



**Citation: Ji v. Aviva General Insurance Company, 2025 ONLAT 23-013785/AABS**

**Licence Appeal Tribunal File Number: 23-013785/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:

**Shuping Ji**

**Applicant**

and

**Aviva General Insurance Company**

**Respondent**

## **DECISION**

**ADJUDICATOR:** Jeff Chatterton

**APPEARANCES:**

For the Applicant: Ryan Olsen, Paralegal

For the Respondent: Natalie Spinelli, Paralegal

**HEARD:** In Writing

## OVERVIEW

- [1] Shuping Ji, the applicant, was involved in an automobile accident on March 21, 2022, 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 General Insurance Company, and applied to the Licence Appeal Tribunal – Automobile Accident Benefits Service (the “Tribunal”) for resolution of the dispute.

## ISSUES

- [2] The issues to be decided in the hearing are:
1. Is the applicant entitled to \$4,069.56 for physiotherapy services, proposed by UHeal Rehab Centre in a treatment plan/OCF-18 (“plan”) dated August 11, 2022?
  2. Is the applicant entitled to \$373.92 (\$1,682.06 less \$1,308.14 approved) for psychological services, proposed by Somatic Assessments and Treatment Clinic in a plan dated September 21, 2023?
  3. Is the applicant entitled to \$747.96 (\$2,804.12 less \$2,056.16 approved) for psychological services, proposed by Somatic Assessments and Treatment Clinic in a plan dated May 29, 2023?
  4. Is the applicant entitled to \$434.67 (\$1,682.06 less \$1,247.39 approved) for psychological services, proposed by Somatic Assessments and Treatment Clinic in a plan dated February 7, 2024?
  5. Is the respondent liable to pay an award under s. 10 of Reg. 664 because it unreasonably withheld or delayed payments to the applicant?
  6. Is the applicant entitled to interest on any overdue payment of benefits?

## RESULT

- [3] The applicant is not entitled to the treatment plan for physiotherapy services.
- [4] The applicant is entitled to the remaining amounts in the treatment plans for psychological services.
- [5] The applicant is entitled to interest in accordance with s. 51 of the Schedule.

[6] The respondent is not liable to pay an award.

## ANALYSIS

### ***Is the Treatment Plan for Physiotherapy Reasonable and Necessary?***

- [7] I find that the applicant is not entitled to the treatment plan for physiotherapy services.
- [8] 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.
- [9] The applicant stated that the treatment plan is necessary to reduce pain in his neck and lower back. The OCF-18 outlined 16 therapy sessions, with a stated goal of pain reduction, an increased range of motion, and increased strength, all intended to return to the activities of normal living.
- [10] The applicant included the Clinical Notes and Records (“CNRs”) from a walk-in clinic he attended after the accident, where he was seen by Dr. Heung-Wing Li.
- [11] The applicant is also relying upon a psychological assessment conducted by Psychologist, Dr. Alfonso Marino, dated March 31, 2023, where he states that physiotherapy helps with alleviating pain.
- [12] The respondent submits that the treatment plan is not reasonable and necessary. It relies upon a s.44 Psychiatry Assessment, conducted by General Practitioner Dr. Neetan Alikhan on March 3, 2023. Dr. Alikhan stated there is no objective evidence of an accident related neurological, anatomical, structural or physiological impairment.
- [13] I find the applicant has not met his onus because he has not led me to contemporaneous corroborating medical evidence that establishes the treatment plan is reasonable and necessary. Dr. Li’s CNRs do not recommend physiotherapy. In addition, while the treatment plan was submitted in November 2022, and denied in mid-March 2023, the evidence of Dr. Marino is from March 31, 2023, and therefore I find it is not contemporaneous with the treatment plan. I put no weight on this evidence.

- [14] In summary, the applicant has not led me to contemporaneous corroborating medical evidence that indicates that the treatment plan for physical therapy is reasonable and necessary.
- [15] I find, on a balance of probabilities, that the applicant has not met his onus to prove that the treatment plan is reasonable and necessary.

