



**Citation: Wu. v. Allstate Canada, 2022 ONLAT 20-010616/AABS**

**Licence Appeal Tribunal File Number: 20-010616/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:

**Hua Bin Wu**

**Applicant**

and

**Allstate Canada**

**Respondent**

**DECISION**

**ADJUDICATOR: Anita Goela**

**APPEARANCES:**

**For the Applicant: Yu Jiang, Paralegal**

**For the Respondent: Jessica Meyerovich, Counsel**

**HEARD: In Writing October 19, 2022**

## REASONS FOR DECISION

### BACKGROUND

- [1] The applicant was involved in an automobile accident on July 26, 2018, and sought benefits pursuant to the Statutory Accident Benefits Schedule – *Effective September 1, 2010 (including amendments effective June 1, 2016)*. The applicant was denied certain benefits by the respondent and submitted an application to the Licence Appeal Tribunal - Automobile Accident Benefits Service (“Tribunal”).
- [2] The respondent denied the applicant a psychological treatment plan and a psychological assessment on the basis that the applicant’s injuries fit the definition of “minor injury” prescribed by s. 3(1) of the *Schedule* and fall within the Minor Injury Guideline (“the MIG”)<sup>1</sup>. The applicant’s position is that his impairments fall outside the MIG.
- [3] The applicant also claims that the respondent failed to pay for replacement of damaged glasses. The respondent submits that the glasses were paid for and are not in dispute.
- [4] If the applicant’s position is correct, then I must address if the medical treatment claimed is reasonable and necessary. If the respondent’s position is correct, then the applicant is subject to a \$3,500.00 limit on medical and rehabilitation benefits prescribed by s.18(1) of the *Schedule*.

### ISSUES

- [5] The specific legal issues in this appeal are as follows:
- i. Did the applicant sustain predominantly minor injuries as defined under the *Schedule*?
- [6] If the applicant’s injuries are not within the MIG, then I must determine the following issues:
- i. Is the applicant entitled to medical benefits recommended by Somatic Assessments and Treatment Clinic, as follows:

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<sup>1</sup> Minor Injury Guideline, Superintendent’s Guideline 01/14, issued pursuant to s. 268.3(1.1) of the *Insurance Act*.

- a. In the amount of \$2,200.00 for a psychological assessment submitted in a treatment plan submitted January 8, 2019 and denied on January 22, 2019?
  - b. In the amount of \$3,701.88 for psychological services submitted in a treatment plan submitted March 1, 2019 and denied on March 15, 2019?
- ii. Is the applicant entitled to \$760.00 for the replacement of damaged glasses submitted on a claim form dated August 4, 2018 and denied on August 30, 2018?
  - iii. Is the applicant entitled to interest on any overdue payment of benefits?

## RESULT

[7] I find the following:

- i. The applicant is not subject to the MIG.
- ii. The applicant is entitled to the two disputed treatment plans.
- iii. It appears that the replacement of the damaged glasses is not disputed as the respondent indicates it has paid for this benefit. If that is not the case, the respondent has agreed to pay for them and they are payable.
- iv. The applicant is entitled to interest in accordance with the *Schedule*.

## ANALYSIS

### *Minor Injury Guideline*

- [8] The MIG establishes a framework for the treatment of minor injuries. Section 3 of the *Schedule* provides that a “minor injury” is defined as “one or more of a strain, sprain, whiplash associated disorder, contusion, abrasion, laceration or subluxation and includes any clinically associated sequelae to such an injury.”
- [9] The language of the MIG expressly does not include psychological impairment. If I find that the applicant suffers from a psychological impairment, he would be removed from the MIG.
- [10] I find that the clinical notes and records (CNR’s) of the applicant’s family physician, Dr. Jing Cao, clearly mention psychological symptoms shortly after the accident on July 26, 2018. Dr. Cao assessed the applicant as suffering from

post-traumatic stress syndrome, recommended meditation and relaxation techniques and prescribed Ativan to address the applicant's symptoms<sup>2</sup>. Dr. Cao referred the applicant for psychological counselling.<sup>3</sup>"

- [11] The respondent submits that the applicant's psychological impairments are not related to this accident but rather to accidents that occurred on January 12, 2019 and February 23, 2019.
- [12] The applicant disputes that there was an accident on January 12, 2019. There is one notation in the applicant's CNR's on that date. The applicant's family doctor did not see the applicant that day. Instead, another doctor, Dr. Rick Chen, saw the applicant. The note states that the applicant was in a major accident last year and then had another MVA recently. The note further states that the applicant became extremely anxious, is already going through psychotherapy, currently very scared of cars and previously had some Ativan from his family doctor which was helpful.
- [13] I find that the reference by Dr. Chen to "another MVA recently" to be ambiguous. The respondent relies on that entry for its causation argument. The applicant denies that there was any accident in January 2019 and that the OHIP entry is in reference to the visit with Dr. Chen.
- [14] In any event, I find that there was sufficient evidence in the CNR's of Dr. Cao that suggest psychological impairment after the July 26, 2018 accident and before January 12, 2019.
- [15] The applicant submitted the disputed psychological assessment. In it, Dr. McDowall diagnosed the applicant with Major Depressive Disorder and Anxious Distress. The respondent submitted its own psychological assessment by Dr. Syed. Dr. Syed, in her conclusions, found no objective psychometric evidence to substantiate the applicant's self-report of psychological impairment. The respondent submits that I should prefer its report over that of the applicant.
- [16] I find that there were inconsistencies in Dr. Syed's report. She finds the applicant to be impaired in several areas including: general profile, avoidant, dependent, depressive, borderline, paranoid, anxiety, post-traumatic stress, major depression. The survey of pain attitude for consistency is found to be within normal limits. Dr. Syed then goes on to state concern about distortion of the

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<sup>2</sup> Applicant's initial submissions, paragraph 6

<sup>3</sup> Applicant's initial submissions, paragraph 7

clinical picture. She finds that there is limited confidence in the reliability and validity of the data gathered in the evaluation.

- [17] On balance, I find that there was sufficient psychometric evidence of the applicant's self-report of psychological impairment. I find it difficult to resolve that the applicant is consistent in his self-reporting yet is also feigning mental disorder, as suggested by Dr. Syed. Overall, I disagree with the respondent's assessment of the applicant's medical evidence. Specifically, I find that the respondent minimized the CNR's of Dr. Cao.
- [18] I find that the applicant's psychological impairments remove him from the treatment limits under the MIG.

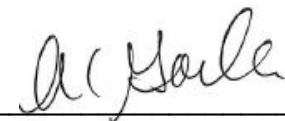
*Reasonable and Necessary*

- [19] Sections 14 and 15 of the *Schedule* provide that an insurer is only liable to pay for medical expenses that are reasonable and necessary as a result of the accident. The applicant bears the onus of proving that the treatment plans are reasonable and necessary.
- [20] As stated above, I find that the applicant has demonstrated that his psychological impairments are accident-related. For similar reasons, I am persuaded that he has met his onus, on a balance of probabilities, that the psychological assessment and psychological treatment plan are reasonable and necessary.

**CONCLUSION AND ORDER**

- [21] The applicant is not subject to the MIG.
- [22] The applicant is entitled to the medical benefits in dispute.
- [23] If the disputed glasses expense have not been paid, the applicant is entitled to this benefit.
- [24] Interest is owing in accordance with the *Schedule*.

**Released: January 3, 2023**



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**Anita Goela  
Adjudicator**