

**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: 17-002957/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:

**Sean Mereweather**

**Applicant**

and

**Aviva Insurance Canada**

**Respondent**

**DECISION**

*(AMENDED)*

**ADJUDICATOR:**

**Khizer Anwar**

**WRITTEN SUBMISSIONS BY: Lisa Bishop, counsel for the applicant**

**Peter Durant, counsel for the respondent**

**HEARD IN WRITING ON:**

**September 14, 2017**

## OVERVIEW

- [1] S.M. (“the applicant”) was injured in an automobile accident on September 17, 2015 (“the accident”), and sought benefits from his auto insurer (“the respondent”) pursuant to the *Statutory Accident Benefits Schedule - Effective September 1, 2010* (“*Schedule*”).
- [2] The applicant submitted a request for attendant care benefits, along with eight treatment and assessment plans (“OCF-18”) to the respondent, requesting funding for physiotherapy/chiropractic services, psychological services, assistive devices and various assessments. The respondent denied funding for the attendant care benefits and all treatment plans, as it held that the applicant had suffered predominantly minor injuries, which could be treated within the *Minor Injury Guideline* (“the MIG”), as defined in s. 3 of the *Schedule*.
- [3] The applicant disagreed with the respondent’s denial and submitted an application for dispute resolution services to the Licence Appeal Tribunal – Automobile Accident Benefits Service (the “Tribunal”).
- [4] The parties participated in a case conference but were unable to resolve the issues in dispute.

## ISSUES TO BE DECIDED

- [5] The issues in dispute identified by the parties in their submissions and to be decided are:
1. Did the applicant sustain predominantly minor injuries as defined under the *Schedule*?
  2. Is the applicant entitled to attendant care benefits at the rate of \$1,414.14 per month from September 17, 2015 to September 17, 2017?
  3. Is the applicant entitled to the balance of a partially approved medical benefit in the amount of \$1,072.00, for physiotherapy and chiropractic services, as outlined in the OCF-18 dated November 17, 2015, completed by Toronto Healthcare Clinic Inc.?
  4. Is the applicant entitled to a medical benefit in the amount of \$1,396.00 for physiotherapy and chiropractic services, as outlined in the OCF-18 dated March 8, 2016, completed by Toronto Healthcare Clinic Inc.?
  5. Is the applicant entitled to a medical benefit in the amount of \$713.58 for assistive devices, as outlined in the OCF-18 dated April 4, 2016, completed by Toronto Healthcare Clinic Inc.?

6. Is the applicant entitled to a medical benefit in the amount of \$1,491.20 for physiotherapy and chiropractic services, as outlined in the OCF-18 dated June 16, 2016, completed by Toronto Healthcare Clinic Inc.?
7. Is the applicant entitled to a medical benefit in the amount of \$2,887.14 for psychological services, as outlined in the OCF-18 dated June 17, 2016, completed by Toronto Healthcare Clinic Inc.?
8. Is the applicant entitled to the cost of examination in the amount of 1,521.26 for an attendant care assessment, as outlined in the OCF-18 dated March 9, 2016, completed by Toronto Healthcare Clinic Inc.?
9. Is the applicant entitled to the cost of examination in the amount of 2,000.00 for a psychological assessment, as outlined in the OCF-18 dated April 13, 2016, completed by Toronto Healthcare Clinic Inc.?
10. Is the applicant entitled to the cost of examination in the amount 2,000.00 for a chronic pain assessment, as outlined in the OCF-18 dated July 4, 2016, completed by Toronto Healthcare Clinic Inc.?
11. Is the applicant entitled to an award pursuant to section 10 of Ontario Regulation 664, because the respondent unreasonably withheld or delayed payments?
12. Is the applicant entitled to interest on overdue payment of benefits?

