



**Citation: Ni v. Aviva Insurance Company of Canada, 2022 ONLAT 20-008774/AABS**

**Licence Appeal Tribunal File Number: 20-008774/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:

**Chun Xia Ni**

**Applicant**

and

**Aviva Insurance Company of Canada**

**Respondent**

**DECISION**

**VICE-CHAIR:**

**Beverly Brooks**

**APPEARANCES:**

**For the Applicant:**

Chun Xia Ni, Applicant  
Pavlos Achioptas, Counsel  
Yu Jiang, Paralegal

**For the Respondent:**

Mohamed R. Hashim, Counsel

**HEARD:**

**By Way of Written Submissions**

## BACKGROUND

- [1] Chun Xia Ni, the applicant, was involved in an automobile accident on December 23, 2019, and sought benefits pursuant to the Statutory Accident Benefits Schedule *Effective - September 1, 2010 (including amendments effective June 1, 2016)* (“Schedule”). The applicant was denied certain benefits by the respondent, Aviva Insurance Company, and submitted an application to the Licence Appeal Tribunal - Automobile Accident Benefits Service (“Tribunal”).
- [2] The applicant claims entitlement to an award related to the Income Replacement Benefits (IRB) withheld before February 9, 2021 as well as entitlement to a psychological treatment plan.
- [3] The respondent maintains that the IRB payments were delayed because the applicant did not comply with s.33 information requests in a timely manner. The respondent submits that once the applicant provided the required documents, the respondent not only started paying IRB but also remitted the IRB since the date of receiving the required documentation from the applicant, plus interest. The respondent denied the psychological treatment plan on the basis that it is a duplicate of a previously approved treatment plan and that an insurer’s examination (“IE”) indicated that that a second psychological treatment plan is not necessary or reasonable.
- [4] The onus is on the applicant to demonstrate, on a balance of probabilities, that she is entitled to an award because the conduct of the respondent was imprudent, stubborn and inflexible and exceeded what is reasonable when responding to the applicant’s application for IRB and request to approve a psychological counselling treatment plan.
- [5] With respect to the psychological counselling treatment plan in dispute, the onus is on the applicant to demonstrate that the psychological counselling plan is reasonable and necessary.

## ISSUES

- [6] The issues in dispute in this hearing are:
  - 1) Is the applicant entitled to an award under Regulation 664 because the respondent unreasonably withheld or delayed payments to the applicant?
  - 2) Is the applicant entitled to a medical benefit in the amount of \$3,701.88 for psychological counselling services, proposed by Somatic Assessment and Treatment Clinic in an OCF-18 dated May 12, 2020?

3) Is the applicant entitled to interest on the overdue payment of benefits?

## RESULT

[7] I find that that the applicant is entitled to an award and to the psychological counselling treatment plan in dispute. Interest is payable on the psychological treatment plan.

## ANALYSIS

### Award

[8] Pursuant to s. 10 of Regulation 664, the Tribunal can award a lump sum of up to 50 percent of the amount to which the applicant is entitled together with interest.

[9] The analysis for an award requires the adjudicator to determine whether the insurer exceeded the limits of what is reasonable and could be characterized as malicious. In *J.G. v. Travelers Canada*<sup>1</sup>, the adjudicator stated that the conduct of the insurer had to be viewed as excessive, imprudent, stubborn, unyielding or immoderate, in withholding or delaying payments and that an award is not punishment for simply delaying the payment of benefits because of a different view of the file. Another aspect that is noted in the same case is that the insurer's handling of the claim is not to be held to a standard of perfection and should not be judged with hindsight but rather should be evaluated on the basis of the information available at the time.

[10] According to s.36(4) to (8) and s.37 of the *Schedule*, the respondent, shall within 10 business days of receiving an application for income benefits replacement (OCF-2) and a completed Disability Certificate (OCF-3), pay the specified benefit or give the applicant notice that the applicant is not entitled to the benefit. If the respondent requires additional documentation and/or an examination under s.44 relating to the benefit, the respondent must advise the applicant of the requirement for documentation and/or an examination. The respondent must then send a request to the applicant under s. 33(1) or s.33(2) and/or request an insurer's examination ("IE") pursuant to s. 44. If the respondent sends the request to the applicant under s.33 (1) or s.33(2) and s. 44 and the applicant provides the documentation and/or undergoes the IEs, the respondent must then either:

a. pay the specified benefit; or

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<sup>1</sup> 17-001630 2018 CanLII 76431 (ON LAT) para. 12.

