Tribunals Ontario
Licence Appeal Tribunal

Tribunaux décisionnels Ontario
Tribunal d'appel en matière de permis

Citation: Yadroozeh v. Aviva Insurance Company, 2021 ONLAT 19-010010/AABS

Released Date: 07/22/2021
File Number: 19-010010/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:

Narges Yadroozeh

Applicant

and

Aviva Insurance Company

Respondent

DECISION

ADJUDICATOR: **Lindsay Lake**

APPEARANCES:

For the Applicant: Jessie V. Tran, Paralegal

For the Respondent: Fraser Chorley, Counsel

HEARD: **By way of written submissions**

OVERVIEW

[1] The applicant, Narges Yadroozeh, was injured in an automobile accident on March 14, 2017 and sought benefits pursuant to the *Statutory Accident Benefits Schedule – Effective September 1, 2010*[1] from the respondent, Aviva Insurance Company.

[2] The respondent denied the applicant's claims for supplemental goods and services, physical rehabilitation sessions/examination, a social work assessment and completion of two disability certificates ("OCF-3s") because it had determined that all of the applicant's injuries fit the definition of "minor injury" as prescribed by s. 3(1) of the *Schedule* and, therefore, fall within the Minor Injury Guideline (the "MIG").[2] As a result, the applicant submitted an application to the Licence Appeal Tribunal – Automobile Accident Benefits Service (the "Tribunal").

[3] A case conference was held on April 14, 2020 and the matter proceeded to a written hearing.

ISSUES IN DISPUTE

[4] The following issues are to be decided:

(i) Are the applicant's injuries predominantly minor as defined in s. 3 of the *Schedule* and therefore subject to treatment within the $3,500.00 limit and in the MIG?

(ii) Is the applicant entitled to $400.00 ($625.00 less $225.00 approved) for supplemental goods and services submitted on an Automobile Insurance Standard Invoice ("OCF-21") dated August 17, 2017?

(iii) Is the applicant entitled to "physical rehab session/examination" recommended by York Medical Centre as follows:

(a) $1,250.00 in a treatment plan ("OCF-18") dated September 26, 2017?

(b) $2,600.00 in an OCF-18 dated November 6, 2017?

[1] O. Reg. 34/10 (the "*Schedule*").
[2] Minor Injury Guideline, Superintendent's Guideline 01/14, issued pursuant to s. 268.3 (1.1) of the *Insurance Act*.

(iv) Is the applicant entitled to $2,350.00 for a social work assessment recommended by York Medical Centre in an OCF-18 dated November 27, 2017?

(v) Is the applicant entitled to payment for the completion of two OCF-3s by York Medical Centre as follows:

(a) $200.00 dated September 26, 2017; and

(b) $200.00 dated November 27, 2017?

(vi) Is the applicant entitled to interest on any overdue payment of benefits?

RESULT

[5] I find that:

(i) The accident was the cause of the applicant's dizziness and shortness of breath;

(ii) The accident was a necessary cause of the applicant's back pain, neck pain and anxiety as these pre-existing conditions would not have been exacerbated but for the accident;

(iii) I need not determine the cause of the applicant's urinary issues as part of this decision as none of the medical benefits in dispute seek any goods or services related to this condition;

(iv) The applicant has met her onus of proving that her accident-related impairments warrant removal from the MIG on the basis that she had pre-existing psychiatric conditions that were documented by a medical practitioner prior to the accident which prevented her maximal medical recovery under the MIG;

(v) The applicant is not entitled to the unpaid amount of $400.00 of the August 17, 2017 OCF-21;

(vi) The applicant is not entitled to the September 26, 2017 and November 6, 2017 OCF-18s for physical rehabilitation sessions/examination or to the November 27, 2017 OCF-18 for a social work assessment;

(vii) The applicant is not entitled to fees for the completion of two OCF-3s dated September 26, 2017 and November 27, 2017; and

(viii) No interest is payable.

