

**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**

Citation: **A. E. vs. Aviva General Insurance Company, 2019 ONLAT 18-006132/AABS**

**Date: July 22, 2019
File Number: 18-006132/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. E.

Appellant

and

Aviva General Insurance Company

Respondent

DECISION

ADJUDICATOR: Derek Grant

For the Appellant: Arthur Semko, Paralegal

For the Respondent: Laura Meschino, Counsel

HEARD: In Writing Hearing: February 25, 2019

OVERVIEW

- [1] The applicant (“A.E.”) was injured in an automobile accident (“the accident”) on October 15, 2016 and sought insurance benefits pursuant to the *Statutory Accident Benefits Schedule – Effective September 1, 2010*¹ (the “*Schedule*”). When his claims for benefits were denied by the respondent (“Aviva”), A.E. applied to the Licence Appeal Tribunal – Automobile Accident Benefits Service (the “Tribunal”).
- [2] Aviva denied A.E.’s claims because it determined that all of his injuries fit the definition of “minor injury” prescribed by section 3(1) of the *Schedule*, and therefore, fall within the Minor Injury Guideline² (“the MIG”). A.E.’s position is the opposite.
- [3] If A.E.’s position is correct, then I must address if the medical treatment plans claimed are reasonable and necessary.
- [4] If Aviva’s position is correct, then A.E. 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

- [5] Did E.O. sustain predominantly minor injuries as defined by the *Schedule*? Is his entitlement to medical benefits limited by the MIG?
- [6] If E.O.’s injuries are not within the MIG, then I must determine the following:
 - i. Is the treatment plan in the amount of \$3,948.91 for chiropractic and massages therapy services recommended by Inline Rehabilitation Centre, and submitted in a treatment plan dated February 1, 2017 and denied on February 15, 2017, reasonable and necessary?
 - ii. Is the treatment plan in the amount of \$1,920.53 for a psychological assessment recommended by Inline Rehabilitation Centre, and submitted in a treatment plan dated February 13, 2017 and denied on February 28, 2017, reasonable and necessary?
 - iii. Is the treatment plan in the amount of \$3,191.25 for chiropractic and massages therapy services recommended by Inline Rehabilitation Centre,

¹ O. Reg. 34/10.

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

and submitted in a treatment plan dated April 10, 2017 and denied on April 26, 2017, reasonable and necessary?

- iv. Is the treatment plan in the amount of \$2,519.00 for psychological services recommended by Inline Rehabilitation Centre, and submitted in a treatment plan dated May 1, 2017 and denied on May 16, 2017, reasonable and necessary?
- v. Is the treatment plan in the amount of \$2,702.11 for chiropractic and massages therapy services recommended by Inline Rehabilitation Centre, and submitted in a treatment plan dated July 17, 2017 and denied on July 31, 2017, reasonable and necessary?
- vi. Is the treatment plan in the amount of \$1,315.02 for in-home exercise program, equipment and chiropractic services recommended by Inline Rehabilitation Centre, and submitted in a treatment plan dated August 21, 2017 and denied on September 1, 2017, reasonable and necessary?
- vii. Is A.E. entitled to interest on any outstanding payment of benefits?

RESULT

- [7] Based on the evidence before me, I find that A.E.'s injuries are subject to treatment within the MIG. Therefore, I do not need to consider if the treatment plans are reasonable and necessary.

ANALYSIS

The Minor Injury Guideline

- [8] The *Guideline* 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 *Guideline*.
- [9] 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.”

[10] The onus is on A.E. to prove on a balance of probabilities that her entitlement to medical benefits is not subject to the *Guideline*, and its prescribed \$3,500.00 limit for minor injuries.

Accident related injuries

[11] For the reasons that follow, I find that the evidence establishes that A.E. sustained accident-related physical injuries, but that those injuries are defined as predominantly minor.

[12] To back her claims, A.E. relies on the following medical evidence:

- (i) Pre-existing upper back pain due to her “heavy, large breasts” and injuries sustained in two prior MVA’s in 2003 and 2006.
- (ii) The disability certificate (OCF-3) of Chiropractor, Peter Miele, which diagnoses A.E. with tension headache, other sprain and strain of cervical spine, sprain and strain of shoulder joint, sprain and strain of the lumbar spine, post-traumatic stress disorder, other sleep disorders, malaise and fatigue and nervousness.
- (iii) The clinical notes and records of Family Physician, Dr. Eunice Lau which contains complaints of back pain.
- (iv) The October 26, 2016 psychological screening and subsequent psychological assessment dated March 6, 2017, done by Ms. Snezana Duri, Psychometrist (under supervision of Dr. Valerie Kleiman, Psychologist). Ms. Duri concluded that A.E.’s post-accident psychological impairments supported a diagnosis of adjustment disorder.

