII 60731 (ON LAT) that a plain reading of the *Schedule* strongly suggests "that transportation expenses for service providers are excluded from mandatory payments under the *Schedule*."
- [37] Therefore, I find that the applicant is not entitled to payment for the treatment provider's mileage.

³ Also known as the *Statutory Accident Benefits Schedule – Effective September 1, 2010*.

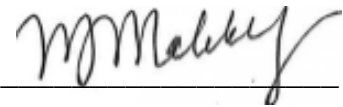
CONCLUSIONS

[38] For the reasons above:

1. The applicant is not entitled to receive payments for the cost of examinations in the amount of \$2,000.00 for a neurological assessment, recommended by Auxilium Wellness Centre in a treatment plan dated December 9, 2015, denied by the respondent on March 23, 2016.
2. The applicant is entitled to receive payment for the cost of examinations for a driving evaluation assessment, recommended by Auxilium Wellness Centre in a treatment plan dated May 6, 2016, denied by the respondent on September 21, 2016, less the cost of counselling for mental health and less the cost of the treatment provider's mileage.

[39] The applicant is entitled to interest on any overdue amounts incurred to date, pursuant to section 51 of the *Schedule*.

Released: April 5, 2018



Melody Maleki-Yazdi
Adjudicator