

**LICENCE APPEAL
TRIBUNAL**

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

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

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



Citation: [A.S.] vs. Aviva Insurance Company, 2020 ONLAT 18-012238/AABS

Released Date: January 30, 2020

File Number: 18-012238/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:

[A.S.]

Applicant

and

Aviva Insurance Company

Respondent

DECISION

ADJUDICATOR: Robert Watt

APPEARANCES:

For the Applicant: [A.S.], Applicant
Mohamed Elbassiouni, Counsel

For the Respondent: Maia K Abbas, Counsel
Dimitry Belsoussev, Claims Adjuster

HEARD: In-Person: November 5, 2019

OVERVIEW

- [1] The applicant was injured in an automobile accident on **May 10, 2017** and sought benefits pursuant to *the Statutory Benefits Schedule-Effective September 1, 2010. (the "Schedule")*. The applicant was denied certain benefits and submitted an application to the Licence Appeal Tribunal-Automobile Accident Benefits Service("Tribunal").

ISSUES IN DISPUTE

- [2] I have been asked to decide the following issues:
- i. Is the applicant entitled to receive a medical benefit in the amount of \$1,501.30 (\$2,444.15 less \$942.82 partially approved) for psychological treatment, recommended by Leanne Wagner, psychological associate of Injury Management and Medical assessments, in a treatment plan dated June 29, 2017, submitted July 4, 2017, and denied by the respondent on July 13, 2017?
 - ii. Is the applicant entitled to payments for a cost of examination in the amount of \$503.90 (\$2,200.00 less \$1,696.10 partially approved) for a psychological assessment, recommended by Dr. Ricardo Harris, in a treatment plan dated June 29, 2017 submitted July 4, 2017 and denied by the respondent on July 13, 2017?
 - iii. Is the respondent liable to pay an award under Regulation 664 because it unreasonably withheld or delayed payments to the applicant?
 - iv. Is the applicant entitled to interest on any overdue payments of benefits?

RESULTS

- [3] The applicant is entitled to receive a medical benefit in the amount of \$1,501.30 (\$2,444.15 less \$942.82 partially approved) for psychological treatment.
- [4] The applicant is not entitled to payments for the cost of examination in the amount of \$503.90 (\$2,200.00 less \$1,696.10 partially approved) for a psychological assessment.
- [5] The applicant is entitled to interest on the benefits owing.
- [6] The respondent is not liable to pay an award under Regulation 664.

Analysis

Background

- [7] The respondent partially approved the treatment plan submitted on May 4, 2017, in the amount of \$942.82 for 12 hours of psychological treatment. The respondent approved partially the amount claimed (\$2,444.15) on the basis that that the service provider was an unregulated provider and therefore was subject to the rate of \$58.19 per hour. The issue in this application appears to be what rate can be charged by a Psychotherapist, while under the supervision of a Psychologist?
- [8] The respondent partially approved the treatment plan submitted on July 4, 2017, for the cost of examination for a psychological assessment in the amount of \$1,696.10 for 10 hours of assessment instead of the requested 13 hours for the assessment. The issue is whether the extra three hours asked for is reasonable and necessary.
- [9] The applicant relied on the evidence of Umiar Malik, a Psychotherapist, highly trained in cognitive behavioral therapy who is registered with the Ontario Association of Consultants, Counsellors, Psychometrists and Psychotherapists (OACCPP).and the college of Registered Psychotherapists of Ontario.
- [10] Umiar Malik gave evidence as to the different responsibilities of a Psychologist and a Psychotherapist. The main difference is that a Psychologist deals with the diagnosis as well as treatment, while the Psychotherapist deals with the treatment. Only the Psychologist reports to the client. Both the Psychologist and the Psychotherapist perform the same method of psychotherapy currently defined as treating, by means of psychotherapy techniques, delivered through a therapeutic relationship, an individual's serious disorder of thought, cognition, mood, emotional regulation, perception or memory that may seriously impair the individual's judgement, insight, behavior, communication or social functioning.¹
- [11] Umiar Malik indicated in his evidence that other insurers that he deals with, have adopted the \$149.61 rate per hour for Psychotherapists. He gave evidence that when they work under the supervision of a Psychologist, they usually have meetings monthly and weekly discussions as needed, with the supervising Psychologist. His evidence was that psychological services, when given under the supervision of a psychologist, provide a multidisciplinary approach which

¹ Evidence of Umiar Malik/ Letter dated August 26, 2018 from OACCPP to financial services commission. Brief of documents Tab 28

reduces the cost to the insurer. This approach allows the psychologist to complete the diagnosis without the insured having to re-attend a separate meeting with a psychologist or psychological associate, for a diagnosis.

- [12] Ms. L Wagner Psychologist supervised Allyson Gilbert and Umiar Malik psychotherapists, when the applicant was being treated by both these psychotherapists.

