



Citation: He v. Economical Insurance, 2025 ONLAT 23-011913/AABS

Licence Appeal Tribunal File Number: 23-011913/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:

Da Chao He

Applicant

and

Economical Insurance Company

Respondent

DECISION

ADJUDICATOR: Estella Muyinda

APPEARANCES:

For the Applicant: Ryan Olson, Paralegal

For the Respondent: Sunjay Mistry, Paralegal

HEARD: By way of written submission

OVERVIEW

- [1] Da Chao He, the applicant, was involved in an automobile accident on August 15, 2021, and sought benefits pursuant to the *Statutory Accident Benefits Schedule - Effective September 1, 2010 (including amendments effective June 1, 2016)* (the “Schedule”).
- [2] The applicant was denied benefits by the respondent, Economical Insurance Company, and applied to the Licence Appeal Tribunal - Automobile Accident Benefits Service (the “Tribunal”) for resolution of the dispute.

ISSUES

- [3] The issues in dispute are:
 - 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? The MIG limits have been exhausted.
 - ii. Is the applicant entitled to \$4,309.56 for physiotherapy services, proposed by Total Recovery Rehab Centre in an OCF-18/treatment plan (“treatment plan”) dated December 14, 2021?
 - iii. Is the applicant entitled to interest on any overdue payment of benefits?
 - iv. Is the respondent liable to pay an award under s. 10 of Reg. 664 because it unreasonably withheld or delayed payments to the applicant?

RESULT

- [4] The applicant’s accident-related injuries are outside the MIG as she suffered from a psychological injury.
- [5] The applicant is not entitled to the treatment plan for \$4,309.56 for physiotherapy services.
- [6] The applicant is not entitled to interest pursuant to s. 51 of the *Schedule*.
- [7] The applicant is not entitled to an award.

ANALYSIS

Application of Minor Injury Guideline.

- [8] I find that the applicant has proven on a balance of probabilities that he should be removed from the MIG.
- [9] Section 18(1) of the *Schedule* provides that medical and rehabilitation benefits are limited to \$3,500.00 if the insured person sustains impairments that are predominantly a minor injury. Section 3(1) defines a “minor injury” as “one or more of a sprain, strain, whiplash associated disorder, contusion, abrasion, laceration or subluxation and includes any clinically associated sequelae to such an injury.”
- [10] An insured person may be removed from the MIG if they can establish that their accident-related injuries fall outside of the MIG, or, under s. 18(2), that they have a documented pre-existing condition combined with compelling medical evidence stating that the condition precludes recovery from any accident-related minor injury if they are kept within the MIG confines. The Tribunal has also determined that chronic pain with functional impairment or a psychological condition may warrant removal from the MIG.
- [11] In all cases, the burden of proof in establishing removal from the MIG lies with the applicant.
- [12] The applicant submits that he should be removed from the MIG as he has sustained a psychological injury because of the accident. The respondent disagrees and submits that the applicant should remain in the MIG.
- [13] The applicant relies on the clinical notes and records (CNR) of Dr. James Chu, family physician, and the report of Dr. Sharleen McDowall, psychologist and Ms. Mandy Fang, registered psychotherapist. Specifically, the applicant submits that the CNRs of Dr. Chu dated March 13, 2024, show that the applicant complained of insomnia, nightmares, and sweats.
- [14] The applicant submits that Dr. Chu's reports correlate with the psychological consultation report dated August 24, 2021, wherein, he was interviewed by Ms. Mandy Fang, under the supervision of Dr. Sharleen McDowall.
- [15] In the psychological consultation report the applicant is described as having daytime fatigue, deterioration in memory and concentration, anxiety, poor mood, increased irritability, and avoidance behaviour, since the accident. Dr. McDowall and Ms. Fang opine that the applicant has a psychological injury that warrants

his removal from the MIG. Both recommend that the applicant undergo a full psychological assessment including psychometric testing and an in-depth clinical interview to determine his clinical diagnosis and psychological treatment needs.

