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Licence Appeal Tribunal
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Tribunaux décisionnels Ontario
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RECONSIDERATION DECISION

Before: Derek Grant

Date of Order: 03/30/2020

Tribunal File Number: 18-006204/AABS

Case Name: A.D. and Certas Home and Auto Insurance

Written Submissions by:

For the Applicant: Arthur Semko, Legal Representative

For the Respondent: Paul Irish, Counsel

OVERVIEW

- [1] On November 28, 2019, the Licence Appeal Tribunal (the “Tribunal”) issued its final decision (the “decision”) in this matter arising under the *Statutory Accident Benefits Schedule – Effective September 1, 2010* (the “*Schedule*”). The issues before the Tribunal were whether A.D. suffered predominantly minor injuries as a result of the accident, and if not, were the medical benefits reasonable and necessary, and whether any interest was payable. The Tribunal determined that A.D.’s injuries were ‘minor’, and he was therefore not entitled to the disputed treatment plans, and as such, no interest was payable.
- [2] A.D. has asked the Tribunal to reconsider that decision.
- [3] Pursuant to s. 17(2) of the *Adjudicative Tribunals Accountability, Governance and Appointments Act, 2009*, S.O. 2009, c. 33, Sched. 5, I have been delegated responsibility to decide this matter in accordance with the applicable rules of the Tribunal.

RELIEF SOUGHT

- [4] A.D. requests that my decision, dated November 28, 2019, be varied to grant his request because the Tribunal violated the rules of procedural fairness and/or made a significant error of law or fact.
- [5] In the alternative, A.D. requests that the Tribunal order a rehearing on all, or part, of the matter.

RESULT

- [6] A.D.’s request for reconsideration is dismissed.

BACKGROUND

- [7] A.D. was injured in an automobile accident on January 18, 2017 and sought benefits from the respondent (“Certas”) pursuant to the *Schedule*.
- [8] In my decision dated November 28, 2019, I concluded that A.D. was not entitled to the cost of examination expense or interest. My decision determined, on the evidence, A.D. sustained predominantly minor injuries that fall within the Minor Injury Guideline (“MIG”). Accordingly, A.D. was not entitled to payment for the treatment plans claimed in his application.

ANALYSIS

Grounds for Reconsideration

- [9] Rule 18 of the Tribunal's *Rules*¹ sets out the grounds on which I may set aside my earlier decision on a reconsideration. The Rule also requires A.D. to identify the applicable ground. A.D. relies on Rule 18.2 (b). He alleges I made a significant error of law or fact such that I would likely have reached a different result had the error not been made.
- [10] Reconsideration is warranted only in cases where an adjudicator has made a legal or evidentiary mistake preventing a just outcome, where false evidence has been admitted, or where genuinely new and undiscoverable evidence comes to light after a hearing.
- [11] A.D. claims my decision failed because the Tribunal made a significant error of law or fact such that the Tribunal likely would have reached a different decision.

The Tribunal did not make any significant error of law or fact

- [12] A.D. submits that I "applied an erroneous standard of review of the psychological assessment". As a result, A.D. contends that the decision,

"...incorrectly emphasized medical history rather than the in-person evaluation. Adjudicator Grant erroneously deprived the psychological assessment report of its appropriate evidential weight because the assessors did not review any medical documentation, and in Adjudicator Grant's opinion, that is a significant element of a psychological assessment".

- [13] Certas submits that the decision did not contain any errors of law or fact, that the evidence was properly weighed and considered, and that A.D. failed to establish the decision wrongly found that A.D.'s injuries were predominantly minor.

- [14] In his submissions, A.D. pointed me to paragraph 15 of the decision, where I stated,

"A.D. relied on a psychological report 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

¹ All references to a "Rule" are made to the *Safety, Licensing Appeals Standards & Tribunal's Common Rules of Practice and Procedure, Version 1 (October 2, 2017)*, to which this Tribunal applies.

question the severity of A.D.'s alleged accident-related psychological impairment."

