



**Citation: Zutshi v. TD General Insurance Company, 2021 ONLAT 19-011347/AABS**

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File Number: 19-011347/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:

**Rohin Zutshi**

**Applicant**

and

**TD General Insurance Company**

**Respondent**

**DECISION AND ORDER**

**ADJUDICATOR: Monica Chakravarti**

**APPEARANCES:**

For the Applicant: David Levy, Counsel

For the Respondent: Kamil Podleszanski, Counsel

**HEARD: Via Written Submissions**

## OVERVIEW

- [1] The applicant was involved in motor vehicle accident on September 8, 2018. As a result of the accident, the applicant claimed benefits from the respondent under the *Statutory Accident Benefits Schedule - Effective September 1, 2010*<sup>1</sup> (the "*Schedule*").
- [2] Specifically, the applicant submitted treatment plans seeking various medical and rehabilitation benefits. The respondent denied the treatment plans because it determined the benefits sought are not reasonable and necessary. The applicant disagreed with the respondent and commenced an application at the Licence Application Tribunal - Automobile Accident Benefits Service ("Tribunal") for resolution of the 11 disputed treatment plans.

## ISSUES TO BE DECIDED

- [3] The issues to be decided in this hearing are:
- a. Is the applicant entitled to \$7,808.97 for occupational therapy, recommended by Audrey Cline in a treatment plan (OCF-18) dated June 27, 2019?
  - b. Is the applicant entitled to \$500.00 for orthotics, recommended by Ken Weinberg on May 24, 2019?
  - c. Is the applicant entitled to \$3,856.85 for case management services, recommended by Jodi Brasgold-Finkelstein in a treatment plan (OCF-18) dated August 8, 2019?
  - d. Is the applicant entitled to \$809.54 for rock climbing therapy, recommended by Can Adaptive Climbing in a treatment plan (OCF-18) dated September 30, 2019?
  - e. Is the applicant entitled to \$5,596.62 for medication (medical cannabis), recommended by Appollo Applied Research in a treatment plan (OCF-18) dated August 14, 2019?
  - f. Is the applicant entitled to \$1,092.82 for topical pain reliever, recommended by Dr. Unarket in a treatment plan (OCF-18) dated December 6, 2019?
  - g. Is the applicant entitled to \$2,145.50 for physiotherapy, recommended by Oriole Physiotherapy in a treatment plan (OCF-18) dated August 22, 2019?

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<sup>1</sup> O. Reg. 34/10, as amended.

- h. Is the applicant entitled to \$3,205.50 for physiotherapy, recommended by Physiofit Health and Rehab in a treatment plan (OCF-18) dated September 21, 2019?
- i. Is the applicant entitled to \$2,326.00 for chiropractic treatment, recommended by Allevio Pain Management in a treatment plan (OCF-18) dated October 7, 2019?
- j. Is the applicant entitled to \$1,430.68 for chiropractic treatment, recommended by Richmond Street Wellness in a treatment plan (OCF-18) dated November 19, 2019?
- k. Is the applicant entitled to \$2,541.00 for chiropractic treatment, recommended by Ryan Scott in a treatment plan (OCF-18) dated November 27, 2019?
- l. Is the applicant entitled to interest on any overdue payment of benefits?

## RESULT

- [4] The applicant has met his onus to show that the following treatment plan is reasonable and necessary, and the applicant is entitled to interest on the cost of this treatment plan in accordance with section 51 of the Schedule:
  - a. \$7,808.97 for occupational therapy, as recommended by Audrey Cline in the treatment plan (OCF-18) dated June 27, 2019?
- [5] The applicant has not met his onus to show that the balance of the disputed treatment plans are reasonable and necessary.

## ANALYSIS

- [6] Sections 14, 15 and 16 of the Schedule provide that an insurer is only liable to pay for medical and rehabilitation expenses that are reasonable and necessary as a result of the accident. The applicant has the onus of proving on a balance of probabilities that the benefits he or she seeks are reasonable and necessary.
  - a. OCF-18 for Occupational Therapy – June 13, 2019 and interest
- [7] The applicant submitted a treatment plan completed by Audrey Cline for occupational therapy (OT Treatment Plan). The treatment plan provides for one session of education for recommended assistive devices (notably, assistive devices that are not part of this treatment plan) and 11 sessions to work towards promoting independence and safety within the home and within the community, as well as pain management. As per the OT Treatment Plan, the therapist will work with the client to provide cognitive strategies to ease completion of daily activities. The therapist will also coordinate with the rehabilitation team. The goals of the OT Treatment Plan are to facilitate and coordinate a return to

activities of daily living. The OT Treatment Plan notes that the applicant's injuries affect his ability to carry out his tasks of employment, activities of normal life, and participate in his usual routine.

