Tribunals Ontario | **Tribunaux décisionnels de l'Ontario**

Licence Appeal Tribunal | Tribunal d'appel en matière de permis

Citation: Yuan v Aviva Insurance Company of Canada, 2026 ONLAT 25-008219/AABS

File Number: 25-008219/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:

Jufen Yuan

Applicant

and

Aviva Insurance Company of Canada

Respondent

DECISION

ADJUDICATOR: **Harouna Saley Sidibé, Member**

APPEARANCES:

For the Applicant: Ryan Olson, Counsel

For the Respondent: Yalda Aziz, Counsel

HEARD: **By way of written submissions**

OVERVIEW

[1] The applicant, Jufen Yuan, was involved in a motor vehicle accident on October 26, 2023, and sought benefits from the respondent, Aviva Insurance Company of Canada, 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 and applied to the Licence Appeal Tribunal - Automobile Accident Benefits Service (the "Tribunal") for resolution of the dispute.

[2] The applicant reported physical pain as well as psychological symptoms, including difficulty sleeping, anxiety while driving, reduced social and recreational activity, and difficulties with memory and concentration. She seeks entitlement to a non-earner benefit ("NEB"), payment of the outstanding balance for a treatment and assessment plan for psychological services, interest, and an award.

ISSUES IN DISPUTE

[3] The issues in dispute are:

1. Is the applicant entitled to a non-earner benefit of $185.00 per week from December 11, 2023, to date and ongoing?

2. Is the applicant entitled to $1,495.92 ($3,252.92 less $1,757.00 approved) for psychological services, proposed by Somatic Assessments and Treatment Clinic in a treatment plan/OCF-18 ("plan") dated April 15, 2025?

3. Is the respondent liable to pay an award under s. 10 of Reg. 664 because it unreasonably withheld or delayed payments to the applicant?

4. Is the applicant entitled to interest on any overdue payment of benefits?

RESULT

[4] For the reasons below, I find that:

a. The applicant has not established a complete inability to carry on a normal life. However, because the respondent's December 11, 2023, denial letter did not comply with s. 36 of the *Schedule*, the respondent shall pay the NEB of $185.00 per week from November 21, 2023, when it received the applicant's completed application and disability certificate, until July 18, 2025, when it issued a compliant notice.

b. The applicant is entitled to interest on the overdue NEB payment for the shall-pay period.

c. The applicant is not entitled to the outstanding balance under the psychological services plan dated April 15, 2025.

d. The applicant is not entitled to an award.

ANALYSIS

Is the applicant entitled to an NEB?

(a) The applicant has not established a complete inability to carry on a normal life

[5] I find that the applicant is not entitled to NEB because she has not established that the accident resulted in a complete inability to carry on a normal life.

[6] Section 12(1) of the *Schedule* provides that an insurer shall pay an NEB to an insured person who sustains an impairment as a result of the accident, if the insured person suffers a complete inability to carry on a normal life as a result of the accident and within 104 weeks after the accident. Section 3(7)(a) of the *Schedule* defines a complete inability to carry on a normal life as "an impairment that continuously prevents

the person from engaging in substantially all of the activities in which the person ordinarily engaged before the accident." The Court of Appeal set out the guiding principles for NEB entitlement in *Heath v. Economical Mut. Ins. Co.*, 2009 ONCA 391 ("*Heath*"), which generally focuses on a comparison of the applicant's pre- and post-accident activities.

[7] The applicant submits that the accident caused physical and psychological impairments that substantially altered her daily functioning. She relies on evidence of driving anxiety, intrusive thoughts about the collision, sleep disturbance, diminished energy and motivation, reduced concentration and memory, decreased socialization, and an inability to participate in hiking. She further submits that she performs household responsibilities with greater difficulty than before the accident and relies more heavily on her husband for assistance. She argues that, viewed cumulatively, these changes represent a marked departure from her pre-accident life and establish a complete inability to carry on a normal life.

[8] She relies particularly on the November 16, 2023, OCF-3 completed by Dr. Richard Tavares, a chiropractor, who indicated that she was completely unable to carry on a normal life. She also relies on the psychological assessment by Dr. Mehrdad Pojhan, a psychologist, who diagnosed Adjustment Disorder with Mixed Anxiety and Depressed Mood.

[9] The respondent submits that this evidence does not meet the stringent NEB test. It relies particularly on Dr. Rakesh Ratti's September 13, 2024, Section 44 psychological assessment and the records of Dr. Suan Ngo, the applicant's family physician. The respondent argues that the applicant has remained independent in self-care, continues to perform household activities, continues to care for her children, continues to drive, and remains a homemaker.

