Tribunals Ontario
Licence Appeal Tribunal

Tribunaux décisionnels Ontario
Tribunal d'appel en matière de permis

Ontario

Citation: Mansuri v. Dominion of Canada General Insurance Company, 2025 ONLAT 23-004244/AABS

Licence Appeal Tribunal File Number: 23-004244/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:

Murtaza Mansuri

Applicant

and

The Dominion of Canada General Insurance Company

Respondent

DECISION

ADJUDICATOR: **Michael Beauchesne**

APPEARANCES:

For the Applicant: Ryan Naimark, Counsel

For the Respondent: Kadey Schultz, Counsel

HEARD: **By way of written hearing**

OVERVIEW

[1] Murtaza Mansuri (the "applicant") was involved in an automobile accident on January 6, 2018, 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 Dominion of Canada General Insurance Company (the "respondent") and applied to the Licence Appeal Tribunal - Automobile Accident Benefits Service (the "Tribunal") for resolution of the dispute.

PROCEDURAL MATTER

[2] In a letter filed with the Tribunal and dated June 3, 2024, the applicant indicates he is withdrawing issues 1, 3, 4, 7, 8, 9, 10, 11, 13, 14, 16, 17, 18, 22, 23, 24, 26, 27, 28, 29, 30, 31, 32, 33, 34, 36, 37, 38, 41, 42, 43, 44, 45, and 46 as listed in the case conference report and order ("CCRO") for this matter, released on November 22, 2023. As such, this written hearing shall consider only the remaining issues in the CCRO: 2, 5, 6, 12, 15, 19, 20, 21, 25, 35, 39, 40, 47, 48, and 49.

ISSUES

[3] The issues in dispute are:

1. Is the applicant entitled to interest owing on income replacement benefits ("IRB") paid from January 7, 2018, to date?

2. Is the applicant entitled to interest owing on attendant care benefits ("ACB") paid from October 21, 2019, to date?

3. Is the applicant entitled to home modifications proposed by Accessible Daily Living in OCF-18s as follows:

   (a) $737,701.00 submitted August 24, 2021, and denied September 9, 2021; and

   (b) $274,273,.60 submitted August 24, 2021, and denied September 24, 2021?

4. Is the applicant entitled to $8,218.44 for psychological services, proposed by Injury Management in an OCF-18 submitted July 27, 2021, and denied August 10, 2021?

5. Is the applicant entitled to services proposed by Critical Trauma in OCF-18s as follows:

   (a) Social rehabilitative counselling in the amount of $4,394.00, submitted October 20, 2020, and denied March 28, 2021; and

   (b) Social rehabilitation services in the amount of $4,294.00, submitted October 20, 2020, and denied November 16, 2020?

6. Is the applicant entitled to services proposed by Joint and Muscle in OCF-18s as follows:

   (a) Chiropractic treatment in the amount of $4,673.75, submitted May 19, 2021, and denied June 8, 2021;

   (b) Chiropractic treatment in the amount of $7,303.04, submitted September 28, 2022, and denied November 1, 2022;

   (c) Chiropractic treatment in the amount of $7,275.14, submitted December 7, 2021, and denied December 16, 2021;

   (d) Physiotherapy in the amount of $4,938.48, submitted June 8, 2020, and denied July 22, 2020;

   (e) Chiropractic treatment in the amount of $4,959.36, submitted January 25, 2021, and February 8, 2021; and

   (f) Chiropractic treatment in the amount of $15,152.60, submitted October 9, 2020, and denied October 26, 2020?

7. Is the respondent liable to pay an award under section 10 of Regulation 664 because it unreasonably withheld or delayed payments to the applicant?

8. Is the applicant entitled to interest on any overdue payment of benefits, save the IRB and ACB addressed separately?

RESULT

[4] The applicant is entitled to amounts incurred for the psychotherapy OCF-18 at issue 4 above, as well as amounts incurred for the OCF-18 for social rehabilitative services at issue 5(a) above except travel time, communication sessions, and “reserve funding” for equipment, devices, or workbooks. The applicant is also entitled to amounts incurred for the physiotherapy and

chiropractic care at issues 6(a) through 6(f), but not the acupuncture, massage therapy, or the unapproved balance of TENS machine.

[5] The applicant is not entitled to interest on the IRB and ACB payments at issues 1 and 2 above, nor the social rehabilitative services OCF-18 at issue 5(b) above. As well, the applicant is not entitled to the alternative living OCF-18s at issues 3(a) and (b) above, nor is the respondent liable to pay an award.

ANALYSIS

Is interest payable on the IRB payments and ACB payments made to the applicant by the respondent?

[6] I find no interest is payable on the IRB and ACB payments made to the applicant by the respondent.

[7] Interest applies on the payment of any overdue benefits pursuant to section 51(2) of the *Schedule*. Sections 51(3) and (4) provide that interest is payable at the rate of one per cent per month, compounded monthly, from the date on which the amount becomes overdue until the date on which the overdue amount is paid; or the date on which an application is filed with Tribunal until the dispute is settled or a decision is issued that disposes of the dispute.