- [8] The applicant submits that as a result of the accident he sustained a concussion/mild traumatic brain injury. I find that this diagnosis was confirmed by Dr. Devi, the family doctor<sup>2</sup>, Dr. Roussev, the treating neurologist<sup>3</sup>, the applicant's assessor Dr. Unarket, physiatrist<sup>4</sup>, and Dr. Goldfinger, the applicant's assessing neuropsychologist<sup>5</sup>. It is also diagnosed by the Insurer Examination (I.E.) of Dr. Berbrayer, physiatrist<sup>6</sup> who although does not list it in the "accident-related diagnoses" section of his report, Dr. Berbrayer confirms that the majority of the applicant's symptoms "appear related to his concussion and post-concussive symptoms...".
- [9] In support of the OT Treatment Plan, the applicant relies on the findings and recommendations of Dr. Goldfinger, Dr. Unarket and his case manager, Ms. Brasgold-Finklestein.
- [10] The respondent submits that, based on the I.E.'s it conducted, that the OT Treatment Plan is not reasonable and necessary. Specifically, the respondent points to the report of Mr. Arash Sasani, dated August 19, 2019, and the report of Mr. Atul Kaul, dated December 27, 2019. The respondent submits that these I.E. assessments demonstrate that the applicant is independent with his personal activities of daily living.
- [11] Based on the evidence noted below, the applicant has met his onus to show that the OT Treatment Plan is reasonable and necessary. The applicant's medical evidence, as noted above, reveals a mild traumatic brain injury as a result of the accident. This is confirmed by the I.E. assessor, Dr. Berbrayer, the applicant's own assessors and the applicant's treatment providers. The evidence also shows psychological injuries which may be both an exacerbation of pre-existing issues and development of post-accident adjustment disorder, and the evidence shows ongoing issues with pain. Dr. Goldfinger notes that there is a cognitive decline and that OT Therapy will assist the applicant with his cognitive and physical limitations.
- [12] Dr. Goldfinger assessed the applicant on April 24 and 25, 2019, and provided a detailed neuropsychological report dated June 19, 2019. Dr. Goldfinger stated that the diagnostic testing of the applicant revealed cognitive weakness. Specifically, Dr. Goldfinger stated that the testing demonstrated the following:

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<sup>2</sup> Respondent's Documents tab 20, clinical note of September 14, 2018

<sup>3</sup> Respondent's Documents, tab 23, report of January 9, 2019

<sup>4</sup> Applicant's Brief tab 8, report dated December 6, 2019

<sup>5</sup> Applicant's Brief tab 5, report dated June 25, 2019

<sup>6</sup> Respondent's brief tab 15

*“...he demonstrated relative weaknesses (low average range) on measures of inhibition decision making and some measures of attentional switching. Mr. Zutshi’s most prominent area of weakness was with attention regulation This was evidenced by poor attention span lack of attention to detail variable working memory fluctuating response speeds in response to changing task demands and when required to sustain his attention for longer periods of time and the tendency to make more errors with the passage of time.” [sic.]*

