



**Citation: Wu v. Aviva Insurance Company of Canada, 2025 ONLAT 23-012028/AABS**

**Licence Appeal Tribunal File Number: 23-012028/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:

**Bai Wen Wu**

**Applicant**

and

**Aviva Insurance Company of Canada**

**Respondent**

**DECISION**

**ADJUDICATOR:**

**Gary Marshall**

**APPEARANCES:**

For the Applicant:

Ryan Olson, Paralegal

For the Respondent:

Kathleen Mertes, Counsel

**HEARD:**

**By way of Written Submissions**

## OVERVIEW

- [1] Bai Wen Wu, the applicant, was involved in an automobile accident on November 23, 2019 and sought benefits pursuant to the *Statutory Accident Benefits Schedule - Effective September 1, 2010 (including amendments effective June 1, 2016)* (the “Schedule”). The applicant was denied benefits by the respondent, Aviva Insurance Company of Canada, and applied to the Licence Appeal Tribunal - Automobile Accident Benefits Service (the “Tribunal”) for resolution of the dispute.

## ISSUES

- [2] The issues in dispute are:
- i. Is the applicant entitled to \$3,701.88 for psychological services, proposed by Somatic Assessments and Treatment Clinic in a treatment plan/OCF-18 (“plan”) dated September 14, 2023?
  - ii. Is the applicant entitled to \$90.00 for a doctor's visit, submitted on a claim form (“OCF-6”) dated August 8, 2023?
  - iii. Is the respondent liable to pay an award under s. 10 of Reg. 664 because it unreasonably withheld or delayed payments to the applicant?
  - iv. Is the applicant entitled to interest on any overdue payment of benefits?

## RESULT

- [3] I find that:
- i. The applicant is entitled to the treatment plan for psychological services.
  - ii. The applicant is entitled to the OCF-6 for a doctor's visit.
  - iii. The applicant is not entitled to an award under s. 10 of Reg. 664.
  - iv. The applicant is entitled to interest on overdue payments.

## ANALYSIS

### Medical Benefits

- [4] To receive payment for a treatment and assessment plan under s. 15 and 16 of the *Schedule*, the applicant bears the burden of demonstrating on a balance of probabilities that the benefit is reasonable and necessary as a result of the accident. To do so, the applicant should identify the goals of treatment, how the goals would be met to a reasonable degree and that the overall costs of achieving them are reasonable.

#### ***Treatment plan for psychological services***

- [5] I find that the treatment plan for psychological services is reasonable and necessary.
- [6] The OCF-18, completed by Raymond Wong, occupational therapist, is for fourteen (14) 1.5-hour sessions of psychotherapy. The goal of the proposed treatment plan is to challenge and reduce negative thought patterns by utilizing cognitive restructuring techniques to deal with anxiety and depression, and to return to activities of normal living.
- [7] The applicant relies on the psychological report dated March 26, 2020, of Dr. Bruce Cook, psychologist. After a comprehensive evaluation of the psychometric testing, Dr. Cook diagnosed the applicant with Severe Depressive Episode, Single, Without Psychotic Symptoms, Generalized Anxiety Disorder. Then, in progress reports from September 30, 2020, March 5, 2021, and October 13, 2022, Dr. Cook opined that the applicant continued to suffer from ongoing issues related to low mood, stress, sleeping difficulties, nightmares, intrusive thoughts and memories, driver and passenger anxiety and cognitive difficulties. Additionally, the applicant relies on the clinical notes and records (dated July 5, 2021, and February 27, 2024) of Dr. Heung-Wing Li, physician. Dr. Li's notes include numerous complaints of insomnia, nightmares, phobia of driving, fatigue, depression, low mood and issues with concentration. Dr. Li provided a diagnosis of PTSD and depression.
- [8] The applicant also submits that Dr. Cook's medical opinion and recommendations should be given significant weight over the respondent's assessor, Dr. Fabio Salerno. According to the applicant, treating practitioners are in a better position to determine whether ongoing treatment is reasonable and necessary, and Dr. Salerno's reports should be given less weight, given the short period spent with the applicant. Furthermore, the applicant submits that the test completed in Dr. Salerno's December 2, 2021, assessment was only designed to

address patients with cognitive and chronic pain symptoms. Finally, the applicant submits that during a visit made six weeks before the plan was submitted, Dr. Li noted that the applicant appeared “clearly sad and downcast with significant depressed effect” and “appears fatigued, depressed look”.

