



Citation: Lo v. Allstate Insurance Company of Canada, 2021 ONLAT 20-003717/AABS

**Release date: July 9, 2021
File Number: 20-003717/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:

Kim Lo

Applicant

and

Allstate Insurance Company of Canada

Respondent

DECISION

ADJUDICATOR: Brian Norris

APPEARANCES:

For the Applicant: Godfrey Bakeerathan, Counsel

For the Respondent: Sonya Katrycz, Counsel

HEARD: By way of written submissions

OVERVIEW

- [1] Kim Lo, (“the Applicant”), was injured in an automobile accident on November 4, 2018 and sought benefits from the Allstate Insurance Company of Canada, (“the Respondent”), pursuant to the *Statutory Accident Benefits Schedule – Effective September 1, 2010*, O. Reg. 34/10 (the “Schedule”). The Respondent refused to pay for a physiotherapy treatment plan, and in response, the applicant applied to the Licence Appeal Tribunal – Automobile Accident Benefit Service (“Tribunal”) for resolution of this dispute.
- [2] The parties participated in a case conference on August 11, 2020. They were unable to achieve a resolution of the issue, and a hearing was ordered with the consent of the parties. The issues for the hearing were entitlement to a physiotherapy treatment plan, an award under section 10 of O. Reg. 664, and interest on the overdue payment of benefits.
- [3] On October 1, 2020, the Respondent, agreed to fund the physiotherapy treatment plan. Entitlement to that treatment plan is no longer in dispute.

ISSUES

- [4] The issues to be determined are as follows:
1. Is the Applicant entitled to **interest** on any overdue payment of benefits?
 2. Is the Respondent liable to pay an **award under Regulation 664** because it unreasonably withheld or delayed payments to the Applicant?

RESULT

- [5] The Applicant is unsuccessful in her claims.

BACKGROUND

- [6] The Applicant was the driver of a vehicle which struck a turning vehicle at an urban intersection. Police and paramedics arrived at the scene of the accident, but the Applicant sought no immediate medical attention. She visited her family physician the following day and was diagnosed with sprain/strain injuries to her neck and back. She commenced physiotherapy treatment about 2 to 3 weeks following the accident, pursuant to the MIG.
- [7] On March 11, 2019, the Applicant, through her treatment provider, requested further funding for treatment pursuant to the MIG. The Respondent approved treatment up to the \$3,500.00 funding limit provided by the MIG.

- [8] About a week later, on March 19, 2019, the Applicant submitted a treatment and assessment plan for a psychological assessment. The Respondent refused to pay for the assessment and sought an insurer's examination ("IE"), pursuant to section 44 of the *Schedule*. That IE was rescheduled from July 26, 2019 to September 21, 2019, because the Applicant failed to attend the first appointment. The report from that IE found that the Applicant sustained an Adjustment Disorder with Anxiety as a result of the accident and, thus, was no longer subject to the MIG and the \$3,500.00 funding limit on treatment. On October 10, 2019, the Respondent removed the applicant from the MIG and approved funding for the psychological assessment.
- [9] The Applicant also attended at the psychiatry IE, which resulted in a report dated November 7, 2019. The assessor there found that the Applicant sustained soft-tissue injuries and concluded that, from a physical perspective, the Applicant sustained a minor injury as defined by the *Schedule* and it is unlikely that further facility-based treatment will aid in her recovery. The Respondent maintained its denial of physical treatment based on this report.
- [10] The Applicant filed an Application with the Tribunal on April 14, 2020, disputing the Respondent's denial of her entitlement to the physiotherapy treatment plan. The subsequent case conference took place on August 11, 2020. As noted above, the Respondent changed its mind following the case conference and approved funding for the physiotherapy treatment plan on October 1, 2020.
- [11] At issue is whether the Applicant is entitled to interest on the overdue payment of benefits and whether the Respondent's actions outlined above resulted in the unreasonable withholding or delayed payment of benefits.

PRELIMINARY ISSUE

- [12] In response, the Respondent sought to exclude the Applicant's request for payment of an award and interest, as it relates to a psychological assessment plan. It submits that entitlement to the psychological assessment plan has never been a part of this Application, that it was approved before the Applicant submitted her Application, and that all submissions concerning the award, insofar as it pertains to the psychological assessment plan, ought to be disregarded.
- [13] The Applicant was provided an opportunity to make reply submissions but chose not to do so.
- [14] I agree with the Respondent. The Applicant's argument's on entitlement to an award, insofar as it pertains to the psychological assessment plan, ought to be

disregarded. This is because the Respondent was not fully aware of the issue prior to the hearing and, as a result, unable to properly prepare a response to it.