[10] I accept that the applicant sustained accident-related impairments and that the accident adversely affected several aspects of her life. The medical evidence, including the reports of Dr. Mehrdad Pojhan and Dr. Rakesh Ratti, as well as the family

physician's records, consistently documents accident-related psychological symptoms, such as anxiety, emotional distress, sleep disturbance, reduced social engagement, and difficulty concentrating. I also accept that the applicant stopped hiking, socializes less frequently, experiences ongoing driving anxiety, and has greater difficulty with certain household activities than before the accident.

[11] However, accident-related impairments, or even significant lifestyle changes, do not, on their own, establish entitlement to an NEB. The issue is whether those impairments continuously prevent the applicant from engaging in substantially all of her pre-accident activities.

[12] The evidence regarding the applicant's pre-accident life shows that she was primarily responsible for childcare and household management. She completed household tasks, including cooking, cleaning, laundry, grocery shopping, and dishwashing. She cared for her children, drove regularly, socialized with friends and family, and participated in recreational activities, including hiking.

[13] Although her post-accident functioning is diminished in important respects, the evidence does not satisfy me that she has been continuously prevented from engaging in substantially all of those activities. She remains independent in her personal care and continues to fulfill her role as a homemaker and caregiver to her children. She continues to perform the core indoor household activities that occupied much of her pre-accident life, including cooking, cleaning, laundry, grocery shopping, and dishwashing. Although she reported greater pain, fatigue, or difficulty performing these activities, the evidence does not establish that she cannot perform them.

[14] I also find that the applicant continues to drive. The evidence consistently shows that driving causes anxiety and that she attempts to avoid the collision site when possible. Nevertheless, she can drive when necessary, and the evidence does not establish that driving anxiety prevents her from engaging in her regular activities.

[15] I have also considered the cumulative impact of the applicant's symptoms and limitations. I accept that she experiences reduced enjoyment of life, diminished social engagement, sleep disturbance, emotional distress, concentration difficulties, and the loss of recreational activities such as hiking. Taken together, these are meaningful consequences of the accident. However, even when considered collectively, they do not persuade me that the applicant has been continuously prevented from engaging in substantially all of the activities that constituted her pre-accident life.

[16] In reaching this conclusion, I place significant weight on the evidence that the applicant has maintained the core functions that characterized her pre-accident lifestyle, namely caring for her children, managing her household, remaining independent in self-care, and continuing to drive. While the evidence shows reduced functioning, it does not show the degree of functional disruption the *Schedule* requires. The applicant's post-accident life is more difficult and less fulfilling than before the accident, but it is not one in which she has been prevented from engaging in substantially all of her ordinary activities.

[17] I also give weight to Dr. Ratti's opinion that, despite his diagnosis of accident-related psychological impairment, there was no evidence that the applicant's psychological condition resulted in functional limitations of the magnitude alleged. I find that opinion consistent with the applicant's continued ability to perform most of her regular activities.

[18] Considering the totality of the evidence and comparing the applicant's pre- and post-accident functioning as required by Heath, I find that the applicant has not established, on a balance of probabilities, that her accident-related impairments continuously prevented her from engaging in substantially all of the activities in which she ordinarily engaged before the accident. Accordingly, she has not established a complete inability to carry on a normal life and is not entitled to an NEB.

[19] The applicant alternatively submits that the respondent's December 11, 2023, denial failed to comply with s. 36(4)(b) of the *Schedule* and that NEB are therefore payable under s. 36(6) until a compliant notice was provided on July 18, 2025. I address that submission below.

(b) The respondent's December 11, 2023, denial did not comply with s. 36(4)

[20] Section 36(4) of the *Schedule* requires an insurer, within 10 business days of receiving an application for a NEB and a completed disability certificate, to either pay the benefit, provide a notice explaining the medical and any other reasons for not believing the insured person is entitled to the benefit, or request information under s. 33. If an insurer fails to comply with s. 36(4) or (5), s. 36(6) provides that the insurer shall pay the specified benefit from the time it received the application and disability certificate until it subsequently provides a notice that is compliant with s. 36(4)(b).

[21] The applicant submits that the respondent received the completed OCF-3 on November 21, 2023. The OCF-3 identified accident-related impairments and expressly recorded Dr. Tavares' opinion that the applicant suffered a complete inability to carry on a normal life. Despite this information, the respondent denied the claim on December 11, 2023, stating that no medical evidence demonstrated a complete inability to carry on a normal life.