## RESULT

[6] Based on the totality of evidence before me, I find that:

1. The applicant did not sustain predominantly minor injuries.
2. The applicant is not entitled to attendant care benefits in the amount of \$1,414.14 per month.
3. The applicant is entitled to the medical benefit in the amount of \$1,072.00.
4. The applicant is entitled to the medical benefit in the amount of \$1,396.00.
5. The applicant is entitled to the medical benefit in the amount of \$451.36, instead of \$713.58.
6. The applicant is entitled to the medical benefit in the amount of \$1,491.20.

7. The applicant is entitled to the medical benefit in the amount of \$2,887.14.
8. The applicant is not entitled to the cost of an attendant care needs assessment in the amount of \$1,521.26.
9. The applicant is not entitled to the cost of a psychological assessment in the amount of \$2,000.00
10. The applicant is not entitled to the cost of a chronic pain assessment in the amount of \$2,000.00.
11. The applicant is not entitled to an award pursuant to section 10 of *Ontario Regulation 664*, because the respondent unreasonably withheld or delayed payments?
12. The applicant is entitled to interest on overdue payments on the payable benefits.

## ANALYSIS

### 1. Accident related injuries and post-accident health

- [7] The applicant was taken to Etobicoke General Hospital by ambulance, where he was assessed and treated for pain symptoms and complaints of neck pain, left shoulder pain and back pain. X-rays were performed on the applicant's back and shoulder, which did not reveal any abnormalities or fractures.
- [8] The applicant first visited his family doctor, Dr. Muhammad, on September 22, 2015, five days after the accident, due to persistent and worsening pain. Dr. Muhammad's CNRs show neck, low back and left shoulder pain as the applicant's primary pain complaints. The CNRs further show Dr. Muhammad referring to the applicant suffering from acute back pain in his beginning entries and chronic low back pain by his last entry, dated June 16, 2016.
- [9] Dr. Muhammad prescribed him pain-killers (Percocet) and anti-inflammatories, and recommended physiotherapy and massage.
- [10] The respondent submits that one month post-accident, an October 2015 entry in Dr. Muhammad's CNRs shows the applicant admitting to feeling "much better", and upon recommendation, also agreeing to make an effort to return to work. This, according to the respondent, is a vital piece of information because it speaks to the applicant's credibility, or lack thereof. However, in reviewing the totality of medical evidence and expert reports discussed below, I do not find this entry to be sufficiently discrediting towards the applicant. Hence, I have assigned little to no weight to the respondent's submission.

- [11] The OCF-3, completed on November 15, 2015, two months post-accident, listed the applicant's injuries as left shoulder girdle sprain/strain, back sprain/strain, post-traumatic headaches and behavioural symptoms. Due to multiple injuries, high pain intensity and emotional and sleep disturbances, it was noted that the applicant's recovery would take more than 12 weeks.
- [12] Collectively, the OCF-18s note the applicant's injuries to be related to lower and upper back, shoulder (both chronic) and headaches. neck, sprain and strain of lumbar and thoracic spine, shoulder pain, sprain and strain of sacroiliac joint, headaches, dizziness, sleep disorders, anxiety and depression and chronic pain.

## **2. The Minor Injury Guideline (the "MIG")**

- [13] The applicant submits that his accident-related physical impairments, particularly chronic pain, and psychological impairments do not fall under the MIG. The respondent contends that the applicant's injuries, physical as well as psychological, are predominantly minor in nature and fall within the MIG.
- [14] The MIG establishes a framework for the treatment of minor injuries. The term "minor injury" is defined in s. 3 of the *Statutory Accident Benefits Schedule* ("the Schedule") as "one or more of a strain, sprain, whiplash associated disorder, contusion, abrasion, laceration or subluxation and includes any clinically associated sequelae to such an injury." The terms "strain", "sprain," "subluxation," and "whiplash associated disorder" are all defined in s. 3.
- [15] S. 18(1) limits recovery for medical and rehabilitation benefits for such injuries to \$3,500 ("the Cap") minus any amounts paid in respect of an insured person under the MIG.
- [16] Section 18(2) of the Schedule makes provision for some injured persons who have a pre-existing medical condition to receive treatment in excess of the Cap. To access the increased benefits, the injured person's healthcare provider must provide compelling evidence that the person has a pre-existing medical condition, documented prior to the accident, which will prevent the injured person from achieving maximal recovery if benefits are limited to the MIG cap.
- [17] It is important to note, however, that existence of a pre-existing condition will not automatically exclude a person's impairment from the MIG. The pre-existing medical condition must also prevent maximal recovery under the Cap.
- [18] The respondent relies upon the Divisional Court decision of *Scarlett v Belair Insurance*, 2015 ONSC 3635 (CanLII), to support its position that the applicant bears the onus of proving entitlement to the benefit beyond the Cap. I agree with the respondent. Accordingly, in this matter, the applicant carries the onus of establishing her entitlement beyond the Cap.