- b. give the applicant notice explaining the medical or other reasons as to why the respondent does not believe that the applicant is entitled to the specific benefit.

- [11] If the insurer fails to comply within the applicable time period, the insurer must pay the specified benefit starting on the day the insurer received the application and the completed Disability Certificate.
- [12] Pursuant to s. 33(1) of the *Schedule*, the applicant is required to provide the insurer within 10 business days after receiving the request from the respondent, any information that is reasonably required to assist the insurer in determining the applicant's entitlement to a benefit.
- [13] The applicant sent the insurer an Application for Accident Benefits (OCF-1) and an Election of Income Replacement Benefits (OCF-10) on January 8, 2002. The OCF-1 indicated that the applicant was employed at the time of the accident and that the applicant had not been able to work since the accident. The applicant then sent the respondent a completed Employer's Confirmation Form (OCF-2) on January 9, 2002. The OCF-2 indicated that she had selected the last four weeks before the accident to process the application for IRB and that she did not have an Income Continuation Benefit through her employer. Dr. G. Plantzas, Chiropractor, sent a Disability Certificate (OCF-3) to the respondent on January 16, 2020.<sup>2</sup> The Disability Certificate indicated that the applicant was unable to perform the essential tasks of her pre-accident employment and that the anticipated duration of the disability was more than 12 weeks. The Disability Certificate also indicated that the applicant suffered an inability to carry on a normal life and was unable to perform the housekeeping and home maintenance services that she performed prior to the accident.<sup>3</sup> In her submission, the applicant points out that she had sent all the required information to determine the quantum and entitlement to IRB by January 16, 2020.
- [14] The applicant sent the OCF-2 (Employer's Confirmation Form) to the respondent on January 9, 2020 and an OCF-3 (Disability Certificate) to the respondent on January 16, 2020. The respondent then sent a letter to the applicant acknowledging the receipt of the Employer's Confirmation Form (OCF-2) and the Disability Certificate (OCF-3) on January 30, 2020 and requesting the following information:

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<sup>2</sup> Applicant's Document Brief, Disability Certificate, Dr. Palantzas, Tab 12, page 4.

<sup>3</sup> Applicant's Document Brief, Disability Certificate, Dr. Palantzas, Tab 12, page 3.

- a. record of employment;
- b. bank statements from four weeks pre-accident to present;
- c. tax return from 2018;
- d. employment Insurance file including dates, duration and payment information;
- e. short-term disability (STD) and long-term disability (LTD) files;
- f. clinical notes and records from total Recovery Rehab Centre from the date of the accident to present;
- g. clinical notes and records from the applicant's family doctor from two years pre-accident;
- h. clinical notes and records from North York General Hospital from the date of the accident until the present.

[15] The respondent continued to send letters to the applicant claiming that it needed the above information to determine IRB eligibility and indicating that unless this information was sent the applicant's IRB payments would be suspended. The respondent indicated in its January 30, 2020 letter to the applicant that under s. 36 of the *Schedule*, it required the above information to determine whether the applicant was eligible for IRB. In its letter, the respondent stated that it would suspend the applicant's eligibility for IRB on February 13, 2020 unless the applicant provided the above documents by then.

[16] The respondent, however, did not require the information listed above to determine whether the applicant was eligible for IRB as the respondent had already received the OCF-2 and the OCF-3. These are the only documents that the applicant is required to submit to the respondent so that the respondent can determine the quantum and eligibility for IRB. S. 36(2) of the *Schedule* requires the applicant to submit a completed OCF-3 with her application for IRBs. The OCF-2 provides the confirmation of her pre-accident income to calculate the quantum of her IRB, pursuant to section 7(2) of the *Schedule*.