[22] The applicant submits that the denial failed to provide adequate medical reasons for the respondent's position. She argues that the respondent did not meaningfully address the medical information in the OCF-3, explain why it was not accepted, identify any deficiencies in the information provided, or specify what additional information was required to assess the claim.

[23] The respondent submits that the December 11, 2023, letter satisfied the requirements of s. 36(4)(b). It argues that the letter advised the applicant that no medical evidence supported a complete inability to carry on a normal life and that no supporting medical records were available for review. The respondent further submits that an

insurer is entitled to advise a claimant that insufficient medical information exists to support entitlement to a benefit.

[24] I am not persuaded that the December 11, 2023, notice complied with s. 36(4)(b) in this case.

[25] The respondent's denial, in substance, asserted that no medical evidence supported a finding of complete inability to carry on a normal life. However, when the letter was issued, the respondent had already received an OCF-3 completed by a regulated health professional. The OCF-3 identified accident-related impairments and expressly stated that, in the practitioner's opinion, the applicant suffered a complete inability to carry on a normal life.

[26] While the respondent was not required to accept Dr. Tavares' opinion, s. 36(4)(b) required it to provide medical and any other reasons for rejecting the claim. In my view, a bare statement that no medical evidence supported entitlement did not meaningfully engage with the information before the respondent. The letter did not explain why the OCF-3 was considered insufficient, what aspects of the applicant's alleged impairments were in dispute, or what additional information was required to assess the claim.

[27] I find this is not a case in which the respondent lacked medical information about the applicant's condition. The respondent had before it medical evidence supporting the applicant's claim, including an OCF-3 indicating that the applicant suffered a complete inability to carry on a normal life. If the respondent considered that evidence insufficient, it was required to explain why. Instead, the denial simply stated that there was insufficient evidence to support entitlement, without meaningfully addressing the medical evidence it had received. In my view, that explanation did not adequately communicate the basis for the denial.

[28] The purpose of s. 36(4)(b) is to provide an insured person with a meaningful explanation of the insurer's decision, enabling the insured to make an informed decision about whether to accept or dispute the denial. The *Schedule* is consumer protection

legislation, and in my view, the December 11, 2023, letter did not achieve that purpose. I find the applicant was left without a clear explanation identifying why the respondent rejected the opinion provided in the OCF-3 and what information it determined was lacking.

[29] I therefore find that the respondent's December 11, 2023, denial did not comply with s. 36(4)(b) of the *Schedule*.

[30] The respondent further submits that any deficiency in its notice cannot create a substantive entitlement to an NEB. It relies on *Stranges v. Allstate Insurance Company of Canada*, 2010 ONCA 457 (CanLII) (*"Stranges"*). In *Stranges*, the Court of Appeal held that an inadequate refusal notice did not entitle an insured person to ongoing benefits absent proof that the substantive test for entitlement was met. The Court emphasized that procedural defects do not relieve an insured person of the obligation to establish entitlement to the claimed benefit. I agree with that principle and have found that the applicant has not established a complete inability to carry on a normal life and is therefore not substantively entitled to an NEB. However, the applicant does not rely on the respondent's deficient notice as proof of substantive entitlement. Rather, she relies on the distinct remedy under s. 36(6) of the *Schedule*, which expressly requires payment of the specified benefit where an insurer fails to comply with the notice requirements in s. 36(4) or (5), until a compliant notice is provided. Accordingly, the issue before me is not whether the respondent's procedural non-compliance establishes her substantive entitlement to an NEB, but whether the statutory consequence prescribed by s. 36(6) is engaged in these circumstances.

[31] The respondent subsequently issued a further denial letter dated July 18, 2025. Unlike the December 11, 2023, notice, the July 18, 2025, letter identified the medical information relied upon, including the family physician's records, the applicant's reported symptoms and functional abilities, Dr. Pojhan's assessment, and the insurer's examination conducted by Dr. Ratti. The letter explained why the respondent concluded that the complete inability test was not met and also requested additional information pursuant to s. 33.

[32] In my view, the July 18, 2025, letter met the requirements of s. 36(4)(b) because it provided the applicant with enough information to understand why the respondent was denying the claim and to make an informed decision about whether to challenge that denial. The letter identified the evidence considered, explained the respondent's conclusion that the applicant did not satisfy the statutory test for a complete inability to carry on a normal life, and connected that conclusion to the evidence. Accordingly, I find that the notice was compliant.