[19] I will now analyze the evidence relied upon by each party to determine whether the applicant's injuries fall outside the MIG. Thereafter, if necessary, I will address the remaining issues in dispute.

(i) The Applicant's Position & Evidence

[20] The applicant contends that he did sustain an impairment as result of the accident and that his injuries will prevent maximal recovery within the MIG. Hence, the disputed treatment plans are reasonable and necessary. In addition to the medical documents mentioned above, the applicant relies on the reports of the following assessors in his submissions to support his position:

1. Dr Andrew Shaul, psychologist
2. Dr. Grigory Karmy, chronic pain specialist

Dr. Andrew Shaul, Psychological Assessment

[21] Dr. Andrew Shaul, a psychologist, conducted a psychological assessment of the applicant on March 3, 2016. Dr. Shaul's assessment included a clinical interview and the Beck Depression Inventory-II test (BDI-II) and the Beck Anxiety Inventory test (BAI), both of which are 21-item questionnaires designed to measure degrees of depression and anxiety, respectively. Dr. Shaul also administered a symptom checklist-90-revised (SCL-90-R) questionnaire, designed to assess a wide range of psychological and physical symptoms, including emotional distress.

[22] Dr. Shaul found that the applicant's respective scores on these three tests were consistent with moderate levels of depression, mild levels of anxiety and considerable levels of emotional distress since the accident. Based on his findings and the DSM-V criteria, Dr. Shaul diagnosed the applicant with 1) adjustment disorder with mixed anxiety and depressed mood; and 2) specific phobia (travelling in a vehicle). He was of the view that the applicant's psychological impairments would prevent maximal recovery under the MIG.

[23] Dr. Shaul found the applicant to be credible, honest and straightforward. He found that the applicant demonstrated the symptoms supporting his diagnoses, which included anxiety in a vehicle, avoid entering a vehicle whenever possible, reduced energy, constant preoccupation with pain and thoughts of the accident and social isolation. He opined that, these symptoms were a direct result of the accident.

[24] Dr. Shaul's recommendations included 12 counselling sessions of psychotherapy on a weekly basis, gradually shifting to bi-weekly with improvements in the applicant's condition. The goals of these recommendations were to assist the applicant in overcoming his psychological impairments, so he may return to his

pre-accident activities of daily living. He further recommended that the applicant's treatment regimen should include cognitive behavioural therapy (CBT), various relaxation techniques and a comprehensive driver/passenger rehabilitation evaluation.