The application of interest to the IRB payments

[8] The applicant submits that the respondent did not remit interest on an IRB payment it made on June 4, 2021, in the amount of $3,809.63 for the 2021 period of February 3 to March 31. Similarly, the applicant submits that the respondent did not remit interest on an IRB payment it made on June 29, 2021, in the amount of $3,428.00 for the 2021 period of April 1 to June 29. The applicant relies on the award particulars he produced to the respondent, as well as a June 2021 letter explaining an IRB cheque issued by the respondent, to show he is entitled to interest.

[9] The respondent argues that interest payable on the applicant's IRB totals $160.81 and was separately remitted to the applicant by cheque on November 13, 2023. Specifically, the respondent calculates that $96.78 in interest was owing for the period of February 1 to March 31, and $64.03 from April 1 to June 13.

[10] My analysis of whether interest is owing on certain IRB payments made to the applicant was hampered because the applicant's submissions conflated his award claim with his interest arguments. I find his award particulars did not

assist in proving his interest claim. He points to 19 paragraphs that, in my view, speak only to his requests for IRB payments with interest and indicate that cheques remitting his IRB entitlement did not include interest.

[11] While I accept that interest was not included in the IRB payment cheques issued by the respondent, I am persuaded that interest incurred on outstanding IRB payments from February 2021 to June 2021 was nevertheless later paid by the respondent. The respondent produced a November 2023 letter that confirms a cheque for $160.81 would be issued and forwarded to the applicant to remit interest on both IRB payments: one interest payment of $96.78 from February 1 to March 31, and a second interest payment of $64.03 from April 1 to June 29. Given that the applicant's submissions and evidence fall short of demonstrating these amounts are inaccurate or were not paid in accordance with the respondent's November 2023 letter, I find the applicant has not met his onus to show he is entitled to outstanding interest on his IRB payments.

The application of interest to the ACB payments

[12] The applicant submits that the respondent remitted insufficient interest (i.e., $253.53) on a late ACB bulk payment it made on January 20, 2022, in the amount of $16,205.00 for the 2021 period of June 1 to September 30. The applicant reasons that since the respondent unreasonably continued to make requests for documents it had already obtained from the service provider by September 30, 2021—but did not pay the ACBs owing until January 20, 2022—the respondent should pay additional interest for this period. The applicant relies on the award particulars he produced to the respondent to show he is entitled to interest.

[13] The respondent argues that any ACB interest payable for the period of June 1, 2021 to January 20, 2022, has been remitted. The respondent explains it had received, on September 30, 2021, three invoices totalling $10,675.00 for attendant care services provided between June and August of 2021. The respondent does not dispute that interest on these invoices was payable from September 30, 2021 to January 20, 2022. The respondent says it calculated interest of $248.15 at one per cent per month, compounding monthly in accordance with the *Schedule*. The respondent adds that interest is not owing up to January 20, 2022 on the invoices for attendant care from September and October of 2021 because they were not produced by the applicant until March 16, 2022. The respondent maintains that these two invoices were paid on March 18, 2022.

[14] The applicant says the interest owed and payable on his ACB payment is more than what was remitted by the respondent. I disagree. The 30 paragraphs of award particulars he cites to support this claim provide little insight into how much more he believes he is owed, or why. In fact, interest is not even mentioned until paragraph 93 (the second last in his citation) and this served only to confirm that the respondent had paid $253.53 in interest.

[15] Rather, I am persuaded, on a balance of probabilities, that additional interest is not owing on the applicant's ACB payments made for the period of June 2021 to January 2022. Contrary to the respondent's submissions, the evidence shows it agreed to pay attendant care expenses in the amount of $16,205.00 and not $10,675.00 for the period of June 1, 2021 to September 30, 2021. This is supported by the Explanation of Benefits ("EOB") dated January 20, 2022, by Nikki Policelli (adjuster). However, the EOB also establishes that interest in the amount of $253.53 was calculated on the entire amount payable (i.e., $16,205.00). Given that the applicant has not produced a calculation that shows this interest was assessed incorrectly, I am satisfied the EOB accurately reflects what interest was owing up to January 20, 2020, on attendant care expenses for the period of June 1, 2021 to September 30, 2021.

The OCF-18s pertaining to a new home purchase and modifications.

[16] I find the applicant has not shown these OCF-18s are reasonable and necessary.

[17] Section 16 of the *Schedule* allows for reasonable and necessary home modifications to reduce or eliminate the effects of disability arising from accident-related impairments. Alternately, section 16 provides for the purchase of a new home if it is more reasonable to do so to accommodate the needs of the insured person than to renovate his or her existing home. This is to be read in conjunction with sections 16(4)(b) and (c), which provide that an insurer is not liable to pay home renovation expenses incurred to provide the insured person with access to areas of the home not needed for ordinary living, or for the purchase of a new home in excess of the value of the renovations that would be required to accommodate the needs of the insured person in the existing home.