- [13] Dr. Goldfinger does note that the applicant’s issues with attention do not affect the applicant’s ability to learn and encode new information.
- [14] Dr. Goldfinger specifically recommends occupational therapy as follows: “Mr Zutshi would benefit from occupational therapy to help him work toward increasing his functioning on a daily basis This will include implementation of strategies to compensate for ongoing physical and cognitive limitations.” Dr. Goldfinger also recommends OT therapy for a reintegration into work.
- [15] Similarly, Dr. Unarket, the physiatrist, recommended occupational therapy for the applicant’s acquired brain injury.
- [16] I am not persuaded by the I.E. assessments of Mr. Sasani and Mr. Kaul, as the assessments do not fully address the need for occupational therapy and do not speak to the treatment being considered in the OT Treatment Plan. The report of Mr. Sasani speaks to the activities of daily living the applicant does in his home. I find the report does not address the applicant’s cognitive changes, his medications and his activities within the community. The report of Mr. Kaul is an attendant care assessment and therefore not in response to the OT Treatment Plan and the treatment proposed therein.
- [17] As noted above, the goals set out in the OT Treatment Plan are, amongst other things, to provide cognitive skills and strategies to ease the completion of daily activities as well as provide support and encouragement as required. It is to promote independence and safety in the home, safety within the community, as well as pain management. Dr. Goldfinger and Dr. Unarket both endorse and support the need for occupational therapy due to the physical and cognitive limitations that the applicant has as a result of the accident. Therefore, I place greater weight on their opinions and find that this treatment plan is reasonable and necessary.
- [18] The applicant is entitled to the cost of the OT Treatment Plan, with interest as prescribed under section 51 of the Schedule.
- b. Orthotics - May 24, 2019
- [19] The applicant submits that the need for orthotics is as a result of accident-related injuries and that they are a reasonable and necessary expense. The

applicant relies on the report of the case manager of May 16, 2019 and points to two specific portions in support of the orthotics. First, the applicant points to his self-reporting of left foot hammer toe and arch collapse, and his right foot arch issue. Secondly, the applicant points to the case manager summarizing Dr. Weinberg, who recommended the orthotics as follows: “The Physician [Dr. Weinberg] opined that the motor vehicle accident exacerbated the pronate and arch of his feet causing the pain Mr. Zutshi experiences.” In her report, the case manager states that this recommendation is in the clinical notes and record of Dr. Weinberg, dated May 24, 2019, despite the fact that the case manager’s report is dated May 16, 2019. Lastly, the applicant submits that the respondent did not obtain a medical opinion regarding the reasonableness and necessity of the orthotics.

- [20] The respondent denied the cost of the orthotics. The respondent submits that the cost of the orthotics was not submitted in a treatment plan or an OCF-6 but that the applicant simply provided a receipt. Further, the respondent submits that the applicant’s need for orthotics is as a result of his pes planus deformity, which is a pre-existing condition for the applicant. Thus, it submits that the payment of the orthotics is not reasonable, as it not an accident-related good that is required.
- [21] The applicant has not met his onus to show that the cost of the orthotics is reasonable and necessary as a result of accident-related impairments or injuries. The family doctor’s pre-accident clinical notes and records confirms that the applicant has pes planus issues with the arches of his feet and plantar fasciitis. These issues pre-date the accident and are not accident related. The clinical notes and records also confirm that the applicant required and used orthotics regularly prior to the accident.
- [22] The respondent provides in evidence the “Rx” from the applicant’s chiropodist, Dr. Weinberg, dated May 24, 2019, which states that the “patient exhibits a bilateral pes planus deformity resulting in an overweight bearing of the rearfoot”. Dr. Weinberg recommends custom made orthotics. In this May 24, 2019 Rx, Dr. Weinberg does not opine on the relationship between the accident and the applicant’s complaints and, in fact, there is no mention of the accident in the Rx of May 24, 2019.
- [23] The applicant has provided no OCF-18, nor any records from Dr. Weinberg that provide his opinion about causation. The case manager reported that Dr. Weinberg opined that the pre-existing conditions of pronate and issues with the foot arch were exacerbated by the accident. The case manager reports that Dr. Weinberg recommend the orthotics to correct the applicant’s biomechanics, however there are no records or reports from Dr. Weinberg to substantiate this. There is also no opinion, details, or evidence as to whether the type of orthotics that are being recommended differ in some way from the orthotics the applicant had prior to the accident, what the goals of the orthotics is, whether they differ from the pre-accident recommendations and need for orthotics, the

reasonableness of the costs of the orthotics, etc. Without this information, I find that the applicant has not met his onus to show that the cost of the orthotics is a reasonable and necessary expense as a result of his accident-related injuries or impairments.

