

**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**

Citation: KS vs. Allstate Insurance Company of Canada, 2020 ONLAT 19-004364/AABS

**Released Date: 06/23/2020
File Number: 19-004364/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:

K. S.

Applicant

and

Allstate Insurance Company of Canada

Respondent

DECISION

ADJUDICATOR: Derek Grant

APPEARANCES:

For the Applicant: Tanzeela Ansari, Counsel

For the Respondent: Heather Kawaguchi, Counsel

HEARD: By way of written submissions

OVERVIEW

- [1] The applicant, K.S., was involved in an automobile accident on October 11, 2016 (the "accident") and sought benefits pursuant to the *Statutory Accident Benefits Schedule - Effective September 1, 2010*¹ (the "Schedule"). This dispute focuses on the respondent's, Allstate, denial of K.S.'s entitlement to medical benefits.
- [2] K.S. submits that, as a result of injuries he sustained in the accident, the treatment he seeks is reasonable and necessary.
- [3] Allstate argues that K.S. has not established that the treatment plans are reasonable and necessary.

ISSUES

- [4] The issues I am asked to determine are as follows:
 - a. Is the medical benefit in the amount of \$2,164.75 for physiotherapy services, recommended by Movement Physio in a treatment plan ("OCF-18") submitted July 25, 2017, and denied on August 1, 2017, reasonable and necessary?
 - b. Is the medical benefit in the amount of \$2,017.25 for physiotherapy services, recommended by Movement Physio in an OCF-18 submitted June 29, 2017, and denied on July 13, 2017, reasonable and necessary?
 - c. Is the medical benefit in the amount of \$1,944.96 (\$3,491.48, less \$1,446.49 approved) for psychological services, recommended by Counselling and Psychological Services of Metropolitan Toronto in an OCF-18 submitted November 30, 2017, and denied on January 17, 2018, reasonable and necessary?
 - d. Is the cost of examinations in the amount of \$2,000.00 for an orthopedic assessment, recommended by Scarborough Physio & Rehab Clinic in an OCF-18 submitted January 19, 2018, and denied on February 8, 2018, reasonable and necessary?
 - e. Is the cost of examinations in the amount of \$2,200.00 for a chronic pain assessment, recommended by Oshawa Physiotherapy and Rehabilitation

¹ O. Reg. 34/10.

Centre in an OCF-18 submitted July 17, 2018, and denied on August 1, 2018, reasonable and necessary?

- f. Is the payment in the amount of \$2,825.00 for an accounting report prepared by Collins Barrow, submitted August 3, 2017, and denied on September 5, 2017, reasonable and necessary?
- g. Is the payment for an initial psychological consultation in the amount of \$100.00, which was denied on August 26, 2017, reasonable and necessary?
- h. Is the payment for prescription expenses in the amount of \$168.78 (\$402.64, less \$233.86 approved), which was denied on August 26, 2017, reasonable and necessary?
- i. Is the payment for prescription and hospital expenses in the amount of \$1,159.31, which was denied on July 24, 2018, reasonable and necessary?
- j. Is K.S. entitled to interest on any overdue payment of benefits?

FINDING

[5] Based on a review of the evidence, I find that:

- a. K.S. is entitled to the OCF-18s for physiotherapy, plus applicable interest;
- b. K.S. is not entitled to the OCF-18s for a chronic pain or orthopaedic assessment, therefore no interest is owing;
- c. K.S. is not entitled to the remaining issues in dispute, as such, no interest is payable on these amounts.

LAW

[6] Sections 14 and 15 of the *Schedule* provide that an insurer is only liable to pay for reasonable and necessary medical expenses incurred as a result of an accident. The applicant bears the onus of proving on a balance of probabilities that any proposed treatment or assessment plan is reasonable and necessary.²

² *Scarlett v. Belair Insurance*, 2015 ONSC 3635 (CanLII).

