

**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



Tribunal File Number: 16-002085/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:

C. L.

Applicant

and

Wawanesa Mutual Insurance

Respondent

DECISION

ADJUDICATOR: Derek Grant

Heard in writing on: March 29, 2017

APPEARANCES:

Counsel for C.L.: Jessie V. Tran

Counsel for the respondent: Domenic D. Nicassio

OVERVIEW

- [1] The applicant ('C.L.') was injured in an automobile accident on June 28, 2014 and sought benefits from its insurer, Wawanesa pursuant to the *Statutory Accident Benefits Schedule – Effective September 1, 2010* (the "Schedule").
- [2] A dispute arose with respect to the benefits and C.L. submitted an application to the Licence Appeal Tribunal - Automobile Accident Benefits Service (AABS) (the "Tribunal").
- [3] The parties were unable to resolve their dispute at a case conference held on November 23, 2016, and the matter proceeded to a written hearing. All submissions and evidence were filed with the Tribunal by March 22, 2017.

ISSUES

- [4] The following are the issues to be decided:
 - i. Did C.L. sustain an impairment within the meaning of the *Schedule* as a result of the accident?
 - a. Is C.L. entitled to the following treatment plans:
 - \$1,965.00 for physical therapy by York Medical Centre, as detailed in a treatment plan dated November 17, 2014?
 - \$3,321.00 for chiropractic treatment by York Medical Centre, as detailed in a treatment plan dated April 13, 2015?
 - \$3,321.00 for chiropractic treatment by York Medical Centre, as detailed in a treatment plan dated August 13, 2015?
 - b. Is C.L. entitled to the following cost of examination expenses:
 - \$2530.00 for a social work assessment, by York Medical Centre as detailed in a treatment plan dated March 2, 2015?
 - \$265.00 for the preparation of a disability certificate submitted March 2, 2015?
 - \$265.00 for the preparation of a disability certificate by York Medical Centre dated July 9, 2014?
 - \$200.00 for the preparation of a disability certificate submitted September 21, 2015?
 - c. Is C.L. entitled to interest on any overdue payment of benefits?

RESULT

- a. C.L. suffered an impairment within the meaning of the *Schedule* as a result of the accident.
- b. After reviewing the submissions and the evidence and for the reasons that follow, I do not find any of the treatment plans for medical benefits or examination expenses to be reasonable or necessary.
- c. C.L. is not entitled to interest in accordance with s. 51 of the *Schedule*.

BACKGROUND

- [5] C.L. was in an automobile accident on June 28, 2014. She was taken to Major Mackenzie Health Centre and was sent for x-rays and an echocardiogram (“ECG”); the results came back normal. The physician at the emergency department recommended physical therapy. On July 8, 2014, she began attending York Medical Centre for physical therapy. On July 22, 2014, C.L. saw her family physician, Dr. Tammy Hermant, who sent her for x-rays and advised her to stay off work for one week.
- [6] C.L. claims she sustained impairment to her neck and back and her pre-existing sciatica was aggravated by the accident. Consequently C.L. argues that the treatment plans for chiropractic treatment and physical therapy are reasonable and necessary to treat her accident related injuries. C.L. submits that the social work assessment is necessary for the purposes of determining whether or not a self-managed home treatment plan would be appropriate. C.L. contends that the disability certificates are reasonable and necessary as nature of her injuries have changed over time, requiring new disability certificates.
- [7] The insurer argues that C.L.’s neck and back impairments were not as a result of the accident, and the treatment plans are not reasonable and necessary. Further, that she had reached maximum medical recovery from facility based treatment. The insurer submits that the social work assessment is not reasonable and necessary on the basis that re-integration into C.L.’s life is not required, which is the purpose of the assessment. In regards to the disability certificates, the insurer stated that no new disability certificates had been requested, therefore the expenses were not payable.