APPLICANT'S POSITION

- [13] The applicant's position is that firstly, that because in this case the Psychotherapists were under the supervision of a Psychologist, that the Psychotherapists should be able to bill at the rate of the Psychologist in accordance with the Schedule, being \$149.61 per hour. The applicant argues secondly, and in the alternative, that in providing the same treatment services to patients as Psychologists (excluding diagnosis), Psychotherapists should be able to charge the \$149.61 per hour.
- [14] The applicant argues that the extra hours required for a Psychological Assessment up to the limit set out in the *Schedule* of \$2000.00 should be approved as the assessment is reasonable and necessary. The applicant argues that the respondent could have completed a section 44 examination to determine whether the psychological assessment was reasonable and necessary and did not.

RESPONDENT'S POSITION

- [15] The respondent questions how much supervision Ms. Wagner gave to the Psychotherapists in the applicant's case, as Ms. Wagner did not meet with the applicant at all in the entire course of her supervision. There was apparently only minor recent telephone contact.² The Respondent argues since no progress report was put into evidence with any diagnosis, the treatment provided to the applicant falls closer to unregulated providers and counsellors at the \$58.19 hourly rate, rather than that of a Psychological Associate or Psychologist at the \$149.61 per hour rate.
- [16] The respondent also argues that Ms. Gilbert and Ms. Wagner in their Statutory Declarations indicate that Ms. Gilbert was capable of providing the services by herself, without any supervision. Ms. Wagner's supervision was therefore not required and therefore the rate for a Psychologist should not be applied.

² Joint Document Brief Agreed Statement of Facts. Tab 1

- [17] The respondent further argues that the psychological assessment plan proposed by Dr. Harris is not reasonable and necessary. Dr. Harris failed to provide a breakdown of what was to be done and the duration, relating to the clinical interview, psychometric testing, and report preparation. Therefore, the respondent is not able to assess whether the cost of the assessment is reasonable and necessary.

ANALYSIS

RATE TO BE APPLIED

- [18] The Financial Services Commission of Ontario (FSCO) has published a Professional Services Guideline (Guideline) dated September 2014, Guideline No.03 /14. This Guideline sets out the maximum hourly rate for Psychologists in a non- catastrophic impairment case as \$149.61 per hour. The Guideline lists some unregulated providers (Psychotherapists are not on the list) and assigns a rate to these groups as \$58.19 per hour being the maximum rate to be charged. The Guideline indicates that for services provided by persons not listed in the Guideline, the rate payable is to be determined by the parties involved.
- [19] The Ontario Association of Consultants Counsellors, Psychometrists and Psychotherapists has contacted FSCO to be added to the Guidelines as a regulated Health Care Profession or Provider, with the same rate given to the Psychologists and Psychological Associates, being the \$149.61 per hour. FSCO has not yet updated its Revised Rates and Fees and has not added any other regulated group to those fees.³
- [20] Psychotherapists have been regulated since April 1, 2015⁴ under the Ontario Association of Consultants, Counsellors, Psychometrists and Psychotherapists (OACCPP).
- [21] The Guideline clearly provides discretion for rates to be set for Psychotherapists by the parties or the Tribunal, if the parties cannot agree. This is because Psychotherapists are not listed in the Guideline, which provide rates to be set by the parties or others, if the parties cannot agree to a rate. The Guideline also is clear that an insurer can pay above the Guideline Rate.
- [22] The issue of what rate is to be applied towards Psychotherapists has already been adjudicated by the Tribunal.⁵

³ Ibid 1

⁴ Psychotherapy Act 2007, S.O. 2007 c. 10 Sched R

- [23] Both Psychologists and Psychotherapists provide the same cognitive behaviour therapy. If they are providing the same cognitive behaviour therapy services, why is the rate different.
- [24] I find that the hourly rates should be the same for the same services provided. I find that the applicant's Psychotherapist, should be paid at the rate of \$149.61 per hour for the work completed. Therefore, the applicant is entitled to the balance of the treatment plan submitted on May 4, 2017 for psychological treatment, at the rate of \$149.61 per hour.

PSYCHOLOGICAL ASSESSMENT

- [25] The respondent provided partial payment for 10 hours of the assessment instead of 13 hours. It is up to the applicant to show on a balance of probabilities that the extra three hours is reasonable and necessary to further assist the applicant in her recovery.
- [26] No evidence has been put before me to justify a further three hours for the psychological assessment. There is no breakdown of what was done and for how long in the course of completing the assessment, making it difficult to assess whether the cost of the assessment is reasonable and necessary.
- [27] I therefore find that the applicant is not entitled to a further three hours for the psychological assessment.

INTEREST

- [28] Interest is payable on the outstanding medical benefit for psychological treatment in accordance with s.51 of the Schedule.

⁵ Reconsideration Adjudicator Shapiro dated August 15, 2019/18-006097/AABS/Decision 18-07991/AABS Adjudicator Parish dated March 18, 2019 released August 15, 2019

AWARD

[29] No award is payable by the respondent as there is no evidence before me that the respondent has unreasonably withheld or delayed payment of benefits. The rate to be paid to Psychotherapists has had very little legal jurisprudence and needed to be clarified.

Released: January 30, 2020

**Robert Watt
Adjudicator**