

**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**



Tribunal File Number: 19-003003/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:

Y.W.C.

Applicant

and

Allstate Canada

Respondent

AMENDED DECISION

ADJUDICATOR: Jesse A. Boyce

APPEARANCES:

Counsel for the Applicant: Yu Jiang

Counsel for the Respondent: Suzanne Clarke

Written Hearing: March 23, 2020

OVERVIEW

- [1] Y.W.C. was injured in an accident on April 7, 2017 and sought benefits from the respondent, Allstate, pursuant to the *Statutory Accident Benefits Schedule – Effective September 1, 2010*¹ (“*Schedule*”). Y.W.C. applied for medical and rehabilitation benefits that were denied by Allstate because it determined his injuries were predominately minor and subject to the Minor Injury Guideline (“MIG”). Y.W.C. disagreed and applied to the Tribunal for resolution of the dispute.

ISSUES TO BE DECIDED

- [2] The following issues are in dispute, according to the Case Conference Order:
- i. Did the applicant sustain predominantly minor injuries as defined under the *Schedule*?
 - ii. Is the applicant entitled to a medical and rehabilitation benefit in the amount of \$1,300.00 for chiropractic treatment recommended by EZ Physio Inc., in a treatment plan (OCF-18) submitted on September 29, 2017 and denied on March 20, 2018?
 - iii. Is the applicant entitled to a medical and rehabilitation benefit in the amount of \$3,701.88 for psychological treatment recommended by Perfect Choice Psychological Serviced Inc., in a treatment plan (OCF-18) submitted on November 1, 2017 and denied on April 23, 2018?
 - iv. Is the applicant entitled to the cost of an examination, in the amount of \$2,000.00 for psychological assessment recommended by Perfect Choice Psychological Services Inc., in a treatment plan (OCF-18) submitted on June 23, 2017 and denied on December 6, 2017?
 - v. Is the applicant entitled to interest on any overdue payment of benefits?

RESULT

- [3] I find Y.W.C. sustained predominantly minor injuries that are treatable within the MIG. As the MIG limits have been exhausted, the treatment and assessment plans in dispute are not reasonable and necessary.

¹ O. Reg. 34/10.

ANALYSIS

Applicability of the Minor Injury Guideline

- [4] The MIG establishes a framework for the treatment of minor injuries, as defined in s. 3(1) of the *Schedule*. Section 18(1) limits recovery for medical and rehabilitation benefits for predominantly minor injuries to \$3,500. However, if Y.W.C. can demonstrate that he has pre-existing conditions documented by a medical practitioner that prevent maximal medical recovery under the MIG, he may receive treatment outside of the limits. Applying *Scarlett v. Belair Insurance*, he must establish entitlement to coverage beyond the \$3,500 cap on a balance of probabilities. I find the medical evidence indicates that Y.W.C. sustained minor injuries and has not demonstrated that removal from the MIG is warranted.
- [5] Y.W.C. submits that the impairments he sustained as a result of the accident—described as physical injuries to his neck, back, shoulders, leg and chest and psychological impairments described as sleep difficulties, nightmares and flashbacks, pain, social withdrawal, anxiety and depression, among other things—warrant treatment beyond the MIG. Y.W.C. relies on various clinical notes and treating records, a MIG discharge form and the psychological assessment report from Dr. Yeh as evidence that his impairments are not “minor injuries”. Y.W.C. argues that his chronic pain and psychological diagnosis of Adjustment Disorder (with mixed anxiety and depressive reaction) and Specific Phobia (vehicular travel) justify treatment beyond the MIG. Specifically, he submits that he has not returned to his pre-accident state and continues to experience the impact of the accident, through physical pain and emotional distress, which impairs his ability to complete household tasks and carry out aspects of daily living. Y.W.C. submits that further treatment, in the form of physical rehabilitation and psychotherapy, is needed to address his accident-related impairments.
- [6] In response, Allstate submits that the injuries alleged by Y.W.C. are all soft-tissue in nature and fall within the definition of minor injuries under the *Schedule*. Allstate argues that Y.W.C.’s visits to his family physician Dr. Lam are scarce, only mention the accident once and his doctor never referred him for further investigation into his alleged impairments nor did he recommend treatment. Allstate relies on two reports: first, the s. 44 report of Dr. Safir, orthopaedic surgeon, who determined that Y.W.C. sustained minor injuries and that there was no evidence of any ongoing musculoskeletal impairment requiring further facility-based treatment; second, the s. 44 report of Dr. McCutcheon, psychologist, who

determined that Y.W.C. did not suffer from a diagnosable psychological condition as a result of the accident and did not require treatment.

