



Citation: Rozas v. Allstate Canada, 2021 ONLAT 19-004516/AABS

**Release date: 10/20/2021
File Number: 19-004516/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:

Edgar Rozas

Applicant

and

Allstate Canada

Respondent

DECISION

ADJUDICATOR: Monica Chakravarti

APPEARANCES:

For the Applicant: Edgar Rozas, Applicant
Roger R Foisy, Counsel
Manjot S. Heer, Counsel
Rusald Laloshi, Paralegal

For the Respondent: Sonya Katrycz, Counsel

HEARD In Person: February 10, 2020 followed by written submissions

OVERVIEW

- [1] The applicant was involved in a motor vehicle accident on July 10, 2015 and sought medical and rehabilitation benefits from the respondent pursuant to the Statutory Accident Benefits Schedule - Effective September 1, 2010¹ (“Schedule”). The respondent denied the benefits and took the position that these benefits were not reasonable and necessary for the applicant’s accident related injuries. The applicant disagreed with the respondent and submitted an application to the Licence Appeal Tribunal - Automobile Accident Benefits Service (“Tribunal”) for resolution of the dispute.

ISSUES TO BE DECIDED

- [2] The issues to be decided in this hearing are:
- i. Is the applicant entitled to payment for the cost of an examination in the amount of \$850.00 for an occupational therapy (OT) re-assessment recommended by Navneet Dhillon, Occupational Therapist (OT), Entwistle Power Occupational Therapy in a treatment plan (OCF-18) dated April 11, 2017 and denied on May 8, 2017?
 - ii. Is the applicant entitled to payment in the amount of \$3,230.77 for physiotherapy treatment recommended by PhysioMed in a treatment plan (OCF-18) dated September 4, 2017 and denied on October 4, 2017?
 - iii. Is the applicant entitled to payment in the amount of \$1,965.25 for physiotherapy treatment recommended by PhysioMed in a treatment plan (OCF-18) dated February 7, 2019 and denied February 25, 2019?
 - iv. Is the applicant entitled to interest on any overdue payment of benefits?
 - v. Is the applicant entitled to an award under *Ontario Regulation 664* because the respondent unreasonably withheld or delayed the payment of benefits?

RESULT

- [3] For the reasons noted, the applicant has not shown on a balance of probabilities that the assessment and treatment proposed are reasonable and necessary to

¹ O.Reg. 34/10, as amended.

treat his accident related injuries or impairments and therefore, the applicant is not entitled to the benefits in dispute.

- [4] As the applicant is not entitled to any of the benefits in dispute, he is not entitled to an award or interest .as no benefits were unreasonably withheld or overdue.

ANALYSIS

a) *Are the physiotherapy treatment plans (OCF-18s) reasonable and necessary?*

- [5] To receive payment for the OCF-18s under the *Schedule*, the applicant bears the burden of proving on a balance of probabilities, that the treatment and assessment plans are reasonable and necessary as a result of the accident. To meet this burden, the applicant should identify the goals of the plan, how the goals are being met to a reasonable degree and whether the time and cost expended to achieve these goals is proportional to the benefit. I find that the applicant has not met his burden and therefore, not entitled to the payments for the treatment and assessment.
- [6] Following the accident, the applicant attended at his family doctor with complaints of thoracic pain along with back pain. An x-ray was done on August 26, 2015, and the findings were that there was a compression fracture at T8-T9 and T7, the fractures were of indeterminate age, and the conclusion noted by the radiologist was that there was no evidence of a compression fracture. A bone scan was done at the behest of the respondent through Trillium, which again concluded that the fracture was of indeterminate age. The applicant's s.25 assessors and the respondent's insurer examination (I.E) assessors disagree on whether the fracture was a result of the accident.
- [7] Based on the clinical notes and records and the applicant's reporting to various assessors from shortly following the accident in 2015 and for the five years following, his ongoing accident related complaints are pain in his neck, upper and mid back, and lower back with radiating pain in his right buttock/hip/leg.
- [8] The applicant submits that as a result of the ongoing injuries, that he requires ongoing physiotherapy to reduce the pain in order to continue to work and perform his activities of daily living.
- [9] The goals of the physiotherapy OCF-18 of September 4, 2017, were to reduce pain, increase strength and range of motion, and assist with a return to pre-accident level of activities of daily living and work capabilities. The plan

recommended 18 sessions of physiotherapy, 8 sessions of massage therapy along with the cost of the treatment plan, a tens machine and a heating pad.

