LICENCE APPEAL TRIBUNAL

Safety, Licensing Appeals and Standards Tribunals Ontario

TRIBUNAL D'APPEL EN MATIÈRE DE PERMIS

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

Citation: A.R. v. Aviva Insurance Canada, 2020 ONLAT 19-005386

Released Date: 09/23/2020
File Number: 19-005386/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:

Arman Ali Ramjohn

Applicant

and

Aviva Insurance Canada

Respondent

REASONS FOR DECISION AND ORDER

PANEL: **Theresa McGee, Vice-Chair**

APPEARANCES:

For the Applicant: Arman Ali Ramjohn, Applicant
Anna Korolkova, Counsel

For the Respondent: Leah Dick, Counsel

HEARD: **By way of written submissions**

OVERVIEW

[1] On July 11, 2016, the applicant ("A.R.") was involved in an automobile accident. He was seat-belted in the front passenger seat of a parked vehicle that was rear-ended.

[2] The force of the collision jerked A.R. forward and backward, but other than the seat belt, his body made no contact with the interior of the vehicle. He did not lose consciousness. He sought no emergency medical treatment. He exited the vehicle independently and got a ride home.

[3] A.R. sought benefits pursuant to the *Statutory Accident Benefits Schedule - Effective September 1, 2010* (the "*Schedule*"). The respondent, ("Aviva") denied those benefits. A.R. then applied to the Licence Appeal Tribunal - Automobile Accident Benefits Service ("Tribunal") for a resolution of the dispute.

ISSUES TO BE DECIDED

[4] I am to decide the following issues:

i. Are A.R.'s injuries predominantly minor injuries as defined in the s. 3 of the *Schedule*, subject to treatment within the $3,500.00 limit in the Minor Injury Guideline?

ii. Is A.R. entitled to payment for the cost of an examination in the amount of $2,000.00 for a Psychological Assessment, recommended by Downsview Health Centre in a treatment plan dated August 1, 2017?

iii. Is A.R. entitled to a medical benefit in the amount of $1,680.44 for chiropractic treatment recommended by Downsview Healthcare Centre in a treatment plan (OCF-18) dated July 11, 2017?

iv. Is A.R. entitled to interest on any overdue payment of benefits?

RESULT

[5] I find that A.R. has failed to establish, on a balance of probabilities, that his injuries are not predominantly minor. He has not provided evidence to substantiate chronic pain or a psychological impairment beyond the *sequelae* (or resulting conditions) of soft tissue injuries resulting from the accident.

[6] As a result, A.R. is not entitled to treatment beyond the $3,500.00 funding limit in the Minor Injury Guideline ("MIG").[1] This funding limit has already been exhausted, and Aviva is not liable to pay for any additional treatment or assessments.

[7] Since no benefits are payable, the applicant is not entitled to any payment of interest.

ANALYSIS

Issue (i) - Are the applicant's injuries predominantly minor and subject to treatment within the MIG*?*

[8] To be eligible for the benefits claimed in his application, A.R. must demonstrate that his injuries are not predominantly minor. If I determine that his injuries are minor, A.R.'s treatment will be subject to the $3,500.00 funding limit for medical and rehabilitation benefits pursuant to s. 18 of the *Schedule*. If I find that his injuries are not minor, A.R. will be entitled to the claimed benefits if he can demonstrate that they are reasonable and necessary.

[9] Section 3(1) of the *Schedule* 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".[2]

[10] A.R. submits that his injuries are not minor because he has developed chronic pain syndrome and emotional symptoms as a result of the accident. He submits that his injuries require treatment outside the limits of the MIG.

[11] Aviva submits that A.R.'s injuries are minor and subject to treatment within the MIG. It submits that A.R. has failed to adduce evidence of accident-related chronic pain syndrome or psychological impairment warranting further treatment.

[12] A.R. bears the onus of establishing that his injuries are not predominantly minor and fall outside the treatment limit in the MIG.[3]

i. Chronic pain syndrome

[13] A.R. submits that he suffers from chronic pain syndrome and would benefit from further treatment to improve and manage his pain. He relies on the clinical notes and records of Dr. Sanandaji for his position that the pain he suffers is chronic

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[1] Superintendent's Guideline No. 01/14.
[2] *Statutory Accident Benefits Schedule — Effective September 1, 2010.* O. Reg. 34/10.
[3] *Scarlett v. Belair Ins. Co.*, 2015 ONSC 3635 (Div. Ct.).

and recurrent in nature.[4] He submits that he is taking naproxen and Depo-Medrol for pain.[5]

[14] Immediately after the accident, A.R. developed pain in his neck, shoulder and lower back. He also experienced insomnia.

