

**LICENCE APPEAL  
TRIBUNAL**

**TRIBUNAL D'APPEL EN MATIÈRE  
DE PERMIS**



**Safety, Licensing Appeals and  
Standards Tribunals Ontario**

**Tribunaux de la sécurité, des appels en  
matière de permis et des normes Ontario**

**Tribunal File Number: 17-001772/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:

**J.V.**

**Applicant**

and

**Aviva General Insurance Company**

**Respondent**

**DECISION**

**ADJUDICATOR: Stephen Scharbach**

**APPEARANCES**

Ryan Naimark, Counsel for the Applicant

Monica Pathak, Counsel for the Respondent

**HEARD: In Writing**

## OVERVIEW

- [1] This is an Application to the Licence Appeal Tribunal (the “Tribunal”) to determine an insured person’s entitlement to statutory accident benefits.
- [2] J.V. (the “applicant”) was involved in two automobile accidents on August 1, 2014 and August 22, 2014, and sought benefits from Aviva General Insurance Company (the “respondent”) pursuant to the *Statutory Accident Benefits Schedule – Effective September 1, 2010* (the “Schedule”).
- [3] A case settlement conference was held which failed to resolve the issues in dispute and a written hearing was ordered to take place.

## ISSUES

- [4] The parties are in agreement that the issues to be decided by the Tribunal are:
  - 1. Is the applicant entitled to receive payment in the amount of \$2,106.00 for physiotherapy services recommended by Body Workx Health Group in an OCF-18 dated April 16, 2015 and denied by the respondent on June 12, 2015?
  - 2. Is the applicant entitled to interest on any overdue payment of benefits?

## FINDINGS

- [5] I find that the applicant is entitled to receive payment in the amount of \$2,106.00 for physiotherapy services recommended by Body Workx Health Group pursuant to an OCF-18 dated April 16, 2015.
- [6] I find that the applicant is entitled to interest on the overdue amount of \$2106.00 pursuant to s. 51 of the *Schedule*.

## REASONS

### A. Claim for Physiotherapy Services

- [7] Section 14 and 15 of the *Schedule* provide that an insurer is liable to pay for medical expenses that are “reasonable and necessary” as a result of a motor vehicle accident. Physiotherapy services are included as eligible medical expenses. The applicant bears the onus of proving on a balance of probabilities that each treatment and assessment plan is reasonable and necessary.<sup>1</sup>
- [8] The treatment plan in dispute is contained in an OCF-18 dated April 16, 2015, (the “OCF-18”) submitted by Dr. Marko Pavacic, a chiropractor with Body Workx,

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<sup>1</sup> *Scarlett v. Belair*, 2015 ONSC 3635.

a rehabilitation clinic. The applicant was seen by Dr. Pavacic within a few days of her first accident and she was examined and treated at Body Workx on several occasions between the time of the first accident and the date of the OCF-18.

- [9] In the OCF-18, Dr. P. described the applicant's complaints and injuries as consisting of sprain/strain of hip, jaw, lumbar and thoracic spine, and neck pain associated with whiplash disorder. He stated that the applicant's symptoms are aggravated by heavier lifting, prolonged sitting, repetitive bending, stooping, lifting, pushing and pulling. He proposed a treatment plan which included 16 physiotherapy sessions with a total cost of \$2,106.60. The stated goal of the treatment plan was to reduce pain, increase strength and achieve a return to normal activities.
- [10] I have concluded that the applicant has established on a balance of probabilities that the proposed treatment plan is both reasonable and necessary.
- [11] From the time of the first accident in August, 2014 until October, 2016, the applicant was treated and assessed by various health care professionals, both before and after the date of the disputed OCF-18. The clinical notes and assessment reports (summarised below) refer consistently to the injuries and symptoms the OCF-18 sought to address. Many of those references rely upon the applicant's own description of her symptoms and, as noted below, the respondent takes issue with the applicant's credibility. However, the applicant's condition and her description of her symptoms are also objectively supported by an MRI, and the clinical observations of physicians who have treated or assessed her.
- [12] The evidence that supports the OCF-18 is as follows:
- i. The clinical notes of the applicant's family physician, Dr. Ismat Ullah, indicate that the applicant was seen by Dr. Ullah on August 6, 2014, immediately after the first accident. She complained of neck pain that became worse with movement and the notes indicate that the applicant was suffering from whiplash. The applicant saw Dr. Ulla again soon after the second accident, reporting neck, lower back, hip and right leg pain. From the time of the first accident until February, 2016, the applicant saw Dr. Ullah on many occasions and consistently reported back pain, neck pain and pain radiating to her right leg which became worse with lifting and bending. There is no indication in Dr. Ullah's clinical notes that suggest that he doubted that the applicant suffered trauma as a result of the accidents. In fact, he provided treatment, advice and referrals in an effort to address it.
  - ii. The clinical notes of Body Workx were reviewed from August 5, 2014 (when the applicant first attended the clinic after the first accident) to