[17] The respondent sent two letters (dated January 30, 2020 and February 25, 2020) to the applicant requesting the required documentation. In the February 25, 2020 letter, the respondent requested the required documentation by March 10, 2020 and then indicated that IRB would be suspended if the documentation was not

received by March 10, 2020.<sup>4</sup> In a third letter dated April 13, 2020, the respondent suspended the applicant's IRB on the basis of non-compliance. In addition to pressing the applicant for documents that were not required to prove her eligibility for IRB, the respondent told the applicant in its April 13, 2020 letter that the applicant was non-compliant with s. 33 requests.

- [18] The applicant then filed an application with the LAT on July 31, 2020. At the case conference on January 21, 2021, the respondent reiterated its production requests and then agreed to reduce its production requests to up to date tax returns and the dates when the applicant was out of the country.
- [19] The applicant submits that she sent most of the requested information to the respondent by March 6, 2020; the exceptions being her bank statements, Employment Insurance file and her short-term and long-term disability files. She maintains that these records were not reasonably required to determine her eligibility to IRB. The respondent gave no explanation to the applicant as to why any of the omitted records were required. The applicant maintained that the Employment Insurance file was not necessary as the respondent knew that she was employed at the time of the accident because of the Application for Accident Benefits (OCF-1) and an Election of Income Replacement Benefits (OCF-10) that she had provided.
- [20] The applicant sent a letter on January 26, 2021 to the respondent indicating that she had yet to receive any IRB (a year after the accident) and asked that her IRB be paid without further delay as she was experiencing financial hardship. (She did receive IRB for about three months but the specific time is not clear from either the applicant's or the respondent's submission). The applicant noted that several documents that were requested are not usually requested by the respondent in order for an applicant to obtain IRB. The respondent acknowledged that its requests were unusual by notifying the applicant that certain documents that had been previously requested were no longer necessary.
- [21] The applicant eventually received her IRB payments approximately eighteen months after the accident. On August 9, 2021, more than six months after the applicant's letter, the respondent advised the applicant by email that IRB in the amount of \$23,314.29 and interest in the amount of \$1,575.20 had been paid to the applicant as of February 9, 2021 for a total amount of \$24,889.49. The applicant presumes that this amount represents an IRB quantum of \$400 per week along with accrued interest from December 30, 2019 (one week after the

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<sup>4</sup> Respondent's Document Brief, Letter Requesting IRB Documentation, February 25, 2020, page 45.

accident) to February 9, 2021 but the respondent has never verified the amounts or the time period. The respondent continued to pay IRB to the applicant since August 9, 2021.

- [22] The applicant submits that from the date of the accident (December 23, 2019) until February 9, 2021 (13 months), which is the period in which the respondent delayed paying IRB to the applicant, the respondent never requested an IE with respect to IRB and that the respondent never relied on any assessment report or medical opinion to deny or withhold the payment of IRB. Moreover, the applicant maintains that the respondent has never provided any explanation for withholding or delaying the payment of IRB. The respondent, however, did request that the applicant attend IEs for IRB. In fact, the respondent has arranged IEs which have generated reports dated March 11, 2020, July 27, 2021 and August 20, 2021 for the respondent to determine the applicant's IRB eligibility. The assessors of the most recent IEs (August 20, 2021) related to IRB reach different conclusions as to whether the applicant has an inability to perform the essential tasks of her pre-accident employment. Dr. Soric, a physiatrist, notes that the applicant does not have injuries that disable her from performing the essential tasks of her pre-accident employment.<sup>5</sup> It should be noted that Dr. Soric does not directly answer the question as to whether the applicant suffered an inability to perform the essential tasks of her pre-accident employment. Dr. Bradbury, a psychologist, directly states that the applicant does not suffer a psychological inability to perform the essential tasks of her pre-accident employment but notes that that it would fall outside her professional practice to comment on this issue from a physical/functional standpoint.<sup>6</sup> Dr. Polygenis, a physiotherapist, does not offer an opinion.
- [23] Both the respondent and the applicant indicate that the respondent started to pay the IRB in early 2020 although neither provide the date when the IRB was first received. In a letter dated April 13, 2020, the respondent informed the applicant that the IRB was suspended because of non-compliance, pursuant to section 33, effective April 13, 2020.<sup>7</sup> The respondent also claimed that the applicant was non-compliant with a number of section 44 requests. This may have been the reason that the respondent suspended the IRB but neither the applicant nor the respondent indicate the reason for the IRB suspension in their respective submissions. The respondent requested that the applicant attend IEs to ensure ongoing income replacement benefit eligibility. (The applicant has attended three IEs to determine IRB eligibility which were scheduled on March 11, 2020, July