[15] A few days after the accident, A.R. visited his family physician, Dr. Sanandaji, with complaints of chest pain (from the seat belt) and pain in his neck, lower back, and mid-back. Dr. Sanandaji noted "mild tenderness over injured area" and "mild restricted movements of injured area". A.R.'s gait was normal.[6]

[16] Dr. Sanandaji assessed A.R. as having sustained a musculoskeletal strain. He prescribed pain medication and recommended physiotherapy. He advised A.R. to visit the emergency department if his symptoms worsened.[7]

[17] In the months that followed, A.R. sought no emergency medical treatment. However, he sought treatment at Downsview Healthcare Inc. Aviva approved a Treatment and Assessment Plan (OCF-18) dated July 19, 2016 in the amount of $2,502.40 and partially approved another, dated October 3, 2016 (for all but $130.58 of the claimed total of $1,280.80). In sum, Aviva funded $3,562.62 of the $4,571.75 in services A.R claimed.

[18] A.R. visited Dr. Sanandaji six months after the accident, in January of 2017, with complaints of left knee pain when walking. A.R. reported that he had been in pain for three weeks. Dr. Sanandaji noted no history of injury.[8]

[19] On January 11, 2017, A.R. underwent an ultrasound that found no signs of injury to his left knee.[9]

[20] In May 2017, ten months after the accident, A.R. visited Dr. Sanandaji again with complaints of left knee pain. Dr. Sanandaji's clinical notations include the remark "post MVA" in relation to this visit. Dr. Sanandaji noted that A.R.'s pain was "chronic recurrent" in nature and attributed his symptoms to a hematoma sprain.[10] A.R. was later fitted for a left knee brace.

[4] Applicant's Submissions, Tab 10: Clinical notes and records of Dr. Sanandaji.
[5] Applicant's Submissions, Tab 11: Prescription Summary.
[6] Applicant's Submissions, Tab 10: Clinical notes and records of Dr. Sanandaji.
[7] Applicant's Submissions, Tab 10: Clinical notes and records of Dr. Sanandaji.
[8] Applicant's Submissions, Tab 10: Clinical notes and records of Dr. Sanandaji.
[9] Respondent's Submissions, Tab E: Left knee ultrasound dated January 11, 2017.
[10] Applicant's Submissions, Tab 10: Clinical notes and records of Dr. Sanandaji.

[21] On January 30, 2018, nearly a year and a half post-accident, A.R. attended Dr. Sanandaji's office with complaints of fatigue and stress, which he reported having felt for a few months. At this visit, he denied feeling any joint or muscle pain or stiffness.[11]

[22] On April 30, 2018, almost two years post-accident, A.R. visited Dr. Sanandaji reporting low back pain aggravated by walking. Dr. Sanandaji noted this complaint was "absent history of injury", assesed A.R. as having mechanical muscle strain, and recommended physiotherapy.[12]

[23] Dr. Pivtoran, Chiropractor, evaluated A.R. on July 7, 2017. Dr. Pivtoran diagnosed the applicant with the following physical conditions: chronic cervical joint dysfunction with myofascial symptoms; chronic lumbar joint dysfunction; chronic post-traumatic headache; and costovertebral joint dysfunction. During the assessment, A.R. reported difficulty with bending, lifting, carrying, stooping and overhead activities, and noted that prolonged sitting, standing and walking were also provocative.[13]

[24] A.R. also relies on the psychological pre-screen interview report of Dr. Shaul, Psychologist,[14] who prepared the disputed Treatment and Assessment Plan (OCF-18) recommending a psychological assessment. During that interview A.R. reported pain in his neck since the accident, as well as pain in his shoulders, abdomen, upper back, lower back and knees; that he is taking painkillers; and that pain has limited his ability to lift, bend, sit, stand, walk for long periods, and climb and descend stairs.[15] A.R. submits that the medical evidence establishes that he suffers from chronic pain syndrome.

