

**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: C.G. vs. Aviva Insurance, 2019 ONLAT 18-008957/AABS

Tribunal File Number: 18-008957/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:

C.G.

Appellant

and

Aviva Insurance

Respondent

DECISION

PANEL: Derek Grant, Adjudicator

APPEARANCES:

For the Appellant: Rania Hafez, Paralegal

For the Respondent: Peter Durant, Counsel

HEARD: In Writing on: July 8, 2019

OVERVIEW

- [1] The applicant (“C.G.”) was involved in a motor vehicle accident (“the accident”) on July 10, 2015 and sought benefits pursuant to the *Statutory Accident Benefits Schedule – Effective September 1, 2010*¹ (“the *Schedule*”).
- [2] C.G. applied for benefits from the respondent (“Aviva”) and applied to the Licence Appeal Tribunal (the “Tribunal”) when his claims were denied.
- [3] Aviva argues that all of C.G.’s injuries fit the definition of “minor injury” prescribed by s. 3(1) of the *Schedule*, and therefore, fall within the Minor Injury Guideline (“the MIG”)². C.G.’s position is exactly the opposite.
- [4] If Aviva is correct, C.G. is then subject to the \$3,500.00 limit on benefits prescribed by s.18(1) of the *Schedule*, and in turn, a determination of whether claimed benefits are reasonable and necessary will be unnecessary. Further, neither party directed me to any evidence that indicated whether or not the MIG limit was exhausted”.
- [5] I must decide whether C.G.’s injuries are predominantly minor as defined by the *Schedule* and thus subject to a \$3,500 treatment limit, and if they are not, I must determine his entitlement to the medical benefits in dispute.

ISSUES

- [6] The issues in dispute are as follows:
 - a. Did the applicant sustain predominantly minor injuries as defined under the *Schedule*?
 - b. Is the applicant entitled to payment for the cost of examination in the amount of \$850.00 for an attendant care assessment recommended by Dr. Paul Bruni in a treatment plan (OCF-18) submitted on April 20, 2017, and denied on April 24, 2017?
 - c. Is the applicant entitled to a medical benefit in the amount of \$1,496.14 for assistive devices recommended by Dr. Paul Bruni in a treatment plan (OCF-18) submitted on November 25, 2016, and denied on December 5, 2016?

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*.

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

RESULT

- [7] Based on a review of all the evidence put before me, I find that C.G.'s physical and psychological injuries meet the definition of 'minor' under the *Schedule*, it is therefore unnecessary for me to consider whether the treatment plans are reasonable and necessary or determine whether interest is payable.

LAW

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." The terms "sprain", "strain", "subluxation", and "whiplash associated disorder" are also defined in subsection 3(1).
- [9] The onus is on the applicant to show that his injuries fall outside of the MIG.³
- [10] C.G. argues that his injuries go beyond the definition of "minor" because he has sustained physical and psychological impairments and chronic pain, all of which remove him from the MIG.

C.G. did not sustain physical injuries that remove him from the MIG

- [11] Although C.G. has provided medical evidence which confirms he sustained accident-related injuries, none of the evidence shows that his injuries fall outside the MIG. In addition, the evidence submitted by Aviva confirms that C.G.'s physical injuries fall within the MIG.
- [12] My finding that C.G.'s physical injuries fall within the MIG is supported by the following evidence.
- (i) The disability certificate ("OCF-3") completed by Tony Jian, Chiropractor, dated July 31, 2015, confirms C.G. has soft tissue injuries. The OCF-3 is consistent with the complaints seen in C.G.'s treatment records;
 - (ii) C.G. first saw his doctor about his injuries on July 13, 2015, a few days

³ *Scarlett v. Belair*, 2015 ONSC 3635 (CanLII) para. 24. Forrester diagnosed C.G. with physical injuries – "sprains, strains and other trauma – neck, low back, coccyx, muscle spasm neck and upper back";

after the accident. On July 15, 2015, Family Physician, Dr. Dennis Forrester diagnosed C.G. with physical injuries – “sprains, strains and other trauma – neck, low back, coccyx, muscle spasm neck and upper back”;

- (iii) Although C.G. made occasional complaints about neck, shoulder and low back pain to Dr. Forrester, there are no accident-related complaints whatsoever after November 17, 2016. In his notes dated November 17, 2016, Dr. Forrester wrote that C.G.’s "pain usually occurs in the morning when he wakes up" and he also stated that C.G. has no problem doing his job.

