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

Citation: C.D. v. Security National Insurance Company, 2020 ONLAT 19-01199/AABS

Released: 05/25/2020
Tribunal File Number: 19-001199/AAS

In the matter of an Application pursuant to subsection 280(2) of the *Insurance Act,* R.S.O. 1990, c. I.8., in relation to statutory accident benefits

Between:

Christina Dalima

Applicant

And

Security National Insurance Company

Respondent

DECISION

Adjudicator: **Avril A. Farlam**

Appearances:

For the Applicant: Jaskarn Grewal**,** Counsel

For the Respondent: Patrick Baker**,** Counsel

HEARD In Writing: **October 21, 2019**

OVERVIEW

[1] The applicant, Christina Dalima ("applicant") was involved in an automobile accident on June 19, 2016 ("accident"), and sought benefits from the respondent, Security National Insurance Company ("respondent") pursuant to the *Statutory Accident Benefits Schedule - Effective September 1, 2010*[1] ("*Schedule*").

[2] The respondent determined the applicant's injuries fit the definition of "minor injury" prescribed by s. 3(1) of the *Schedule* and therefore fall within the Minor Injury Guideline ("MIG")[2]. The respondent also submits that even if the MIG is found not applicable, the applicant has not provided sufficient evidence that the disputed treatment plans are reasonable and necessary. The applicant has applied to the Licence Appeal Tribunal - Automobile Accident Benefits Service for dispute resolution.

ISSUES

[3] The issues to be decided in this hearing are:

i. Did the applicant sustain predominantly minor injuries as defined under the *Schedule*?

ii. Is the applicant entitled to a medical benefit in the amount of $1,777.10 for chiropractic treatment recommended by Heartland Wellness Clinic, denied on February 14, 2017?

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

iv. Is the respondent liable to pay an award under Regulation 664 because it unreasonably withheld or delayed payments to the applicant?

RESULT

[4] The applicant sustained minor injuries as defined under the *Schedule* and is subject to the $3,500.00 funding limit. It is therefore unnecessary to consider the reasonableness or necessity of the disputed treatment plan. There is no special award. No interest is owed.

BACKGROUND

[5] The applicant's vehicle was rear-ended by another vehicle and as a result the applicant alleges that she sustained injuries to her lower back, neck and shoulders.

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[1] O.Reg. 34/10
[2] Minor Injury Guideline, Superintendent's Guideline 01/14, issued under s. 268.3(1.1) of the Insurance Act.

[6] The applicant made a claim for accident benefits. The respondent characterized the applicant's injuries as falling within the MIG and refused to pay for the disputed chiropractic treatment plan.

LAW AND ANALYSIS

The Minor Injury Guideline

[7] The MIG establishes a treatment framework available to injured person who sustains a minor injury as a result of an accident. A "minor injury" is defined in Section 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." Under section 18(1) of the Schedule, injuries that are defined as minor are subject to a $3,500.00 funding limit on treatment.

[8] To request treatment above the $3,500.00 funding limit, the applicant must prove that his or her injuries do not fall within the definition of minor injury. The applicant can establish that by:

> a. Producing compelling evidence, provided by a health practitioner that documents before the accident a pre-existing condition that will prevent the applicant from achieving maximal recovery from the minor injury if subject to the funding limit; or
>
> b. Establishing an impairment sustained in the accident is not a predominantly minor injury.

[9] The onus is on the applicant to show that his or her injuries fall outside of the MIG[3] on a balance of probabilities.

Did the applicant have a pre-existing medical condition that would remove her from the MIG?

[10] The applicant submits that she should not be subject to the MIG because she had a pre-existing condition of disc bulges and chronic back pain exacerbated by the accident that prevents maximal recovery within the MIG funding limits. In support of her submissions, the applicant put forward the records of her family doctor, Dr. Lam, her chiropractor Dr. Djetvai and excerpts from her OHIP summary.