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<sup>5</sup> Applicant's Reply Document Brief, Psychiatry Assessment, Dr. Soric, August 20, 2021, page 25.

<sup>6</sup> Applicant's Reply Document Brief, Psychology Assessment, Dr. Bradbury, August 20, 2021, page 39.

<sup>7</sup> Respondent's Document Brief, Respondent's Letter Regarding IRB, April 13, 2020, page 50.

27, 2021 and August 20, 2021). After reviewing the requested information that the applicant sent throughout 2020, the respondent reinstated the IRB on February 8, 2021. The respondent then remitted \$24,889.49 (\$23,314.29 of IRB and \$1,575.20 in interest) to the applicant. It should be noted that the respondent's April 13, 2020 letter neither acknowledges the applicant's March 6, 2020 letter or responds to the applicant's questions she posed in the letter about why certain documents were being requested that were not required to determine IRB eligibility. Instead, the respondent informed the applicant that she was in non-compliance and that her IRB payments were being suspended until she provided the requested documents.<sup>8</sup> The respondent also added that if the applicant did not agree she could file an application with the Tribunal.

[24] I find that the respondent's conduct was imprudent, stubborn and inflexible as the respondent refused to pay the IRB after the applicant had submitted an OCF-2 on January 9, 2020 and an OCF-3 on January 16, 2020. For this applicant, these were the only documents that were required to initiate the IRB. In some cases, it is reasonable for the respondent to ask for additional information if the applicant is self-employed or has several sources of income. In this case, however, the applicant was not self-employed and had only one source of income. The respondent then requested documents that were not required to prove the applicant was eligible for IRB. The respondent received the OCF-2 and the OCF-3 on January 16, 2020, but never paid the benefit until February 8, 2021, which was over a year later. The applicant submits that 50 percent of the amount of the IRB payment should be paid as an award as the respondent had not paid the IRB for more than a year even though it had the required documentation. The respondent maintained that it should not pay an award as it had paid the amount of IRB plus interest and, therefore, was not liable to pay an award. Based on this analysis, I find that the respondent is liable to pay an award equal to 50 percent of the IRB paid (50 percent of \$23,314.29 which is equal to \$11,652.14). This amount represents the highest percentage that can be awarded. I find that the respondent's behaviour falls on the furthest end of the scale because the respondent insisted on receiving documentation that was not required to prove the applicant's IRB eligibility, did not pay her IRB for over a year (April 2020 to February 2021) even though she had sent the all the required documentation by January 16, 2020 and suspended her IRB payments on April 13, 2020 because of "non-compliance". The applicant was compliant, however, as she had sent the respondent the required documentation by January 16, 2020 and attended three

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<sup>8</sup> Respondent's Document Brief, Respondent's Letter Regarding IRB Eligibility, April 13, 2020, page 51.



IEs to determine IRB eligibility that the respondent had scheduled in 2020 and in 2021.