[13] To rebut A.E.’s evidence, the Aviva relies on:

- (i) The insurer examination (“IE”) by Dr. Alan Kruger, Physician, dated March 17, 2017. Dr. Kruger opined that A.E. had suffered soft tissues injuries of the cervical and lumbar spine, which he diagnosed as a whiplash type injury (WAD I) and lumbar sprain/strain. Dr. Kruger opined that there was no objective evidence to suggest A.E.’s injuries were anything but minor. As such, he concluded that there were no pre-existing or concurrent conditions that would prevent A.E. from reaching maximum medical recovery within the MIG limits.
- (ii) The IE by Dr. Shahriar Moshiri, Psychologist, dated April 5, 2017. Dr. Moshiri’s report noted A.E. disclosed to be nervous when being tailgated or when driving on the highway. Dr. Moshiri concluded, based on his objective

testing, that A.E. did not suffer from any identifiable psychological impairment or condition as a result of the MVA. Dr. Moshiri opined that from a psychological perspective, there was no compelling evidence that A.E. had a pre-existing medical condition that would prevent her from achieving maximum medical recovery under the MIG.

[14] After my review of the evidence, I find that:

- (i) The injuries listed in the disability certificate are consistent with injuries that are defined as 'minor'.
- (ii) The Family Physician, Dr. Lau noted that A.E.'s back pain was due to "heavy, large breasts" for several years. A June 2015 visit notes a back-pain complaint, however, related to weight lifting. At an October 18, 2016 visit, Dr. Lau notes, "no problem with neck and lower back prior to (subject) MVA. Has recovered from previous MVA 2003, 2006". It should be noted that A.E. reported the same level of improvement to Dr. Moshiri.
- (iii) Regarding A.E.'s psychological impairment, while Ms. Duri notes an Adjustment Disorder at the screening, as discussed at par. 12 (iv) above, during the subsequent full psychological assessment, Ms. Duri diagnoses A.E. with a Specific Phobia (driving/travelling/pedestrian related). This is a less significant diagnosis than that of an Adjustment Disorder, which I find to be more in line with sequelae of accident-related injuries.
- (iv) At the insurer examination with Dr. Moshiri, A.E. denied suffering from depression. Further, when Dr. Moshiri inquired about the need for further psychological treatment, A.E. replied, "no, not really...because over time I will get better". Additionally, A.E. confirmed to Dr. Moshiri that psychologically, the subject MVA did not affect her activities of daily living and she felt a 70% psychological improvement since the accident at the time of the assessment.
- (v) A.E. returned to work shortly after the accident, as directed by Dr. Lau, and continues to work full time at her regular duties and hours. Although Dr. Lau made a referral to a chronic pain clinic, there is no medical evidence of any follow up with a chronic pain specialist, or of a diagnosis of chronic pain or chronic pain syndrome.
- (vi) A.E. has failed to show me that her accident-related injuries are anything but minor or not sequelae of those injuries. Further, the fact that A.E. has returned to her activities of daily living, including her regular pre-accident work routine, is not indicative of an individual who suffers from chronic pain.

[15] Based on the combined evidence of the disability certificate, clinical notes and records and assessor reports, I find that A.E. has sustained minor injuries from the subject accident. As a result, A.E. has not satisfied her onus to prove that she has

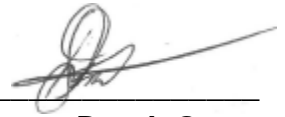
suffered anything but minor physical injuries as a result of the accident or that her pain complaints are not sequelae of those minor injuries.

[16] For the reasons stated above, I find that A.E. is not entitled to the treatment plans.

CONCLUSION

[17] A.E. sustained predominantly minor physical injuries that fall within the MIG. Accordingly, A.E. is not entitled to payment for the treatment plans claimed in this application. Her application is dismissed.

Released: July 22, 2019



**Derek Grant
Adjudicator**