PROCEDURAL ISSUE – RESPONDENT'S SUBMISSIONS

[6] In reply, the applicant submitted that the respondent's hearing submissions fail to comply with the Tribunal's April 14, 2020 Case Conference Report and Order (the "Order") and, as a result, requested that they be struck from the record. Specifically, the applicant submitted that the respondent failed to make pinpoint references to the evidence and case law by tab and page number which left her at a significant disadvantage in preparing her reply submissions.

[7] I am not prepared to strike the respondent's submissions that fail to comply with the Order as requested by the applicant. While I agree with the applicant that the respondent's submissions do not reference its evidence by tab and page number, and sometimes there is no reference provided, I find that the applicant was only minimally prejudiced by enduring some confusion and a lengthier amount of time to prepare her reply submissions. The applicant's concerns could have been remedied by a request for an extension to prepare her reply submissions which was not requested. While I too share her frustration in locating portions of the evidence referenced by the respondent, striking its submissions would significantly prejudice the respondent which would outweigh the minimal prejudice to the applicant.

[8] For these reasons, the applicant's request to strike the portions of the respondent's submissions that do not comply with the Order is denied.

ANALYSIS

Causation

[9] In its hearing submissions, the respondent raised the issue of causation related to the applicant's injuries. The respondent submitted that the applicant's back pain, neck pain, anxiety, dizziness, urinary symptoms and shortness of breath were pre-existing and that the applicant failed to prove that the accident led to a worsening of these symptoms.

[10] The applicant only responded to the causation issue raised by the respondent in her reply hearing submissions by extending her appreciation to the respondent for its assistance in establishing, and conceeding to, the applicant's lengthy pre-existing physical and psychiatric conditions.

[11] In order to determine entitlement to accident benefits, the applicant is required to prove, on a balance of probabilities, that the subject accident caused her

impairments. The applicable test in making this determination is the "but for" test: whether the applicant would have had the impairments but for the subject accident.[3] The subject accident is not required to have been "the cause" – that is, the subject accident need not be the sole cause or have been sufficient in itself to have caused the impairments at issue. Rather, the subject accident need only to have been a "necessary cause."[4]

[12] I find that the applicant has proven on a balance of probabilities that the accident was the cause of her dizziness and shortness of breath. I also find that the causation test has been met regarding the applicant's back pain, neck pain and anxiety as I find that the accident was a necessary cause such that these complaints would not have been exacerbated but for the accident. Finally, I find that I do not need to determine the cause of the applicant's urinary issues as part of this decision as none of the issues in dispute seek funding for any goods or services related to this condition.

The Applicant's Pre-Accident Health

[13] Both parties agree that the applicant had extensive pre-accident health conditions. There is no dispute between the parties that prior to the accident, the applicant was:

(i) Diagnosed with major depression in 2012 with severe anxiety and a panic disorder;[5]

(ii) Involved in a slip and fall incident on November 27, 2012. X-rays after this fall showed that the applicant had a mild displacement of the distal clavicle that was in keeping with a type 1 acromioclavicular joint separation, but no fractures were noted. The applicant was subsequently diagnosed with contusion, aches and pains;[6]

(iii) Involved in a prior motor vehicle accident on September 14, 2014 following which she was diagnosed with a neck and back strain;[7] and

[3] *Sabadash v. State Farm et al.*, 2019 ONSC 1121 (CanLII).
[4] *Ibid.* at para. 39.
[5] Clinical notes and records ("CNRs") of Dr. Jack Barabtarlo, psychiatrist, dated October 24, 2012 and September 26, 2012, Submissions of the Respondent, tab 2.
[6] Scarborough Hospital Emergency Department Record, Submissions of the Respondent, tab 3.
[7] Emergency Record Mackenzie Health, Submissions of the Respondent, tab 4.

