

**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**



Tribunal File Number: 18-07991/AABS

In the matter of an Application pursuant to subsection 280(2) of the *Insurance Act, RSO 1990, c 1.8.*, in relation to statutory accident benefits.

Between:

J.V.

Applicant

and

Intact Insurance Company

Respondent

DECISION

PANEL: **Kimberly Parish, Adjudicator**

APPEARANCES:

Counsel for the Applicant: Rachel Levitsky, Counsel

Counsel for the Respondent: Darrell P. March, Counsel

HEARD: **In Writing on: March 18, 2019**

OVERVIEW

- [1] The applicant was injured in an automobile accident (“accident”) on September 13, 2017, and sought benefits from the respondent pursuant to Ontario Regulation 34/10, known as the *Statutory Accident Benefits Schedule - Effective September 1, 2010* (the “*Schedule*”).¹
- [2] The nature of the dispute involves the respondent’s refusal to fund the full amount of a treatment plan for cognitive behaviour therapy submitted by a registered psychotherapist. The disagreement between the parties relates to how much the respondent is liable to pay the registered psychotherapist per hour. The applicant applied to the Licence Appeal Tribunal - Automobile Accident Benefits Service (the “Tribunal”) for resolution of this dispute.

ISSUES

- [3] The only disputed claim in this hearing is:
- (i) Is the applicant entitled to a medical and rehabilitation benefit in the amount of \$648.18 (original treatment plan amount \$2,594.93. Partially approved in the amount of \$1,946.75) for psychological treatment recommended by Donna J. Barefoot in a treatment plan (OCF-18) submitted on June 21, 2018, and denied on July 6, 2018?

RESULT

- [4] Based on the evidence before me, and on a balance of probabilities, I find that:
- (i) The applicant is entitled to the balance of the treatment plan in the amount of \$648.18 for psychological treatment recommended by Donna J. Barefoot in a treatment plan (OCF-18) submitted on June 21, 2018, and denied on July 6, 2018.

ANALYSIS

The Professional Services Guideline (“Guideline”)

- [5] The Professional Services Guideline² (“Guideline”) establishes the maximum expenses payable by automobile insurers under the *Schedule* related to services provided by health care professions, or health care providers listed within the Guideline. Insurers are not prohibited from paying above any maximum amount

¹ O. Reg. 34/10

² *Professional Services Guideline*, Superintendent’s Guideline No. 03/14, September 2014

or hourly rate established in the Guideline. It is also noted within the Guideline that services provided by health care professionals/providers, unregulated providers and other occupations not listed within the Guideline are not covered by the Guideline. For services not covered by the Guideline, the amounts payable by an insurer are to be determined by the parties involved. The Guideline further notes that automobile insurers are not liable to pay expenses for services rendered to an insured person which exceed the maximum hourly rates set out in the Guideline's Appendix.

- [6] I find the applicant is entitled to the \$648.18 balance of the treatment plan in dispute as the respondent is liable to fund the hourly rate of \$149.61 as submitted in the treatment plan prepared by Donna J. Barefoot ("Ms. Barefoot"), registered psychotherapist. I find the cognitive behaviour therapy proposed within the treatment plan entitles Ms. Barefoot to be paid at the same hourly rate noted within the Guideline as a psychologist, or psychological associate. My analysis and reasons are provided below.

Credentials and Training

- [7] I find that based upon Ms. Barefoot's credentials, specialized training within the area of cognitive behaviour therapy, and her experience, this warrants her being paid an hourly rate of \$149.61 as noted within the Guideline for psychologists, and psychological associates. I do not agree with the respondent's position that because she does not have all of the same training and accreditation as a psychologist, or psychological associate that it disentitles her to being paid the same hourly rate noted within the Guideline that a psychologist, or a psychological associate would be paid. Ms. Barefoot is providing cognitive behaviour therapy, a service she is qualified to provide. Ms. Barefoot is a registered psychotherapist who specializes in cognitive behaviour therapy and is registered with both the Canadian College of Professional Counsellors and Psychotherapists ("CCPCP") and the College of Registered Psychotherapists of Ontario ("CRPO"). Her fee for uninsured patients is \$150.00 per hour.
- [8] It is the applicant's position that her fee is based on her education, experience, academic credentials, and licensed status and the rate at which she should be paid for providing cognitive therapy to the applicant should correspond with the rate which a psychological associate noted in the Guideline is paid; \$149.61 per hour. For comparison purposes, the applicant relies on fees paid for by the Workplace Safety and Insurance Board ("WSIB") for psychological services which are \$73.48 per half hour, or \$146.96 per hour.³ It is an agreed fact that

³ Excerpt from WSIB Fee Schedule, included with applicant's written submissions, at tab G.

