

**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: Frankie vs. Aviva General Insurance Company, 2021 ONLAT 19-004010/AABS**

**File Number: 19-004010/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:

**Jonathan Frankie**

**Applicant**

and

**Aviva General Insurance Company**

**Respondent**

**DECISION**

**ADJUDICATOR: Derek Grant**

**APPEARANCES:**

For the Applicant: Jonathan Frankie, Applicant  
Dharshika Pathmanathan, Counsel

For the Respondent: Aviva General Insurance Company,  
Chantalle Youkhana, Counsel

**HEARD: By way of written submissions**

## OVERVIEW

- [1] The applicant, J.F., was injured in an automobile accident on September 22, 2016 and sought insurance benefits pursuant to the *Statutory Accident Benefits Schedule – Effective September 1, 2010*<sup>1</sup> (the "Schedule") from the respondent, Aviva.
- [2] Aviva denied J.F.'s claims because it took the position that his injuries fit the definition of "minor injury" prescribed by s. 3(1) of the *Schedule* and, therefore, fell within the Minor Injury Guideline<sup>2</sup> ("the MIG"). J.F. disagrees.
- [1] The MIG sets a monetary limit of \$3,500.00 on medical and rehabilitation benefits for predominantly minor injuries. J.F. argues that his injuries take him out of the limits set out by the MIG.
- [2] If J.F.'s position is correct, then I must address if the medical treatment plans claimed are reasonable and necessary. Based on treatment that J.F. has received to date, the MIG limit has been exhausted.
- [3] If Aviva's position is correct, then J.F. is subject to a \$3,500.00 limit on medical and rehabilitation benefits prescribed by section 18(1) of the *Schedule*, and in turn, a determination of whether claimed benefits are reasonable and necessary will be unnecessary.

## ISSUES

- [4] In accordance with the Tribunal Order of Adjudicator John, the issues to be determined are as follows:
- (i) Did J.F. sustain predominantly minor injuries as defined by the *Schedule*? Is his entitlement to medical benefits limited by the MIG?
- [5] If J.F.'s injuries are not within the MIG, then I must determine the following issues:
- (i) Is the medical and rehabilitation benefit in the amount of \$5,254.01 for physiotherapy treatment recommended by PhysioFix and Fitness, in a treatment plan (OCF-18) submitted on February 3, 2017 and denied on February 16, 2017, reasonable and necessary?

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<sup>1</sup> O. Reg. 34/10.

<sup>2</sup> Minor Injury Guideline, Superintendent's Guideline 01/14, issued pursuant to s. 268.3 (1.1) of the *Insurance Act*.

- (ii) Is the medical and rehabilitation benefit in the amount of \$4,713.81 for physiotherapy treatment recommended by PhysioFix and Fitness, in an OCF-18 submitted on May 8, 2017 and denied on May 23, 2017, reasonable and necessary?
- (iii) Is the cost of examination expense in the amount of \$2,082.95 for a psychological assessment recommended by PhysioFix and Fitness, in an OCF-18 submitted on December 20, 2016 and denied on January 10, 2017, reasonable and necessary?
- (iv) Is J.F. entitled to interest on any overdue payment of benefits?

## RESULT

- [6] Based on the evidence before me, I find that J.F.'s injuries are predominantly minor and therefore subject to treatment within the MIG and the \$3,500.00 monetary limit prescribed by s. 18(1) of the *Schedule*. Given that the monetary limit has been exhausted, I do not need to consider if the treatment plans are reasonable and necessary.

## ANALYSIS

### The 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." Subsection 18(1) of the *Schedule* limits recovery for medical and rehabilitation benefits for such injuries at a cap of \$3,500.00, if the insured person sustains an impairment that is predominantly a minor injury in accordance with the MIG.
- [8] Section 18 further provides that the \$3,500.00 limit does not apply to an insured person "if her health practitioner determines and provides compelling evidence that the insured person has a pre-existing medical condition that was documented by a health practitioner before the accident and that will prevent the insured person from achieving maximal medical recovery from the minor injury if the insured person is subject to the \$3,500.00 limit."

[9] The onus is on J.F. to prove on a balance of probabilities that his entitlement to medical benefits is not subject to the MIG, and its prescribed \$3,500.00 limit for minor injuries.<sup>3</sup>

### **Accident-related injuries – Physical**

[10] For the reasons to follow, J.F. has not persuaded me that his accident-related physical injuries are not predominantly minor. The medical reports, clinical notes and records, and the injuries indicated in the treatment plans are consistent with the *Schedule*'s definition of 'minor injuries. J.F.'s injuries were listed as headache, WAD II, sprain and strain of the shoulder, injury of muscles and tendons at the shoulder and upper arm level, sprain and strain of the elbow and other, and unspecified ulnar nerve injury at the forearm level.<sup>4</sup>

### **Applicant's Position**

[11] J.F. sought and received treatment from PhysioFix & Fitness from September 2016 until approximately July 2017. On January 26, 2017 J.F. was assessed by Dr. Thirunavukkarasu ("Dr. T."), Chiropractor. Dr. T. noted improved range of motion in the left shoulder, but J.F. still complained of left shoulder pain. Dr. T. opined that the neck and back required further treatment and recommended treatment.<sup>5</sup> J.F. was reassessed on May 1, 2017, where Dr. T. noted left shoulder, elbow and lower back pain. Again, Dr. T. provided J.F. with additional assistive devices for home exercise sessions. Dr. T. also recommended J.F. see a physician regarding his continued shoulder pain.

