Citation: Qu v Co-operators General Insurance Company, 2026 ONLAT 24-003648/AABS

Licence Appeal Tribunal File Number: 24-003648/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:

Jimei Qu

Applicant

and

Co-operators General Insurance Company

Respondent

DECISION

ADJUDICATOR: **Kathleen Wells**

APPEARANCES:

For the Applicant: Rakesh Sharma, Counsel

For the Respondent: Nathalie Rosenthall, Counsel

HEARD: **By way of written submissions**

OVERVIEW

[1] Jimei Qu, the applicant, was involved in an automobile accident on June 19, 2023, 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, Co-operators General Insurance Company, and applied to the Licence Appeal Tribunal - Automobile Accident Benefits Service (the "Tribunal") for resolution of the dispute.

ISSUES

[2] The issues in dispute are:

1. 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?

2. Is the applicant entitled to a non-earner benefit ("NEB") of $185.00 per week from July 14, 2023 to June 19, 2025?

3. Is the applicant entitled to $200.00 ($1,300.00 less $1,100.00 approved) for physiotherapy services, proposed by Total recovery Rehab Centre in a treatment plan/OCF-18 ("treatment plan") submitted August 15, 2023?

4. Is the applicant entitled to $2,144.93 for a psychological assessment, proposed by Somatic Assessments and Treatment Clinic in a treatment plan submitted February 5, 2024?

5. Is the applicant entitled to $4,069.56 for physiotherapy services, proposed by Total Recovery Rehab Centre in a treatment plan submitted April 23, 2024?

6. Is the respondent liable to pay an award under s. 10 of Reg. 664 because it unreasonably withheld or delayed payments to the applicant?

7. Is the applicant entitled to interest on any overdue payment of benefits?

[3] The applicant submits that the issue # 5 as set out in the Case Conference Report and Order ("CCRO") for an OCF-6 for $45.00 for an ambulance fee has been resolved. As such, I have removed it as an issue in dispute.

RESULT

[4] I find that:

1. The applicant remains subject to the MIG and its $3,500.00 funding limit.
2. An NEB of $185.00 per week is payable from August 23, 2023 to October 18, 2023 in accordance with s. 36(5) of the *Schedule.*
3. As I have found that the applicant is subject to the MIG, it is not necessary for me to consider whether the treatment plans in dispute are reasonable and necessary.
4. The remaining balance of $200.00 for physiotherapy services in the treatment plan submitted August 13, 2023 is not payable under s. 38(11) of the *Schedule.*
5. The treatment plan for $ 2,144.93 for a psychological assessment dated February 5, 2024 is payable under s. 38(11) of the *Schedule.*
6. The treatment plan for $4,069.56 for physiotherapy services is not payable under s. 38(11).
7. Interest is payable on any outstanding amount in accordance with s. 51 of the *Schedule.*
8. The applicant is not entitled to an award.

PROCEDURAL ISSUES

s. 54

[5] In her reply submissions, the applicant submits that the respondent may not rely on submissions and evidence which have not been referenced in the denial letters served on the applicant under section 54 of the *Schedule.*

[6] However, s. 54 is silent on Tribunal's hearing process. It provides:

1. If an insurer refuses to pay a benefit or reduces the amount of a benefit that a person is receiving, the insurer shall provide the person with a written notice advising the person of his or her right to dispute the refusal or reduction.

[7] I disagree with the applicant's argument that s. 54 precludes the respondent from making submissions or submitting evidence at a Tribunal hearing, because a plain reading of s.54 is a simple requirement that the respondent provide the insured person with a written notice or her right to dispute the denial. The applicant has not provided any case law or other legal authority to support her position.

[8] In the present case, I find that the respondent provided the applicant with written denials that included information with respect to her right to dispute the denials and the process by which to do so, in compliance with s. 54. I further find that nothing in s. 54 limits the respondent's ability to present submissions in response to the applicant's submissions as it deems appropriate.