- [10] The goals of the physiotherapy OCF-18 of February 2, 2019 are similar to the above, and as well, this OCF-18 states that the applicant has not returned to regular work since the accident. This OCF-18 recommends 19 sessions of physiotherapy.
- [11] The medical evidence however does not support the need for ongoing physiotherapy. The first disputed OCF-18 is September 4, 2017. The last time the applicant saw his family doctor prior to the submission of this OCF-18 was on April 29, 2016. The family doctor noted at that time that the pain in the mid to lower back was mostly after work and he is told that the applicant is still at physiotherapy. The family doctor recommended that the applicant continue with light duties, mobilize (i.e. move) and return to the clinic in 1-2 months. The applicant however returns three years later, March 29, 2019, and almost five years post-accident with complaints of back pain. Prior to this March 29, 2019 visit the only other visit is in May 25, 2018 for a stuffy nose, sore throat etc.
- [12] In the March 29, 2019 visit the family doctor recommends that the applicant “to be more active and more fitness, join gym, aquacize, stretch” etc. Thus, the family doctor is not recommending or supporting the need for ongoing physiotherapy.
- [13] The applicant points to the clinical notes and records of Physiomed for the ongoing need for treatment, however, I find that these clinical notes and records are not helpful in providing evidence on the ongoing reasonableness and necessity of physiotherapy because, they show that the applicant requires active treatment, yet, Physiomed is providing passive treatment. As well the clinical notes and records of Physiomed are based only on the self-reporting of the applicant, and does not take into account whether treatment is being recommended by the applicant’s own treating physician.
- [14] The respondent relies on the I.E. reports of Dr. Guerra, orthopaedic surgeon, and Dr. Ko, physiatrist, both of whom opine that the applicant has reached maximal medical recovery, and no further treatment is warranted.
- [15] The applicant has provided the report of Dr. Hanna, chronic pain specialist, who does not specifically recommend ongoing physiotherapy, but does note that that the applicant’s ability to cope may improve with further treatments. Dr. Hanna recommends a multidisciplinary treatment to treat chronic pain. When Dr. Hanna is directly asked if the OCF-18 of September 4, 2017 is reasonable and

necessary, while he answers in the affirmative, he does not state why the applicant requires ongoing physiotherapy, since he also acknowledges that the applicant has received a substantial amount of physical therapy, and that the applicant, in Dr. Hanna's opinion, now has chronic pain. Further, Dr. Hanna also does not provide his opinion or reasons as to the necessity of the tens machine and the heating pad. He does opine that the cost of both combined could be \$400.00, but he does not offer an opinion on what the tens machine and heat pad would treat, and how it would assist the applicant.

- [16] As seen above, there are no recommendations or evidence that is contemporaneous to the disputed treatment plan of September 4, 2017, to show that the OCF-18 for physiotherapy is reasonable and necessary. More is needed from the applicant than just the OCF-18 itself. While I appreciate that the applicant had reasons for the gaps in treatment and a 2-3-year gap from seeing his treating doctors, those reasons unfortunately cannot override the applicant's burden to show that the disputed treatment plan is reasonable and necessary.
- [17] With respect to the disputed physiotherapy OCF-18 of February 7, 2019, I rely on the above evidence and place weight on the recommendations of the applicant's family doctor of May 29, 2019, who confirms that the applicant is in need of other treatments such as fitness and "aquacise", and the family doctor does not make any recommendations for physiotherapy. Again, I place minimal weight on Dr. Hanna's opinion that the February 7, 2019 OCF-18 is reasonable and necessary, as it is not in keeping with the diagnosis made by Dr. Hanna of chronic pain, or his recommendation for a multidisciplinary therapy approach.
- [18] Therefore, for the reasons above the OCF-18s for physiotherapy of September 4, 2017 and February 7, 2019 are not reasonable and necessary.

b) Is the OT re-assessment reasonable and necessary?

- [19] The applicant is seeking payment for an OT re-assessment as per the OCF-18 of April 11, 2017. The applicant has not provided evidence to meet his burden to show that this assessment is reasonable and necessary.
- [20] The goals of the re-assessment, as per the OCF-18, was to return to activities of normal living. The applicant does not point to the medical evidence contemporaneous to this treatment plan that indicates that the applicant had not returned to his activities of daily living. Despite the denial of the OT OCF-18, the OT did complete a re-assessment report indicating that the activities of daily living that the applicant has trouble with are toenail clipping, complex meal

preparation and bedroom and bathroom hygiene. The assessor also noted assistance with grocery shopping and heavier household cleaning.

[21] The applicant's own evidence is that he requested the OT assessment based on the advice of his sister. There is no evidence that this was recommended to him by any treating physicians or providers.

[22] Dr. Hanna was asked to opine on the reasonable necessity of the OT assessment, and he stated the following:

“Mr. Rozas reported that he has remained independent with his personal care and mobility tasks, despite the exacerbation of his pain. At this point, attendant care is not indicated; however, in the future, as his condition continues to deteriorate, he may require attendant care services.”

[23] The re-assessment report of the OT is based only on the self-reporting of the applicant, and not substantiated by the evidence, and as well, is contrary to the reports he made to Dr. Hanna. Dr. Hanna as well does not recommend the OT re-assessment.

[24] Therefore, the applicant has failed to meet his onus to show that the OT re-assessment of April 11, 2017, two years post-accident, is reasonable and necessary. The applicant submitted the treatment plan and the report of the OT following the treatment plan, however, has not submitted evidence that shows why the OT re-assessment was required in the first place.

c) Award and Interest

[25] As the applicant is not entitled to the above noted benefits, it cannot be said that the respondent unreasonably withheld or delayed the benefits, and therefore, there is no award pursuant to s. 10 of O. Reg 664.

[26] As no benefits are overdue and owing there is no interest payable.

CONCLUSION

[27] The application is dismissed in its entirety.

Released: October 20, 2021



Monica Chakravarti, Adjudicator