Issues 4 a., b. – OCF-18s for physiotherapy

- [7] For the reasons that follow, I find that K.S. has met his onus on a balance of probabilities that the OCF-18s are reasonable and necessary.
- [8] K.S.'s claims that the treatment he seeks is reasonable and necessary; I find the medical evidence supports his claims.
- [9] K.S. was assessed by Dr. Razvi, chronic pain specialist, on February 23, 2018. In his report³, Dr. Razvi diagnosed K.S. with several injuries and impairments as a result of the accident: post-concussion syndrome, depression with features of post-traumatic stress disorder, cervicogenic headaches, zygapophyseal/myofascial pain left shoulder, zygapophyseal/myofascial pain cervical spine, zygapophyseal/myofascial pain lumbar spine and whiplash associated disorder.
- [10] Dr. Razvi opined that K.S. is experiencing prolonged pain that has gone beyond the typical time period of recovery for soft tissue injuries. Dr. Razvi stated that, "soft tissue injuries heal by normal physiological repair of the course of 4-6 weeks". Dr. Razvi noted that K.S. has "developed a chronic pain condition with reported reduction and functional ability". As a result of the injuries, Dr. Razvi recommended that K.S. be prescribed pain medication as well as participate in physiotherapy treatment. Dr. Razvi also recommended K.S. participate in a chronic self pain management program.
- [11] Allstate relied on the report⁴ of its assessor, Physiatrist Dr. Julie Millard, in support of its position that the OCF-18s were not reasonable and necessary.
- [12] K.S. reported to Dr. Millard that he continued to experience neck, left shoulder, mid-back and lower back pain. Dr. Millard noted that these pain complaints neither improved nor worsened since the subject accident.
- [13] Upon examination, Dr. Millard opined that K.S. had mild cervical impairment and left shoulder range of motion. Dr. Millard noted that K.S. sustained "soft tissue musculoligamentous injuries to his cervical, thoracic and lumbar spine, as well as musculotendinous strain of his left shoulder...". Based on the accident history, self-reporting and assessment, Dr. Millard diagnosed K.S. with: chronic cervical spine musculoligamentous strain, post-traumatic headache, left shoulder musculotendinous strain, chronic thoracic spine musculoligamentous strain, and chronic lumbar spine musculoligamentous strain". Dr. Millard opined that K.S.

³ Chronic Pain Assessment Report of Dr. Razvi dated March 3, 2018.

⁴ Insurer Examination Physiatry Assessment Report dated October 5, 2017.

may benefit from working with a kinesiologist. Dr. Millard further recommended pain medication, injections and anti-depressants to help with musculoskeletal, headache syndromes and improving sleep.

- [14] I find there to be significant similarities in the reports of Drs. Razvi and Millard in that they both concluded that K.S. suffers a degree of chronic pain. Although only Dr. Razvi recommends physiotherapy, Dr. Millard did mention that she anticipated further clinical improvement and that K.S.'s prognosis is reasonable, upon receiving further facility-based treatment.
- [15] I find both reports support indications that physiotherapy treatment would be reasonable and necessary to help K.S. with his chronic pain. I prefer Dr. Razvi's report. As a chronic pain specialist, I find his report to be a more persuasive account of K.S.'s post-accident level of impairment.
- [16] As such, I am satisfied that K.S. has met his onus that the physiotherapy treatment plans are reasonable and necessary.

Issue 4 c. – OCF-18 dated April 9, 2018

- [17] For the reasons that follow, I agree with Allstate that the psychological OCF-18 is partially reasonable and necessary.
- [18] The parties agree that K.S. suffered psychological impairments as a result of the accident. The dispute regarding the OCF-18 centres around whether the recommended duration of treatment is reasonable and necessary.
- [19] K.S. received psychological treatment from Dr. Mehra, psychotherapist, and psychological counselling from Dr. Fiati. On November 20, 2017, Dr. Fiati provided a progress report. In her report, she diagnosed K.S. with: Severe Depression, Adjustment Disorder, Anxiety Disorder, Chronic Pain, Insomnia and Post-Traumatic Stress Disorder. Dr. Fiati opined that K.S. would benefit from further 12, one and a half hour sessions of psychotherapy treatment.
- [20] Psychologist Dr. Moshri conducted a s. 44 assessment of K.S. Noting that K.S. had already received psychological treatment, having completed ten biweekly sessions at 45 minutes each, Dr. Moshri opined that K.S. would benefit from an additional 6 one-hour biweekly sessions of psychological counselling.
- [21] On January 16, 2018, by way of Explanation of Benefits ("OCF-9"), Allstate partially approved the treatment plan for 6 one-hour sessions, plus 3 hours for a re-evaluation and progress report.

- [22] Allstate submits that K.S. has not provided evidence to support why further psychological treatment is reasonable and necessary beyond the partially approved amounts. Allstate further submits that its approval of longer sessions was reasonable, even though the number of sessions is less. K.S. has failed to produce evidence that 12 psychological sessions are reasonable and necessary, rather than six. Further, there is no persuasive evidence to support that further counselling is required beyond what Allstate has already approved. I agree.
- [23] K.S. has not met his burden to persuade me that the psychological treatment he seeks beyond what was partially approved is reasonable and necessary.
- [24] I find that K.S. is not entitled to any further funding beyond what Allstate has already approved for psychological treatment. Consequently, I find that Allstate is not required to provide funding for the balance of the psychological OCF-18.