Dr. Grigory Karmy, Chronic Pain Assessment

- [25] Dr. Karmy assessed the applicant for chronic pain. After interviewing the applicant and conducting a physical examination, Dr. Karmy found the following: a) visible back pain when changing positions from sitting to standing; b) left shoulder pain during forward flexion, c) abduction and internal and external rotation; d) tenderness in the thoracic spine; and e) exacerbation of the dorsolumbar spine upon flexion and hyperextension.
- [26] Based on his findings, Dr. Karmy diagnosed the applicant with the following:
- 1) post-concussion syndrome,
  - 2) chronic mechanical left shoulder pain, likely associated with post-traumatic tendinopathy and/or osteoarthritis;
  - 3) chronic neuropathic left upper limb pain, possibly associated with radiculopathy, originating from the cervical discs and facet joints;
  - 4) chronic mechanical back pain, originating from the thoracic and lumbar discs and facet joints
  - 5) sacroiliac joint dysfunction
  - 6) myofascial pain syndrome
  - 7) sleep disorder
  - 8) mood disorder with symptoms of driving anxiety
- [27] Dr. Karmy recommended that the multifactorial nature of the applicant's chronic pain warrants a multidisciplinary approach and should include a combination of active rehabilitation with passive physical modalities and a comprehensive psychological approach. Specifically, Dr. Karmy opined that physiotherapy, massage, chiropractic adjustments and physiotherapy would improve the applicant's functionality, pain management, mood and overall quality of life. He further emphasized that laser, ultrasound, interferential currents (IFC), moist heat, myofascial release, trigger point therapy and proprioceptive facilitation technique (PNF) should be an integral part of the applicant's rehabilitation regime.
- [28] With respect to his diagnosis of post-concussion syndrome, Dr. Karmy opined that the applicant's symptoms were typical features of either a mild traumatic brain injury (m-TBI) or a concussion. He explained that a direct blow to the head

or loss of consciousness is not necessary to develop or sustain a concussion. An external force causing a sudden head movement can make the brain bounce violently inside the skull, as the brain is soft and moves at a different rate than the skull. The resulting damage to the brain is at microscopic and biochemical levels.

- [29] He concluded that the applicant presents with many symptoms consistent with post-concussion syndrome, including a combination of somatic, mood and cognitive symptoms, which can sometimes persist for years after an m-TBI, fatigue, sleep disturbances, irritability, mood swings, difficulty coping with chronic pain and various emotional problems.

### The Respondent's Position & Evidence

- [30] The respondent argues that the applicant's injuries are predominantly minor in nature, as defined in the *Schedule*, and hence, the disputed treatment plans are not reasonable and necessary. It further argues that the opinions of the assessors the applicant is relying upon should be given little to no weight as both those assessors relied on very limited medical information (OCF-18 and OCF-3). The respondent relies on the reports of the following assessors to support its position in regards to the applicant's injuries being minor:

1. Dr. P. Jugnundan, general practitioner
2. Dr. Rod Day, psychologist
3. Rod Pritchett, occupational therapist

### Dr. Jugnundan

- [31] According to Dr. Jugnundan, as a result of the accident, the applicant sustained minor and uncomplicated soft tissue injuries to his low back, left shoulder and has complaints of headaches.
- [32] Dr. Jugnundan's assessment combines clinical interview questions and a physical examination. During the physical examination, Dr. Jugnundan noted the following complaints: right sided neck pain during right rotation; left shoulder pain at the internal rotation and abduction; tenderness in the lumbosacral region and low back pain during range of motion testing. However, he did not find any impairments, as in his opinion, the applicant's injuries were predominantly minor in nature and fell within the scope of MIG. Hence, in light of his diagnoses, he did not deem the treatment plans for physical therapy services or for assistive devices to be reasonable and necessary.
- [33] The applicant submitted additional documents for Dr. Jugnundan's consideration. After reviewing the new set of documents, which included the CNRs of the



applicant's family doctor for the year 2015 only, diagnostic imaging and the CNRs from the emergency room, Dr. Jugnundan completed an addendum report. In this report, he stuck to his original findings and reiterated that the applicant suffered predominantly minor injuries as a result of the accident, and should be able to attain maximal recovery within the Cap.

Dr. Day

- [34] The applicant underwent an independent psychological assessment with Dr. Day, who along with a detailed clinical diagnostic interview, administered a psychometric personality assessment inventory (PAI), a 44-item self-report pain patient profile (P-3) and pain catastrophizing scale (PCS).
- [35] The results of a variety of validity indices administered by Dr. Day suggested that the applicant responded consistently to similar items with no signs of malingering or exaggeration. The combined results of all the tests indicated the following: a) significant distress and unusual degree of concern about physical functioning; b) decrease in social roles; c) symptoms of depression; d) disturbance in sleep patterns and decrease in level of energy; e) some degree of anxiety and stress; f) some anxiety related to travelling in a vehicle; and g) some weight gain.
- [36] Overall, Dr. Day found the applicant endorsed mild and transient psychological symptoms. However, he concluded that the applicant's impairments did not meet the diagnostic criteria for any psychological disorder under DSM-5, as he did not find marked distress, depression, fear or anxiety.