[25] A.R. relies on two decisions in support of his position that chronic pain syndrome is excluded from the MIG.[16] The cases the applicant has referred me to support the proposition that chronic pain syndrome is excluded from the MIG, but they do not assist the applicant in advancing his position that his injuries are not predominantly minor. In *Arruda v. Western*,[17] the applicant had a formal diagnosis of chronic pain syndrome uncontested by the respondent. In *BU v.*

[11] Respondent's Submissions, Tab B: Clinical notes and records of Dr. Sanandaji at p. 176.
[12] Respondent's Submissions, Tab B: Clinical notes and records of Dr. Sanandaji at p. 179.
[13] Applicant's Submissions, Tab 5: Treatment and Assessment Plan (OCF-18) dated July 7, 2017.
[14] Applicant's Submissions, Tab 7: Treatment and Assessment Plan (OCF-18) dated July 24, 2017.
[15] Applicant's Submissions, Tab 7: Treatment and Assessment Plan (OCF-18) dated July 24, 2017.
[16] *Arruda v. Western*, FSCO A13-003926; *BU v. Aviva*, 2016 CanLII 96167 (ONLAT).
[17] *Arruda v. Western*, FSCO A13-003926.

Aviva,[18] it was the applicant's psychological injuries, not complaints of chronic pain, that formed the basis for removing the applicant from the MIG.

[26] Aviva submits that A.R.'s complaints of pain do not amount to chronic pain syndrome but are *sequelae* of soft tissue injuries that do not warrant treatment outside the MIG. Aviva relies on four decisions of the Tribunal in support of its position that (a) chronic pain complaints are distinct from an actual diagnosis of chronic pain syndrome; and (b) that only the latter warrants removal from the MIG.[19]

[27] Aviva does not contest A.R.'s submission that chronic pain syndrome warrants removal from the MIG. Rather, it submits that notations of chronic pain in themselves are not enough to remove an injured person from treatment within the $3,500.00 funding limit. The case law Aviva has referred me to establishes that complaints of chronic pain that are limited to *sequelae* of soft tissue injuries fall within the MIG.[20]

[28] Aviva directs me to *MNM v. Aviva Ins. Co.*,[21] which sets out six criteria drawn from the American Medical Association (AMA) Guides against which it submits a claim of chronic pain should be assessed. According to the AMA Guides, at least three of the following six criteria must be met to establish a diagnosis of chronic pain syndrome:

1) Use of prescription drugs beyond the recommended duration and/or abuse of or dependence on prescription drugs or other substances.

2) Excessive dependence on health care providers, spouse, or family.

3) Secondary physical deconditioning due to disuse and/or fear-avoidance of physical activity due to pain.

4) Withdrawal from social milieu, including work, recreation, or other social contracts.

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[18] *BU v. Aviva*, 2016 CanLII 96167 (ONLAT).
[19] *Applicant v. Aviva Ins.*, 2018 CanLII 81880 (LAT); *MNM v. Aviva Ins. Co.*, 17-007825/AABS, July 30, 2018; *Applicant v. Aviva Ins.*, 2017 CanLII 70685 (LAT); *Applicant v. Aviva Ins.*, 2018 CanLII 81910 (LAT).
[20] *Aviva Canada and Maverick Sleep*, FSCO Appeal P17-00034 (July 10, 2018; Delegate M. Murray), [2018] O.F.S.C.D. No. 122
[21] *17-007825/AABS v. Aviva Insurance Canada*, 2018 CanLII 98282 (ON LAT) at paras. 6-8.

5) Failure to restore pre-injury function after a period of disability, such that the physical capacity is insufficient to pursue work, family or recreational needs.

6) Development of psychosocial sequelae after the initial incident, including anxiety, fear-avoidance, depression, or non-organic illness behaviours.

[29] The jurisprudence is not settled on the criteria against which a claim of chronic pain should be assessed. However, I am persuaded that the AMA Guides provide a useful point of reference in the analysis.

[30] Aviva submits that A.R. does not meet the AMA Guides criteria for chronic pain syndrome:

i. there is no evidence that A.R. used prescription drugs beyond the recommended duration or was dependent on prescription drugs.

ii. A.R. is not excessively dependent on health care practitioners or family members.

iii. He has not withdrawn from his social milieu. He has no inability to carry out activities of daily life; in fact, he reported his day to day life remained the same following the accident.

iv. The highest pain scale A.R. ever reported was 4/10, which is on par with his pre-accident back pain. There is no objective medical evidence supporting psychological or psychosocial issues regarding the accident.

v. There is no evidence of A.R. developing secondary physical deconditioning, and no psychosocial *sequelae* as a result of the accident.