(iv) Involved in a second slip and fall accident in November 2016 following which she was diagnosed with a mild traumatic brain injury.[8]

[14] I also find that the applicant was diagnosed with the following conditions prior to the accident:

(i) Myofascial strain of the right cervical and right shoulder girdle muscles (June 27, 2013);[9]

(ii) Chronic neck and back pain since the applicant's 2014 motor vehicle accident (February 19, 2019);[10]

(iii) Neck and Back sprain from the 2014 motor vehicle accident (December 7, 2015);[11]

(iv) Chronic myofascial neck and back pain that caused headaches since the 2014 motor vehicle accident (July 5, 2016);[12]

(v) Lumbar strain with complaints of urinary incontinence that was described as long-standing (January 10, 2017 and February 23, 2017);[13] and

(vi) Anxiety[14] and Depression15 (July 5, 2016) that were not well controlled by medication until August 23, 2016.[16]

The Applicant's Post-Accident Complaints

[15] First, I find that the applicant's post-accident complaints of dizziness and shortness of breath were caused by the accident. There is no pre-accident evidence before me that mentions or diagnoses the applicant with either condition. The respondent has also failed to direct me to any evidence to support a finding that these two conditions were not caused by the accident.

[16] Second, the respondent's position that the applicant's back and neck pain were not caused or exacerbated by the accident directly contradicts the evidence of its own assessors. In the first insurance examination ("IE") report dated December

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[8] Submissions of the Respondent, tab 3.
[9] June 27, 2013 Clinical note by Dr. Farshid Tabloie, orthopaedic surgeon, Submissions of the Respondent, tab 3.
[10] CNRs of Dr. Mina Tasharofi Kia, Submissions of the Respondent, tab 3.
[11] *Ibid*.
[12] *Ibid*.
[13] *Ibid*.
[14] *Ibid*.
[15] *Ibid*.
[16] *Ibid*.

10, 2018 by Dr. Alborz Oshidari, physiatrist,[17] Dr. Oshidari opined that as a result of the accident, the applicant sustained a sprain/strain of the muscles in her spine and a contusion of the upper and lower extremity which exacerbated a longstanding condition.[18] He also opined that the applicant suffered from headaches as a result of the accident.[19] In his second IE report dated September 13, 2019,[20] Dr. Oshdari again opined that the applicant sustained a sprain/strain of the cervical and thoracolumbar spine and contusion of the upper and lower extremity with tension headache.[21] Dr. Oshidari also stated that despite the applicant's long standing pre-existing medical conditions, that it was "very difficult to come to the conclusion of how her pre-existing condition plays a role in her presentation today."[22] I place weight on Dr. Oshidari's opinion regarding the causation of the applicant's neck and back pain given his thorough review of pre-accident medical documentation including a review of Dr. Mina Tasharofi Kia's, the applicant's family doctor's CNRs from 2012 as part of his September 13, 2019 report.[23]

[17] Third, in the September 13, 2019 Psychiatry IE Assessment Report by Dr. Ariel Zielinsky, psychiatrist,[24] Dr. Zielinsky diagnosed the applicant with: 1) Somatic Symptom Disorder, chronic, predominantly due to pain; and 2) Major Depressive Disorder, recurrent, chronic with anxious distress.[25] Dr. Zielinsky opined that the applicant did not sustain a new mental and behavioural disorder as a result of the accident but that her psychiatric symptoms appear to be an exacerbation of her pre-existing conditions.[26]

[18] Further, while Dr. Louise E. Koepfler, psychologist, could not make a formal diagnosis of the applicant as a result of the accident in her February 12, 2018 Psychology IE Assessment report,[27] Dr. Koepfler did opine that the accident did not "directly" relate to the applicant's significant psychological impairments.[28] Dr. Koepfler failed to comment on whether or not the applicant's pre-existing psychological conditions were exacerbated by the accident despite a detailed