Rod Pritchett

- [37] Mr. Pritchett conducted an in-home/functional assessment of the applicant to determine: a) reasonableness and necessity of the treatment plan requesting assistive devices; and b) the applicant eligibility for attendant care benefits, as listed in Form 1.
- [38] This assessment combined the applicant's description of his pre-accident and post-accident activities with objective clinical observations, range of motion testing, manual muscle testing, grip strength assessment and evaluation of functional tolerance.
- [39] Mr. Pritchett concluded that the applicant did not suffer from an impairment that required an aide to assist in his personal care and activities of daily living because he demonstrated adequate functional ability to independently complete his self-care tasks. He opined that unnecessary support would promote unnecessary dependency on external supports.

- [40] While Mr. Pritchett did find decreased range of motion in the applicant's neck and left shoulder, he did not find functional limitations that would prevent the applicant from engaging in his personal care tasks, other than the applicant having trouble with putting his socks on. Mr. Pritchett also completed a Form-1, and based on his findings, recommended an amount of \$0 to be attributed towards attendant care benefits for the applicant.
- [41] As a result, Mr. Pritchett found that both the proposed treatment plans for assistive devices as well as aide of an attendant would not permit greater independence with personal care tasks. Hence, he found both these requests to be not reasonable and necessary.

### Finding

- [42] In conjunction with all the medical evidence before me, I accept Dr. Karmy's report and diagnoses over that of Dr. Jugnundan. Hence, I find that the applicant's accident-related physical injuries do not fall within the MIG for reasons listed below.
- [43] In light of Dr. Karmy's expertise as a chronic pain specialist, I prefer his conclusions over those of Dr. Jugnundan, who did not comment on the chronicity of the applicant's injuries. I accept Dr. Karmy's testing methods and conclusions derived by him from those tests, and find that overall, the applicant's pain symptoms and complaints were consistent throughout his visits to his family physician, Dr. Karmy and Dr. Jugnundan.
- [44] While I take note of the respondent's submission regarding the documents reviewed by Dr. Karmy being scant, I have assigned that point little to no weight, as I am able to corroborate his findings with Dr. Muhammad's CNRs to my satisfaction. Hence, I need not comment on the distinguishing features of the Tribunal matter of *J.S. and RBC Insurance Company*<sup>1</sup>, cited by the respondent, and the matter at hand.
- [45] I also reject the respondent's argument that Dr. Muhammad did not make a formal diagnosis of chronic pain in his CNRs. It is obvious to me from a detailed review of Dr. Muhammad's CNRs that the applicant's complaints regarding his low back pain were consistent and well documented, and the CNRs reflect the changing nature of his condition from acute to chronic.
- [46] Given my findings above, I do not need to determine whether the applicant's psychological impairment removes him from the MIG. Later in the decision, I do make a finding on whether the treatment plans proposing psychological treatment and psychological assessment are reasonable and necessary.

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<sup>1</sup> *J.S. and RBC Insurance Company*, AABS File No.: 16-000576; CanLii 12602

3. **Is the applicant entitled to monthly Attendant Care benefits in the amount of \$1,414.14?**

The Law

[47] In order to be entitled to monthly attendant care benefits, section 19 of the *Schedule* requires that the applicant must first establish that the benefit is reasonable and necessary. If the applicant is successful in satisfying initial entitlement, among other things, he/she must then establish that they have incurred the expense of attendant care. Section 3(7)(e) of the *Schedule* sets out the definition of “incurred” that is relevant in this appeal and states that an expense is not incurred unless:

(i) the insured person has received the goods or services to which the expense(s) relates;

(ii) the insured person has paid the expense, has promised to pay the expense or is otherwise legally obligated to pay the expense, and

(iii) the person who provided the goods or services,

(A) did so in the course of the employment, occupation or profession in which he or she would ordinarily have been engaged, but for the accident, or

(B) sustained an economic loss as a result of providing the goods or services to the insured person

[48] The applicant must satisfy all three requirements of “incurred” listed above in order to be successful in claiming entitlement.