THE LAW:

- [8] Section 14 and 15 of the *Schedule* provides that the insurer shall pay for medical benefits to or on behalf of an applicant so long as:

- i. The applicant sustains an impairment as a result of an accident; and
 - ii. The medical benefit is a reasonable and necessary expense incurred by the applicant as a result of the accident.
- [9] Section 25 of the *Schedule* establishes the insurer shall pay for reasonable fees charged by a health practitioner for reviewing and approving a treatment and assessment plan including any assessment or examination necessary for that purpose, if any one or more of the goods, services, assessments or examinations described in the treatment and assessment plan have been:
- i. approved by the insurer;
 - ii. deemed by this Regulation to be payable by the insurer; or
 - iii. determined to be payable by the insurer on the resolution of a dispute described in subsection 280 (1) of the Act.

EVIDENCE AND ANALYSIS:

- [10] I must determine whether C.L.'s impairments resulted from the accident. If I find that her injuries were caused by the accident, then I must determine if the treatment plans and assessments in dispute and the cost of completion of the disability certificates are reasonable and necessary.
- [11] C.L. bears the onus to prove on a balance of probabilities that her impairments are as a result of the accident. She also bears the burden of proving that the benefits claimed are reasonable and necessary.
- [12] For the following reasons I find that C.L. has not met her onus and she is therefore, not entitled to the benefits she seeks in this Application.

Did C.L. sustain an impairment within the meaning of the *Schedule* as a result of the accident?

- [13] Before I make a decision on whether or not the treatment plans were reasonable and necessary, I must determine that C.L.'s impairments were as a result of the accident.
- [14] I am satisfied that C.L.'s neck and back injuries are a result of the accident. While her pre-accident clinical notes and records from 2011 to 2013 indicate that she suffered from headaches, neck pain and depression, the post-accident records of her family doctor confirm that she was prescribed stronger nerve pain

medication after the accident. In addition, the records show that C.L. suffered from right-sided sciatica, which had resolved prior to the accident.

- [15] C.L.'s post-accident medical records from Dr. Hermant and Dr. Luke Bui, general surgeon, indicate that, as a result of the accident, she sustained cervical and lower lumbar back strain. Over the course of several visits to Dr. Hermant in 2015, C.L. reports neck pain and headaches as a result of the accident.
- [16] From my review of the evidence submitted by the parties, I find that the medical practitioners and assessors agreed that C.L. suffered predominantly soft tissue injuries as a result of the accident and an exacerbation of her pre-existing psychological impairments.

Is C.L. entitled to receive payment for medical benefits for physical therapy and chiropractic treatment?

- [17] I find that C.L. is not entitled to the medical benefit because she has not met her onus in proving entitlement to physical treatment. Based on the evidence before me, I find that she would benefit from psychological treatment. The medical records demonstrate that C.L.'s psychological issues act as the catalyst to C.L.'s recovery, which is not addressed through the recommended physical treatment plans in dispute.
- [18] C.L. argued that her psychological and pre-existing impairments are the main basis for why she is not able to successfully complete a home-based, self-directed exercise program. However, there was no evidence submitted to support this. C.L. relied on the treatment plans for physical therapy, recommended by Dr. Bui to support her ongoing need for treatment.
- [19] C.L.'s assessors, Dr. Eva Bodnar, psychologist, Dr. Karen Spivak, psychologist and Dr. Hermant, note the applicant's complaints of pain and the self-reported results of the physical treatment she received. Despite this, I am not pointed to any objective evidence that supports the need for further facility based treatment.
- [20] The report of Dr. Spivak, dated April 2015 recommends further psychological treatment, as a means to deal with the physical complaints of pain. However I do not give much weight to a psychologist providing a physical impairment opinion. In addition, C.L. reported to Dr. Spivak that she did not find the weekly physical treatments helpful.
- [21] C.L. argued that Dr. Hermant's clinical notes and records establish the need for further physical treatment. Throughout Dr. Hermant's records between 2014 and 2015, C.L. reports a variety of issues, related to neck pain and headaches, stress and depression. C.L. reports that the medication helped for a time, but on

subsequent visits, reports worsening headaches, stress, depression and neck pain.