[9] As a result, I will consider the respondent's submissions with respect to the treatment plans in dispute.

Admissibility of the respondent's surveillance evidence

[10] In her reply submissions, the applicant submits that the respondent's surveillance evidence of the applicant should not be admitted, in part, because it was conducted after the Case Conference. The applicant also argues that the respondent lacks the legal authority to conduct the surveillance.

[11] As I have not considered the respondent's surveillance evidence below, the applicant's request to have the respondent's surveillance excluded is moot.

ANALYSIS

Applicability of the MIG

[12] I find that the applicant has not established on a balance of probabilities that her accident-related injuries warrant her removal from the MIG.

[13] Section 18(1) of the *Schedule* provides that medical and rehabilitation benefits are limited to $3,500.00 if the insured 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."

[14] An insured 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 injury or condition combined with compelling medical

evidence stating that the condition precludes recovery if they are kept within the confines of the MIG. The Tribunal has also determined that chronic pain with functional impairment or a psychological condition may warrant removal from the MIG. In all cases, the burden of proof lies with the applicant.

[15] The applicant states that she "will not be making any submissions solely on the applicability of the MIG but will dispute applicability of the MIG with respect to the denied substantive issues". She further submits that the treatment plans comply with s. 38(3) of the *Schedule,* which sets out the requirements for a treatment and assessment plan, and the plans are therefore deemed to be reasonable and necessary.

[16] The applicant submits that s. 54 requires that the respondent's denial notices must comply with s. 38(8). Section 38(8) requires that the respondent provide medical and all other reason it believes that the treatment plans are not reasonable and necessary, and s. 38(9) requires the respondent to state that the MIG applies if it intends to rely on the MIG as a reason for the denial of the treatment plan. The applicant submits that because the treatment plans comply with the procedural requirements set out in s. 38(3), her onus is limited to disprove the respondent's reasons for the denial of the treatment plans under s. 54.

[17] The applicant relies on the treatment plans for physiotherapy treatment dated August 15, 2023 and April 23, 2024 as well as the treatment plan for psychological services dated February 5, 2024.

[18] The respondent argues that the applicant has not met her onus to prove that the treatment plans are reasonable and necessary because the applicant has not submitted contemporary medical evidence to support the treatment plans. The respondent also argues that the burden of proof lies with the applicant and relies on *Owusu v. TD Home & Auto Insurance Company et al,* 2010 ONSC 6627 *("Owusu")* to support its argument that the "burden does not shift" to the respondent.

[19] I disagree with the applicant's interpretation of s. 38 of the *Schedule.* The Tribunal has long held that treatment plans must be supported by contemporaneous, corroborating evidence, and the provisions of 38(8) and s. 38(9) confirm that the *Schedule* clearly contemplates that the respondent may deny treatment plans which satisfy the procedural requirements under s.38(3).

[20] Additionally, under s. 38(11), one of the consequences of an insurer's non-compliance with s. 38(8) is that the insurer may not rely on the MIG as a reason

for the denial of the treatment plan at issue, however, s. 38 (11) does not automatically remove the insured from the MIG; see *Zheng, Cai v. Aviva Insurance Company of Canada*, 2018 OSNC 5707 at para. 21.

[21] With respect to the applicant's onus, the applicant has not directed me to case law or legal authority to support their position that the applicant must only disprove the respondent's reasons for the denial of a treatment plan to prove entitlement. Further, I am bound by *Owusu,* in which the Divisional Court held at para. 8: "The burden is on the applicant to establish the elements required to show entitlement to benefits. There is no presumption of entitlement created in the legislation, nor should one be implied."

[22] The applicant has not directed me to any medical or other evidence to corroborate the treatment plans, or support a finding that the applicant's accident related injuries warrant her removal from the MIG. As a result, I find that the applicant has not met her onus to prove on a balance of probabilities that she sustained injuries as a result of the accident that warrant her removal from the MIG.