- [15] A.D. contends that my finding in paragraph 15 is contrary to various recommendations found in the Practice Guideline for the Psychiatric Evaluation of Adults, 2nd edition and the Oxford Handbook of Psychiatry, 3rd Edition.
- [16] Certas argues that A.D.'s references to the Practice Guideline and Oxford Handbook in his submissions are neither instructive nor supportive of his argument that I relied on an "erroneous standard of review" in assessing the psychological assessment.
- [17] In his submissions, A.D. refers to the recommended practices of psychological evaluation in the Practice Guideline and Oxford Handbook including the following examples,
- a. The Practice Guideline recommends, "central component to a psychiatric evaluation is an interview with the patient, not a review of medical history. The interview-based data then is integrated with any other information from collateral sources, such as diagnostic tests, review of medical records, etc.";
 - b. Another Practice Guideline recommendation: "the psychiatrist's primary assessment tool is the direct face-to-face interview of the patient...the clinical interview provides the psychiatrist with a sample of the patient's interpersonal behavior and emotional process"; and
 - c. The Oxford Handbook states, "in most branches of clinical medicine, diagnoses are made largely on the basis of the patient's history, with physical examination and investigation playing important but subordinate roles. In psychiatry, physical examination and investigations are of lesser diagnostic value and diagnosis is based on the clinical interview and, to a lesser extent, the later course of the patient's illness".
- [18] A.D. submits that I placed more emphasis on the lack of review of medical history from the psychological report, and not on the results of the objective testing of Dr. Kleinman in his report. A.D.'s assertion from the excerpts taken from the Practice Guideline and Oxford Handbook is that I should have taken a similar approach in considering the objective psychological findings of Dr. Kleinman.
- [19] I disagree with A.D.'s position. First, A.D. provides no evidence of how the recommendations from the Practice Guideline and Oxford Handbook establish that my decision erred on law or fact. Second, A.D. does not consider that the entirety of the decision was based on a review of the evidence of the parties. The decision was not solely based on the lack of medical review in the psychological report. Finally, the decision expressly stated at paragraph 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”.

[20] Neither in the decision nor in his request for reconsideration has A.D. satisfied the following requirement, stated at paragraph 17 of the decision,

“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”.

[21] A psychological report, on a case by case basis, may not be enough to establish that an insured has suffered a psychological impairment to the extent that the impairment was significant enough to remove them from the MIG limit. If psychological impairment does not result in a significant impairment, it is caught by the phrase “predominantly minor injury” in s. 18. The onus was on A.D. to persuade me that he suffered a significant psychological impairment that was not treatable under the MIG limit. The onus was not satisfied.

[22] A.D.’s medical evidence, specifically, the OHIP records, show no post-accident records for accident-related psychological complaints. I was not convinced that there is evidence that A.D. suffered a psychological impairment that is not treatable within the MIG limit.

[23] Interestingly, although A.D. makes a reference to pages 44-45 of the Oxford Handbook, A.D. neglects to include the following,

"The information [from the interview] obtained should, together with the psychiatric history, enable a judgment to be made regarding the presence of and severity of any mental disorder and the risk of harm to self or others."

[24] I agree with Certas’ submission that, “this passage is not supportive of A.D.’s position, and in fact highlights the importance of a patient’s psychiatric history in conducting a psychiatric evaluation”. I find A.D.’s submissions support the approach taken in the decision that the psychological history should be considered when making a finding on the impact of any psychological impairment as a result of an accident.

[25] I considered and weighed A.D.’s medical evidence and found that it did not persuade me that A.D. suffered psychological impairment as a result of the accident, which could not be treated within the MIG limit. A.D.’s reconsideration

submissions also fell short of persuading me that a significant error of law or fact was made. As such, the decision stands.

CONCLUSION

[26] For the reasons set out above, A.D.'s request for reconsideration is dismissed.



Derek Grant
Adjudicator
Tribunals Ontario - Safety, Licensing Appeals and Standards Division

Released: March 30, 2020