- [16] The respondent submits that there is no pre-accident condition that would prevent the applicant from recovery within the MIG. Further, the respondent submits that there is no evidence of accident-related orthopaedic injuries, psychological injuries, or chronic pain.
- [17] The respondent relies on the income replacement benefit insurer examination (IE) Dr. Khaled, general physician dated May 24, 2022, to assert that the applicant remains in the MIG. During the assessment, the applicant reported that he had bilateral hand pain which improved by fifty percent since the collision and occasional pain in the shoulder.
- [18] Dr. Khaled opined that the applicant sustained minor soft tissue injuries that included sprain/strain of both hands and shoulder and there was no evidence of ongoing, or permanent musculoskeletal, neurological, or orthopaedic accident-related injury or impairment. I am not persuaded by Dr. Khaled's opinion as it relates to the applicant's psychological condition, given that his report pertains to the applicant's physical condition.
- [19] The respondent submits that I should put more weight on the report of the IE assessor, Dr. Godwin Lau, psychologist, than the report of Dr. McDowall and Ms. Fang. The report from Dr. Lau dated September 19, 2022, includes testing of the applicant. The results of the testing indicate that the applicant's score put him within the range of severely depressed, severely anxious, and severely hopeless. However, Dr. Lau opines that the applicant's highly severe psychometric test results were inconsistent with his relatively normal clinical presentation.
- [20] Although Dr. Lau opines that there is no clear indication of a diagnosable psychological condition because of the accident, I find that the test results he conducted appear to corroborate with the psychological consultation report of Dr. McDowell and Ms. Fang. I place more weight on the report from Dr. McDowell and Ms. Fang because I find that the psychological testing of the applicant consistently shows he had a psychological impairment.
- [21] Additionally, I find that Dr. Chu's clinical notes and records wherein he states that the applicant had nightmares, and insomnia for which he prescribed sleep medication, corroborates the report of Dr. McDowell and Ms. Fang.

- [22] For the reasons above, I find that the applicant has proven on a balance of probabilities that he sustained a psychological injury because of the accident which warrants removal from the MIG.

Treatment Plan

- [23] I find that the treatment plan in dispute is not payable.
- [24] The applicant makes arguments pursuant to section 38 of the *Schedule* that the denial notice was deficient and also argues the treatment plan is reasonable and necessary. I will consider the section 38 arguments first.
- [25] Sections 38(8) and 38(11) of the *Schedule* set out strict notice requirements for insurers responding to treatment plans and specific consequences if they fail to comply. Section 38(8) requires an insurer to inform an insured person within ten business days after it receives an OCF-18 which goods, services, assessments, and/or examinations it agrees to pay for, and which it does not agree to pay for, as well as the medical and other reasons why it considered any of the goods and services to not be reasonable and necessary.
- [26] If an insurer fails to comply with its obligations under s. 38(8), the following consequences set out in s. 38(11) of the *Schedule* are triggered:
1. The insurer is prohibited from taking the position that the insured person has an impairment to which the Minor Injury Guideline applies.
 2. The insurer shall pay for all goods, services, assessments, and examinations described in the treatment and assessment plan that relate to the period starting on the 11th business day after the day the insurer received the application and ending on the day the insurer gives a notice described in subsection (8).
- [27] The applicant submits that the respondent failed to meet the requirements under s. 38(8) because it did not provide sufficient medical reasons for the denial of the treatment plan.
- [28] The respondent asserts that it relied upon the medical evidence then at hand to deny the treatment plan. Further, the respondent submits that it sent a s.33 request for medical records to the applicant on September 14, 2021. The respondent submits that the applicant did not provide the medical records. Instead, the OCF-18 was submitted.