[13] The medical evidence submitted by C.G. confirm that C.G.’s physical injuries are consistent with those that would be defined as ‘minor’. The evidence supports and I find that C.G. suffered soft tissue injuries as a result of the accident. C.G. has therefore failed to persuade me that the physical injuries he sustained in the accident require treatment beyond that provided in the MIG.

C.G. did not sustain psychological injuries that remove him from the MIG

[14] For the reasons that follow, I find that C.G.’s own evidence does not support that he suffered psychological impairments that would remove him from the MIG. My finding is based on the following:

- (i) On November 11, 2016, Dr. Forrester noted “no history of anxiety or depression, no insomnia, no panic attacks”; and
- (ii) C.G. relied on the OCF-3 of Mr. Jian, to support that he has a psychological impairment that would remove him from the MIG. However, I put little weight on the OCF-3 of Mr. Jian because psychological diagnoses are beyond a chiropractor’s area of expertise. Further, in the OCF-3 Mr. Jian doesn’t list any type of psychological impairment yet recommends a psychological assessment under Part 7 of the OCF-3. I am not persuaded by this evidence.

[15] Without the presence of an objective medical opinion providing a basis to indicate the existence of a psychological impairment that is not sequelae of minor injuries, I am unable to conclude that C.G. suffers from a psychological impairment as a result of the accident. Even if C.G. did suffer a psychological impairment, he has not provided medical evidence to demonstrate that he is unable to recover under the MIG as a result of any psychological symptoms.

C.G. does not suffer from a chronic pain condition that would remove him from the MIG

- [16] I find that C.G. does not have a chronic pain condition arising from the accident that places him outside of the MIG. Chronic pain, if established, removes a claimant from the MIG, because the prescribed definition of “minor injury” does not include chronic pain conditions.
- [17] C.G. submits that due to his “chronic pain” he should be removed from the MIG. C.G. contends he has not reached his pre-accident state, he still has functional impairments and has not recovered in the usual time with these types of injuries. Despite this, C.G. has not provided me with any medical opinion that supports a chronic pain diagnosis.
- [18] C.G. asserts that he suffers from chronic pain syndrome based on the medical records/reports of Dr. Forrester and Dr. Paul Bruni (April 2017 treatment plan). I disagree.
- [19] I find that C.G.’s symptoms do not meet the criteria for chronic pain because:
- (i) In the family physician records, Dr. Forrester mentions “chronic” regarding C.G.’s leg pain. Dr. Forrester does not provide an analysis on the severity, frequency and duration of C.G.s pain or the functional impacts of his pain complaints;
 - (ii) In the April 2017 treatment plan for an attendant care assessment, Dr. Paul Bruni mentions “chronic pain”. It should be noted that the assessment was conducted by a registered nurse, and not Dr. Bruni. There is no evidence that the nurse who conducted the assessment has any training or is a specialist in chronic pain.
 - (iii) I find for chronic pain to take someone out of the MIG, there must be an affect on their functionality. A treating physician’s mention of a chronic pain condition be it ‘syndrome’ or specific use of the term ‘chronic pain’ is not enough in establishing the impact on functionality. This opinion must be supported by medical evidence that establishes an applicant’s functionality is impaired and that the chronic pain is the cause of the disability.
- [20] I find that the C.G.’s functionality is inconsistent with chronic pain based on the following:
- (i) C.G. takes very little medication and is currently not receiving treatment

having last seen his family physician in November 2016 with respect to his accident-related complaints; and

- (ii) C.G.'s pain does not result in functional impairments as he continues to work.

[21] Based on the evidence before me, I am unable to find, on a balance of probabilities, that C.G. should be removed from the MIG because he has chronic pain, or that he suffers from chronic pain as a result of the accident.

CONCLUSION

[22] C.G. sustained predominantly minor injuries that fall within the MIG. Accordingly, C.G. is not entitled to payment for the treatment plans claimed in this application. His application is dismissed.

Released: November 5, 2019

**Derek Grant
Adjudicator**