



Citation: Lo v. TD General Insurance Company, 2024 ONLAT 22-002917/AABS

Licence Appeal Tribunal File Number: 22-002917/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:

Lincoln Lo

Applicant

and

TD General Insurance Company

Respondent

DECISION

VICE-CHAIR: Monica Ciriello

APPEARANCES:

For the Applicant: Aylina Dhanji, Counsel

For the Respondent: Taylor Cawley, Counsel

HEARD: In Writing

OVERVIEW

[1] Lincoln Lo, the applicant, was involved in an automobile accident on July 13, 2019, and sought benefits pursuant to the *Statutory Accident Benefits Schedule - Effective September 1, 2010 (including amendments effective June 1, 2016)* (the “Schedule”). The applicant was denied benefits by the respondent, TD General Insurance Company, and applied to the Licence Appeal Tribunal - Automobile Accident Benefits Service (the “Tribunal”) for resolution of the dispute.

ISSUES

- [2] The following issues are to be decided:
- i. Are the applicant’s injuries predominantly minor as defined in s. 3 of the *Schedule* and therefore subject to treatment within the \$3,500.00 Minor Injury Guideline (“MIG”) limit?
 - ii. Is the applicant entitled to \$3,981.88 for psychological services, proposed by Somatic Assessments & Treatment Clinic in a treatment plan (“OCF-18”) dated June 1, 2020?
 - iii. Is the applicant entitled to \$2,200.00 for a psychological assessment, proposed by Somatic Assessments & Treatment in OCF-18 dated May 25, 2020?
 - iv. Is the respondent liable to pay an award under s. 10 of O. Reg. 664 because it unreasonably withheld or delayed payments to the applicant?
 - v. Is the applicant entitled to interest on any overdue payment of benefits?

RESULT

- [3] I find that:
- i. The applicant has met his onus of proving that his accident-related impairments warrant removal from the MIG;
 - ii. The applicant is entitled to the treatment plans in dispute;
 - iii. The applicant is not entitled to a special award; and
 - iv. The applicant is entitled to interest.

ANALYSIS

Applicability of the Minor Injury Guideline (“MIG”)

- [4] The MIG establishes a framework available to injured persons who sustain a minor injury as a result of an accident. A “minor injury” is defined in s. 3(1) of the *Schedule* 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.”
- [5] Section 18(1) of the *Schedule* provides that medical and rehabilitation benefits are limited to \$3,500.00 if the applicant sustains an impairment that is predominantly a minor injury in accordance with the MIG.
- [6] An applicant may receive payment for treatment beyond the \$3,500.00 limit if they can demonstrate that a pre-existing condition, documented by a medical practitioner, prevents maximal medical recovery of the minor injury sustained in the accident if they were kept in the MIG, or if they provide evidence of an injury sustained in the accident that is not included in the minor injury definition in s.3(1). The Tribunal has also determined that chronic pain with functional impairment or a psychological condition may warrant removal from the MIG.
- [7] It is the applicant’s burden to establish entitlement to coverage beyond the \$3,500.00 cap on a balance of probabilities. The respondent has already approved \$3,500.00 in medical and rehabilitation benefits.
- [8] The applicant submits that he sustained psychological injuries as a result of the accident. The respondent submits that on a balance of probabilities, the applicant is suffering from predominately minor injuries.

The applicant suffers psychological injuries that warrant removal from the MIG

- [9] I find that the applicant has provided sufficient evidence to demonstrate that his psychological impairments justify treatment beyond the MIG.
- [10] An applicant may be removed from the MIG if they sustain a psychological impairment as a result of the accident, as psychological impairments are not captured within the definition of minor injuries under section 3(1) of the *Schedule*.
- [11] In order to be removed from the MIG due to psychological impairments, the applicant must show that he has an actual psychological impairment and not just post-accident sequelae. A psychological diagnosis requires the progression of

ongoing, post-accident symptomatology, or clinically significant psychological impairments.

- [12] In support of his position, the applicant relies on the April 22, 2020 clinical notes and records (“CNRs”) of Dr. Joginder Kaur Saini, family physician at walk-in clinic, that requested the applicant be referred to psychiatry due to severe depression with suicidal thoughts. The applicant attended Ottawa Hospital on April 22, 2020 and consulted with Dr. Jeremy Gardner, medical student, on behalf of Dr. Catherine Mann, psychiatry. The CNRs note features of PTSD, and that the applicant’s entire life was turned upside down when he was in an accident, and his car exploded. The applicant was admitted overnight at Ottawa Hospital and diagnosed with depression and suicidal ideations.
- [13] The applicant also relies on the psychological assessment report by Mandy Fang registered psychotherapist, under the supervision of Dr. Sharleen McDowell, psychologist, dated May 28, 2020. The applicant reported severe depression, anxiety, frustration and persistent thoughts about how he could have died during the accident. Ms. Fang reported that the applicant exhibited significant emotional and psychological distress, reflected in low mood, anxiety, and somatic stress. Ms. Fang concluded that the applicant suffered from post-traumatic stress disorder, major depressive disorder, as well as somatic symptom disorder supported by the trauma of the accident. Ms. Fang recommended psychological treatment. Dr. McDowell recommended continued psychological treatment in the psychological counselling progress report, dated March 14, 2022.
- [14] In response, the respondent submits that the applicant did not provide any compelling medical evidence. The respondent submits that the April 22, 2020 CNRs of Dr. Gardner in addition to the accident, reference the applicant’s disappointment with society, and the ongoing COVID-19 pandemic. Further, the respondent highlights that on October 21, 2021, while at Appletree Medical Group the applicant refused to be referred to a psychotherapist for treatment.
- [15] In addition, the respondent relies on the section 44 insurers examination (“IE”) of Dr. Rhonda Nemeth, psychologist dated January 26, 2022. Dr. Nemeth opined that from a psychological perspective, the applicant’s injuries from the accident meet the criteria of a minor injury, as there was no data reflecting the presence of psychological symptomatology.
- [16] After reviewing the evidence, I agree with the applicant. I find there is compelling evidence to show that the applicant suffers from a psychological impairment as a result of the accident that would remove him from the MIG. I prefer the corroborating evidence of Dr. Saini, Dr. Gardner, Dr. Mann, Ms. Fang, and Dr.