[23] Accordingly, the applicant remains subject to the MIG and its $3,500.00 funding limit.

Is the applicant entitled to an NEB of $185.00 per week from July 14, 2023 to June 19, 2025?

[24] I find that the applicant is entitled to an NEB of $185.00 per week from August 15, 2023 to October 18, 2023 in accordance with s. 36(6) of the *Schedule.*

[25] Section 12(1) provides that an insurer shall pay an NEB to an insured person who sustains an impairment as a result of the accident, if the insured person suffers a complete inability to carry on a normal life as a result of and within 104 weeks after the accident. Section 3(7)(a) defines a "complete inability to carry on a normal life" as "an impairment that continuously prevents the person from engaging in substantially all of the activities in which the person ordinarily engaged before the accident." The Court of Appeal set out the guiding principles for NEB entitlement in *Heath v. Economical Mut. Ins. Co.*, 2009 ONCA 391, which, generally, focuses on a comparison of the applicant's pre- and post-accident activities.

[26] According to s. 36(1), a "specified benefit" includes, relevant to this dispute, a non-earner benefit. Section 36(2) of the *Schedule* provides that an insured's

application for a specified benefit shall include a completed disability certificate ("OCF-3") along with her application under s. 32 of the *Schedule*.

[27] Section 36(4) of the *Schedule* provides that within ten business days after the insurer receives an application and a completed OCF-3, the insurer shall,

> (a) Pay the specified benefit;
>
> (b) Give the applicant a notice explaining the medical and any other reasons why the insurer does not believe that the applicant is entitled to the specified benefit and, if the insurer requires an examination under section 44 relating to the specified benefit, advising the applicant of the requirement for an examination; or
>
> (c) Send a request to the applicant under subsection 33(1) or (2).

[28] Section 36(5) of the Schedule further states that if an insurer sends a request to the applicant under subsection 33(1) or (2), the insurer shall, within ten business days after the applicant complies with the request, pay the specified benefit or give the applicant a denial notice described in clause 36(4)(b). If the insurer fails to comply with either s. 36(4) or s. 36(5), then s. 36(6) requires the insurer to pay the specific benefit for the period starting on the day the insurer received the application and the completed OCF-3 until it provides notice in accordance with s. 36(4)(b).

[29] The applicant did not make submissions or lead evidence to support the applicant's substantive entitlement to an NEB. Instead, the applicant submitted that the respondent's October 18, 2023 EOB, November 10, 2023 Notice of Examination ("NOE"), and March 8, 2024 denial did not comply with s. 36 of the *Schedule.*

[30] The respondent argues that the November 10, 2023 NOE and the March 8, 2024 denial letter are compliant with s. 36. It makes no submissions with respect to the October 18, 2023 EOB.

[31] The applicant submitted a completed OCF-1 on July 14, 2023 and a completed OCF-3, on August 15, 2023. The OCF-1 indicated that the applicant was retired at the time of the accident, and the OCF-3, dated August 3, 2023, was prepared by Raymond Wong, occupational therapist, and indicated that the applicant suffered a complete inability to carry on a normal life as a result of her accident-related injuries. As a result, I find that the completed application was received by the respondent on August 15, 2023. The applicant did not provide an explanation

for a delay in submitting the OCF-3. Although the applicant claims entitlement to the NEB starting July 14, 2023, I find that s. 36(3) clearly marks the date of the submission of the OCF-3 to be start of a potential entitlement. The respondent denied the NEB in an Explanation of Benefits ("EOB") dated October 18, 2023, which was not within 10 business days of August 15, 2023. As such, I find that the applicant is entitled to payment of the NEB beginning on August 15, 2023.

[32] The applicant submits that the respondent's October 18, 2023 EOB is invalid, because it does not mention the receipt of the OCF-1 and OCF-3. As noted above, the respondent did not make submissions with respect to the October 18, 2023 EOB.