### **Psychological Counselling**

- [25] Section 38(8) of the Schedule states that the respondent must give notice of the goods and services it agrees to pay for and those that it does not agree to pay for within 10 business days after it receives the treatment and assessment plan. If the respondent fails to give notice in accordance with section 38(8), the respondent is prohibited from taking the position that the insured person has a minor injury that is subject to the Minor Injury Guideline. If it fails to respond on time or fails to give the requisite medical and other reasons for the decision, the respondent must then pay for the incurred goods and services starting on the eleventh day after the respondent received the application, until a proper notice is provided.
- [26] The applicant and the respondent initially had different explanations as to why the May 12, 2020 psychological treatment plan was denied. The applicant submitted the psychological treatment plan to the respondent on May 20, 2020. The applicant maintained in her initial submission that the respondent failed to give notice within 10 days of the treatment plan for psychological counselling being submitted. In fact, the applicant claimed to have never received any notice related to the treatment plan and submitted that the respondent must, therefore, pay for all goods and services outlined in the treatment plan starting on the 11<sup>th</sup> business day after the respondent received the treatment plan as the applicant incurred the costs. The respondent, however, has included the denial letter dated May 29, 2020 in its document brief. In this letter, the respondent denies the psychological treatment plan on the basis that it is a duplicate of psychiatric services provided by Dr. S. Xiang, a psychiatrist to which her family doctor has referred to her, for psychiatry services not psychology treatment.<sup>9</sup> The inclusion of the denial letter in the respondent's document brief is evidence that the respondent provided a denial within the required time. Moreover, the applicant acknowledges the May 29, 2020 denial letter in her submission reply but indicates that the May 29, 2020 letter is not in her file. Considering the timing of the exchange, I find that the respondent is compliant with the time provisions in s.38(8).
- [27] The respondent relied on an s. 44 assessor report to determine if the May 12, 2020 psychological counselling treatment plan was reasonable and necessary.

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<sup>9</sup> Respondent's Document Brief, Denial Letter for Psychological Counselling Treatment Plan, May 29, 2020, Tab B8, page 1, page 68 of Document Brief.

The respondent requested that the applicant attend an IE with respect to the psychological treatment plan dated November 13, 2020. This IE was conducted on July 22, 2021, by Dr. C. Bradbury, a psychologist. Dr. Bradbury concluded that the applicant “did not meet any DSM-5 diagnostic threshold for any current depressive disorder; manic or hypomanic episode; or any form of post-accident stress disorder that can be directly accounted for by her 2019 motor vehicle accident”.<sup>10</sup> Dr. Bradbury, however, diagnosed the applicant with Adjustment Disorder with mixed anxiety and depressed mood, gradually improving<sup>11</sup> and recommended “an additional twelve session course of psychological treatment sessions”.<sup>12</sup> Dr. Bradbury agreed that the treatment plan dated November 13, 2020 was “partially reasonable and necessary at this time”.<sup>13</sup> It should be noted that Dr. Bradbury was not specifically asked about the psychological counselling treatment plan dated May 12, 2020 in the IE assessment questions.

[28] The respondent submits that the psychological treatment plan dated May 12, 2020 and the client’s psychiatric treatments with Dr. Xiang are duplicates and, therefore, the treatment plan is not reasonable and necessary. This treatment plan is not a duplication of the counselling that she received from Dr. Xiang, the psychiatrist to which Dr. Dong, her family physician, referred her. In his clinical notes, Dr. Xiang merely summarized the applicant’s comments about her relationships with family members and others, indicated that he would rather refer the applicant to a clinic (the services of this clinic are not described in his clinical notes), claimed that he made psychopharmacology suggestions (not detailed in his clinical notes), advised her family doctor to continue emphasizing the importance of sleep, diet and exercise, recommended calling the crisis line if required and indicated that a follow up appointment would be scheduled in a month’s time.<sup>14</sup> In contrast to Dr. Xiang’s assessment and future planned treatment for the applicant, Dr. B. Cook, a psychological associate, who wrote the treatment plan, recommends cognitive restricting techniques to address the applicant’s anxiety and depression.

[29] The goal of the May 12, 2020 psychological counselling treatment plan is to enable the applicant to return to activities of normal living. Dr. Cook also added

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<sup>10</sup> Applicant’s Reply Submission Document Brief, Psychological Assessment Report, Dr. Bradbury, page 9 (page 12 of document brief).

<sup>11</sup> Applicant’s Reply Submission Document Brief, Psychological Assessment Report, Dr. Bradbury, page 10 (page 13 of the document brief).