[11] The respondent submits the applicant must provide compelling evidence that her pre-existing condition, documented prior to the accident, prevents her from achieving maximal recovery with the MIG limits.[4]

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[3] *Scarlett v. Belair Insurance,* 2015 ONSC 3635 (Div. Ct.) para. 24.
[4] *WI v. Aviva Ins. Co.,* 2018 CanLII 764409 (LAT) at paras. 8, 21, 22

[12] I agree and find that the applicant has not proven on a balance of probabilities by compelling medical evidence that she had a pre-existing medical condition, documented prior to the accident, which will prevent her from achieving maximal recovery within the MIG limits. It is the applicant's onus to prove she is out of the MIG.

[13] The records of Dr. Lam and excerpts from her OHIP summary do not amount to compelling medical evidence of a pre-existing condition of disc bulges and chronic back pain. These records show that when the applicant went to her family doctor in January, 2013 after what appears to have been a slip at home, he diagnosed a lumbar strain. An x-ray taken at that time revealed scoliosis of the lumbar spine. An MRI in December, 2014 showed "small" disc bulges at L4-L5 and L5-S1. In an appointment after the MRI, Dr. Lam diagnosed lumbar strain and prescribed physiotherapy. Dr. Lam did not diagnose chronic pain. There are no entries in the records that document low back pain or chronic low back pain between December, 2014 and June 19, 2016, the date of the accident. To the contrary, on April 12, 2016, Dr. Lam notes that the applicant has been experiencing right arm and elbow pain after lifting stones for her driveway. This activity is inconsistent with the pre-existing condition suggested.

[14] The records of applicant's family doctor show the applicant did not consult him until some four months after the accident at which time she reported that she experienced neck, shoulder and back pain after the accident and had gone to a walk-in clinic. She told him she had returned to work shortly after the accident. X-rays taken October 31, 2016 reveal mild scoliosis and degenerative disc disease at L4-L5 but no disc bulging was noted. The records of Dr. Lam do not show any complaints of low back pain from the applicant in the first half of 2017.

[15] In breach of the Tribunal's Order made July 10, 2019, the applicant submitted for the first time at this hearing updated records of Dr. Lam from July, 2017 to October, 2018. The respondent objected to the introduction of these records as they were not provided to the respondent by the deadline in the Order. The applicant did not seek an extension and simply the submitted these records. Although the respondent objected to the introduction of these records, the respondent also made submissions regarding the content. Therefore, I have considered these records I find them to be of no significant assistance to the issues I have to decide. These records lack specificity as no MRI report or diagnosis was provided.

[16] The records of applicant's chiropractor Dr. Djetvai are not enough on their own to support the applicant's position. These records only show that in 2013 the applicant received treatment from Dr. Djetvai. Little detail other than dates and dollar amounts are provided and I give these records no weight

[17] I find that the applicant has failed to prove she had a pre-existing condition that prevented the applicant from achieving maximal recovery within the MIG or how it is related to the accident. The applicant has not provided compelling evidence to prove her pre-existing condition prevents her from achieving maximal recovery within the MIG limits.

[18] I also find that the applicant has not proven on a balance of probabilities that she suffers from chronic pain that justifies treatment beyond the limits of the MIG. The records of Dr. Lam contain very few references to pain. There was no diagnosis of chronic pain

Medical Benefit: Are the treatment plans reasonable and necessary?

[19] Having found that the applicant has not proven on a balance of probabilities that she had a pre-existing condition or has sustained chronic pain as a result of the accident that would remove her from the MIG, I do not need to consider whether the treatment plans in dispute are reasonable and necessary.

Special Award

[20] Section 10 of Ontario Regulation 664 provides that a special award may be granted if the respondent unreasonably withheld or delayed payments. As there are no benefits payable, the respondent has not unreasonably withheld or delayed the payment of benefits. Therefore, there is no award under Ontario Regulation 664.

Interest

[21] As no benefits are payable, no interest is payable.

CONCLUSION

[22] For the reasons outlined above, I find that the applicant's injuries are predominately minor injuries that fall within the MIG as defined by the *Schedule* and I therefore do not need to consider whether the treatment plan in dispute is reasonable and necessary. There is no special award. As no benefits are payable, no interest is payable. The applicant's claim is dismissed.

Released: May 25, 2020

Avril A. Farlam
Vice Chair