McDowell. The medical evidence of those physicians opine that the applicant suffers from depression, PTSD and somatic symptom disorder as a result of the accident. I put little weight on the report of Dr. Nemeth as it is inconsistent with the bulk of the medical evidence. Accordingly, the applicant has met his burden.

THE DISPUTED TREATMENT PLANS

Is the applicant entitled to \$3,981.88 for psychological services?

- [17] I find that the applicant is entitled to the cost of the psychological services for the following reasons.
- [18] I find that the applicant has provided sufficient evidence in this regard. The applicant submits that there was a need for psychological services especially when the applicant began to have suicidal thoughts. At the time the OCF-18 was submitted, the applicant had been admitted to Ottawa Hospital and underwent a psychological assessment.
- [19] The respondent submits that the applicant, on multiple occasions, indicated that he did not have a desire for psychological-related treatment. The respondent highlights that on October 21, 2021, the applicant refused to be referred to a psychotherapist.
- [20] I find that the bulk of the medical evidence supports a psychological impairment, and the psychological counselling progress report, dated March 14, 2022, specifically demonstrates the applicant's desire, and need for psychological services.
- [21] Based on the evidence before me, I find that the applicant has met his burden to establish that the OCF-18, and the costs incurred was reasonable and necessary.

Is the applicant entitled to \$2,200.00 for a psychological assessment?

- [22] I find that the applicant is entitled to the cost of the psychological assessment for the following reasons.
- [23] In determining whether an applicant is entitled to a psychological assessment, the applicant is not required to prove that he requires the treatment. Rather, the evidence should demonstrate that there is a reasonable possibility that the applicant has the condition the assessment will investigate, and that the assessment is reasonable and necessary.

- [24] I find that the applicant has provided sufficient evidence in this regard. The applicant provided evidence of psychological impairment, including the CNRs from Ottawa Hospital as reported by Dr. Gardner and Dr. Mann as well as the psychological assessment report by Ms. Fang and Dr. Sharleen McDowell. The applicant also submits psychological and emotional complaints including low mood, anxiety, suicidal thoughts, nightmares and somatic stress. The applicant has reported having suicidal ideation and has been hospitalized accordingly.
- [25] The respondent relied on the reasons in the OCF-18 denial, that no compelling medical evidence had been provided to date to suggest that the applicant suffers from an impairment that does not come within the MIG.
- [26] Based on the evidence before me, I find that the applicant has met his burden to establish that the OCF-18, and the costs incurred was reasonable and necessary.

Award

- [27] Section 10 of Reg. 664 provides that an award of up to 50% of the accident benefit and interest owed may be granted if the respondent unreasonably withheld or delayed payments.
- [28] The applicant submits that the respondent ignored the medical records of all the applicant's treating physicians and as a result has sustained serious injuries. The respondent submits that it reviewed and considered all medical records when it arrived at the decision to not remove the applicant from the MIG.
- [29] I agree with the respondent and find that the applicant's medical evidence was considered when arriving at its MIG decision. I do not find that the respondent's conduct was unreasonable or amounted to egregious delay to attract a section 10 award.

Interest

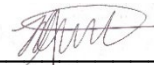
- [30] The applicant submits that he is entitled to interest on all benefits in dispute. The respondent submits that no benefits were unreasonably withheld and there is no legitimate basis for the applicant to receive interest.
- [31] After considering the submissions of the parties, based on a balance of probabilities, I find that interest is payable on the overdue benefit claims in dispute, namely \$3,981.88 for psychological services and \$2,200.00 for a psychological assessment, pursuant to s. 51 of the *Schedule*.

ORDER

[32] I find that:

- i. The applicant's injuries justify treatment beyond the MIG.
- ii. The applicant is entitled to \$3,981.88 for psychological services.
- iii. The applicant is entitled to \$2,200.00 for a psychological assessment.
- iv. The applicant is not entitled to a special award.
- v. The applicant is entitled to interest.

Released: January 25, 2024



Monica Ciriello
Vice-Chair