[31] Aviva's position is that A.R.'s ongoing complaints of chronic pain are unrelated to the subject accident and, even so, they fail to meet the threshold for a diagnosis of chronic pain syndrome that would warrant removal from the MIG.

[32] Aviva submits that A.R. must prove that his chronic pain is separate from his initial soft tissue injuries falling within the MIG and is not a sequela thereof. [22] Aviva's position is that he has not done so.

[22] *Aviva Canada and Maverick Sleep*, FSCO Appeal P17-00034, (July 10, 2018; Delegate M. Murray), [2018] O.F.S.C.D. No. 122, p. 184-186.

[33] The applicant has not adduced evidence of a diagnosis of chronic pain syndrome, but instead submits that the chronicity of his complaints alone removes him from the MIG.

[34] I accept that the applicant suffers from recurrent pain. However, based on my review of the medical evidence, I conclude that the applicant's pain is linked to soft tissue sprains, strains or other minor injuries. Specifically:

i. Dr. Jugnundan, General Practitioner, who conducted a s. 44 Insurer's Examination, found that A.R. sustained soft tissue injuries to his neck, right shoulder and back. These findings are consistent with the clinical notes and records of Dr. Sanandaji.[23]

ii. The pre-screen interview conducted by Dr. Shaul notes that A.R.'s injuries are delaying his return to his pre-accident activities and that his pain has impacted his functioning, but only refers to challenges with household chores.[24] I find that Dr. Shaul, a clinical psychologist, is not qualified to opine on the nature of A.R.'s physical injuries.

iii. Ten months after the accident, A.R. was diagnosed with a hematoma sprain. Given the time elapsed between the accident and the diagnosis, I conclude that this injury is unlikely to have been sustained as a result of the accident.

iv. A.R. has not proven that the accident caused the injury to his left knee. There was no contact between his body and the interior of the vehicle, except the seat belt. The alleged left knee injury was reported six months post-accident, accompanied by A.R.'s complaint to Dr. Sanandaji of pain lasting for three weeks. Dr. Jugnundan could identify no objective physical injury and opined that the pain was unrelated to the accident.[25] I accept that opinion.

v. The evidence A.R. has adduced as to his accident-related injuries and impairments does not satisfy any of the criteria in the AMA Guides.

[35] I am satisfied that A.R.'s complaints of pain are *sequelae* of soft tissue injuries and are insufficient to warrant removal form the MIG.

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[23] Respondent's Submissions, Tab N: General Practitioner Assessment Report, Dr. Jugnundan (GP) dated April 19, 2017.
[24] Applicant's Submissions, Tab 7: Treatment and Assessment Plan (OCF-18) dated July 24, 2017.
[25] Respondent's Submissions, Tab N: GP IE report dated April 19, 2017.

ii. Psychological injury

[36] A.R. submits that in addition to developing chronic pain, he sustained psychological injuries in the accident that warrant treatment beyond the MIG.

[37] A.R. relies on the evaluation of Dr. Shaul, who prepared the Treatment and Assessment Plan (OCF-18) recommending a psychological assessment. On the basis of an "extensive screening interview", Dr. Shaul concluded that A.R. was in a "state of emotional shock and distress, unspecified", and exhibiting "symptoms and signs involving emotional state".[26] Dr. Shaul conducted no diagnostic tests. His opinion is based on A.R.'s self-reported psychosocial history.

[38] During Dr. Shaul's pre-screen interview, A.R. described sleep difficulties, changes in mood, feelings of frustration due to chronic pain and lack of sleep, effects on his relationships, difficulty coping, worry, feeling anxious, tense and nervous, and feeling overwhelmed. A.R. reported a decline in his social life, an inability to participate in his previous activities, decreased interest in activities he previously enjoyed, nervousness and avoidance surrounding travel as a passenger in vehicles.[27]

[39] Dr. Pivtoran, Chiropractor, completed a disability certificate on A.R.'s behalf on January 27, 2017, in which he reported clinical findings of symptoms and signs involving emotional state, and emotional and sleep disturbances. Dr. Pivtoran could not assure recovery within the 12 weeks contemplated in the MIG.[28]

[40] I accept the clinical observations of Dr. Pivtoran, a chiropractor, but give limited weight to his opinion on A.R.'s prognosis in relation to any emotional or psychological injuries or impairments.