c. OCF-18 for Case Management Services – August 8, 2019

- [24] The applicant has access to case management services without the need for a catastrophic designation as part of the benefits available to him under the Schedule. A treatment plan for case management was submitted on August 9, 2019 on the recommendation of Ms. Brasgold-Finkelstein.
- [25] The goals of this treatment plan are to facilitate and coordinate a return to activities of daily living. As per the additional comments attached to the treatment plan, the case manager is recommending that she meet with the applicant and his family to discuss his ongoing rehabilitation needs; complete referrals to a dietician, yoga therapist and driver anxiety assessment; to follow up with the adjuster; meet with the family doctor to request medical referrals for various specialists; follow up with the treatment providers regarding their plans for intervention and the progress made; and, follow up with various doctors and clinics for initial appointments.
- [26] The only evidence put forth for the need for these case management services at the time it was recommended is found in the assessment report of the case manager of May 16, 2019, some three months prior to the treatment plan. That report details the accident, the difficulties the applicant had post-accident as a result of accident-related impairments and the medical care received to date. In this report, the case manager makes no mention of her review of the medical records (as it appears none were provided) nor why the applicant requires these services. The reports of the applicant's treating providers and assessors do not make the same recommendations that the case manager does in the treatment plan of August 9, 2019. Further, other than the treatment plan itself, the applicant points to no evidence that links the need for the case manager to his accident-related injuries or impairments or the need for a person other than himself to facilitate the above. The case manager has provided recommendations for services that she would have to facilitate, however there is no indication that the recommendations made by the case manager, which then warrant case management services to facilitate, are supported by the applicant's treatment providers.
- [27] The treatment plan for case management services is dated August 9, 2019 and there is no evidence that is contemporaneous to this treatment plan that corroborates the need for case management services at that time. The applicant has not met his onus to show that this treatment plan of August 9, 2019 for case management services is reasonable and necessary.

d. OCF-18 for Rock Climbing Therapy – September 30, 2019

- [28] The treatment plan for rock climbing therapy is recommended by Canadian Adaptive Climbing, the occupational therapist (who completed the treatment plan) states the treatment would consist of a six-week adaptive climbing program. The goals of this treatment are “pain reduction, increase in strength, increase range of motion, return to activities of normal living, improve balance strength and endurance, practice mindfulness skills for pain management and body awareness and integrate into a community activity that can be done with friends and family”. The treatment plan was completed after the applicant attended a “Try-It” session. The additional information attached to the treatment plan indicates that there is research that rock climbing has benefits such as improved balance strength and endurance, improved, attention and problem solving and improved spirit such as confidence, connection and socialization.
- [29] However, there is no objective medical evidence, such as a report or an assessment to support these recommendations. Furthermore, there is no objective evidence to support the need for this type of therapy or that the goals set out will be met by this type of treatment. A treatment plan without any supporting evidence is not enough for the applicant to meet his onus that he requires the treatment and that the treatment is reasonable and necessary. Consequently, the treatment plan in dispute by Canadian Adaptive Climbing is not reasonable nor necessary.
- e. OCF-18 for Medical Cannabis – August 14, **2019**
  - f. OCF-18 for Topical Pain Reliever – December 6, 2019
- [30] With respect to the treatment plan for medical cannabis, the applicant’s appeal suffers the same fate. Other than the treatment plan itself, there is no further support that the cannabis is required. The applicant points to no reports, assessments or recommendations by his medical providers and only points to the treatment plan itself as evidence of the reasonableness and necessity of same. On the other hand, the respondent points to evidence from its I.E. assessors, Dr. Berbrayer and Dr. Gratzner, to show that the treatment plan is not reasonable and necessary.
- [31] Similarly, with respect to the topical pain reliever, the applicant relies on the recommendation itself without any objective medical evidence to substantiate the need, while the respondent relies on its I.E.’s to shows that there is no need for the treatment.
- [32] The applicant has not met his onus to show that the treatment plans for the medical cannabis and the topical cream are reasonable and necessary, as the applicant has provided no evidence to corroborate the need for these interventions.
- g. k) OCF-18s for Physiotherapy, Massage, Chiropractic, and Acupuncture Services