[17] Submissions of the Respondent, tab 7.
[18] *Ibid*. at pages 6-7.
[19] *Ibid*.
[20] September 13, 2019 Physical Medicine and Rehabilitation Specialist Assessment report by Oshidari, Submissions of the Respondent, tab 8, page 7.
[21] *Ibid*.
[22] *Ibid*. at page 8.
[23] *Ibid*. at page 2.
[24] Written Submissions of the Applicant, tab 49.
[25] *Ibid*. at page 17.
[26] *Ibid*.
[27] Submissions of the Respondent, tab 6, page 11.
[28] *Ibid*.

review of the applicant's long-standing psychiatric history.[29] Moreover, Dr. Koepfler also stated, "the file provides compelling evidence of pre-existing psychiatric problems that will likely prevent Ms. Yadroozeh from achieving maximum medical recovery from any true injuries within the Minor Injury Guideline."[30]

[19] As between Dr. Zielinsky's and Dr. Koepfler's reports, I place greater weight on Dr. Zielinsky's report because she provided an opinion on whether or not the accident *exacerbated* the applicant's longstanding psychological impairments rather than simply stating that the accident did not *directly cause* the applicant's psychological problems. The case law is clear that the accident need not be the sole cause of an impairment as it can also be a necessary cause which is consistent with Dr. Zielinsky's opinion. Further, Dr. Koepfler's comment that the applicant would likely be prevented from recovering within the MIG limits based on her pre-existing psychiatric problems indicates to me that while not explicitly stated in her report, Dr. Koepfler is also of the opinion that the accident exacerbated the applicant's psychiatric conditions because there would be no other reason to comment on the applicant's ability to recover within the MIG limits unless the applicant's pre-existing conditions were made worse by the accident thereby entitling her to accident benefits.

[20] Finally, none of the treatment plans seek funding for any goods, services or assessments related to the applicant's urinary issues. As a result, I find that I need not decide on the issue of causation raised by the respondent regarding this condition.

[21] In summary, I find that the applicant has proven on a balance of probabilities that the accident was the cause of her dizziness and shortness of breath. I also find that the accident was a necessary cause such that her neck pain, back pain and anxiety would not have been exacerbated but for the accident. Finally, I find that I do not need to detemrine the cause of the applicant's urinary issues for the purposes of this application.

The Minor Injury Guideline ("MIG")

[22] The MIG establishes a framework available to injured persons who sustain a minor injury as a result of an accident. A "minor injury" is defined in s. 3(1) of the *Schedule* as, "one or more of a strain, sprain, whiplash associated disorder, contusion, abrasion, laceration or subluxation and includes any clinically

[29] *Ibid*.
[30] *Ibid*. at page 12.

associated sequelae to such an injury." The terms, "strain," "sprain," "subluxation," and "whiplash associated disorder" are defined in the *Schedule*.

[23] Section 18(1) limits recovery for medical and rehabilitation benefits for predominantly minor injuries to $3,500.00. An applicant may receive payment for treatment beyond the $3,500.00 cap if they can demonstrate that a pre-existing condition, documented by a medical practitioner, prevents maximal medical recovery under the MIG or if they provide evidence of a psychological impairment or chronic pain. It is the applicant's burden to establish entitlement to coverage beyond the $3,500.00 cap on a balance of probabilities.[31]

[24] I find that the applicant has met her burden of proving that her accident-related impairments require treatment beyond the MIG based on a pre-existing condition. Dr. Zielinsky opined that the applicant "does not meet the criteria for [the] Minor Injury Guideline because of the severity of the pre-existing condition and the worsening of symptoms following this accident which only serve to reinforce her perception of being victimized and aggrieved."[32] Dr. Koepfler also opined that there is compelling evidence of the applicant's pre-existing psychiatric problems that will likely prevent the applicant from achieving maximum medical recovery from any "true injuries" within the MIG.[33] Both psychiatrists agree that the applicant's well-documented psychiatric history that was exacerbated by the accident prevents the applicant from achieving maximal medical recovery under the MIG limits.