<sup>12</sup> Applicant’s Reply Submission Document Brief, Psychological Assessment Report, Dr. Bradbury, page 11 (page 14 of the document brief).

<sup>13</sup> Applicant’s Reply Submission Document Brief, Psychological Assessment Report, Dr. Bradbury, page 11 (page 14 of the document brief).

<sup>14</sup> Applicant’s Reply Document Brief, Clinical Notes and Records of Dr. Xiang, April 16, 2020, Tab 2, pages 14, 15 and 16.

the following explanation to the goals section of the OCF-18 “to challenge and reduce negative thought patterns by utilizing cognitive restructuring techniques to deal with her anxiety and depressive feelings and cognitions”.<sup>15</sup> Dr. Cook has noted in the Activity Limitations Section of the OCF-18 that the applicant has been “experiencing significant emotional and psychological distress since the accident”<sup>16</sup> and that the applicant is distressed from the accident about her “general health and future outlook, avoidance and anxiety when travelling in a vehicle, difficulties with sleep, fluctuating emotions, and feelings of guilt for causing family and friends to worry”.<sup>17</sup>

- [30] I find that the treatment plan dated May 12, 2020 is reasonable and necessary as the goals are the same as the November 13, 2020 treatment plan for the same type of service which was found to be reasonable and necessary by Dr. Bradbury. Further, the evidence demonstrates that the applicant was suffering from depression and anxiety at the time the treatment plan was proposed and that the treatment plan is not duplicative of the treatment through her family physician, as submitted by the respondent.
- [31] Dr. Cook assessed the applicant and concluded that the applicant had a high probability of full recovery with the appropriate treatment but without such treatment he stated that her prognosis for recovery is fairly poor.<sup>18</sup> Dr. Cook assessed the applicant and issued a report dated May 4, 2020 regarding the nature of and extent to which the applicant was suffering from psychological or emotional difficulties as a direct result of the accident.<sup>19</sup> Dr. Cook noted in his report that the applicant had above average pain patient profile, above average pain patient depression scores, above average patient anxiety scores and above average somatization scores.<sup>20</sup> In addition, the applicant’s scores on the Beck Anxiety Inventory test were in the “severely anxious range”<sup>21</sup> and “severely depressed range”<sup>22</sup> for the Beck Depression Inventory.
- [32] The psychological treatment plan dated May 12, 2020 is not a duplication of the counselling she received from Dr. Xiang, the psychiatrist to which Dr. Dong, her family physician, referred her. In his clinical notes, Dr. Xiang merely summarized the applicant’s comments about her relationship with her family members and

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<sup>15</sup> Applicant’s Document Brief, OCF-18, March 21, 2021, Dr. Cook, page 7.

<sup>16</sup> Applicant’s Document Brief, OCF-18, March 21, 2021, Dr. Cook, page 7.

<sup>17</sup> Applicant’s Document Brief, OCF-18, March 21, 2021, Dr. Cook, page 7.

<sup>18</sup> Applicant’s Document Brief, Psychological Assessment, May 4, 2020 Dr. Cook, Tab 24, page 12.

<sup>19</sup> Applicant’s Document Brief, Psychological Assessment, May 4, 2020, Dr. Cook, Tab 24, page 3.

<sup>20</sup> Applicant Document Brief, Psychological Assessment, May 4, 2020, Dr. Cook, Tab 24, page 7 to 8.

<sup>21</sup> Applicant Document Brief, Psychological Assessment, May 4, 2020, Dr. Cook, Tab 24, page 10.

<sup>22</sup> Applicant Document Brief, Psychological Assessment, May 4, 2020, Dr. Cook, Tab 24, page 11.

others, indicated that he would refer the applicant to a clinic (the services of this clinic are not described in his clinical notes), claimed that he made psychopharmacology suggestions (not detailed in his clinical notes), advised her family doctor to continue emphasizing the importance of sleep, diet and exercise, recommended calling the crisis line if required and indicated that a follow up appointment would be scheduled in a month's time.<sup>23</sup> In contrast to Dr. Xiang's assessment and future planned treatment for the applicant, Dr. Cook recommends cognitive restricting techniques to address the applicant's anxiety and depression.