- [15] However, as will be explained below, the issue over the scope of the Applicant's award claim is moot because she is not entitled to an award pursuant to section 10 of O. Reg 664.

AWARD

- [16] The Applicant claims entitlement to an award because, according to her, the Respondent had "ample evidence as to the existence of the physical and psychological impairments she suffered". She further submits that the refusal was unreasonable and caused a substantial delay in the Applicant's ability to access treatment that was recommended by her treating physicians and the IE examiners.
- [17] The Respondent submits that the Applicant has not met her onus to prove that it unreasonably withheld or delayed benefits. It submits that the Applicant never provided compelling medical evidence to support her claim, and her submissions provide no evidence that it acted in bad faith and unreasonably withheld benefits.
- [18] Pursuant to section 10 of O. Reg. 664, the applicant may be entitled to an award if the respondent unreasonably withheld or delayed payment of a benefit. The amount of the award may be no more than 50% of the amount withheld or delayed.
- [19] I find that an award is unwarranted for the following reasons.
- [20] I disagree with the Applicant and find that the Respondent had insufficient evidence to support the Applicant's claim. The Applicant sought a psychological assessment but, at that time, provided no credible evidence of a psychological injury or symptoms of a psychological injury. There is no evidence to show that the Applicant provided the Respondent with credible evidence of anything but soft-tissue injuries. The disability certificate, completed by Dr. A. Nalli, chiropractor, dated November 19, 2018, lists predominantly soft tissue injuries and notes insomnia, other anxiety disorders, dizziness and giddiness. The latter injuries listed are not formally diagnosed psychological injuries but, rather, symptoms noted by a chiropractor who is unqualified to diagnose psychological injuries.
- [21] The clinical notes and records ("CNRs") from the Applicant's family physicians are unresponsive of her claim that it was clear that she sustained non-minor

injuries. The CNRs of Dr. S. P. Kwong, physician, have one entry related to a psychological issue, which occurred on January 7, 2019 and was attributed to the Applicant's relationship with her partner. Otherwise, these CNRs sporadically and infrequently refer to soft-tissue injury pain, possibly related to the accident. Likewise, the CNRs of Dr. H. Plant, physician, include a psychiatric consultation report dated July 11, 2019, which notes that the Applicant was involved in an accident but that her psychological symptoms stemming from it are secondary to the issues surrounding her personal relationships and concludes that "at present, the patient has definitely recovered." Further, the CNRs discussed above were only given to the Respondent after it removed her from the MIG – which was based on the advice of the IE assessor.

- [22] The refusal was not unreasonable. Considering that the Applicant provided little medical evidence to support her claims, it was reasonable for the Respondent to seek an IE to determine the Applicant's medical status. Further, the Respondent followed the recommendation in the IE and approved funding for the psychological treatment plan within the timelines prescribed by the *Schedule*.
- [23] Contrary to the Applicant's submissions, I distinguish this matter from *O.M. vs. Allstate Insurance* ("O.M").¹ In *O.M.*, an award was granted because the Respondent denied funding for a psychological assessment despite receiving multiple documents referring to symptoms of psychological impairment as well as follow-up explanatory emails from counsel for the insured. Here, as discussed earlier, the Applicant provided no documents to support her claim.

INTEREST

- [24] I find that the Applicant has not met her onus to prove that she is entitled to interest.
- [25] Pursuant to section 51 of the *Schedule*, the Respondent is liable to pay interest on any overdue payment of benefits. Pursuant to section 51(1), an amount payable becomes overdue if the insurer fails to pay the benefit within the time required under the *Schedule*.
- [26] The Applicant claims interest on the basis that the approved psychological assessment and physiotherapy plans were reasonable and necessary and incurred. She makes no submissions on when payments were due or, rather,

¹ 2020 CanLII 45540 (ON LAT)

makes no submissions to describe how the payments were ever overdue.
Considering the above, I find no basis to order the Respondent to pay interest.

CONCLUSION

- [27] The Applicant is not entitled to an award because there is no evidence to show that the Respondent unreasonably withheld or delayed the payment of her benefits.
- [28] No interest is payable.

Released: July 9, 2021

**Brian Norris
Adjudicator**