The Applicant's Position

[49] The assessment of attendant care needs report completed by Devi Panganiban recommended monthly attendant care services in the amount of \$1,414.14. The same amount was also recommended in Form-1.

[50] The applicant submits that he has provided the respondent with all the invoices that had been forwarded to him by the service provider on May 7, 2017, in the total amount of \$15,232.00. These invoices should serve as proof for “incurred” services and the respondent should pay the attendant care benefits. The applicant further submits that the attendant care services were provided by Ms. Rita Oronsaye, a certified professional support worker (certificate provided by the applicant), employed with Attendants with Care Inc.

The Respondent's Position

[51] The respondent relies on the in-home/functional assessment of Mr. Pritchett (discussed earlier) to support its position that the applicant is not entitled to attendant care benefits. Mr. Pritchett concluded that the applicant demonstrated

adequate functional ability to independently complete his self-care tasks, with some difficulty in putting socks on. Hence, the Form-1 is excessive in its proposed amount.

- [52] The respondent further asserts that the applicant did not bring the invoices to its attention until after filing the appeal with the Tribunal. Therefore, they should not be considered, as the respondent was deprived of an opportunity to assess them prior to coming before the Tribunal.
- [53] In the alternative, the respondent raises credibility questions with respect to the submitted invoices. Firstly, the respondent is skeptical of the fact that the service provider did not invoice the applicant on a monthly basis for over two years, despite providing monthly services. Secondly, the invoices do not clarify the type of services provided and by whom. Moreover, there is no evidence that Ms. Oronsaye is employed with Attendants with Care and simply providing a diploma, qualifying her as a personal support worker, is not satisfactory evidence.

### Finding

- [54] In light of the evidence before me, I am not convinced that, on balance of probabilities, the applicant has met his onus of establishing entitlement to receive attendant care benefits. I find Mr. Pritchett's findings persuasive, and testing methods and observations credible. In my opinion, the totality of evidence suggests that while the applicant would benefit from physical ther

apy, his injuries and impairments do not warrant attendant care benefits. Therefore, the attendant care benefits are not reasonable and necessary.

- [55] In the event I'm wrong with respect to the applicant's initial entitlement to receive attendant care benefits, I find that the applicant has failed to establish that the expenses were incurred, as stipulated in s. 3(7) of the *Schedule*. I will now briefly address these requirements one by one in relation to the facts.
- [56] With respect to the first requirement, the invoices do not specify or itemize the services received by the applicant. As a result, I'm unable to determine whether he received the goods or services to which the expense(s) relates.
- [57] With respect to the second requirement, I am satisfied that the invoices serve as evidence that the applicant has either paid the expense or has promised to pay it.
- [58] Most importantly, with respect to the third requirement, the applicant fails to tender any evidence that: a) services were provided by Ms. Oronsaye, as the invoices do not contain the name of the specific person rendering their services; and b) if she indeed provided the services, she did so in the course of her employment, occupation or profession in which she would ordinarily have been engaged, but for the accident. There is no evidence before me that Ms.

Oronsaye is an employee of Attendants with Care and proof of her credentials in the form a certificate does not satisfy this part of the requirement.

- [59] In light of the foregoing, I am not persuaded and find that the applicant is not entitled to monthly attendant care benefits as proposed in the Form-1 and the attendant care needs report.

**4. Are the treatment plans reasonable and necessary?**

- (i) Treatment Plans for physical therapy services in the amounts of \$1,072.00 (partially approved), \$1,396.00 and \$1,491.20

- [60] The applicant submitted three treatment plans for physical therapy services, including chiropractic services, massage therapy and passive modalities between November 2015 and June 2016. One of these was partially approved by the respondent while the other two were denied. The applicant claims entitlement to services outlined in these treatment plans. In order to receive payment, he must prove that each treatment plan is reasonable and necessary.