[25] Therefore, I find that the applicant has met her onus of proving that her accident-related psychiatric impairments warrant removal from the MIG on the basis that she had pre-existing diagnosed psychiatric conditions that were documented by a medical practitioner prior to the accident which were found by Dr. Zielinsky and Dr. Koepfler to prevent the applicant's maximal medical recovery under the MIG.

Medical Benefits and Assessments

[26] Sections 14 and 15 of the *Schedule* provide that the insurer shall pay medical benefits to, or on behalf of, an applicant so long as the applicant sustains an impairment as a result of an accident and the medical benefit is a reasonable and necessary expense incurred by the applicant as a result of the accident.

[27] I find that the applicant has not met her onus of proving entitlement to the unpaid amount of $400.00 of the August 17, 2017 OCF-21, the September 26, 2017 and

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[31] *Scarlett v. Belair Insurance,* 2015 ONSC 3635, para. 24 (Div. Ct.).
[32] *Supra* note 24 at page 17.
[33] *Supra* note 27.

November 6, 2017 OCF-18s for physical rehabilitation sessions/examination or to the November 27, 2017 OCF-18 for a social work assessment as she has failed to prove that the proposed goods, services and assessments are reasonable and necessary on a balance of probabilities.

The August 17, 2017 OCF-21

[28] The August 17, 2017 OCF-21 in the amount of $625.00 was comprised of $225.00 for treatment provided by Yu Liu Chen, massage therapist, and Linda Koo, naturopath, and $400.00 for "supplementary goods and services."

[29] On September 27, 2017, the respondent wrote to the applicant and requested completed copies of all CNRs, medical notes and correspondence in addition to the billing records on file.

[30] The parties agree that $225.00 of the total amount of the OCF-21 was paid by the respondent leaving the $400.00 for supplementary goods and services in dispute.

[31] I agree with the applicant that the Superintendent's Guideline 01/14, "Minor Injury Guideline," provides that supplementary goods and/or services that are deemed necessary may be provided to the applicant up to a maximum of $400.00 without the respondent's approval. However, this does not permit payment to a treatment provider in a block amount for unknown goods and services, which is what was proposed in the applicant's case.

[32] The OCF-21 provided no details as to what the $400.00 was for or how it would be used to fund the applicant's treatment. The applicant submitted that the $400.00 was for "IFC treatment" which required pads and for ergonomic advice. While the applicant may have received this treatment, the applicant's submissions that the $400.00 was sought to cover such costs is not supported by any evidence from York Medical Centre. Without evidence from the treating facility, it is known what "supplemental goods/services" would be covered by the invoiced amount of $400.00 and, therefore, I am unable to determine if this cost was necessary. As a result, the applicant is not entitled to the unpaid amount of $400.00 from the August 17, 2017 OCF-21.

Physical Rehabilitation Treatment

[33] There are two treatment plans in dispute that were submitted by York Medical Centre. The first is an OCF-18 dated September 26, 2017 in the amount of $1,250.00 which was completed by Dr. Alin Oishi-Stamatiou, chiropractor, which

sought funding for seven 1-hour “physical rehab sessions/examination” with the provider referenced as Dr. San Bui, chiropractor. The OCF-18 noted that the applicant’s improvement since the last treatment plan was “pain reduced,” and that the estimated duration of the treatment plan was 12 weeks.

[34] The second treatment plan is dated November 6, 2017 in the amount of $2,600.00 which was completed by Mahir Rastogi, physiotherapist, and sought funding for 16 1-hour “physical rehab session/examination” with the provider referenced as Dr. San Bui, chiropractor. This OCF-18 noted that the applicant’s pain has reduced, her range of motion increased and that her overall activity tolerance improved since the submission of the previous treatment plan.

[35] The goals of the two treatment plans were identical and included pain reduction, increased range of motion, a return to activities of normal living and a return to pre-accident work activities.