- [9] The respondent submits that the treatment plan is not reasonable and necessary. The respondent relies on various medical assessment reports, clinical notes and records of Dr. Salerno, psychologist, the *Schedule*, and previously reported decisions with the Tribunal. The respondent submits that it has already approved an excessive number of psychological therapy sessions to date, with no updated medical documentation submitted to support the proposed therapy. Additionally, the respondent noted that there was no evidence of any objective signs of improvement despite continuing therapy.
- [10] The respondent further submits that, aside from visits to Dr. Li on March 6, 2020, and December 5, 2020, the applicant did not attend to any medical doctor again until he saw Dr. Li over two and a half years later August 2, 2023. The respondent noted that, despite indicating a diagnosis of depression and PTSD, Dr. Li did not recommend further psychotherapy. The respondent further submits that Dr. Salerno conducted s. 44 IE psychological assessment on November 24, 2023, at which time he determined the proposed psychological therapy to be not reasonable and necessary. Dr. Salerno noted that:
- Mr. Wu may likely exhibit some accident-related psychological symptoms; however, given the convergence of objective validity data from multiple measures of negative response bias and symptom overreporting, my examination findings provide insufficient objective evidence to support a DSM-5-TR diagnosis as a direct result of the subject accident or an accident-related psychological impairment.
- [11] The respondent further submits that the treatment plan in dispute is essentially an identical copy of the past three approved treatment plans, dating back to the initial OCF-18 submitted on April 24, 2020, with no change in the nature, number, or duration of the proposed psychological treatment sessions. Furthermore, the respondent also noted that despite recommending another 14 sessions of psychotherapy in the s. 25 psychological progress note of Dr. Cook, dated October 13, 2022, the applicant did not submit the disputed treatment plan to the respondent for consideration until almost one year later on September 22, 2023.

- [12] I agree with the applicant that multiple progress reports from Dr. Cook noted ongoing issues related to low mood, stress, sleeping difficulties, nightmares, intrusive thoughts and memories, driver and passenger anxiety and cognitive difficulties. I also recognize the applicant's submission that, during a visit six weeks before the plan was submitted, Dr. Li noted that the applicant appeared "clearly sad and downcast with significant depressed effect" and "appears fatigued, depressed look". Following a review of the evidence before me, I have been satisfied that the applicant has provided corroborating medical evidence to establish that the treatment plan is reasonable and necessary.
- [13] I find, on a balance of probabilities, that the applicant has established that the treatment plan, dated September 14, 2023, is reasonable and necessary.

***OCF-6 for a doctor's visit***

- [14] I find that the applicant is entitled to the OCF-6 for a doctor's visit.
- [15] The applicant submits that the expenses related to the doctor's visit to Dr. Li are directly related to the symptoms caused by the subject accident, and the expenses are reasonable and necessary on a balance of probabilities.
- [16] The respondent submits that the OCF-6 is not reasonable and necessary, as the applicant did not provide updated medical documentation until March 4, 2024, which consisted of a clinical note, dated August 2, 2023. This note did not provide any indication that the complaints raised by the applicant during this visit were directly linked to the subject MVA.
- [17] As noted above, I find that the applicant's evidence shows that his family doctor did recommend psychological services for the applicant's accident-related injuries between March 2020 and August 2023. It is well established that a treatment plan, with corroborating medical evidence, is sufficient to establish that the treatment plan is reasonable and necessary.
- [18] I find, on a balance of probabilities, that the applicant has established that the OCF-6, dated August 8, 2023, is reasonable and necessary.

***Award***

- [19] Under section 10, the Tribunal may award up to 50% of the total benefits payable if it determines that an insurer has unreasonably withheld or delayed payment of those benefits. An award is deemed justified when the insurer's conduct is classified as unreasonable, which refers to behaviour that is excessive, imprudent, stubborn, inflexible, unyielding, or immoderate.

- [20] The applicant seeks an award due to the following reasons; the respondent categorically ignoring the medical records of the applicants' treating practitioners and assessors; the applicant is vulnerable and has sustained serious injuries, the Tribunal needs to set precedents to ensure deterrence to insurers, and the insurer acted in a highhanded manner.
- [21] In response, the respondent denies any bad faith or unreasonable behaviour. It argues that the applicant has not provided any specific instances to support a finding that the respondent has unreasonably withheld or delayed payment of benefits.
- [22] The applicant must demonstrate that the denial of benefits was unreasonable and that the respondent unreasonably withheld or delayed payment of benefits.
- [23] As outlined in paragraph 54, an award is justified only when the insurer's conduct is unreasonable in terms of being excessive, imprudent, stubborn, inflexible, unyielding, or immoderate. In this case, the applicant had been approved for 42 prior sessions of the same psychotherapy that is in dispute. In this case, while the delay may have caused some inconvenience, there is no evidence to suggest that it was deliberate, persistent, or part of a broader pattern of obstruction. Accordingly, I find that the conduct does not rise to the level of unreasonableness required to justify an award.

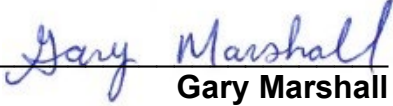
### ***Interest***

- [24] Interest is applicable on any overdue benefits in accordance with s. 51 of the *Schedule*. Consequently, the applicant is entitled to receive interest on any overdue payments.

### **ORDER**

- [25] The applicant is entitled to the disputed OCF-18 and OCF-6.
- [26] The applicant is entitled to interest, pursuant to s. 51 of the *Schedule*.
- [27] The applicant is not entitled to an award under s. 10 of Reg. 664.

**Released: September 2, 2025**

  
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**Gary Marshall**  
**Adjudicator**