[33] I find that the October 18, 2023 EOB complies with s. 36(4) because it is a clear and unequivocal denial. The EOB states that the respondent has reviewed the application and other documents on file, and which I find sufficient reference to the OCF-1 and OCF-3 because, as the applicant notes, a completed OCF-1 and OCF-3 constitute a complete application for an NEB.

[34] In the EOB, the respondent identifies that the applicant is not eligible for an NEB. It summarizes the clinical notes and records (CNRs) of the Markham Stouffville Hospital emergency department from the date of the accident, and that the applicant has not provided medical evidence to support that the applicant has a complete inability to carry on a normal life as a result of the accident. The EOB also identifies that the respondent requires the pre- and post-accident CNRs of the applicant's family doctor, Dr. Andrew Wan, and notes that the applicant's counsel is attempting to obtain these CNRs. Further, the EOB includes information with respect to the applicant's right to dispute the denial, and the process by which to do so.

[35] For these reasons, I find that the October 18, 2023 EOB is sufficiently clear and detailed for an unsophisticated person to make an informed decision whether or not to dispute the denial.

[36] Accordingly, I find that the applicant is entitled to an NEB in the amount of $185.00 per week from August 15, 2023 to October 18, 2023.

Treatment Plans

[37] As I have found that the applicant remains within the MIG, it is not necessary for me to consider whether the treatment plans are reasonable and necessary.

[38] However, as the applicant argues that the denials of the treatment plans do not comply with s. 38(8), I will consider whether the denials of the treatment plans are compliant with s.38(8).

[39] 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, as well as the medical and other reasons why it considered any of the goods and services to not be reasonable and necessary.

[40] 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).

Is the remaining balance of $200.00 ($1,300.00 less $1,100.00 approved) in the treatment plan for physiotherapy services submitted August 15, 2023 payable under s. 38(11)?

[41] I find that the remaining balance of $200.00 ($1,300.00 less $1,100.00 approved) in the August 15, 2023 treatment plan is not payable under s. 38(11).

[42] The applicant submits that the respondent's August 22, 2023 letter, which partially approved the treatment plan in the amount of $1,100.00, and denied the remaining $200.00 does not comply with s. 38(8) because it does not identify details of the $2,400.00 previously approved, and the applicant believes that the respondent is incorrectly including the $200.00 fee for the completion of the OCF-3 toward the applicant's $3,500.00 MIG funding limit The respondent argues that the August 22, 2023 letter is a valid notice.

[43] I find that the August 22, 2023 denial letter is compliant with s. 38(8) because it was provided within 10 business days of the submission of the treatment plan and it is a clear and unequivocal denial. It identifies the applicant's injuries, as

sprains and strains to the cervical spine, shoulder girdle, and lower back, and that the respondent has determined that the applicant's injuries fall within the MIG, which is a medical reason. The letter also directs the applicant to the definition of minor injury in the *Schedule.* It further explains that the respondent has previously approved $2,400.00 and it has partially approved the treatment plan in the amount of $1,100.00 remaining within the MIG. The denial letter also includes information about the applicant's right to dispute the denial, and the process by which to do so.

[44] In my view, s 38(8) does not require the respondent to itemize previous approvals in its denial, because providing the total amount approved, and the amount remaining in the MIG is sufficient to explain the reason for the respondent's partial denial. While the applicant may not agree with the amount remaining in the MIG, the respondent's reasons are not required to be legally correct in order to satisfy s. 38(8).

[45] Overall, I find that the respondent's August 22, 2023 letter is sufficiently clear and detailed for an unsophisticated person to make an informed decision whether to dispute the denial.

Is the treatment plan for $2,144.93 for a psychological assessment, submitted February 5, 2024 payable under s.38(11)?

[46] I find that the February 5, 2024 treatment plan for a psychological assessment is payable in accordance with s. 38(11).