[36] In the additional comments portion of both treatment plans, the OCF-18s, the York Medical Centre advised it does not treat the applicant by hour, but rather by session and care may be comprised of a combination of massage, chiropractic, acupuncture, physical therapy (including laser, ultrasound and various forms of electrotherapy) and active rehabilitation. The OCF-18 stated that York Medical Centre cannot submit a “physical rehab session” in a “pr,” or procedure unit on HCAI and that they are therefore forced to measure their services in hours. The treatment plans also advised that the cost of $150.00 per physical rehabilitation session accounts for the nature of care provided during each session and that treatment can be provided by:

(i) Yu Liu (Sandy) Chen – registered massage therapist and acupuncturist;

(ii) Rongchun (Tim) Gao – registered massage therapist and acupuncturist;

(iii) Julie Kim – naturopath (registered) and acupuncturist;

(iv) Linda Koo – naturopath (registered) and acupuncturist;

(v) Dr. San Bui – chiropractor;

(vi) Dr. Ailin Oishi-Stamatiou – chiropractor; and/or

(vii) Mohit Rastogi – physiotherapist.

[37] I find that the applicant has failed to prove that the September 26, 2017 and the November 6, 2017 OCF-18s are reasonable and necessary on a balance of probabilities for the following reasons:

(i) There is no recommendation for the treatment modalities set out in either treatment plan by Dr. Kai in or about the time that the OCF-18s were submitted for consideration to the respondent. Dr. Kai only recommended that the applicant restart yoga in an October 24, 2017 CNR entry despite the applicant seeking treatment from Dr. Kai on June 15, 2017, June 29, 2017, September 18, 2017 and November 14, 2017;

(ii) The applicant's last treatment session at York Medical Centre prior to the submission of the September 26, 2017 treatment plan was on May 8, 2017. There is no explanation for why the applicant ceased physical treatment for almost 5 months prior to the submission of the September 26, 2017 OCF-18;

(iii) While the applicant reported a 20% improvement in her physical symptoms as a result of physical treatment to Dr. Zielinsky in her September 13, 2019 report,[34] this report was not in existence at the time either treatment plan was submitted to the respondent for consideration. Further, it is unclear whether the applicant's condition improved as a result of treatment received at York Medical Centre or from treatment received from her new treatment facility, Fit For Less, as no dates were provided when the applicant switched treatment providers; and

(iv) Finally, I find that the treatment plans lack particulars and are vague such that I am unable to determine the amount of each type of treatment that the applicant would receive under each OCF-18. I also find that I am unable to determine whether the "pr" flat fee per session is in accordance with the maximum hourly rate payable for professional services set out in the Financial Services Commission of Ontario ("FSCO") *Professional Services Guideline* (the "Guideline").[35]

[38] For the reasons set out above, the applicant is not entitled to the September 26, 2017 or the November 6, 2017 treatment plans.

[34] *Supra* note 24 at page 12.
[35] September 2014, Superintendent's Guideline No. 03/14.

Social Work Assessment

[39] The November 27, 2017 OCF-18 was completed by Dr. Bui and sought funding for a social work assessment to be completed by Shayna Rachel Pilc, social worker. The goals of this treatment plan were to address psycho-social impairments and the assessment was to assist the patient in maximizing independence and autonomy in the various areas of her functioning. The OCF-18 noted that through the assessment and intervention in the areas of psycho-social functioning and discharge planning, a social worker would help the applicant and her family move from a situation of uncertainty, anxiety and dependence to one of increased confidence, hope and autonomy.

[40] The applicant relied upon a clinic note from Dr. Barabtarlo dated July 17, 2017,[36] which is largely illegible, and Dr. Zielinsky's recommendation that the applicant continue with psychiatric treatment[37] in support of this treatment plan. Neither pieces of evidence, however, recommend any assessment or treatment by a social worker. I also find that the decision of *16-000098 v. Aviva Insurance Canada*,[38] as relied upon by the applicant, is distinguishable as there was no evidence in that decision that the applicant had been receiving ongoing psychiatric care as the applicant has in this matter.