February, 2016. The notes indicate that the applicant complained of neck, shoulder and thigh pain immediately after the accidents. Physiotherapy treatments were recommended to reduce pain and increase mobility. The notes indicate that the applicant was seen by Body Workx staff frequently between August, 2014 and February, 2016, and consistently reported neck, shoulder, back, and hip pain which sometimes radiated to the applicant's legs. Again, there is no indication that the health care professionals that treated the applicant doubted her condition.

- iii. On December 1, 2014, Dr. Louis Weisleder, an orthopaedic surgeon, completed an orthopaedic surgery assessment at the respondent's request. Dr. Weisleder's diagnosis was that the applicant "...sustained cervical strain, thoracic strain, and lumbar strain injuries as a direct result of the motor vehicle accident on August 1, 2014. She developed right flank/buttock pain following a second motor vehicle accident on August 22, 2014." He stated that the applicant "...has an impairment in range of motion of her neck, shoulders, and lower back as a result of the motor vehicle accident..."
- iv. On November 7, 2015, the applicant attended at the Brampton Civic Hospital emergency room complaining of back pain. According to clinical notes, the applicant reported that she had intermittent hip and back pain radiating to her right leg which had increased over the previous two weeks. She was discharged but an MRI was arranged and took place on November 18, 2015. The MRI report revealed a "narrow disc bulge" at L4-L5 indicating an objective basis for the pain that the applicant had consistently reported since the August, 2014 accidents.
- v. On January 19, 2016, after a referral by Dr. Ullah, the applicant was assessed by Dr. John Leonardo, a physician at a chronic pain medical clinic. Dr. Leonardo noted in his report that the applicant presented with chronic lower back pain radiating to the right lower limb. Consistent with the information detailed in the reports above, Dr. Leonardo described her condition as chronic mechanical lower pain, secondary to degenerative disc disease, sacroiliac dysfunction, right sciatic nerve pain, and chronic pain syndrome. He discussed and recommended treatment options, including nerve blocking.
- vi. On October 13, 2016, the applicant was assessed again at the respondent's request by Dr. Hashmat Khan, a general practitioner. Dr. Khan's assessment was part of a multidisciplinary assessment whose purpose was to determine whether the applicant suffered from a complete inability to engage in any occupation. Dr. Khan's conclusion was that "from a musculoskeletal perspective", the applicant was not unable to engage in an occupation. However, he noted that the applicant "...reported on-going pain symptoms in the right hip, right gluteal region, and low back. Clinical examination identified findings that were consistent with soft tissue

injuries.... These injuries would be consistent with a diagnosis of: right hip sprain/strain; right gluteal sprain/strain; lumbar strain; right SI joint sprain/strain.”