[18] For context, the OCF-18 for the cost of purchasing a new home was completed by Brenda Labron (occupational therapist) on August 24, 2021, and proposed $737,701.00 to implement the recommendation in the alternative living assessment report ("ALAR") completed by John Groe (accessibility consultant) on August 20, 2021, as well as a $200.00 fee to complete the OCF-18. Similarly, the OCF-18 for modifications to the new home was also completed by Brenda Labron on August 24, 2021, and proposed $274,273.60 to implement

modifications to the proposed new home as recommended in the ALAR by Mr. Groe, as well as a $200.00 fee to complete the OCF-18.

[19] The goal of both these OCF-18s is to provide a safe and accessible living environment for the applicant.

[20] The applicant submits that his current rental apartment is not safe and accessible in light of his functional impairments. He explains that modifying his apartment to meet his needs is not possible and is therefore not a reasonable option. The applicant reasons that the purchase of a new home with modifications is reasonable and necessary to reduce or eliminate the effects of his disability.

[21] The applicant relies on several reports other than the home accessibility assessment report ("HAAR") and ALAR to show his current apartment is not safe and accessible, and that it is more reasonable to purchase and modify a new dwelling than renovate his existing one. These include a case management letter completed by Ms. Labron on October 12, 2021; and the August 2023 section 44 Insurer's Examination ("IE") reports of Drs. Velan Sivasubramanian (psychiatrist) and Gilbert Yee (orthopaedic surgeon).

[22] The applicant also submits that the respondent's reasons for denying this OCF-18 are inaccurate and do not consider any of the evidence submitted in support of these plans, including the HAAR dated July 18, 2021, and the ALAR, both completed by Mr. Groe. The applicant points to its award particulars to support this position.

[23] The respondent argues that the proposed renovations to the applicant's existing home are not reasonable or necessary to reduce or eliminate the effects of any accident-related disability because he has received $378,737.48 in medical and rehabilitative care benefits. The respondent submits that the observations of Ms. Erin Mathison (occupational therapist) are flawed, and that the report of Mr. Groe is therefore unreliable to the extent it relies on Ms. Mathison's section 25 assessment. The respondent relies on surveillance evidence to show there are irreconcilable differences between Ms. Mathison's report and the applicant's functionality.

Is it more reasonable to purchase and modify a new home than to renovate the applicant's existing home to accommodate his needs?

[24] I find the applicant has not shown that it is more reasonable to purchase and modify a new home than to renovate his existing home to accommodate his needs.

[25] I did not place a great deal of weight on the October 2021 letter prepared by Ms. Labron when considering the modifications recommended for the applicant's existing home. I find her report focused on providing reasons why the applicant's current home is not safe and accessible, which is not helpful in determining whether the modifications proposed by Mr. Groe can reduce or eliminate the effects of the applicant's disability. In fact, Ms. Labron does not address the modification recommendations made by Mr. Groe.

[26] Similarly, I did not place a great deal of weight on the reports of Drs. Sivasubramanian and Yee as evidence that supports Mr. Groe's modification recommendations. While I accept these reports provide medical opinions that agree the applicant requires attendant care services, I find the applicant's submissions do not clearly address a connection between his need for attendant care and modifications to his living space. In my view, the need for attendant care, even of a 24/7 nature, does not automatically mean that home modifications, or a new house for that matter, is reasonable and necessary to reduce or eliminate the effects of the applicant's disability. Rather, it is the applicant's burden to prove that the recommended home modifications are reasonable and necessary to reduce or eliminate the effects of disability arising from his accident-related impairments.

[27] This leaves the HAAR to consider. The HAAR proposes $473,605.43 to make the applicant's current apartment safe and accessible and thereby reduce or eliminate the effects of his disability. I find the bulk of this cost is largely for modifications, which consist of the following:

1. An addition to the main apartment unit that would double his living space to 2,260 square feet and consist of an exercise room, a new accessible kitchen, a new living room, a new bedroom for his PSW, a new bedroom for his son, and a new main bathroom ($146,900.00);

2. A 36" wide new entry door with automatic door opener ($4,050.00);

3. An accessible washroom ($25,000.00);

4. A quiet space bedroom ($7,100.00);

5. An exterior lift including installation and regulatory inspection ($56,430.00);

6. ADA-approved appliances, including a stove top, wall oven, refrigerator, and dishwasher ($12,000.00);

7. Motion-timed lighting throughout and additional lighting to main entrance to apartment and exterior hallway ($5,125.00);

8. A security/alarm system ($2,550.00);

9. New sound-proof windows in accessible bedroom, dining room, kitchen, and two other bedrooms ($11,000.00);

10. New 32”-36” door openings to all bedrooms ($4,800.00);

11. Intelligent home technology with mobile and tabletop system ($19,500.00);

12. Automatic door openers at the primary, secondary, and apartment entrance as well as the balcony ($12,840.40);

13. Install closet organizers where required ($4,500.00); and

14. Exterior ramp with railings ($39,800.00).

[28] While Mr. Groe maintains that his recommendations for modification were agreed upon in consultation with the applicant’s multi-disciplinary team, I find little evidence of that in his report. His analysis does not show how these modifications will reduce or eliminate the effects of the applicant’s disability, as he does not specify which impairments inform his recommendations and does not analyze how Ms. Mathison’s findings connect to any modifications despite copying her assessment into his report. He also fails to show that he considered any medical opinions he may have consulted in his file review to prepare the HAAR.