[41] The applicant also relied upon the content of the OCF-18 itself as evidence of its reasonableness and necessity. I agree with the respondent that a treatment plan on its own is not compelling evidence in support of the proposed goods and services.

[42] The presence of objective supporting and contemporaneous evidence to justify a treatment plan is key to determining whether the medical benefit sought is reasonable and necessary. A treatment plan without more, is not enough to establish entitlement.[39] As a result, I find that the applicant has not met her burden to prove on a balance of probabilities that the social work assessment is reasonable and necessary and, therefore, she is not entitled to the November 27, 2017 OCF-18.

[36] Written Submissions of the Applicant, tab 24.
[37] *Supra* note 24 at page 19.
[38] 2016 CanLII 93136 (ON LAT).
[39] See: *17-002689 and Aviva Insurance*, 2018 CanLII 2311 at para. 15.

Completion of Disability Certificates

[43] I find that the applicant has failed to prove on a balance of probabilities that payment for the completion of two OCF-3s dated September 26, 2017 and November 27, 2017 in the amount of $200.00 each is reasonable and necessary.

[44] I agree with Adjudicator Parish's decision in *H.T.T. v. Aviva Insurance Canada*[40] in which she disagreed with the decision of *17-002589 v. Wawanesa Mutual Insurance Company*,[41] which was relied upon by the applicant in this matter. I agree with Adjudicator Parish that the *Schedule* is clear when an insurer is obliged to pay for the completion of an OCF-3. I also agree with Adjudicator Parish's finding that while an insured person may choose to update an insurer on changes to their medical condition, this does not make an insurer liable to pay for the OCF-3 completion expense.

[45] In this matter, the applicant failed to advance any evidence that the two OCF-3s in dispute were required under s. 21, s. 36 or s. 37 of the *Schedule* as part of the applicant's application for a specified benefit. Therefore, the respondent is not liable to pay for the completion of the two OCF-3s pursuant to s. 25(1)1. of the *Schedule*. The applicant also failed to advance any evidence that the respondent requested a completed OCF-3 at any time prior to the completion of the two OCF-3s in dispute. Further, if the applicant wanted to provide information to the respondent regarding her rehabilitation needs as suggested in her submissions, this does not make the respondent liable for the completion expenses for the disputed OCF-3s.

[46] For all these reasons, the applicant is not entitled to payment for the completion of two OCF-3s dated September 26, 2017 and November 27, 2017.

Interest

[47] As there are no benefits owing, no interest is payable.

CONCLUSION

[48] For the reasons outlined above, I find that:

(i) The accident was the cause of the applicant's dizziness and shortness of breath;

[40] 2020 CanLII 72504 (ON LAT) at para. 24.
[41] 2018 CanLII 83505 (ON LAT).

(ii) The accident was a necessary cause of the applicant's back pain, neck pain and anxiety as these pre-existing conditions would not have been exacerbated but for the accident;

(iii) I need not determine the cause of the applicant's urinary issues as part of this decision as none of the medical benefits in dispute seek any goods or services related to this condition;

(iv) The applicant has met her onus of proving that her accident-related impairments warrant removal from the MIG on the basis that she had pre-existing psychiatric conditions that were documented by a medical practitioner prior to the accident which prevented her maximal medical recovery under the MIG;

(v) The applicant is not entitled to the unpaid amount of $400.00 of the August 17, 2017 OCF-21;

(vi) The applicant is not entitled to the September 26, 2017 and November 6, 2017 OCF-18s for physical rehab sessions/examination or to the November 27, 2017 OCF-18 for a social work assessment;

(vii) The applicant is not entitled to fees for the completion of two OCF-3s dated September 26, 2017 and November 27, 2017; and

(viii) No interest is payable.

Released: July 22, 2021

Lindsay Lake
Adjudicator