***Is the applicant entitled to the partially denied amounts in the psychological treatment plans (issues 2, 3 and 4, above.)***

- [16] The applicant is entitled to the partially denied amounts in the treatment plans for psychological services.
- [17] The dispute arises over the amount payable to the treatment provider. The fee for services provided through the Schedule is governed by the Professional Services Guideline (“the Guideline”), as outlined in section 49(1) of the *Schedule*. Pursuant to the Guideline, the Respondent is not liable to pay for expenses related to professional services rendered to an insured person that exceed the maximum hourly rates set out in it. Further, the Guideline provides that the maximum hourly rate for psychologists and psychological associates is \$149.62. The rate provided for unregulated professional is \$58.19 per hour. Relevant to this dispute, the Guideline states: services provided by health care professionals/providers, unregulated providers and other occupations not listed in the Guideline are not covered by the Guideline. The amounts payable by an insurer related to services not covered by the Guideline are to be determined by the parties involved.
- [18] The applicant submits that the treatment provider, Dr. Wendy Lee, is a psychotherapist, and should be paid at \$149.61 per hour, rather than the approved \$99.76 per hour. The applicant submits that Dr. Lee is a registered psychotherapist providing the same cognitive behavioural and psychotherapy services as would be provided by a psychologist, and should therefore be paid at the higher rate equivalent to a psychologist.
- [19] The applicant relies on *J.V. vs Intact*<sup>1</sup>, which found that a psychotherapist providing the same cognitive behavioural therapy as a psychologist should be compensated at the same rate as a psychologist.
- [20] The applicant further stated that Dr. Lee’s work would be under the supervision of a qualified psychologist, Dr. Pojhan.

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<sup>1</sup> 2019 CANLII 76995 (ON LAT)

- [21] The applicant also submits that Dr. Lee speaks fluent Mandarin and would be able to communicate with the applicant without the need for an interpreter, which may represent a net savings to the respondent.
- [22] The respondent relies on *J.A. v. Aviva General Insurance*<sup>2</sup>, which found that it is acceptable for psychotherapists to be compensated at a lower rate.
- [23] Having reviewed both precedents, I prefer *J.V. v Intact* as being similar to the issues in dispute in this application. While both cases discuss the compensation rates for psychotherapists, *J.A. v Aviva* speaks more to when an agreement has been made between a treatment provider and an insurer to conduct work at agreed upon rates. In our current case, no agreement exists.
- [24] Upon review of the Guideline, and bearing in mind the legal precedent's discussed, I find the respondent is liable to pay Dr. Lee the same hourly rate of \$149.61 as a psychologist, or psychological associate under the Guidelines. As a result, I have exercised this discretion in finding Dr. Lee is entitled to be paid an hourly rate of \$149.61. The plain language meaning of the Guideline establishes that registered psychotherapists are not listed within the Guideline, and as a result are not covered by the Guideline. Therefore, the amounts payable are to be determined by the parties, or if the parties cannot agree, an adjudicator.
- [25] While reviewing the evidence provided, I note the progress report dated September 15, 2023, clearly indicates all the work is under the direct supervision of Dr. Pojhan. In fact, the progress report was co-authored by and signed by both doctors. The progress report also indicates an array of cognitive therapy treatments have been conducted.
- [26] It is clear to me that the work Dr. Lee is doing is behavioural cognitive therapy, under the direct supervision of a psychologist, Dr. Pojhan.
- [27] For these reasons, I find on a balance of probabilities the applicant has met her onus in demonstrating that she is entitled to the disputed amounts in issues 2, 3 and 4.

### ***Interest***

- [28] Interest applies on the payment of any overdue benefits pursuant to s. 51 of the *Schedule*. Interest applies on the remaining balances in the treatment plans in issues 2, 3 and 4.

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<sup>2</sup> 2020 CANLII 12726 (ON LAT)

## **Award**

- [29] The applicant sought an award under s. 10 of Reg. 664. Under s. 10, the Tribunal may grant an award of up to 50 per cent of the total benefits payable if it finds that an insurer unreasonably withheld or delayed the payment of benefits. The Tribunal has determined that an award is justified where the delay or withholding of benefits by the insurer is unreasonable conduct, meaning “behaviour, which is excessive, imprudent, stubborn, inflexible, unyielding, or immoderate.” The onus is on the applicant to prove, on a balance of probabilities, that the respondent’s conduct meets this criteria.
- [30] While the applicant is successful, I do not find that the respondent’s behaviour rises to the level of an award. A dispute regarding compensation amounts does not rise to the level of unreasonable conduct.
- [31] I do not find that the insurer unreasonably withheld or delayed payment of benefits. Therefore, no award is payable.

## **ORDER**

- [32] I find:
- i. The applicant is not entitled to \$4,069.56 for physiotherapy services, proposed by U-Heal Rehab Centre in a treatment plan dated August 16, 2022.
  - ii. The applicant is entitled to the remaining balances in the three treatment plans for psychological services proposed by Somatic Assessments and Treatment Clinic, dated May 29, 2023, September 21, 2023 and February 7, 2024.
  - iii. Interest is payable on the remaining balances in the three treatment plans for psychological services in accordance with the *Schedule*.
  - iv. The applicant is not entitled to an award.

**Released:** September 19, 2025

  
Jeff Chatterton  
Adjudicator