Ms. Barefoot does not have a master's degree in psychology which is required pursuant to Ontario Regulation 74/15⁴, the new Registration Regulation of the *Psychology Act*, 1991⁵, requiring that psychologists and psychological associates be registered under the regulations. However, I find these requirements are not required in order for Ms. Barefoot to provide cognitive behaviour therapy. The respondent submits that the training is distinguishable for a psychologist, or a psychological associate who are required to undergo 6,000 hours of supervised training by a psychologist, versus a psychotherapist who is required to undergo 450 hours of patient contact and at least 100 hours of clinical supervision but is not required to be under the supervision of a psychologist. The respondent submitted that psychologists and psychological associates are registered members of the Psychologists Association of Ontario and in order to become registered members there are specific examinations they must undergo which are more intensive than the examinations a registered psychotherapist must undergo. I accept Ms. Barefoot is not accredited within the Province of Ontario to provide all of the services which a psychologist or a psychological associate can provide. Ms. Barefoot is providing cognitive behaviour therapy which is not outside of her scope of expertise, or services which can be provided by a registered psychotherapist. Therefore, I do not find she should be disentitled to be paid at the same rate as a psychologist, or psychological associate within the Guideline for providing a service she is qualified to provide which is the same service which can also be provided by psychologists and psychological associates.

Cognitive Behaviour Therapy

- [9] I find the applicant's position persuasive in supporting Ms. Barefoot is entitled to be paid an hourly rate of \$149.61, the same hourly rate noted within the Guideline for a psychologist, or a psychological associate. An insurer would be required to pay a psychologist, or a psychological associate a minimum hourly rate of \$149.61 for cognitive behaviour therapy as stipulated within the Guideline, but because Ms. Barefoot is not a psychologist, or a psychological associate, the respondent's position is she would not be entitled to that rate and I do not agree with this position. I find the service being provided is distinguishable from other services which psychologists and psychological associates can provide but registered psychotherapists cannot. It has been established that Ms. Barefoot is qualified to provide cognitive behaviour therapy and in doing so she should be entitled to receive the same rate as a psychologist, or psychological associate under the Guideline.

⁴ O. Reg 74/15 under *Psychology Act*, 1991, S.O. 1991, c. 38

⁵ *Psychology Act*, 1991, S.O. 1991, C. 38

- [10] The applicant argues that psychotherapists (regulated) are considered Regulated Health Professionals under the List of Regulated Health Professionals and Practitioners⁶ established by the Financial Services Commission of Ontario (“FSCO”). However, the Guideline does not specifically list psychotherapists and a minimum hourly rate for which they are to be paid. The applicant relies on a letter from the Ontario Association of Consultants, Counsellors, Psychometrists, and Psychotherapists (“CRPO”) which was sent to FSCO⁷ requesting that Registered Psychotherapists not receive an hourly rate of \$58.19 but the rate of \$146.61 per hour which is the same rate as psychologists and psychological associates as they perform the same controlled act of psychotherapy. The applicant further argues that psychotherapy is distinct from counselling as recognized by the CRPO. It is the applicant’s submission that if the applicant were to receive cognitive behaviour therapy from a psychologist, or psychological associate, the respondent would be liable to pay the minimum hourly rate of \$149.61 as stipulated by the Guideline.
- [11] The respondent submitted that when the Guideline was created in 2014, there were no registration requirements for psychotherapists and the hourly fee for counsellors is \$58.19 and \$146.91 for psychologists and psychological associates. It is the respondent’s submission that the *Psychotherapy Act*⁸ only became law on April 1, 2015 and prior to that there were no registration requirements for psychotherapists, and psychotherapists were a type of counsellor. The respondent lastly submitted that as the Guideline permits insurers to pay amounts in excess of the Guideline, the respondent agreed to pay Ms. Barefoot based on an hourly rate of \$99.75 which exceeds the hourly rate of \$58.19 noted within the Guideline for counsellors. The Explanation of Benefits provided by the respondent dated July 6, 2018 noted it was not liable to pay expenses in excess of the Guideline and further noted that occupations not listed in the Guideline are not covered by or subjected to the fees within the Guideline. Therefore, I do not accept the explanation produced by the respondent as the hourly rate of \$99.75 noted within the Guideline is the rate noted for occupational therapists, physiotherapists, and podiatrists who typically have no specialization in providing cognitive behaviour therapy. I find that the respondent’s approval of the treatment plan at an hourly rate of \$99.75 which is a higher rate than the hourly rate of \$58.19 for counsellors confirms the respondent accepts that cognitive behaviour therapy provided by Ms. Barefoot warrants her

⁶ Appendix E List of Regulated Health Professionals and Practitioners, included with applicant’s written submissions, tab K.