- [61] All three treatment plans outline the applicant's accident-related injuries and impairments, largely consistent with other medical documentation I have reviewed thus far. The proposed treatments aim to target these impairments and outline common goals, such as pain reduction, increased range of motion and return to activities of normal living, coupled with some specific goals of each treatment plan. The methods to monitor progress are also noted, along with barriers to recovery, recommendations and any improvements in the applicant's condition with prior treatments.

Finding

- [62] I am persuaded that the disputed treatment plans are reasonable and necessary. The respondent relies on the findings of Dr. Jugnundan, which I have already discussed. Based on: a) my comments regarding Dr. Karmy and Dr. Jugnundan's competing reports in the previous section; b) my acceptance of Dr. Karmy's findings and diagnoses; and c) the information found in Dr. Muhammad's CNRs about the applicant's complaints, I am convinced that these treatment plans set out reasonable and legitimate medical and rehabilitative goals, particularly pain reduction to treat the applicant's accident-related impairments. As well, I do not find the treatment plans redundant because of the chronic nature of the applicant's complaints.
- [63] I accept the proposed methods to monitor the applicant's progress and find the costs associated with the treatments plans to be reasonable. Therefore, I find that the treatment plans relating to provision of physical treatments, valued at \$1,072.00 (partially approved), \$1,396.00 and \$1,491.20, respectively, are reasonable and necessary.

(ii) Treatment Plan for Assistive Devices in the amount of \$713.68

- [64] The goal of this treatment plan is to provide the client with necessary tools in the form of assistive devices to facilitate his return to activities of daily living. The respondent denied this treatment plan based on Dr. Jugnundan and Mr. Pritchett's reports.
- [65] Mr. Pritchett himself reports that the applicant has decreased range of motion and pain in neck and left shoulder, and has difficulty putting his socks on, which screams back problems to me. The applicant's back problems are well documented. In balancing Mr. Pritchett's findings with other reports, CNRs and treatment plans discussing the nature and extent of the applicant's accident-related impairments, Keeping in mind the extent and nature of the applicant's injuries, I am convinced that this treatment plan is reasonable and necessary, but only partially.
- [66] I find that the applicant is entitled to the following devices: 1) cervical pillow; 2) orthopaedic mattress pad; 3) long handle shoe horn; 4) long handle bath sponge; and 4) lumbar support, as they are consistent with the applicant's injuries and impairments. As a result, I find that this treatment plan is reasonable and necessary in the amount of \$451.36, including the administrative costs outlined in the treatment plan.

(iii) Treatment Plan for Psychological Treatment in the amount of \$2887.14

- [67] This treatment plan follows up on Dr. Shaul's diagnosis of adjustment disorder with mixed anxiety and depression and specific phobia relating to vehicles, and his recommendations made in the assessment report. The respondent denied this treatment plan based on Dr. Day's findings. I have discussed both Dr. Shaul and Dr. Day's findings in section two above.
- [68] I find Dr. Day's report to be more convincing and his testing methods more comprehensive. Dr. Day acknowledged that the applicant sustained some psychological and emotional injuries and impairments due to the accident, similar to the ones determined by Dr. Shaul. However, in his opinion, those impairments did not satisfy the diagnostic criteria of DSM-5. I agree with his conclusion and diagnosis.
- [69] Hence, while I accept that the applicant sustained psychological injuries as a result of the accident, the applicant, on a balance of probabilities, has failed to convince me that he sustained psychological impairments that are clinically significant. As a result, I find that the proposed treatment plan for psychological treatment is not reasonable and necessary.

(iv) Cost of Examination: Psychological Assessment in the amount of \$2,000.00

[70] The applicant claims entitlement to \$2,000.00 for a psychological assessment. The onus remains on him to prove that the proposed assessment is reasonable and necessary.

[71] In light of my findings and comments about the applicant's psychological impairments above, I find the cost of the examination for a psychological assessment to be an unreasonable and unnecessary expense. Hence, the applicant is not entitled to \$2,000 for the cost of an examination for a psychological assessment.