[33] Accordingly, I find that the respondent's December 11, 2023, notice did not comply with s. 36(4)(b) of the *Schedule*. Pursuant to s. 36(6), the respondent shall pay the specified NEB from the date it received the applicant's completed application and disability certificate until July 18, 2025, when it issued a compliant notice under s. 36(4)(b).

Is the applicant entitled to the outstanding balance under the psychological services plan?

[34] I find that the applicant has not established entitlement to the disputed balance in the April 15, 2025, treatment plan.

[35] The April 15, 2025, treatment plan seeks approval for psychological services in the amount of $3,252.92. The plan includes 12 sessions of mental health and addictions therapy, brokerage and planning services, a support activity documentation fee, and a support activity claim form fee. In its May 5, 2025, explanation of benefits, the respondent approved $1,757.00 to cover the costs of the progress report, completion of the OCF-18, and psychological treatment delivered by the social worker at an hourly rate of $99.75. The respondent did not approve the brokerage and planning services. The dispute concerns the hourly rate claimed for treatment provided by Mr. Pan Pang Tam, a social worker, and the denial of the brokerage and planning charges.

[36] The applicant bears the burden of proving, on a balance of probabilities, that the treatment plan is reasonable and necessary. She argues that the proposed psychological treatment is justified by the accident-related psychological impairments identified by both Dr. Pojhan and Dr. Ratti, each of whom recommended treatment. She further submits that Mr. Tam's proposed psychotherapy and cognitive behavioural therapy services are equivalent to services typically delivered by a psychologist and should be funded at the hourly psychologist rate of $149.61 rather than the $99.75 rate approved by the respondent.

[37] The applicant further relies on several LAT decisions approving higher hourly rates for providers delivering psychotherapy under a psychologist's supervision. She also submits that Mr. Tam speaks Mandarin, enabling direct communication with the applicant without an interpreter. According to the applicant, this enhances treatment effectiveness and supports the reasonableness of the proposed rate. The applicant also relies on Dr. Pojhan's involvement and supervision.

[38] I accept that the applicant would benefit from receiving treatment in her preferred language. Mr. Tam's ability to communicate with the applicant in Mandarin likely facilitates the therapeutic relationship and reduces the risk of misunderstandings that might arise through interpretation. However, a provider's ability to speak the applicant's language does not, by itself, establish that the provider should be compensated at the hourly rate generally associated with a psychologist.

[39] I also accept that, in some circumstances, psychotherapy services delivered by a social worker may warrant compensation at a rate higher than the standard social work rate. However, entitlement to such a rate depends on evidence of the provider's qualifications, expertise, specialized training, scope of practice, and the nature of any psychological supervision. In this regard, the applicant relies on *Ji v. Aviva General Insurance Company*, 2025 CanLII 97776 (ON LAT) (*"Ji"*). Like the present case, *Ji* concerned whether a non-psychologist providing psychotherapy services should be reimbursed at a psychologist's rate. However, the Tribunal's conclusion in *Ji* turned on specific evidence about the provider's qualifications and role. In that case, the Tribunal

found that a psychotherapist providing the same cognitive behavioural therapy as a psychologist should be compensated at the same rate. The evidence established that the psychotherapist, who was fluent in Mandarin, worked under the supervision of a qualified psychologist, and that both practitioners co-authored and signed the progress report, which indicated that the psychotherapist delivered a range of cognitive behavioural therapy treatments. Accordingly, I do not read *Ji* as establishing a general principle that all psychotherapy services provided by a social worker should be compensated at a psychologist's rate. Rather, *Ji* illustrates that such entitlement depends on the particular facts and evidence relating to the provider and the services delivered.

[40] I find the evidentiary record before me is insufficient to justify the claimed rate of $149.61 per hour. Although the applicant submits that Mr. Tam provides cognitive behavioural therapy and psychotherapy, the record provides limited evidence of his specialized qualifications, certifications, training, or experience to justify departing from the respondent's approved social work rate.

[41] Similarly, the applicant relies on supervision from Dr. Pojhan. However, the record contains little evidence about the nature or extent of that supervision. The record provides no meaningful description of how often supervision occurred, which issues were reviewed, the degree of Dr. Pojhan's clinical involvement, or how that supervision informed the treatment provided. Without such evidence, I cannot conclude that the claimed psychologist-level rate is reasonable.