Issue 4 d. – OCF-18 dated April 9, 2018

- [25] For the reasons that follow, I find that K.S. has not met his onus on a balance of probabilities that the OCF-18 is reasonable and necessary.
- [26] My finding that the OCF-18 is not reasonable and necessary is based on the following:
- a. The diagnostic imaging reports confirmed normal findings, including x-ray results of the cervical, lumbar and thoracic spine;
 - b. K.S. already received approval for a chronic pain assessment;
 - c. There is no recommendation for an orthopaedic assessment from any treating practitioner or assessor on behalf of K.S. or otherwise; and
 - d. Aside from the OCF-18s, there are no other recommendations for chiropractic treatment. In this proceeding, the OCF-18s are unsupported by other objective medical evidence to establish that the proposed treatment is reasonable and necessary. Further, K.S.'s own treating practitioner does not recommend chiropractic treatment, but in fact recommends a different treatment modality to address K.S.'s accident-related injuries.
- [27] On a review of all the evidence, I find that K.S. has not met his burden of proof on a balance of probabilities that the OCF-18 for an orthopaedic assessment is reasonable and necessary.

Issue 4 e. – OCF-18 dated July 17, 2017

- [28] K.S. is not entitled to the chronic pain assessment.
- [29] Allstate approved the request for a chronic pain assessment from Dr. Razvi in January 2018. Allstate submits that because the Dr. Razvi OCF-18 was already approved, this July 17, 2017 OCF-18 is a duplication of services, and therefore not reasonable and necessary. I agree.
- [30] K.S. has not pointed me to any evidence to support that this OCF-18 is reasonable and necessary in addition to the chronic pain assessment already approved. I am not persuaded that same is reasonable and necessary and find that K.S. has fail to satisfy his onus to establish entitlement to the OCF-18.

Issue 4 f. – OCF-18 dated April 9, 2018

- [31] K.S. has failed to persuade me that this assessment is reasonable and necessary.
- [32] Allstate submits that this income calculation report was denied based on the fact that a report was not required to determine K.S.'s entitlement to an income replacement benefit ('IRBs'). Allstate's position is that the report was not accurately calculated, as it concluded that K.S. was owed a sum of money on the basis that no IRBs were paid. Allstate submits that it paid K.S. IRBs in an amount higher than that claimed by the report. Additionally, Allstate further submits that K.S. returned to work at the time of the income calculation report and all IRBs owing were paid.
- [33] K.S. did not point me to any evidence to refute Allstate's claims regarding the income calculation report. K.S. offered no submissions on the issue of this report. Further, the IRB issue was withdrawn prior to this written hearing.
- [34] As such, I find that K.S. has not established that the cost of the income report is reasonable and necessary.

Issues 4 g., h. and i. – OCF-6s

- [35] Allstate submits that it has not received any record, documentation or consultation report regarding this OCF-6 ('Issue 4g'), therefore it was unable to consider the expense. Allstate's position is that it has received nothing to warrant payment, as such, the OCF-6 is not payable. I agree.

- [36] K.S. has put forth no evidence that the Issue 4g OCF-6 is payable. I find no evidence that the OCF-6 is payable. Therefore, Allstate is not required to pay same.
- [37] I find the balance of the Issue 4h OCF-6 is not payable. On the evidence, it appears that the remaining balance relates to prescription expenses that are not accident-related or were already paid by the collateral benefits provider.
- [38] K.S. has not provided any evidence or submissions to the contrary. There is no evidence that the remaining balance was not covered by the collateral benefits provider, or that the outstanding balance was for accident-related amounts.
- [39] As such, K.S. has failed to establish that the July 27, 2017 OCF-6 is payable.
- [40] The remaining Issue 4i OCF-6 is not payable as K.S. has failed to adduce any evidence to support that the OCF-6 is payable.
- [41] Allstate submits that partial payment of the OCF-6 was made, with the remaining balance denied as duplicate expenses, not accident-related or there was no record of the amount owing. By way of an Explanation of Benefits dated July 24, 2018, Allstate requested further documentation, to which K.S. has failed to provide at the time of this proceeding.
- [42] I find that having failed to meet his burden regarding the July 27, 2017 OCF-6, this expense is not payable.

CONCLUSION

- [43] K.S. is entitled to the OCF-18s for physiotherapy, plus interest in accordance with s. 51 of the *Schedule*.
- [44] K.S. is not entitled to the remaining OCF-18s.
- [45] K.S. is not entitled to the OCF-6 expenses.

Released: June 23, 2020



**Derek Grant
Adjudicator**