Physical Injuries and Chronic Pain

- [7] On the evidence, I find the physical injuries documented in the weeks and months after Y.W.C.'s accident fall squarely within the definition of "minor injury" under the *Schedule*, as they are listed as contusions and sprain and strain-type injuries. On the medical records, I find little to suggest that Y.W.C.'s physical injuries and resulting pain are severe enough to require treatment beyond the MIG. The diagnostic imaging reports were all negative and revealed no issues. Further, there is no argument that Y.W.C. had any pre-existing conditions that would prevent recovery. Even if I accept that Y.W.C. has lingering physical pain that can be definitively traced to the accident, I find that he has not demonstrated that recovery from his pain is practically prevented if he is kept within the MIG. Notably, Y.W.C.'s own physician does not refer him for another opinion or recommend facility-based treatment. Other than the clinical notes from EZ Physio, Y.W.C. provided no medical opinion to rebut the finding of Dr. Safir that there was no evidence of any ongoing musculoskeletal impairment requiring further facility-based treatment.
- [8] In a similar vein, I agree with Allstate that there is limited evidence of functionally-disabling chronic pain in the medical documentation to justify removal from the MIG on that basis, as Y.W.C. alleges. While not strictly required, the Tribunal was not directed to a diagnosis of chronic pain or chronic pain syndrome from a medical professional to support Y.W.C.'s claim. Without a diagnosis or a medical opinion to support his claim, it is difficult to reconcile Y.W.C.'s position that he requires treatment beyond the MIG for chronic pain with the reality of the medical documentation that is silent on chronic pain. Finally, based on Y.W.C.'s self-reporting to s. 44 assessors that he continued to work, care for himself, drive, watch TV, perform household chores and attend temple post-accident, I find no evidence of "severely impaired" functional impairment, as alleged.

Psychological Impairments

- [9] Y.W.C.'s claim for removal from the MIG is also rooted in psychological "concerns" that he alleges arose from the accident. He argues that these impairments—sleep issues, excessive worry, flashbacks, social withdrawal, fatigue, forgetfulness, anxiety and depression—justify removal from the MIG. To escape the MIG due to psychological impairments, Y.W.C. must show that he has an actual psychological impairment and not just symptomology. A psychological diagnosis requires the development of ongoing, substantive and

residual post-traumatic symptomology or clinically-significant psychological distress. I find that Y.W.C. has not provided evidence sufficient to demonstrate that his alleged psychological impairments prevent maximal medical recovery if he is kept within the MIG.

- [10] In support of his position, Y.W.C. relies on the psychological assessment report from Dr. Yeh, who diagnosed him with Adjustment Disorder (with mixed anxiety and depressive reaction) and Specific Phobia (vehicular travel). The report recommends that M.S. undergo 14 90-minute counselling sessions. M.S. reports that post-accident he is experiencing sleep issues, irritability, driving anxiety, sadness and depression. The Dr. Yeh report is rebutted by Allstate's psychological report from Dr. McCutcheon, who found that Y.W.C.'s psychological symptoms are subclinical and offered no diagnosis.
- [11] On the evidence, I prefer the report of Dr. McCutcheon, as I found it was more proportional to the bulk of the evidence and Y.W.C.'s self-reporting. While Y.W.C. reports some driving anxiety as it relates to other vehicles, he continued to drive himself immediately post-accident, so the actual severity of Dr. Yeh's vehicular anxiety diagnosis is questionable because there does not appear to be any functional impairment in his daily or work life as a result of driving anxiety.
- [12] Similarly, there is no corroborating or continuous evidence from any other medical practitioner that Y.W.C. was or continues to struggle with psychological impairments. In the five post-accident visits documented, Dr. Tam's notes reflect no conversations about post-accident psychological issues and do not make a referral for same or recommend treatment. On this basis, Y.W.C.'s subclinical symptoms, his credible test results revealing mild symptoms and his alleged statement to Dr. McCutcheon that he does not want counselling and does not want to talk to anyone further undermines Dr. Yeh's report and diagnosis. As noted, to escape the MIG, a psychological diagnosis requires the development of ongoing, substantive and residual post-traumatic symptomology or clinically-significant psychological distress. On a balance of probabilities, I find Y.W.C. has not met his burden of proof.
- [13] As a result, I find that Y.M.C. has not demonstrated this his accident-related injuries, chronic pain or psychological impairments warrant removal from the MIG.

Are the treatment plans reasonable and necessary?

- [14] It is the Tribunal's understanding that the limits under the MIG have been exhausted. Having determined that Y.W.C.'s accident-related impairments are

properly within the MIG, it is not necessary to conduct an analysis of whether the various treatment plans in dispute are reasonable and necessary under s.15. As no benefits are payable, it follows that no interest is payable under s. 51.

CONCLUSION

- [15] Y.W.C. sustained injuries that are treatable within the MIG. As the MIG limits have been exhausted, the treatment and assessment plans are not reasonable and necessary.

Released: April 24, 2020



Jesse A. Boyce, Adjudicator