LICENCE APPEAL TRIBUNAL

TRIBUNAL D'APPEL EN MATIÈRE DE PERMIS

Safety, Licensing Appeals and Standards Tribunals Ontario

Tribunaux de la sécurité, des appels en matière de permis et des normes Ontario

Ontario

Tribunal File Number: 17-006892/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:

S.Y.

Applicant

and

Certas Home and Auto Insurance Company

Respondent

DECISION

ADJUDICATOR: **Craig Mazerolle**

APPEARANCES:

Counsel for the Applicant: Loulia Logoutova

Counsel for the Respondent: Patrick Baker

Written Hearing Held on: **May 14, 2018**

OVERVIEW

[1] The applicant was injured in a motor vehicle accident on September 5, 2015. She sought benefits pursuant to the *Statutory Accident Benefits Schedule – Effective September 1, 2010*[1] (the "*Schedule*"). When some of these claims were denied by the respondent, she applied to the Licence Appeal Tribunal – Automobile Accident Benefits Service (the "Tribunal").

[2] The respondent denied the applicant's claims, because it determined that all of the applicant's injuries fit the definition of "minor injury", prescribed by s. 3(1) of the *Schedule*, and, therefore, they all fell within the *Minor Injury Guideline*[2] (the "MIG"). If the respondent's position is correct, the applicant is subject to a $3,500.00 limit on medical and rehabilitation benefits, as prescribed by s. 18(1) of the *Schedule*. In turn, the applicant will not be entitled to the disputed medical benefits, because her previous treatment has already reached this financial limit.

[3] As I will explain below, I find that the applicant should be held to the cap of benefits under s. 18(1).

ISSUES

[4] The benefits in dispute are for physiotherapy services from 101 Physio in the amount for $2,909.47 (as recommended in a treatment plan denied by the respondent on March 7, 2016). The plan cites "subluxation complex" and sprain/strain of the spine as the applicant's primary impairments, and the stated goals of the treatment include: "pain reduction", "increase in strength", and "increased range of motion".

[5] The applicant is also requesting interest on this overdue payment of benefits.

ANALYSIS

[6] Section 18(1) of the *Schedule* limits an insured person's entitlement for medical and rehabilitation benefits for minor injuries to $3,500.00. The onus is on the applicant to demonstrate—on a balance of probabilities—that she or he should

[1] O. Reg. 34/10.
[2] *Minor Injury Guideline*, Superintendent's Guideline 01/14, issued pursuant to s. 268.3(1.1) of the *Insurance Act*, R.S.O. 1990, c. I.8.

not be held to this cap on benefits. Therefore, by showing that an injury is not "predominately a minor injury", the financial limit will not apply.

[7] Section 3(1) defines a "minor injury" as: "a sprain, strain, whiplash associated disorder, contusion, abrasion, laceration or subluxation and includes any clinically associated sequelae to such an injury." The MIG provides guidance about how to interpret this definition.

[8] The applicant argues that the respondent did not properly adjust her claim. Specifically, the applicant takes issue with the respondent's decision to not send her for an insurer's examination after she submitted the disputed treatment plan. Further, the applicant claims that the respondent did not follow up with her family physician to receive relevant medical records, even though she had provided her written consent for this disclosure.

[9] The respondent contends that there is no positive obligation on an insurer to request examinations or to obtain medical records (regardless of whether an insured person consents to their disclosure). The onus of demonstrating entitlement to a medical benefit and removal from the MIG is on the insured person. Therefore, since the applicant has not provided any medical evidence that would support her removal from the MIG or entitlement to the disputed benefit, the respondent was well within its right to deny her claim.

[10] In this same vein, the respondent further submits that the applicant has not presented any evidence or argumentation to the Tribunal that would support either her removal from the MIG or her entitlement to the benefit. As such, the applicant has not met her evidentiary burden, and so the Tribunal must deny her application.

[11] I largely accept the respondent's assertion that the applicant has produced little medical evidence to support her removal from the MIG. However, the applicant did provide the Tribunal with: the in-home assessment by the respondent's occupational therapist (conducted on March 1, 2016) and a disability certificate (dated September 21, 2015).

[12] Even with these documents though, I have been provided with no submissions to help me understand why the applicant's injuries are not minor in nature. That is, the applicant's submissions focus exclusively on the respondent's adjusting of her claim. Therefore, even if I were to agree with the applicant's concerns about how her claim was adjusted, I have little to no information about the relevant issues at hand. Further, this medical evidence I have been provided does not support the applicant's removal from the financial limit of s. 18(1).

[13] First, the in-home assessment performed by the respondent's occupational therapist, Marlene Levy, revealed no serious physical limitations. That is, while the applicant required some modifications to her daily tasks (mainly in the form of pacing and assistance from her family), the assessor found that "[the applicant] did not demonstrate any significant impairment which would affect her functional abilities."

[14] Second, the disability certificate lists a series of impairments that are mainly minor injuries, e.g., sprains, strains, and subluxation. There is reference to injuries that could be considered outside of the definition of "minor injury", e.g., headaches, "injury of nerves", and emotional/sleep disturbances. However, without further medical documentation or argumentation, these brief references do not allow me to determine the severity of these injuries, nor am I provided with any description of the functional impairments they may be causing. This latter information is especially pertinent in light of the above noted findings from Ms. Levy. Additionally, I have no evidence from the applicant to meet her evidentiary burden of demonstrating that these are not clinically associated sequelae to her otherwise minor injuries.

[15] I would also note that the respondent's documents included a denied treatment plan for a psychological assessment (dated January 26, 2016). In this plan, the applicant claims to suffer from psychological distress, e.g., driving anxiety and panic attacks. While psychological disorders do not fall under the definition of "minor injury", once again, the applicant has not provided me with any medical documentation that can corroborate these brief, self-reported references to distress. In fact, Ms. Levy noted during her assessment (which took place several months after the preparation of this treatment plan) that the applicant reported feeling "less anxious as a driver".

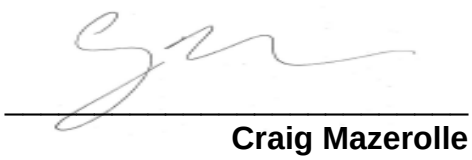
[16] Therefore, after considering the parties' submissions and evidence, I have found that the applicant has not demonstrated that she did not suffer a predominantly minor injury. As such, she should remain subject to the financial limit of s. 18(1).

[17] Because I have found that her injuries are predominately minor in nature, there is then no need to determine if the disputed treatment plan is reasonable and necessary.

CONCLUSION

[18] I find that the applicant sustained predominantly minor injuries. The applicant should remain subject to the financial limit of s. 18(1) of the *Schedule*.

Released: October 02, 2018



Craig Mazerolle
Adjudicator