[41] Aviva submits that A.R. suffered no psychological impairment as a result of the accident that would warrant removal from the MIG. Aviva relies on the opinion of its examiner, Dr. Syed, Neurologist, who found that A.R. was not suffering from any psychological impairment that would warrant diagnosis, treatment, or investigations.[29] Dr. Syed conducted 10 psychometric tests, a mental status exam and a thorough clinical interview and found no personality changes, no changes to A.R.'s daily activities, no reported feelings of sadness or depression,

[26] Applicant's Submissions, Tab 7: Treatment and Assessment Plan (OCF-18) dated July 24, 2017.
[27] Applicant's Submissions, Tab 7:Treatment and Assessment Plan (OCF-18) dated July 24, 2017.
[28] Written Submissions of the Applicant, Tab 9: OCF-3 dated January 27, 2017.
[29] Written Submissions of the Respondent, Tab O: Psychological Assessment Report, April 19, 2017.

no crying spells, no reported increase in feelings of anger, irritability, or frustration, no excessive worry, and identified no need for psychological therapy.

[42] Aviva submits that A.R. made no complaints of a psychological nature related to the accident whatsoever to his family physician, Dr. Sanandaji. Rather, when he visited him a week after the accident, he had denied experiencing any accident-related emotional stress.[30]

[43] Aviva's position is that there is no medical evidence to support A.R.'s psychological complaints, and that the MIG applies.

[44] Based on my review of the evidence, I conclude that A.R. has failed to demonstrate emotional and psychological injuries separate and distinct from the *sequelae* of soft tissue injuries. Specifically:

i. Dr. Shaul's pre-screen psychological interview notes a decline in A.R.'s social activities but offers no description as to what those activities were or the extent to which A.R.'s condition has restricted them.

ii. Dr. Shaul notes A.R.'s reported decreased interest in previously enjoyed activities but provides no details as to what these activities were, or the extent to which the applicant has lost interest in them.

iii. The applicant reported frustration, irritability, and sleep difficulties, but there is no evidence as to the severity of these complaints or whether they were caused by the accident.

[45] The MIG adopts a 'functional restoration' approach to the management of minor injuries, "in which the health practitioner is oriented toward function and to the delivery of interventions that help the insured person to reduce or manage his/her pain *and associated psycho-social symptoms*" [emphasis added].[31] This approach to treatment contemplates psycho-social symptoms that may be associated with minor injuries and considers them treatable within the limits of the MIG.

[46] A certain degree of psychological distress can be expected as clinically associated consequences of minor injuries resulting from a motor vehicle accident. Based on the evidence before me I conclude on a balance of

[30] Respondent's Submissions, Tab B: Clinical notes and records of Dr. Sanandaji at pp 103-106.
[31] Superintendent's Guideline No. 01/14 at p. 4.

probabilities that A.R.'s psychological complaints are consistent with his minor, soft tissue physical injuries.

Issue (ii) - Is the applicant entitled to the cost of a Psychological Assessment?

[47] Since I have determined that the MIG applies, I need not determine whether the claim for a psychological assessment is reasonable and necessary. The applicant has exhausted the funding available to him for medical and rehabilitation benefits under the *Schedule*.

Issue (iii) - Is the applicant entitled to a medical benefit in the amount of $1,680.44 for chiropractic treatment?

[48] Since I have determined that the MIG applies, I need not determine whether the treatment plan for chiropractic treatment is reasonable and necessary. The applicant has exhausted the funding available to him for medical and rehabilitation benefits under the *Schedule*.

Issue (iv) - Is the applicant entitled to interest on any overdue payment of benefits?

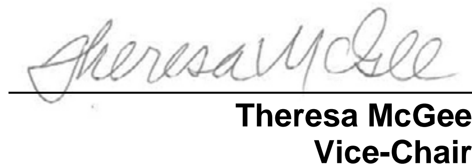
[49] Since I have determined that A.R. is not entitled to any of the amounts claimed in this application, he is not entitled to interest for the overdue payment of benefits pursuant to s. 51 of the *Schedule*.

ORDER

[50] For the reasons set out above, I find that A.R. is not entitled to the benefits claimed in his application. The applicant's injuries are subject to treatment within the $3,500.00 limit within the MIG. No interest is payable.

[51] The application is dismissed.

Released: September 23, 2020



Theresa McGee
Vice-Chair