[12] On May 15, 2017, J.F. saw Dr. Rajmohamed regarding his ongoing shoulder pain complaints. Dr. Rajmohamed recommended physiotherapy. An ultrasound was done on May 19, 2017 of the shoulders, which showed mild left subacromial/subdeltoid bursitis in the left shoulder. A second ultrasound was conducted on November 21, 2019 which showed bursal fluid and bursitis.

### **Respondent's Position**

[13] Aviva relies on the report of its assessor, General Practitioner, Dr. Hanna. In his March 9, 2017 report, Dr. Hanna diagnosed J.F. with post-traumatic headaches, whiplash associated disorder, myofascial sprain/strain injuries and

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<sup>3</sup> *Scarlett v. Belair Insurance*, 2015 ONSC 3635 at para. 24

<sup>4</sup> Respondent Document Brief – OCF-23 dated September 26, 2016 – Tab 2

<sup>5</sup> Dr. T. recommended Biofreeze, back support and a heating pad – OCF-18 submitted February 3, 2017.

left shoulder sprain/strain. Dr. Hanna concluded that J.F.'s injuries fall within the MIG.

- [14] The medical evidence J.F. relies on is supported by Dr. Hanna's conclusion in his March 9, 2017 report. In addition, the diagnostic reporting does not substantiate J.F.'s claim that his physical injuries warrant treatment beyond the allowance of the MIG.
- [15] Further, in a May 1, 2017 progress report from Dr. T., J.F. reported improvement, despite ongoing left shoulder, elbow and lower back pain. J.F. also reported to Dr. T. that he continued to complete his activities of daily living. There is a note of further moderate improvement in the shoulder range of motion and lumbar spine, as discussed in a progress report dated July 11, 2017.
- [16] There is little by way of medical evidence that supports that J.F. suffered anything but predominantly minor injuries. I am not persuaded by the medical records from the OCF-18 author(s) or the records of Dr. Rajmohamed that J.F.'s physical injuries require treatment beyond the MIG limit.
- [17] Based on the above, J.F. has failed to persuade me that his physical injuries fall outside of the MIG.

### **Accident-related injuries – psychological**

- [18] In order to be taken out of the MIG due to psychological impairments, J.F. must show that he has an actual psychological impairment and not just symptomology. A psychological diagnosis requires the development of ongoing substantive post-traumatic symptomology or clinically significant psychological distress. I find that J.F. has not provided sufficient evidence to support that his alleged psychological impairments would prevent him from reaching maximum medical recovery if kept within the MIG.

### **Applicant's position**

- [19] J.F. relies on a s. 25 report, completed by Dr. Bodnar, Supervising Psychologist, and Ms. Bernstein, Therapist, in relation to the OCF-18 submitted on December 20, 2016. I place very little weight on this report, as it does not provide me with persuasive evidence to show that J.F.'s reported psychological impairment(s) are anything other than symptoms or sequelae arising from the soft tissue injuries sustained in the accident.

[20] In addition, two of the four tests administered resulted in mild depression and mild anxiety responses. Only one administered test resulted in a severe response related to when J.F. drives in the location of the accident. As a result of testing, Dr. Bodnar diagnosed J.F. with Adjustment Disorder with Mixed Anxiety and Depressed Mood, and Specific Phobia (Driver and Passenger Anxiety). I note that Dr. Bodnar's diagnosis is the result of the subject accident and a subsequent accident on May 8, 2017. It is unclear which results of Dr. Bodnar's report is solely attributable to the September 2016 accident.

### **Respondent's position**

[21] On its behalf, Aviva relies on the s. 44 reports of Psychologist Dr. Corbin. In the initial report, dated April 3, 2017, Dr. Corbin noted that J.F. did not think he required counselling. In an addendum report dated October 21, 2019, Dr. Corbin noted his psychometric testing (similar to that administered by Dr. Bodnar), indicated J.F.'s symptoms were categorically mild. Dr. Corbin also noted that Dr. Bodnar's data was similar to that of his initial report, almost two months prior to Dr. Bodnar's May 17, 2017 report. Dr. Corbin opined that J.F.'s symptoms were not significant enough to warrant a psychological diagnosis. Dr. Corbin concluded that his opinion in his April 3, 2017 report remained unchanged, that from a psychological standpoint, J.F.'s impairments were predominantly minor.

[22] On the evidence, I prefer the reports of Dr. Corbin, as I found they were more in line with the evidence and J.F.'s self-reporting. Post-accident, J.F. continued to drive and travel as a passenger, which brings in to question the severity of any vehicular anxiety as this functional impairment aspect of his daily life does not appear to be severely impacted.

[23] J.F. has not provided me with an objective medical opinion to refute Aviva's position that any accident-related psychological impairment is minor accident-related sequelae. On a balance of probabilities, I am unable to conclude that J.F. suffers from a psychological impairment that is not subject to the MIG.

### **Are the treatment plans reasonable and necessary?**

[24] As noted, the MIG limit has been exhausted. I have determined that J.F.'s accident-related injuries are restricted to the MIG limit; therefore, it is unnecessary to address the question of whether the OCF-18s are reasonable and necessary. Consequently, as no benefits are payable, no interest is payable under s. 51.

## **CONCLUSION**

[25] J.F. sustained predominantly minor physical injuries that fall within the MIG. Accordingly, as, the MIG limit has been exhausted, J.F. is not entitled to payment for the claimed OCF-18s in this application.

**Released: January 15, 2021**



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**Derek Grant, Adjudicator**