- [29] Furthermore, the respondent denied the treatment plan on December 17, 2021, and at that time it still did not have medical documentation from the applicant's family doctor. The respondent states that it received the applicant's medical records on January 27, 2022, five months after it had made its decision concerning the treatment plan. The respondent submits that the applicant's claim was adjusted in a fair and reasonable manner.
- [30] In *16-003316/AABS v. Peel Mutual Insurance Company*, 2018 CanLII 39373 (ON LAT) it is stated that medical reasons for denying a plan should engage the specific details about the insured's condition forming a basis for the insurer's decision.
- [31] Upon review of the letter dated December 17, 2021, I find that the respondent clearly states it will not pay for the treatment plan, referencing the MIG, referring to the applicant's injuries as being minor, which I find is a medical reason.
- [32] Additionally, the respondent invited the applicant to provide further medical documentation under s.33 for it to be able to reconsider payment of the treatment plan.
- [33] The applicant provided the medical records to the respondent five months after it requested them. Thus, the respondent claims that it relied on what was in the applicant's file to reach its decision to deny the treatment plan. Upon review of the submissions and evidence, I find that the respondent has satisfied its obligation under s. 38(8) because it has offered a principled rationale based on the applicant's file.
- [34] Therefore, I find the denial of the treatment plan was valid and the consequences of s. 38(11) do not apply.
- [35] I now turn to the question of whether the treatment plan is reasonable and necessary.
- [36] To receive payment for a treatment and assessment plan under s.15 and s.16 of the *Schedule*, the applicant bears the burden of demonstrating on a balance of probabilities that the benefit is reasonable and necessary as a result of the accident.
- [37] To do so, the applicant should identify the goals of the treatment, how the goals would be met to a reasonable degree and that the overall costs of achieving them are reasonable.

- [38] Mr. Ahmed Afifi, physiotherapist, reported that the applicant was experiencing pain resulting from the accident. Mr. Afifi proposed physiotherapy treatment sessions. The applicant identified the goals of the treatment plan as reducing pain, increase of the applicant's range of motion and strength. The applicant asserts that the treatment plan for physiotherapy services is reasonable and necessary.
- [39] The respondent submits that the applicant has not proven that the physiotherapy services are reasonable and necessary. The respondent asserts that during his visits with Dr. Chu, the applicant made no reference to physical injuries or psychological symptoms related to the accident. Additionally, in a letter dated December 17, 2021, the respondent told the applicant that it had not received supporting medical documentation from Dr. Chu substantiating an ongoing accident-related impairment. Thus, the respondent believed that the applicant remained in the MIG and therefore, the physiotherapy treatment plan was not reasonable and necessary.
- [40] Although the applicant argues the treatment plan is reasonable and necessary, I find that he has not provided contemporaneous corroborating evidence of the need for physiotherapy. It was not recommended by Dr. Chu, and the applicant has not pointed me to any other corroborating evidence other than the treatment plan itself.
- [41] Therefore, I find on a balance of probabilities that the applicant has not met his onus in showing that the treatment plan was reasonable and necessary.

Interest

- [42] Interest applies on the payment of any overdue benefits pursuant to a s.51 of the *Schedule*. As no benefits have been found to be owing, no interest is payable to the applicant.

Award

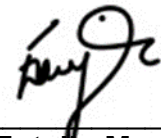
- [43] The applicant sought an award under s. 10 of Reg. 664. Under s. 10, the Tribunal may grant an award of up to 50 per cent of the total benefits payable if it finds that an insurer unreasonably withheld or delayed the payment of benefits.
- [44] The applicant submits that he is entitled to an award because he is vulnerable as a result of the accident, and he states that the respondent acted in a high-handed manner when it delayed payment of benefits.

- [45] Other than the submissions made, the applicant has not directed me to any evidence of high-handed, excessive, imprudent, stubborn, inflexible, unyielding, or immoderate behaviour on the part of the respondent that would justify an award.
- [46] I find that the applicant is not entitled to an award because he has not proven on a balance of probabilities that the insurer unreasonably withheld or delayed the payment of benefits.

ORDER

- [47] The applicant is removed from the MIG.
- [48] The treatment plan for \$4,309.56 for physiotherapy services, proposed by Total Recovery Rehab Centre, is not payable.
- [49] The applicant is not entitled to interest pursuant to s. 51 of the *Schedule*.
- [50] The applicant is not entitled to an award.

Released: August 15, 2025



Estella Muyinda
Adjudicator