[47] The applicant submits that the respondent's denial letter dated February 15, 2024, denying the treatment plan for $2,144.93 for a psychological assessment is not compliant with s. 38(8) because the respondent's reasons for the denial consist of boilerplate statements and are not sufficiently meaningful for the applicant to be able to effectively respond. The respondent argues that the denial is valid.

[48] I find that the February 15, 2024 denial letter does not comply with s.38(8) because it is not a clear and unequivocal denial. The letter summarizes the CNRs from the applicant's June 19, 2023 hospital emergency room visit, which discuss the applicant's physical condition. It continues to explain that some psycho-social issues can be treated within the MIG and that the applicant may speak to her doctor because the assessment is "OHIP funded," and concludes with a statement that the respondent believes that the applicant's injuries fall within the MIG. However, the respondent does not explain what the MIG is, or its

limit, or provide a definition for a minor injury. I find the letter to be confusing, because it does not clearly state that the treatment plan is being denied.

[49] For these reasons, I find that the February 15, 2023 denial letter is not sufficiently clear and detailed for an unsophisticated person to make an informed decision whether to dispute the denial. As a result, s. 38(11) is triggered.

[50] As neither party has directed me to a subsequent denial notice, the treatment plan for $2,144.93 for a psychological assessment, dated February 5, 2025 is payable, once incurred and properly invoiced.

Is the treatment plan for $4,069.56 for physiotherapy services, submitted April 23, 2024 payable under s. 38(11)?

[51] I find that the treatment plan for $4,069.56 for physiotherapy services dated April 23, 2024 is not payable under s. 38(11).

[52] The applicant submits that the respondent's denial letter dated April 25, 2024 does not comply with s. 38(8) because the letter does not refer to the contents of the treatment plan as evidence in support of approval of the treatment plan. The respondent submits that the April 25, 2024 letter is a valid denial.

[53] I find that the respondent's April 25, 2024 denial letter complies with s. 38(11) because it is a clear and unequivocal denial. It informs the applicant that she is entitled to treatment within the MIG, and provides information about the MIG and the definition of minor injury in the *Schedule* and the process to claim benefits under the MIG. It also includes detailed summaries of the applicant's medical records. Further the denial letter informs the applicant that s.44 examinations will be required, and asks the applicant to provide any evidence that her injuries fall outside of the MIG, and provides information about her right to dispute the denial and the process by which to do so. Overall, I find that the denial letter is sufficiently clear and understandable for an unsophisticated person to make an informed decision whether to dispute the denial.

[54] For these reasons, I find that the respondent's denial letter is compliant with s. 38(8), and is therefore not payable under s. 38(11)

Interest

[55] Interest applies on the payment of any overdue benefits pursuant to s. 51 of the *Schedule.* Interest is payable on all outstanding payments in accordance with s. 51.

Award

[56] 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.

[57] The applicant has not made submissions or directed me to evidence with respect to an award. As a result, I find that the applicant has not met her onus to prove on a balance of probabilities that she is entitled to an award.

ORDER

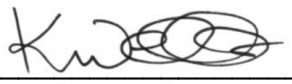
[58] I find that:

1. The applicant is subject to the MIG and its $3,500.00 funding limit.
2. An NEB of $185.00 per week is payable from August 23, 2023 to October 18, 2023 in accordance with s. 36(6) of the *Schedule.*
3. As I have found that the applicant is subject to the MIG, it is not necessary for me to consider whether the treatment plans in dispute are reasonable and necessary.
4. The remaining balance of $200.00 for physiotherapy services in the treatment plan submitted August 13, 2023 is not payable under s. 38(11) of the *Schedule.*
5. The treatment plan for $ 2,144.93 for a psychological assessment dated February 5, 2024 is payable under s. 38(11) of the *Schedule.*
6. The treatment plan for $4,069.56 for physiotherapy services is not payable under s. 38(11).

7. Interest is payable on any outstanding amount in accordance with s. 51 of the *Schedule.*

8. The applicant is not entitled to an award.

Released: May 5, 2026



Kathleen Wells
Adjudicator