- [13] In summary, the medical information indicates that from August 2014, until January 2016, the applicant suffered pain and discomfort as a result of the motor vehicle accidents. The applicant’s symptoms have been consistently reported by her over a period of almost two years and they are also objectively supported by an MRI and clinical examinations by physicians.
- [14] In denying the OCF-18, the respondent relies on an assessment conducted on May 28, 2015 by Dr. Jaqueline Auguste, an orthopaedic surgeon. After the OCF-18 was submitted on April 16, 2015, the respondent required an assessment to determine whether the proposed treatment plan was reasonable and necessary. Dr. Auguste examined the applicant and reviewed Dr. Weisleder’s report. There is no indication that she reviewed the clinical notes of Dr. Ullah or Body Workx. Dr. Auguste concluded that the applicant “sustained uncomplicated myofascial strain/sprain injuries of the cervical, thoracic, and lumbar spine on August 1, 2014, and developed right flank/buttock pain following a second motor vehicle accident.... I found no substantive musculoligamentous, osseous or neurologic impairments in clinical testing today and therefore do not find any need for further formal facility based treatment. Therefore, I find the OCF-18 is NOT reasonable and necessary ...”
- [15] Although Dr. Auguste concluded that the proposed treatment plan was not necessary, I conclude that the weight of the medical evidence favours the applicant. In my view, it is especially significant that a few months after Dr. Auguste’s assessment, the applicant attended at a hospital emergency room complaining of pain and an MRI revealed a bulging disk - an objective, physical cause for the pain the applicant consistently claims to have experienced since the accidents.
- [16] Taking all of the available medical information into account, I conclude that the treatment plan contained in the disputed OCF-18 is both reasonable and necessary.
- [17] The respondent states that the OCF-18 is not payable on two additional grounds:
- The applicant signed a release on My 29, 2017 that the respondent submits terminated her claim for benefits under the OCF-18.
  - The applicant’s claim lacks credibility because she failed to report pre-existing physical and psychological impairments to the respondent’s assessors, and surveillance video purportedly shows the applicant engaging in activity inconsistent with her claimed medical condition.

- [18] With respect to the release, the relevant paragraph in the release states:
- “...the above payment is a partial settlement, on a full and final basis, **of all past claims which are the subject matter of FSCO file No: A15-007487-SUMA** as a result of motor vehicle accidents that occurred on or about August 1, 2014 and August 22, 2014....”  
(emphasis added)
- [19] The release, by its terms, is confined to “all past claims which are the subject matter of FSCO file No: A15-007487-SUMA”. No information was provided that would clarify whether the OCF-18—the subject matter of this application—was, or was not, a past claim falling within the subject matter of FSCO file No: A15-007487-SUMA.
- [20] I therefore cannot conclude that the applicant’s claim for benefits under the disputed OCF-18 is barred by the release.
- [21] With respect to the applicant’s credibility, I have reviewed the four insurer examination reports (Weisleder, Auguste, Khan and Koepfler). The only report that clearly suggests that the applicant provided misleading or incomplete medical information was the psychological assessment report of Dr. Koepfler who reported that the applicant stated that she had no recent psychological trauma and no pre-existing pain complaints.
- [22] Those statements conflict with other medical information indicating that, before the accidents, the applicant sought medical assistance for mood issues and right hip pain.
- [23] The fact that the applicant apparently made misleading statements during her psychological assessment is concerning. However, I am not prepared to deny her application on that basis. As outlined above, there is compelling objective, clinical evidence that establishes on a balance of probabilities that the applicant suffered from the conditions that the OCF-18 sought to address.
- [24] With respect to the surveillance video, I have reviewed the photographs taken from the video and they show the applicant doing normal activities such as sweeping, throwing away trash, and carrying groceries. In my view, the surveillance video does not establish that the applicant does not suffer from the conditions that the OCF-18 was meant to address. According to the OCF-18, the applicant’s symptoms were aggravated by certain physical activities, not precluded. I gather that the surveillance was undertaken in connection with the applicant’s wider claim that she was unable to engage in any occupation. However, in the narrower context of the present application, the fact that the applicant was able to carry on certain normal activities does not materially conflict

with the medical evidence described above indicating that she suffered pain, discomfort and a restricted range of movement.

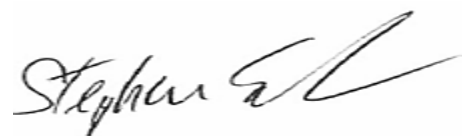
### **B. Claim for Interest**

- [25] Since I have found that the applicant is entitled to receive payment in the amount of \$2,106.00 for physiotherapy services recommended by Body Workx Health Group pursuant to an OCF-18 dated April 16, 2015, the applicant is entitled to interest on the overdue amount of \$2106.00 pursuant to s. 51 of the *Schedule*.

### **CONCLUSIONS**

- [26] I find that the applicant is entitled to receive payment in the amount of \$2,106.00 for physiotherapy services recommended by Body Workx Health Group pursuant to an OCF-18 dated April 16, 2015.
- [27] I find that the applicant is entitled to interest on the overdue amount of \$2,106.00, pursuant to s. 51 of the *Schedule*.

**Date of Issue: February 6, 2018**



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**Stephen Scharbach**  
**Adjudicator**