[29] For example, when addressing the expansion of the applicant’s living space, he offers that the extra space is needed to “meet immediate and lifespan housing needs specific to injuries and impairments sustained at the time of loss.” This explanation is not persuasive because it fails to deliver on what it says—which is to connect specific impairments to the need for extra space. In another example,

Mr. Groe provided no explanation as to how a new bedroom for the applicant's son bears on reducing or eliminating the disabling effect of the applicant's impairments. As well, Mr. Groe made several recommendations to modify rooms for soundproofing to help the applicant sleep but did not tie this to medical evidence that, for example, establishes noise sensitivity as the reason the applicant sleeps poorly.

[30] For that matter, the applicant's submissions also focused on establishing that his apartment was unsafe and inaccessible without pointing to evidence that addressed whether the recommended home modifications could reduce or eliminate the effects of his disability.

[31] In my view, it is not the Tribunal's role to sort through the applicant's medical evidence, such as Ms. Mathison's assessment of the applicant's function, to determine whether Mr. Groe's modifications are reasonable and necessary. It is the applicant's onus to prove entitlement and the Tribunal cannot make a case for the applicant by connecting the dots between Mr. Groe's recommendations and medical evidence of disability to show those modifications will reduce or eliminate the effects of the applicant's disability.

[32] I find the thrust of the applicant's position is that the home modifications are moot because they cannot be effected. Mr. Groe assessed that the likelihood of his recommendations being approved and implemented is not realistic. He based this on a discussion he reportedly had with "property management staff" who confirmed the proposed modifications would be extremely invasive and would not be approved, as they would affect two units. While I do not doubt that Mr. Groe spoke with someone associated with the property where the applicant lives about modifications, I find the details are vague. Mr. Groe's report does not identify who he spoke with or confirm their decision-making capacity. It seems Mr. Groe is uncertain as to whether he received an opinion or a decision about the modifications, as he subsequently states that it is his opinion that the property management/landlord would not approve such changes. In my view, Mr. Groe's oral investigation is rather informal for a $400,000.00-plus expense.

[33] While the applicant is not required to produce documentary evidence of diligence in confirming whether the modifications could be carried out—such as a letter to the landlord seeking approval to proceed with some or all the proposed modifications—it remains that he did not. Without more specificity as to what the approving authority may or may not allow in terms of modifications to the applicant's unit, I find the applicant cannot meet his onus to show that it is more

reasonable to purchase a new home than renovating the existing one, which the *Schedule* requires him to prove.

[34] Given that the applicant has not shown the proposed modifications to his existing home are reasonable and necessary, or that buying a new home is more reasonable than renovating his existing home, I find he is not entitled to the new home purchase and modifications proposed in the OCF-18s.

The reasonableness and necessity of the OCF-18s proposing psychological and social rehabilitative services.

[35] I find the OCF-18 for psychotherapy is reasonable and necessary. I also find that while certain aspects of the **$4,394.00** OCF-18 for social rehabilitative services are reasonable and necessary, the applicant has not shown the **$4,294.00** OCF-18 for social rehabilitative services to be reasonable and necessary. For clarity here, there are two separate OCF-18s for social rehabilitative services at issue: one in the amount of **$4,394.00** and the other in the amount of **$4,294.00**.

[36] To receive payment for a treatment and assessment plan under sections 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.

[37] The applicant submits these OCF-18s propose to return the applicant to his activities of daily living and address his emotional response and impairments from the accident. The applicant contends that psychological counselling was helping him, and that his treating psychiatrist, Dr. Michael Kelly, reinforces the importance of continuing with psychological therapy in his report dated December 2, 2021. The applicant also relies on the report dated April 6, 2021, by Ms. Rabia Idris (social worker) to show that psychological and rehabilitative services have been helping him address his impairments.

[38] The respondent submits that the OCF-18 for psychological services is not reasonable and necessary because Dr. Sivasubramanian determined, in his September and November 2020 section 44 examinations, that the applicant was a “very poor” candidate for psychotherapy. The respondent further contends that the applicant has reportedly received essentially no benefit from any psychological therapy since the accident occurred, and points to his continuing hallucinations and “significant” depressive symptoms to support this position. Pertaining to the two OCF18s for social rehabilitation services, the respondent

says they were denied because they duplicated services already being provided in accordance with a separate OCF-18 that was partially approved in October 2020.