(v) Cost of Examination: Chronic Pain Assessment in the amount of \$2,000.00

[72] Based on my findings and comments regarding Dr. Karmy's report and the consistent complaints of pain by the applicant to his family doctor and other treating practitioners, I am satisfied that, on a balance of probabilities, the applicant has proven entitlement to \$2,000 for the cost of an examination for a chronic pain assessment.

[73] The proposed assessment is in relation to the impairments caused by the accident, and provides an opportunity for the applicant to find out the extent of his injuries, become educated on the nature of his chronic pain and identify any barriers to recovery. More importantly, recommendations can be made to the applicant regarding future care and an appropriate treatment regime can be determined.

[74] Therefore, I find it reasonable and necessary that the applicant be afforded an opportunity to explore the nature of his chronic pain, and be provided a prognosis and recommendations for recovery.

(vi) Cost of Examination: Attendant Care Assessment in the amount of \$1,521.26

[75] The goal of this treatment plan is to determine the future needs for attendant care required by the applicant as a result of the nature and extent of his injuries. I have already found that the applicant is not entitled to attendant care benefits. Therefore, an attendant care assessment would be moot.

[76] In light of the foregoing, I find that the applicant is not entitled to the cost of examination for an attendant care assessment. Hence, the proposed treatment plan is neither reasonable nor necessary.

**5. Is the respondent liable to pay a special Award under s. 10 O. Reg 664?**

- [77] The applicant seeks a special award under s. 10 of the *Ontario Regulation 664*, on the basis that the respondent unreasonably withheld or delayed payments to the applicant. The applicant requests this award on the basis that the respondent improperly adjusted the file and unfairly neglected medical evidence available to it. As a result, it unreasonably withheld access and payments of the benefits in dispute by keeping the applicant in MIG.
- [78] The respondent submits that there is no evidence that the benefits were withheld unreasonably or were delayed. The applicant did not provide convincing evidence to establish entitlement to benefits beyond the MIG as well as failed to establish that the disputed treatment plans were reasonable and necessary.
- [79] I am not convinced that the respondent unreasonably withheld or delayed payments of the benefits to the applicant. In making its decisions, the respondent relied on the medical opinions of its assessors, which is its prerogative and it is well within its rights to do so. Hence, I find that the applicant is not entitled to an award under s. 10 of the *Ontario Regulation 664*.

**6. Is the applicant entitled to Interest on overdue payments?**

- [80] Since the medical benefits are payable, I find that the applicant is entitled to interest, payable on the applicable amount of benefits owed to the applicant to the date of this decision in accordance with the *Schedule*.

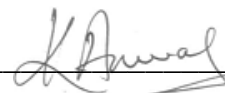
**CONCLUSION**

- [81] For the reasons noted above, I find that:
1. The applicant did not sustain predominantly minor injuries.
  2. The applicant is not entitled to attendant care benefits in the amount of \$1,414.14 per month.
  3. The applicant is entitled to the medical benefit in the amount of \$1,072.00.
  4. The applicant is entitled to the medical benefit in the amount of \$1,396.00.
  5. The applicant is entitled to the medical benefit in the amount of \$451.36, instead of \$713.58.
  6. The applicant is entitled to the medical benefit in the amount of 1,491.20.



7. The applicant is entitled to the medical benefit in the amount of 2,887.14.
8. The applicant is not entitled to the cost of an attendant care needs assessment in the amount of \$1,521.26.
9. The applicant is not entitled to the cost of a psychological assessment in the amount of \$2,000.00
10. The applicant is entitled to the cost of a chronic pain assessment in the amount of \$2,000.00.
11. The applicant is not entitled to an award pursuant to section 10 of *Ontario Regulation 664*, because the respondent unreasonably withheld or delayed payments?
12. The applicant is entitled to interest on overdue payments on the payable benefits.

Date of Issue: March 15, 2018



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**Khizer Anwar**  
**Adjudicator**