

**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**

**File Number: 18-006204/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:

**A. D.**

**Appellant**

**and**

**Certas Home and Auto Insurance**

**Respondent**

**DECISION**

**ADJUDICATOR: Derek Grant**

**APPEARANCES:**

For the Appellant: Arthur Semko, Paralegal

For the Respondent: Paul Irish, Counsel

**HEARD: In Writing February 25, 2019**

## OVERVIEW

- [1] The applicant (“A.D.”) was involved in a motor vehicle accident on January 18, 2017 (“the accident”) and sought benefits from the respondent (“Certas”) and applied to the Licence Appeal Tribunal (the “Tribunal”) when his claims were denied.
- [2] Certas argues that all of A.D.’s injuries fit the definition of “minor injury” prescribed by s. 3(1) of the *Schedule*, and therefore, fall within the Minor Injury Guideline (“the MIG”).<sup>1</sup> A.D. disagrees.
- [3] If Certas is correct, A.D. is then subject to the \$3,500.00 limit on benefits prescribed by s. 18(1) of the *Schedule*, and in turn, a determination of whether the claimed benefits are reasonable and necessary will not be needed as A.D. has exhausted the \$3,500.00 maximum benefit for minor injuries.
- [4] If A.D. is correct and his injuries are not predominantly minor as defined by the *Schedule* and thus not subject to a \$3,500 treatment limit under the MIG, I must determine his entitlement to the medical benefits in dispute based on whether the expenses are reasonable and necessary.

## ISSUES

- [5] The issues in dispute are as follows:
  - a. Did A.D. sustain predominantly minor injuries as defined under the *Schedule*?
  - b. Is the medical and rehabilitation benefit in the amount of \$1,920.53 for psychological treatment recommended by Inline Rehabilitation Centre in a treatment plan (OCF-18) dated June 22, 2017, reasonable and necessary?
  - c. Is the medical and rehabilitation benefit in the amount of \$3,948.91 for chiropractic treatment recommended by Inline Rehabilitation Centre in a treatment plan (OCF-18) dated October 4, 2017, reasonable and necessary?
  - d. Is the medical and rehabilitation benefit in the amount of \$3,416.68 for psychological treatment recommended by Inline Rehabilitation Centre in

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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 treatment plan (OCF-18) dated November 6, 2017, reasonable and necessary?

- e. Is the medical and rehabilitation benefit in the amount of \$3,191.25 for chiropractic treatment recommended by Inline Rehabilitation Centre in a treatment plan (OCF-18) dated May 3, 2018, reasonable and necessary?
- f. Is A.D. entitled to interest on any overdue payment of benefits?

## RESULT

- [6] Based on a review of all the evidence put before me, I find that A.D.'s physical and psychological injuries meet the definition of 'minor' under the *Schedule*, it is therefore unnecessary for me to consider whether the treatment plans are reasonable and necessary or determine whether interest is payable.

## LAW

### Minor Injury Guideline

- [7] The MIG establishes a framework for the treatment of minor injuries. The term "minor injury" is defined in subsection 3(1) of the *Schedule* 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." The terms "sprain", "strain", "subluxation", and "whiplash associated disorder" are also defined in subsection 3(1).
- [8] The onus is on the applicant to show that his injuries fall outside of the MIG.<sup>2</sup>
- [9] A.D. argues that his injuries go beyond the definition of "minor" because he has sustained physical and psychological impairments which remove him from the MIG.

## CASE LAW

- [10] Although A.D. relies on numerous previous Tribunal decisions, I am not bound by those decisions. Further, I did not find any of those decisions persuasive in determining that A.D. did not suffer predominantly minor injuries as a result of the accident.

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<sup>2</sup> *Scarlett v. Belair*, 2015 ONSC 3635 (CanLII) para. 24.

[11] I have based my decision on the submissions of the parties. The Tribunal is not required to expressly address every piece of evidence, argument, or case law submitted by a party.

*A.D. did not sustain physical injuries that remove him from the MIG*

[12] Although A.D. has provided medical evidence which confirms he sustained accident-related injuries, none of the evidence shows that his injuries fall outside the MIG. In addition, the evidence submitted by Certas confirms that A.D.'s physical injuries fall within the MIG.