The OCF-18 for psychological services

[39] I am persuaded this OCF-18 is reasonable and necessary. For context, the OFC-18 was certified by Dr. Leanne Wagner (psychologist) on July 27, 2021. It proposes to treat the applicant's psychological injuries with two-dozen, one-hour counselling sessions at a cost of $179.29 per hour; one hour to plan these sessions at a total cost of $179.29; three hours to complete a progress report at a total cost of $537.87; 12 minutes to complete notes after each counselling session at a cost of $35.86 each; interpretation services for each session at a cost of 89.07 per hour; and a $200.00 fee to complete the OCF-18.

[40] I find the applicant is disabled by his accident-related psychiatric condition, which, in turn, supports the need for treatment of his psychiatric symptoms. Dr. Sivasubramanian completed a section 44 psychiatry assessment report on September 25, 2020, that determined the applicant sustained a catastrophic impairment owing to a mental and behavioural disorder as a result of the accident. The respondent subsequently confirmed the applicant's catastrophic impairment in a notice dated October 8, 2020, and, by August 2023, Dr. Sivasubramanian reported that the applicant appeared to be almost completely disabled, primarily owing to his psychiatric condition.

[41] I also find that the medical evidence supports the injuries documented in Part 6 of the OCF-18, which include severe depressive episode with psychotic symptoms, persistent somatoform pain disorder, conversion disorder and post-traumatic stress disorder. In September 2020, Dr. Sivasubramanian documented symptoms of depression with psychotic features and post-traumatic stress that correlated with the applicant's presentation and were consistent with major depressive disorder with anxious distress and psychotic features; somatic symptom disorder with predominant pain, conversion disorder, and post-traumatic stress disorder.

[42] In my view, the reasonableness and necessity of the psychological treatment proposed in the OCF-18 is supported by the bulk of the evidence, which shows it was helping to address the applicant's condition. While Dr. Sivasubramanian deemed psychiatric treatment to be medically necessary in September 2020, the experts who have assessed and treated the applicant differ on whether psychotherapy is reasonable and necessary. Dr. Sivasubramanian's opinion of the applicant's progress has been consistent since September 2020, in that he

ascribes little improvement in the applicant's symptomology to psychological intervention and describes the applicant as "an exceedingly poor psychotherapy candidate." However, I placed less weight on this evidence because Dr. Sivasubramanian's opinion about the merits of psychotherapy, as expressed in his September 2020 report, was based on mere suspicion (i.e., "Unfortunately, I *suspect* [emphasis added] that he is an exceedingly poor psychotherapy candidate. As such, I *suspect* [emphasis added] that he might be best served by a referral to mindfulness-based stress reduction program to help him cope with his perception of chronic pain and impairment." Further, I find Dr. Sivasubramanian's subsequent opinion that the applicant is an "extremely poor psychotherapy candidate" who is unlikely to benefit from individual psychotherapy and counselling—as voiced in his November 2020 paper review—is unsupported because I am not pointed to the evidence he relied on to inform his opinion. I reject the respondent's assertion that Dr. Sivasubramanian confirmed the applicant had self-reported having essentially no benefit from psychological therapy in the two years since the accident occurred because I could find no such reference to this at page 415 of the respondent's document brief as cited.

[43] In contrast, Dr. Kelly's opinion that it was important for the applicant to continue with psychological therapy is persuasive because it is consistent with the applicant's self-report of medication and psychotherapy being the only treatments that provide "mental ease." In fact, I find the applicant has consistently told his treatment and assessment providers that psychotherapy is helpful. In April of 2021, he told Ms. Idris that he finds it very helpful to speak with a therapist about what he is experiencing. In September 2021, the applicant told Dr. Kelly that he found psychological therapy to be most helpful and went on to describe how the psychologist helped him develop cognitive ways to distract himself from the "voices". In August 2023, the applicant told Dr. Sivasubramanian that when he was receiving psychological treatment, he found it to be helpful.

[44] While I accept that the applicant's psychiatric symptomology (i.e., continuing hallucinations and "significant" depressive symptoms) nevertheless persisted into August 2023 as documented by Dr. Sivasubramanian, I place less weight on this as evidence that shows the applicant is not responding to psychological counselling. This is because the evidence indicates the applicant had not been receiving psychological treatment since at least September 2021, when Dr. Kelly notes the applicant was reportedly distressed because he could not avail himself of therapy owing to a lack of funding support from the respondent.

[45] Given that this OCF-18 seeks to address accident-related and disabling psychiatric injuries through psychotherapy that the applicant has found to be helpful and is endorsed by Dr. Kelly, I find it reasonable and necessary. The applicant is therefore entitled to incurred expenses relating to this OCF-18.

