

**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**

Date: 2017-08-09

Tribunal File No: 17-001061/AABS

Case Name: 17-001061 v Yarmouth Mutual Fire

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:

Applicant

Applicant

and

Yarmouth Mutual Fire

Respondent

DECISION

ADJUDICATOR: Christopher A. Ferguson

Counsel for the Applicant: Matthew D. Reid

Counsel for the Respondent: Shannon Mulholland

HEARD: Written Hearing May 26, 2017

REASONS FOR DECISION

Background

- [1] The applicant was aged 9 years old when he was involved as a passenger in a motor vehicle accident (MVA) on October 5, 2015. He sought benefits pursuant to the *Statutory Accident Benefits Schedule – Effective September 1, 2010* (“the ‘Schedule’”).
- [2] [The applicant] applied for dispute resolution services to the Licence Appeal Tribunal – Automobile Accident Benefits Service (the “Tribunal”).
- [3] A case settlement conference held on April 18, 2017 failed to fully resolve the issues disputed by the parties. Accordingly, a written hearing was ordered to be conducted in this matter, commencing June 26, 2017.
- [4] On consent, this matter was heard concurrently with another file, #17-001057/AABS as ordered by the Tribunal in orders dated May 3, 2017 and May 4, 2017 respectively.
- [5] Concurrent hearings were ordered and conducted because the applicants are siblings who sustained injuries in the same MVA, and claim entitlement to benefits arising from the same MVA. In his orders, Adjudicator Johal noted that the applicants were attending the same treatment providers. I would further note that:
 - (i) The treatment and assessment plans disputed in both files are identical in cost and very similar in substance.
 - (ii) The responses by the respondent insurer to both applications are virtually identical.
- [6] Despite the similarities between the two cases, I determined each application independently on its own merits with respect to disputed rehabilitation benefits.
- [7] I handled the dispute over whether transport costs – “mileage” -- are payable by the respondent to a service provider jointly, because the same payment is claimed jointly by the two applicants. I elaborate on this below.

Issues

- [8] The substantive issues for me to determine are:
 1. Is [the applicant] entitled to receive a rehabilitation benefit in the amount of \$3,700.00 for social worker support, recommended by Natalie Walters, occupational therapist, and Mei-ling Thiessen, registered social worker, of Novus Rehabilitation, in a treatment plan dated February 8, 2016, denied by the Respondent on February 26, 2016?

2. Is [the applicant] entitled to receive a rehabilitation benefit in the amount of \$1,116.32 for in-home occupational therapy (“OT”) assessment, recommended by Natalie Walters of Novus Rehabilitation, in a treatment plan dated November 17, 2015, denied by the Respondent on December 1, 2015?
3. Is [the applicant], along with his sibling entitled to \$598.50 for the travel costs of a service provider associated with an approved treatment plan for physiotherapy approved by the respondent on December 30, 2016 – the travel costs denied by the respondent on January 31, 2017?
4. Is [the applicant] entitled to interest on overdue payments from the respondent?

RESULT

Findings

- [9] I find that the treatment plan for social work support (issue #1) is not reasonable and necessary.
- [10] I find that the assessment plan for an OT in-home assessment is not reasonable and necessary.
- [11] On the joint claim for travel costs, I find that the respondent is not required by the *Schedule* to pay it.
- [12] [The applicant’s] application for interest is denied.

Analysis and Reasons: Issue 1 – Social Worker Support

- [13] The parties agree that [the applicant] suffered psychological injuries from the MVA.
- [14] To support [the applicant’s] recovery, the insurer approved a treatment plan for psychological therapy recommended by Dr. Nicole Reist, psychologist, on January 25, 2016 (approval date February 11, 2016).
- [15] The parties agree that [the applicant] has formed a productive therapeutic relationship with Dr. Reist and is benefitting from his work with her.
- [16] The respondent denies [the applicant’s] claim for social worker support on the basis of duplication. The respondent argues that it cannot be obliged to pay for treatment plans that have the same goals and methods.
- [17] The applicant argues that the disputed treatment plan is not duplicative because social workers offer different, “hands on” and “community-based” therapies that [the applicant] needs to reinforce his treatment by Dr. Reist.

- [18] In reviewing the disputed treatment plan and the approved treatment plan with Dr. Reist, I made the following observations:
- (i) The disputed treatment plan sets out goals that are the same as the approved treatment plan; the issues addressed in the two plans, such as coping with post-traumatic stress disorder symptoms, appear to me to be the same.
 - (ii) The disputed treatment plan's details provide me with no evidence that its therapeutic approach differs from that of the approved plan¹: it provides me with no basis to find that it is materially different from the approved plan, or required to reinforce it, as contended by [the applicant].
 - (iii) The persons completing the disputed treatment plan did not acknowledge the existence of the approved treatment plan, and so failed to differentiate their approach from the psychological services to be provided to [the applicant].
- [19] The respondent relies on its insurer's examination (IE) report dated September 27, 2016, by Dr. Larry Tuff, pediatric psychologist and neuropsychologist, who provided the following opinions:
- (i) The disputed treatment plan for social worker support duplicates the approved treatment plan that [the applicant] is undergoing with Dr. Reist.
 - (ii) [The applicant] is receiving appropriate psychological treatment for his symptoms.
 - (iii) "the rationale for concurrent social work is not evident" ...
 - (iv) The need for further counselling cannot be evaluated until the approved treatment by Dr. Reist is completed.
- [20] Dr. Tuff's report also indicates that [the applicant] is functionally independent and manages age-appropriate self-care activities and successfully completed Grade 4 at school. I find that this information rebuts [the applicant's] contention that the disputed treatment plan is necessary to assist him in resuming pre-accident activities. [The applicant's] submissions lack compelling evidence of restrictions on [the applicant's] ordinary daily activities.