[42] While I accept that psychological treatment is reasonable and necessary, I am not satisfied that the applicant has established that the disputed portion of the hourly rate is reasonable and necessary. Accordingly, I find that the services should not be compensated at a rate higher than that already approved by the respondent.

[43] I reach a similar conclusion regarding the brokerage and planning charges. The applicant has provided little evidence describing the specific services covered by those expenses, the necessity of those services, how often they were required, or how they

differ from work already compensated through the treatment provider's hourly rate or the approved OCF-18 completion fee.

[44] In the absence of evidence explaining the nature and necessity of the brokerage and planning services, I find that those expenses are not reasonable and necessary.

[45] Accordingly, on a balance of probabilities, I find that the applicant has not established entitlement to the disputed balance in the April 15, 2025, treatment plan.

Interest

[46] Section 51 of the *Schedule* sets out interest on overdue benefit payments.

[47] I have found that, pursuant to s. 36(6), the respondent was required to pay the applicant NEB from the date it received the completed application and disability certificate until it issued a compliant denial notice on July 18, 2025; those overdue benefits attract interest.

[48] However, because I have found that the applicant is not entitled to the disputed balance of the April 15, 2024, treatment plan, no interest is payable on those amounts.

Award

[49] The applicant seeks an award under section 10 of Regulation 664. Under section 10, the Tribunal may grant an award of up to 50 percent 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 insurer's delay or withholding of benefits is unreasonable conduct, meaning “behaviour, which is excessive, imprudent, stubborn, inflexible, unyielding or immoderate.” [See, for e.g., *17-006757 v. Aviva Insurance Canada*, 2018 CanLII 81949 (ON LAT); and *S.M. v. Unica Insurance Inc.,* 2020 CanLII 61460 (ON LAT Reconsideration)]. The onus is on the applicant to prove, on a balance of probabilities, that the respondent’s conduct meets this threshold.

[50] The applicant submits that the respondent improperly denied her NEB claim and portions of the treatment plan, failed to adequately investigate the claim, ignored available medical evidence, and applied an unfair approach to adjusting her claim.

[51] The applicant also submits that the respondent failed to account for her vulnerability, including her limited English proficiency, and failed to assess her claim fairly and reasonably, despite medical evidence supporting her position.

[52] The respondent submits that an award cannot be based solely on the finding that an insurer's position is ultimately incorrect. It argues that it reviewed the information available to it, reassessed the claim as additional information became available, and approved portions of the treatment plan it considered reasonable and necessary.

[53] While I have found that the respondent's December 11, 2023, NEB denial did not comply with s. 36(4)(b), I am not persuaded that this deficiency alone warrants an award. The *Schedule* distinguishes between statutory non-compliance and unreasonable conduct. Section 36(6) already provides a specific consequence for an insurer's failure to issue a compliant notice. An award requires more evidence showing that the insurer's withholding or delay of benefits was itself unreasonable.

[54] In this case, the respondent's substantive position on the applicant's entitlement to an NEB was ultimately supported by a substantial body of evidence, including the insurer's examination report by Dr. Ratti and the applicant's own reports on retained functioning. Indeed, I have reached the same conclusion on the merits and found that the applicant did not satisfy the complete inability test.

[55] The evidence also shows that the respondent continued to assess the claim as additional information became available. In particular, its July 18, 2025, correspondence reviewed the available medical evidence, explained its position on entitlement, and sought further information pursuant to s. 33 of the *Schedule*.

[56] Similarly, regarding the treatment plan, the respondent did not outright deny psychological treatment. Instead, it approved most of the proposed costs and disputed only the hourly rate and ancillary services. I have ultimately found that the applicant did not establish entitlement to the disputed amounts.

[57] Overall, I am not satisfied that the respondent acted in an excessive, imprudent, stubborn, inflexible, or unyielding manner.

[58] Accordingly, the applicant is not entitled to an award.

ORDER

[59] For the above reasons, it is ordered that:

1. The applicant has not established a complete inability to carry on a normal life. However, because the respondent’s December 11, 2023, denial letter did not comply with s. 36 of the *Schedule*, the respondent shall pay the NEB of $185.00 per week from November 21, 2023, when it received the applicant's completed application and disability certificate, until July 18, 2025, when it issued a compliant notice.

2. The applicant is entitled to interest on the overdue NEB payment for the shall-pay period.

3. The applicant is not entitled to the outstanding balance under the psychological services plan dated April 15, 2025.

4. The applicant is not entitled to an award.

Released: November 9, 2026



Harouna Saley Sidibé
Member