The OCF-18s for social rehabilitative services

[46] I find the applicant did not file the $4,294.00 OCF-18 denied on November 16, 2020, with his evidence. Tab 14C of his document brief, which purports to be this OCF-18, is a duplicate of the $4,394.00 OCF-18 denied on March 28, 2021. According to the index provided with the respondent's submissions, it does not appear the respondent filed this OCF-18 either. To prove entitlement to a medical benefit, the applicant must, at a minimum, produce the OCF-18 in question. As the applicant has not done so here, I find he has not shown this OCF-18 to be reasonable and necessary.

[47] With regard to the $4,394 OCF-18, I agree that aspects of it are reasonable and necessary. For context, the OCF-18 was completed by Ms. Helen Leimonis (occupational therapist) and proposes to treat the applicant's psychological injuries (i.e., personality and behaviour disorders including recurrent depression and adjustment difficulties) with eight 90-minute virtual therapy sessions at a cost of $222.00 each; two hours for service provider travel (if in-person sessions are deemed necessary) at a cost of $148.00 per hour; eight hours of communication on an as-needed basis outside of scheduled sessions with the applicant and his rehabilitation team for a cost of $148.00 per hour; one hour of file research and review as needed at a cost of $148.00; five hours to prepare a progress report at a total cost of $740.00; "reserve funding" in the amount of $50.00 for equipment, devices, and workbooks as required to support treatment sessions; and a fee of $200.00 to complete the OCF-18.

[48] I find this OCF-18 addresses the same mental and behavioural disorders and symptoms identified in Dr. Sivasubramanian's psychiatric assessment of catastrophic impairment determination. As well, I am satisfied that the goals of this OCF-18 are not substantively distinguishable from those proposed in the psychology OCF-18—they both aim to return the applicant to activities of normal living by addressing the applicant's psychological impairments.

[49] It therefore logically follows that the outcome of my analysis would be the same as the OCF-18 for psychological services because the parties rely on the same medical evidence.

[50] However, there is a distinguishing factor that needs to be addressed, which is the respondent's position that this OCF-18 for social rehabilitative services duplicated psychological services the applicant was receiving on a separate OCF-18 at that time. This argument is unpersuasive. The respondent did not point me to this partially approved OCF-18 in evidence, so I am uncertain as to what treatment was provided. Further, the March 2021 denial letter makes no such claim. I find the OCF-18 for social rehabilitative services was denied because Dr. Sivasubramanian determined the applicant was a poor candidate for psychotherapy and unlikely to benefit from individual psychotherapy or counselling.

[51] I therefore find the applicant has demonstrated this OCF-18 is reasonable and necessary. But only in part. I disagree that service provider travel time is reasonable and necessary because the therapy sessions are being delivered virtually. Further, I disagree that "as-needed" communication sessions are reasonable and necessary because the OCF-18 is unclear as to who constitutes the applicant's rehabilitation team and why they would need to be contacted. I also disagree with the reasonableness and necessity of "reserve funding." The OCF-18 does not establish that equipment, devices, or workbooks will be required to support the treatment sessions.

The OCF-18s for physical therapies (i.e., physiotherapy, chiropractic services, massage therapy, and acupuncture)

[52] I find the applicant has demonstrated the reasonableness and necessity of these OCF-18s, in part.

[53] For context, all these OCF-18s were certified by Mr. Jayesh Mistry (chiropractor) between July 2020 and July 2022. They all list the same physical injuries and address the same treatment goals (i.e., pain reduction, increase in strength, and improved range of motion to return the applicant to activities of normal living). They also all include a $200.00 form fee to complete the OCF-18.

[54] While the treatments proposed to address these injuries are largely the same, I have contrasted them below in a chart to illustrate slight differences. In doing so, I note the respondent approved the active therapy sessions and form completion fees associated with the OCF-18s certified in October 2020, January 2021, and May 2021. As such, these specific items are not in dispute. In short, the parties are disputing a combined total of 158 chiropractic sessions, 76 active therapy sessions, 114 acupuncture sessions, and 40 physiotherapy sessions. The TENS device proposed in October 2020 was partially approved by the respondent for $250.00, so the disputed amount is $450.00.

Date OCF-18 certified by Dr. Mistry	Proposed treatment	Number of sessions | duration	Cost
July 8, 2020	Chiropractic	24 | one-hour	$112.81/hour
	Active therapy	16 | not specified	$58.19 each
	Acupuncture	20 | one-hour	$55.00/hour
October 9, 2020	Chiropractic	40 | one-hour	$135.36/hour
	~~Active therapy~~	~~30 | not specified~~	~~$89.07 each~~
	Acupuncture	30 | one-hour	$89.07/hour
	Physiotherapy	40 | one-hour	$119.92/hour
	Massage therapy	20 | one-hour	$89.07/hour
	TENS device	N/A	$700.00
January 25, 2021	Chiropractic	26 | one-hour	$135.36/hour
	~~Active therapy~~	~~30 | not specified~~	~~$89.07 each~~
	Acupuncture	16 | one-hour	$90.00/hour
May 19, 2021	Chiropractic	24 | one-hour	$135.36/hour