Analysis and Reasons: Issue 2 – In-Home OT Assessment

- [21] The disputed treatment plan indicates that [the applicant] is experiencing continuing pain and such challenges as:

¹ The disputed treatment plan's reference to "social work treatment" in Part 12 of the OCF-18 is unhelpful, because standard definitions of clinical social work include psychotherapy and the diagnosis and treatment of mental health problems. See pp.9-13 of National Association of Social Workers *Standards for Clinical Social Work* 2005, www.socialworkers.org/practice/standards/NASWClinicalSWStandards.pdf. The term itself does not assist me in differentiating between the disputed plan and the approved plan.

- (i) increased fatigue at the end of the school day;
 - (ii) requiring increased “cuing” to complete household tasks;
 - (iii) incomplete return to normal ADLs (i.e. activities of daily living) with “not fully engaging in play as prior” given as an example.
- [22] [The applicant’s] assessment plan provides no specific descriptions of the at-home barriers faced by [the applicant] that the plan, in his argument, would help him overcome. None of the issues mentioned by [the applicant] in the treatment plan itself speak to at-home barriers.
- [23] In an IE report dated September 27, 2016, Dr. John D. Heitzner, physiatrist, concluded that [the applicant] “does not require any assistance with returning to his activities of daily living”, and that the proposed in-home OT assessment is not reasonable and necessary. ”
- [24] Dr. Tuff’s observations support Dr. Heitzner’s findings insofar as [the applicant] reported to him in support of his conclusions that he was carrying out such everyday activities as: “feeding his dog, making his bed, taking out the recycling, and keeping his room tidy” and that [the applicant] “occasionally helps his father out with his carpentry work”.
- [25] Overall, I find the opinions of Dr. Heitzner, and corroborated by Dr. Tuff more persuasive than the arguments of the applicant. The applicant has not met the onus of proof in demonstrating that the disputed assessment plan is reasonable and necessary, in particular with respect to the goal of overcoming at-home barriers to maximum medical recovery.

Analysis and Reasons: Issue 3 – Travel Costs (Joint Finding files #17-001057/AABS and 17-0010161/AABS)

- [26] The applicant in 17-001061/AABS, [the applicant and sibling] (hereinafter “the applicants”) are siblings, as noted above. They are treated by the same physiotherapist at their family home in back-to-back appointments. For that reason, the disputed travel costs cover both applicants’ physiotherapy treatment plans and I will consider them jointly.
- [27] The treatments provided by the physiotherapist are, as noted above, approved by the respondent, and it has agreed to pay the non-travel portion of the cost.
- [28] The applicants seek to recover the travel costs incurred by the physiotherapist in driving to their home to provide treatment.
- [29] The respondent states correctly that section 15(1)(g) of the *Schedule* expressly provides only for travel costs for insured persons to and from treatment sessions, and where applicable, an aide or attendant. The section does not cover travel costs for service providers.

[30] The Superintendent of Insurance has issued guidelines on travel expenses, which govern my interpretation of the *Schedule*; Bulletin No. A-14/14, (December 1, 2014), states

“[...] some health care providers are submitting mileage expenses to insurers to travel to an injured accident victim’s location when providing services. Insurers are reminded that "authorized transportation expenses", as defined in the SABS², are intended to apply to expenses incurred by the insured person and an aide for travel to and from treatment sessions, subject to the Superintendent’s Transportation Expense Guideline.”

[31] I concur with the adjudicator in *J.H. vs. Intact Insurance Company* (2016) LAT 000009/AABS that a plain reading of the *Schedule* strongly suggests “that payments for the transportation expenses for service providers are excluded from mandatory payments under the *Schedule*.”

[32] As a result of my findings above, I find no basis on which I may conclude that the respondent is mandated by law to pay the claimed travel expenses claimed by the applicants.

INTEREST

[33] [The applicant] has asked for interest on overdue payments from the respondent.

[34] As I have found that no payment from the respondent is due to [the applicant], the request for interest in both applications is denied.

SUMMARY of FINDINGS

[35] The treatment plan for social worker support for [the applicant] is not reasonable and necessary, because it duplicates a previously approved treatment plan.

[36] The in-home OT assessment plan for [the applicant] is not reasonable and necessary.

[37] I find no regulatory basis to determine that the respondent is obliged to pay the transportation costs claimed by [the applicant and sibling].

[38] [The applicant] request for interest is denied.

Date of Issue: August 9, 2017

**Christopher A. Ferguson
Adjudicator**

² i.e. *Statutory Accident Benefits Schedule – Effective September 1, 2010*.