- [33] The following treatment plans are disputed:
- g. Treatment plan in the amount of \$2,145.50, dated August 22, 2019, is for 18 sessions of concussion rehabilitation with a physiotherapist and a blue light screen protector. The goals of this treatment plan are to decrease concussion signs and symptoms and return to activities of normal living.
  - h. Treatment plan in the amount of \$3,205.50, dated September 21, 2019, is for 18 sessions of physiotherapy (PT) and nine sessions of acupuncture. The goals of this treatment plan include pain reduction, increase strength, increase range of motion, return to modified work activities.
  - i. Treatment plan in the amount of \$2,326.00, dated October 7, 2019, is for eight sessions of chiropractic treatment (DC) and eight sessions with an “MD”, however, it is not stated what type of treatment the MD will perform other than body manipulations. The goals of this treatment plan include pain reduction, increase strength, increase range of motion, return to work activities, return to modified work activities and return to activities of normal living.
  - j. Treatment plan in the amount of \$1,430.68, dated November 19, 2019, is for 26 sessions of chiropractic treatment (DC) and four sessions of massage therapy (MT). The goals of this treatment plan are similar to those listed above.
  - k. Treatment plan in the amount of \$2,541.00, dated November 27, 2019, is for 12 session of chiropractic treatment. The goals are similar to those listed above.
- [34] The onus remains on the applicant to show that the treatment plans are reasonable and necessary at the time they are recommended. The applicant submits that the above treatments for DC, PT, MT and acupuncture are reasonable and necessary and relies on the recommendations by Ms. Brasgold-Finkelstein, case manager, in her report of May 16, 2019 and the recommendations of Ms. Haycock in her report of June 8, 2020.
- [35] There are five disputed treatment plans submitted within a two-month span with substantially the same goals and differing recommendations for the type of treatment and/or duration of the treatment. Contrary to the submissions of the applicant he has not met his onus to show that theses treatments were being recommended by his treatment providers during this two-month span. Similarly, the evidence does not support the reasonableness and necessity of the disputed treatment plans.
- [36] The May 16, 2019 report of Ms. Brasgold-Finkelstein makes no recommendations for DC, PT, MT and acupuncture.

- [37] In her report of June 8, 2020, Ms. Haycock speaks to the applicant's perceived needs and recommendations in May and June of 2020 and not to the treatment recommendations for September, October and November of 2019.
- [38] When looking at the medical evidence contemporaneously to the disputed treatment plans, there is no objective medical evidence that the applicant requires the treatment proposed in the above treatment plans. On February 26, 2019, the applicant saw Dr. Roussev, his treating neurologist. Dr. Roussev notes the applicant has multiple pain symptoms and recommends that the applicant be seen at a pain clinic. He does note that the applicant is doing "physio-rehab".
- [39] In the report of March 27, 2019 by Dr. Gantry at Allevio Clinic (which is a pain clinic), Dr. Gantry notes that the applicant has had physiotherapy, massage, chiropractic, and acupuncture treatment but the pain is alleviated by rest and medication. Dr. Gantry makes recommendations for treatment but makes no recommendations for PT, DC, MT or acupuncture specifically.
- [40] In his July 25, 2019 report, Dr. Goldfinger recommends occupational therapy, psychological therapy, medication, pain management and neurological treatment. Dr. Goldfinger does not make any of the recommendations for the types of treatment that are noted in the disputed treatment plans.
- [41] Dr. Unarket assessed the applicant on December 6, 2019. Dr. Unarket made no recommendations for PT, DC, MT or acupuncture. It is noted that Dr. Unarket does make recommendations for other forms of treatment.
- [42] Further, in his report dated December 27, 2019, Dr. Berbrayer noted that most of the symptoms the applicant is complaining of are related to concussion (but defers any further comments to the proper specialist) and, in terms of physical injuries, are minor soft-tissue injuries and no further treatment is required.
- [43] In his report dated December 27, 2019, Dr. Yahmad, I.E. Neurologist, opines that from a "strict physical neurological perspective" that no physical therapy is required.
- [44] Based on the above, the applicant has not met his onus to show that the above noted treatment plans are reasonable and necessary at the time the treatment was recommended. The medical information in and around the time of the treatment plans make no recommendations for PT, MT, DC or acupuncture.

## **ORDER**

- [45] The applicant is entitled to \$7,808.97 for occupational therapy recommended in the treatment plan dated June 27, 2019, with interest in accordance with section 51 of the Schedule.

[46] The applicant is not entitled to the balance of the treatment plans and is not entitled to further interest.

**Date of Issue: March 31, 2021**

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**Monica Chakravarti, Adjudicator**