[13] My finding that A.D.'s physical injuries fall within the MIG is supported by the following evidence;

- (i) The disability certificate ("OCF-3") completed by Dr. Nana Barnes, a chiropractor, dated February 5, 2017, confirms A.D. has soft tissue injuries.<sup>3</sup> Although, as a frontline healthcare practitioner, Dr. Barnes may be trained to observe possible signs of psychological issues, she is not qualified to diagnose them. As such, I place no weight on the "post-traumatic stress disorder and other sleep disorders" diagnoses mentioned in the OCF-3 of Dr. Barnes;
- (ii) A.D. to date, has not provided Certas with any family doctor records, records from walk-in clinics, hospital records, or diagnostic imaging;
- (iii) Following the accident, A.D. did not seek medical treatment from any family physician; and
- (iv) There is no evidence that A.D. was ever seen by a medical doctor for his accident related impairments. Certas has not been provided with any family doctor records for almost two years post-accident.

[14] I find that the medical evidence, or more accurately, the lack thereof, submitted by A.D. confirms that his physical injuries are predominantly 'minor'. A.D. has therefore failed to persuade me that the physical injuries he sustained in the accident require treatment beyond that provided for in the MIG.

*A.D. did not sustain psychological injuries that remove him from the MIG*

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<sup>3</sup> OCF-3 injuries listed as headache, sprain & strain of the cervical spine, sprain and strain of the thoracic spine, sprain and strain of lumbar spine, sprain and strain of sacroiliac joint, contusion of knee, post-traumatic stress disorder, other sleep disorders.

[15] For the reasons that follow, I find that A.D.'s own evidence does not support the conclusion that his psychological impairments would remove him from the MIG. My finding is based on the following:

- (i) A.D. relied on a psychological report<sup>4</sup> wherein he was diagnosed with Adjustment Disorder with Mixed Anxiety and Depressed Mood and Mood and Specific Phobia (driving/travelling related). It should be noted that neither assessor reviewed any medical documentation in conjunction with any objective testing or self-reporting by A.D. I find the lack of review of medical history to be significant as it calls in to question the severity of A.D.'s alleged accident-related psychological impairment.
- (ii) The following record of A.D.'s OHIP Summary entries in the time period after the accident up until June 26, 2018:
  - a. February 6, 2017 – Common cold, Acute; Nasopharyngitis;
  - b. May 2, 2017 – Other diseases of urinary tract;
  - c. May 30, 2017 – Acute sinusitis;
  - d. December 16, 2017 – Common cold, Acute; Nasopharyngitis;
  - e. February 2, 2018 – Signs/symptoms not yet diagnosed – digestive system – Anorexia, Nausea.

[16] I note that there are no entries for any accident-related psychological impairments noted in the OHIP summary.

[17] Without the presence of an objective medical opinion providing a thorough analysis to indicate the existence of a psychological impairment that is not sequelae of minor injuries, I am unable to conclude that A.D. suffers from a psychological impairment that warrants removing him from the application of the MIG.

[18] Although A.D. alleges that he sustained a psychological impairment as a result of the accident, he has not provided any medical evidence to demonstrate that he is unable to recover under the MIG as a result of any accident-related psychological symptoms. Therefore, he has not met the onus of establishing his entitlement to psychological treatment beyond the MIG limits.

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<sup>4</sup> Psychological Assessment Report dated August 31, 2017 of Sabrina Simmons, Psychometrist, as supervised by Valerie Kleimans, Psychologist

## **AWARD**

- [19] A.D. did not raise the issue of award in the Tribunal Application. There was no formal request to add this issue. Instead, A.D.'s counsel raised the argument in the written submissions. A.D. provides no evidence for an award pursuant to s. 10 of Regulation 664 of the *Insurance Act*.
- [20] Since I found that no benefits are payable to A.D., Certas cannot be found to have unreasonably withheld or delayed payment. As a result, an award is not warranted in the circumstances of this case.

## **CONCLUSION**

- [21] A.D. sustained predominantly minor physical and psychological injuries that fall within the MIG. Accordingly, A.D. is not entitled to payment for the treatment plans claimed in this application. A.D. is also not entitled to an award. His application is dismissed.

**Released: November 29, 2019**



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**Derek Grant  
Adjudicator**