- [22] I do not find the recommendation by Dr. Hermant for further physical treatment compelling, due to the inconsistencies of reports given by C.L. to Dr. Hermant, Dr. Spivak, Dr. Silver and Dr. Bodnar about her response to physical treatment. If the reports by the insurer's assessors, Dr. Hermant and her own assessors were consistent, in regards to her response to physical treatment, I would have given more consideration for the need for physical treatment.
- [23] The insurer submits that the treatment plans in dispute are for physical treatment and not psychological treatment, and therefore are not reasonable and necessary.
- [24] The insurer relied upon two insurer examinations ("IE") reports of Dr. Eric Silver, general practitioner, dated March 23, and October 25, 2015. Dr. Silver's physical examination concluded that C.L. had sustained soft tissue injuries and there was no objective evidence of any impairment from a musculoskeletal perspective. Further, that C.L. "has reached maximum medical recovery from facility based therapy".
- [25] The respondent contends that C.L. has not provided evidence that establishes the need for further physical therapy treatment. For the above-noted reasons, I agree with the insurer's position and place more weight on Dr. Silver's reports than the medical evidence submitted by the applicant. Dr. Silver has more expertise to diagnose C.L.'s physical impairments versus the opinion of the two psychologists.
- [26] For the reasons stated above, I do not find the treatment plans to be reasonable or necessary.

Is C.L. entitled to receive the cost of an examination for a social work assessment in the amount of \$2,530.00?

- [27] I find that C.L. is not entitled to the cost of an examination for a social work assessment as she provided no submissions or evidence in support of the assessment and indicated to Dr. Spivak that she did not want assistance from a social worker.
- [28] The onus is on C.L. to prove that the examination expense was reasonable and necessary. C.L.'s refusal of a service requested on her behalf is not a service that the insurer should be obliged to pay for. Therefore, I do not find the examination expense to be reasonable and necessary.

Is C.L. entitled to receive payment for the following examination expenses:

- i. Cost of examination for the preparation of the treatment plan for the social work assessment in the amount of \$265.00?
 - ii. Cost of an examination for the preparation of a disability certificate in the amount of \$265.00?
 - iii. Cost of an examination for the preparation of a disability certificate in the amount of \$200.00?
- [29] Section 25 of the *Schedule* requires the respondent to pay for reasonable fees charged for preparing a disability certificate if required under section 21, 36 or 37 of the *Schedule*, including any assessment or examination necessary for that purpose.
- [30] The disability certificate is a certificate from a health practitioner that states the cause and nature of the person's impairment and contains an estimate of the duration of the disability.
- [31] In regards to the disability certificates, I agree with the insurer that no new disability certificates had been requested; therefore these expenses are not payable. In addition, I also agree with the insurer's submissions that these expenses are not payable because I did not find that the treatment plan in relation to the disability certificates is reasonable and necessary. Additionally, the insurer has paid according to the *Guideline*, therefore, no further amount is payable.
- [32] With respect to the expense of preparing the social work assessment, the insurer takes the position that the denial of the treatment plan for the social work assessment is based on s.25 (3) of the SABS and therefore, any associated fees or expenses are also not payable. I agree. C.L. did not provide any legal argument or evidence to demonstrate that this expense was reasonable and necessary or payable. Having found the social work assessment is not reasonable and necessary, the fee for form completion and preparation for this treatment plan are also not payable.
- [33] For the same reasons that I find the cost of examination expense outlined above is not payable under section 25(3) of the *Schedule*, I also find the remaining cost of examination expenses, not payable under the same section. Therefore, as a result I find that C.L. is not entitled to receive payment for the examination expenses noted above.

ORDER:

- [34] For the reasons outlined above this application is dismissed.

Released: August 14, 2017



Derek Grant, Adjudicator