Date OCF-18 certified by Dr. Mistry	Proposed treatment	Number of sessions | duration	Cost
	~~Active therapy~~	~~30 | not specified~~	~~$89.07 each~~
	Acupuncture	16 | not specified	$89.07 each
December 1, 2021	Chiropractic	22 | one-hour	$135.36/hour
	Active therapy	30 | not specified	$89.07 each
	Acupuncture	16 | not specified	$89.07 each
September 28, 2022	Chiropractic	22 | one-hour	$135.36/hour
	Active therapy	30 | not specified	$90.00 each
	Acupuncture	16 | not specified	$89.07 each

[55] The applicant submits that the goals identified in these OCF-18s are reasonable and necessary to reduce the effects of disabilities arising from the accident, including pain reduction, range of motion improvement, and to assist him with returning to the activities of daily living he completed before the accident. He adds that the costs are reasonable considering his catastrophic impairment determination. The applicant's submissions go on to say he was benefitting from professionally delivered physical therapies and that this is documented in each of the disputed treatment plans.

[56] The applicant cites *17-001146 v. Aviva Insurance Canada*, 2017 CanLII 69449 ("*Aviva*") to demonstrate that pain reduction is a legitimate goal of treatment, and points to the section 44 reports and records of Dr. Yee to show he has residual symptomology related to myofascial strains and soft tissue injuries in his neck and back that require more treatment. The applicant says his symptoms have worsened since engaging in an at-home exercise program after his facility-based

treatment was terminated by the respondent. The applicant cites *Pereira v. Certas Direct Insurance Company*, 2021 CanLII 93246 ("*Pereira*") as an analogous example to support his entitlement.

[57] The respondent argues that these OCF-18s are not reasonable and necessary because the applicant's condition has not improved after two years of treatment. The respondent relies on the section 44 report of Dr. Lee to show the applicant will not benefit from further facility-based treatment.

[58] While I accept the applicant suffered multiple physical injuries as a result of the accident, I disagree that the applicant has shown all the injuries listed at Part 6 of the disputed OCF-18s are accident-related. I find that his physical diagnoses contemporaneous to these OCF-18s consisted only of myofascial strain to his cervical and lumbosacral spine, as well as a right hip fracture according to Drs. Yee and Tajedin Getahun (orthopaedic surgeon). I have therefore assessed the reasonableness and necessity of these OCF-18s in the context of these specific injuries.

[59] I am persuaded that the goals of these OCF-18s are reasonable. Dr. Yee consistently assessed strength and range of motion deficits attributable to the applicant's cervical spine and hip injuries during the physical examinations he documented in January 2020, September 2020, August 2023. During the latter examination, range of motion limitations were also indicated in the applicant's lumbar spine. Throughout the examinations, Dr. Yee observed overt pain behaviours. When Dr. Getahun performed a section 25 examination in April 2020, he also observed range of motion restrictions and pain behaviours that support the goals of the OCF-18s.

[60] I agree that the applicant was benefitting from his physical therapies. While the applicant did not point to any clinical notes and records or progress reports form his family physician or physical treatment providers to corroborate therapeutic benefits, I find that Dr. Yee's assessments establish that the applicant's function did indeed worsen when he relied only on a home exercise program to address his injuries.

[61] The 2020 reports of both Drs. Yee and Getahun indicate that the applicant was receiving facility-based treatment contemporaneous to their examinations. Dr. Getahun noted the applicant was attending physical therapy twice a week and receiving intermittent improvement to his symptoms. While I accept Dr. Getahun determined the applicant was catastrophically impaired at this time, I note Dr. Getahun attributed his findings to the psychiatric opinions of Dr. Abbas Alzadian (psychiatrist) and not from an orthopaedic perspective. Dr. Yee noted the

applicant attended physiotherapy twice per week, was receiving chiropractic care that included TENS therapy, and did a home exercise program. At that time, Dr. Yee concluded, strictly from an orthopaedic perspective, that the applicant did not require attendant care services. Further, Dr. Yee did not identify any objective, compelling organic musculoskeletal pathology that would result in the applicant suffering from a complete inability to engage in any employment and/or self-employment for which he is reasonably suited by education, training, or experience as a direct result of the accident. Considering Dr. Yee's observations in totality, I take this evidence to mean that the applicant's physical function was sufficient to carry on his normal living activities despite his impairments.

[62] I find this is in stark contrast to the medical opinion expressed by Dr. Yee in August 2023. At that time, he noted the applicant had not undergone facility-based treatment for the past nine months (i.e., since November 2022) because the respondent had "terminated" his physical therapy, and that the applicant now required attendant care, housekeeping, and home maintenance support from an orthopaedic perspective. In my view, this evidence corroborates the applicant's self-report of feeling his physical condition had worsened over this time.