- [33] I agree with the applicant that Dr. Bradbury's opinion is applicable to the May 12, 2020 treatment plan. Dr. Bradbury found the November 13, 2020 treatment plan which had the same goals as the May 12, 2020 treatment plan to be reasonable and necessary. By extension, I find the May 12, 2020 treatment plan to be reasonable and necessary. The goals of the two plans are identical (to facilitate a return to normal living). Both plans contain the same comment in the goal section of the OCF-18 i.e. "to challenge and reduce negative thought patterns by utilizing cognitive restructuring techniques to deal with her anxiety and depressive feelings and cognitions".<sup>24</sup> The treatment plan activities are similar (psychological treatments, progress and completion on OCF-18). To me, the second plan is effectively a continuation of the first plan and both plans are reasonable and necessary given the psychological state of the applicant.
- [34] The applicant maintains that her psychological state is so frail that number of psychological treatments are needed. Dr. Xiang's clinical notes and records indicate that the applicant is facing challenges with respect to her relationships with various people and her family but do not mention any types of treatment or psychological tests. In fact, Dr. Xiang's clinical notes and records emphasize the need for additional psychological treatments and mention that Dr. Xiang is going to refer her to a clinic and schedule a follow up appointment in a month's time. Moreover, the Psychological Assessment by Dr. Cook reports high scores of the applicant on the anxiety and depression indexes and a need for psychotherapy to improve her psychosocial functioning.<sup>25</sup>
- [35] Dr. Soric concluded that the applicant has not reached maximum medical improvement. Dr. Soric conducted a paper review of the applicant's medical records and issued a report dated January 25, 2021. He stated that the applicant

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<sup>23</sup> Applicant's Reply Document Brief, Clinical Notes and Records of Dr. Xiang, April 16, 2020, Tab 2, pages 14, 15 and 16.

<sup>24</sup> Applicants' Document Brief, OCF-18, Psychological Treatment, Dr. Cook, May 12, 2020, Dr. Cook, Tab 24, Page 7.

<sup>25</sup> Applicant's Document Brief, Psychological Assessment, May 4, 2020, Dr. Cooke, Tab 24, page 12.

would regress if she was not supported by a physiotherapist or chiropractor because of her psychological status.<sup>26</sup>

- [36] Considering the evidence and analysis above, I find the May 12, 2020 treatment plan is reasonable and necessary. Having found that the treatment plan is reasonable and necessary and that the applicant incurred it, it follows that she is entitled to the payment of the goods and services.

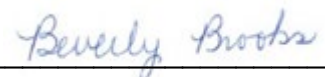
### **Interest**

- [37] Interest is payable on the overdue payment of benefits, pursuant to s. 51.

### **CONCLUSION**

- [38] The applicant is entitled to an award on her claim for IRB. The applicant provided the required documents to the respondent (an OCF-2 and OCF-3) by January 16, 2020 to verify that she was eligible for IRB. The applicant is only required to indicate to the respondent that she is applying for benefits (OCF-2) and that she is unable to work (OCF-3) to qualify for IRB. The respondent requested other documentation from the applicant supposedly to determine the applicant's eligibility for IRB but these other documents are not required to qualify for IRB payments. The respondent, therefore, unreasonably withheld or delayed payments to the applicant for IRB. The respondent then relied on these documents as justification to delay the applicant's IRB payments for over a year (January 26, 2020 which is 10 business days after the applicant provided an OCF-2 and an OCF-3 to February 8, 2021 although some IRB payments were made in April but the dates and the time period over which IRB was paid are not clear). I, therefore, find that the applicant is entitled to a lump sum equal to 50 per cent of the amount of IRB which was unreasonably withheld and delayed (50% of \$24,889.49).
- [39] The applicant is entitled to the psychological counselling treatment plan dated May 12, 2020, plus interest.

**Released:** December 21, 2022



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**Beverly Brooks  
Vice-Chair**

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<sup>26</sup> Respondent's Document Brief, Paper Review, Dr. Soric, January 25, 2021, page 118.