⁷ Letter from Ontario Association of Consultants, Counsellors, Psychometrists, and Psychotherapists, dated August 22, 2018, included with the applicant’s written submissions, tab N.

⁸ *Psychotherapy Act 2007*, S.O. 2007, c. 10, Sched. R

being paid an hourly rate which exceeds what is noted within the Guideline for a counsellor. I do not accept the respondent's rate of \$99.75 per hour in which they have based the approval of the treatment plan. I find that the cognitive behaviour therapy proposed within the treatment plan justifies the hourly rate of \$149.61 rate which aligns with what psychologists, and psychological associates are entitled to be paid under the Guideline as this a service which they also provide.

Statutory Interpretation

- [12] Upon review of the Guideline, I have discretion to find the respondent is liable to pay Ms. Barefoot the same hourly rate of \$149.61 as a psychologist, or psychological associate under the Guideline. As a result, I have exercised this discretion in finding Ms. Barefoot is entitled to be paid an hourly rate of \$149.61. I find the plain language meaning of the Guideline establishes that registered psychotherapists are not listed within the Guideline, and as a result are not covered by the Guideline. Therefore, the amounts payable are to be determined by the parties, or if the parties cannot agree, an adjudicator. This allows the Tribunal to exercise its discretion in determining an hourly rate Ms. Barefoot is to be paid for the cognitive behaviour therapy she proposed within the treatment plan. I am not persuaded by the respondent's submission that it was the Superintendent's intention when the Guideline was created that psychotherapists be classified as counsellors. I find the legislative intent of the Guideline for establishing a set of hourly rates and fees for healthcare professions/providers listed within the Guideline was to ensure there is a maximum amount that insurers are obligated to fund for treatment under the *Schedule*. However, insurers could elect to pay more than what the Guideline stipulates. This serves to protect the insured person from not being overcharged for treatment, and allowing them to access treatment approved by their insurer.
- [13] The applicant's position is that there is a gap in the Guideline which has resulted in Ms. Barefoot not falling under one of the categories listed within the Guideline. It is the applicant's position that the Guideline does not state that a registered psychotherapist must be paid **less** [emphasis applicant's] than a psychologist, or a psychological associate. The respondent relies on *Rizzo and Rizzo Shoes*⁹ which noted the legislation must be read in the intention of the legislature. The respondent submitted that when the Guideline was created in 2014, there were no registration requirements for psychotherapists and the hourly fee for counsellors is \$58.19 and \$146.91 for psychologists and psychological associates. It is the respondent's submission if the Guideline needs to be updated as a result of the changes implemented within the *Psychotherapy Act*,

⁹ *Rizzo and Rizzo Shoes*, [1998] 1 S.C.R 27, at para 21

then that it is the responsibility of the Superintendent to do so. While I accept this may be so, it does not change my discretion to award Ms. Barefoot an hourly rate of \$149.61 at this time.

- [14] The respondent submitted if individuals not possessing the same qualifications and experience as psychologists and psychological associates are paid the same hourly rate as psychologists, and psychological associates under the Guideline, this would lead to an absurd result and would not be in accordance with *Rizzo*. I am not persuaded by the respondent's reliance on *Rizzo* as in this case I find Ms. Barefoot is entitled to be paid the same rate for providing cognitive behaviour therapy as a psychologist, or psychological associate would be paid under the Guideline. I do not find this produces an absurd result as she would be paid for providing cognitive behaviour therapy which she has specialized training and expertise in. It does not allow her to be paid for any service provided by a psychologist, or a psychological associate that she is not qualified to provide.

CONCLUSION

- [15] The applicant is entitled to the balance of the treatment plan in the amount of \$648.18 for psychological treatment recommended by Donna J. Barefoot in a treatment plan (OCF-18) submitted on June 21, 2018, and denied on July 6, 2018.

Released: June 24, 2019



**Kimberly Parish
Adjudicator**