[63] I would point out here too, that the respondent's submission about Dr. Yee discounting the benefit of further facility-based treatment is unsupported. The respondent points to a series of notices it issued to the applicant between July 2020 and November 2022. However, I find these documents make no such reference to an opinion on facility-based treatment expressed by Dr. Yee. Rather, it is the respondent's own opinion that further physical therapy does not appear to be reasonable or necessary, "considering the amount of time that has passed since the date of loss …". In fact, Dr. Yee did not offer an opinion on the merits of facility-based treatments in his 2020 or 2023 reports.

[64] Taken together, I find this evidence establishes that the chiropractic and physiotherapy treatment proposed in the OCF-18s is reasonable and necessary. I am persuaded that the applicant has accident-related injuries that are causing pain and range of motion deficits that have resulted in disabling functional impairments. I further accept that the chiropractic and physiotherapy care he received in the past had some benefit on his function.

[65] I do not agree, however, that acupuncture or massage therapy are reasonable and necessary because the applicant did not lead corroborating evidence that showed these treatments were recommended by an assessing or treating health care practitioner to address the applicant's injuries at any point since the accident. I also do not agree that the TENS machine is reasonable and

necessary. Given that it was partially approved by the respondent, I can only presume the outstanding amount on this device is owing to a dispute about the reasonableness of its cost. The onus is on the applicant to show the cost is reasonable, but the applicant did not lead evidence or make submissions in this regard. Therefore, he cannot meet his onus on the TENS machine.

Interest

[66] Interest applies on the payment of any overdue benefits pursuant to section 51 of the *Schedule.*

Award

[67] I find the applicant has not established that the respondent is liable to pay an award.

[68] The applicant seeks an award under section 10 of Regulation 664. Under section 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." [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.

[69] The applicant submits that an award should be granted for any benefits or interest improperly and unreasonably withheld by the respondent, given the totality of the evidence respecting how the respondent handled the applicant's accident benefit claim. The applicant relies on the award particulars dated January 2, 2024, to prove his claim.

[70] The respondent argues that the basis for the applicant's award claim (i.e., that it improperly investigated the claims for benefits and improperly assigned the same adjuster and the same counsel) have already been adjudicated as confirmed in the Tribunal Order dated September 28, 2022, the Reconsideration Order dated November 2, 2022, and the Judicial Review Order dated October 18, 2023, as cited in its submissions.

[71] The applicant does not substantively address his award claim in his written submissions. He instead delegates his award submissions to the particulars he

provided to the respondent prior to the written hearing by including them in his document brief. In my view, this serves to circumvent the page limit on submissions that the Tribunal ordered, and which the parties consented to abide by at the case conference. The parties agreed to limit their written submissions on the disputed issues to 10 pages. This page limit was to include submissions on the applicant's award claim exclusive of evidence and case law. I find the award particulars, which total 701 pages, include 47 pages of submissions that constitute neither evidence nor authorities.

[72] In my view, the applicant did not comply with the Tribunal's orders by omitting his award arguments from his written submissions in favour of presenting his particulars as evidence. While I cannot possibly fathom how the parties would agree to a 10-page limit in a proceeding that, at that time, contemplated 49 issues in dispute—let alone in written format for an application that disputed catastrophic impairment, attendant care benefits, and an income replacement benefit in addition to more than $1 million in medical and rehabilitative benefits—I find it was open to the applicant to request an increase to the page limit if he felt 10 pages was inadequate to fully and fairly present his arguments. The applicant did not do this, instead opting to file what amounts to a second set of lengthy submissions, apparently without the consent of the other party and certainly without the permission of the Tribunal.

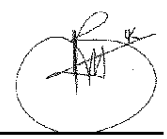
[73] The applicant breached the CCRO, and I find he may not rely on the submissions he included in his award particulars to support his award claim. The 47 extra pages of submissions is an extraordinary amount, given that it greatly exceeds what the Tribunal would typically order for any one written proceeding—let alone for a single issue. Given the applicant's award arguments in his written hearing submissions extend only to broadly referring me to his award particulars, I find he has not met his onus to prove the respondent unreasonably withheld or delayed payment of any benefits that form part of his claim. I am therefore persuaded that no award is owing.

ORDER

[74] The applicant is entitled to amounts incurred for the psychotherapy OCF-18 at issue 4 above, as well as amounts incurred for the OCF-18 for social rehabilitative services at issue 5(a) above except travel time, communication sessions, and "reserve funding" for equipment, devices, or workbooks. The applicant is also entitled to amounts incurred for the physiotherapy and chiropractic care at issues 6(a) through 6(f), but not the acupuncture, massage therapy, or the unapproved balance of TENS machine.

The applicant is not entitled to interest on the IRB and ACB payments at issues 1 and 2 above, nor the social rehabilitative services OCF-18 at issue 5(b) above. As well, the applicant is not entitled to the alternative living OCF-18s at issues 3(a) and (b) above, nor is the respondent liable to pay an award.

Released: July 8, 2025



Michael Beauchesne
Adjudicator