



Citation: Tomson v. Allstate Insurance Company of Canada, 2021 ONLAT 20-003094/AABS

**Released Date: 03/18/2021
File Number: 20-003094/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:

Sara Tomson

Applicant

and

Allstate Insurance Company of Canada

Respondent

DECISION

ADJUDICATOR: Lindsay Lake

APPEARANCES:

For the Applicant: Frank McNally, Counsel

For the Respondent: Eric Grossman, Counsel

HEARD BY WAY OF WRITTEN SUBMISSIONS

OVERVIEW

- [1] The applicant, Sara Tomson (“Ms. Tomson”), was injured in an automobile accident on October 7, 2014 and sought benefits pursuant to the *Statutory Accident Benefits Schedule – Effective September 1, 2010*¹ from Allstate Insurance Company of Canada (“Allstate”), the respondent.
- [2] Allstate denied Ms. Tomson’s claims for attendant care benefits, home modifications and prescription medication. As a result, Ms. Tomson submitted an application to the Licence Appeal Tribunal – Automobile Accident Benefits Service (the “Tribunal”).
- [3] A case conference was held on July 9, 2020 and a combination hearing consisting of a videoconference portion as well as written submissions was scheduled.
- [4] A settlement conference was held on December 1, 2020 and, as a result, the only remaining issues in dispute are Ms. Tomson’s claim for prescription medication and interest. As such, the videoconference portion of the hearing was vacated, and the remaining issues proceeded by way of written submissions.

ISSUES IN DISPUTE

- [5] The following issues are to be decided:
- (i) Is Ms. Tomson entitled to \$404.39 for Saxenda submitted on an Expense Claim Form (“OCF-6”) dated March 3, 2019?
 - (ii) Is Ms. Tomson entitled to interest on any overdue payment of benefits?

RESULT

- [6] I find that the accident did not cause Ms. Tomson’s type 1 late onset (LADA) type diabetes and, therefore, she is not entitled to payment for Saxenda. Alternatively, if I am incorrect regarding the cause of Ms. Tomson’s diabetes, I find that she is not entitled to payment for the Saxenda as she has failed to prove that it is reasonable and necessary on a balance of probabilities. Therefore, no interest is payable.

¹ O. Reg. 34/10 (the “Schedule”).

ANALYSIS

- [7] 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.
- [8] Ms. Tomson submitted an OCF-6 dated March 6, 2019 to Allstate for several expenses including \$404.39 for Saxenda, a prescription medication.
- [9] By way of explanation of benefits dated March 27, 2019, Allstate denied payment for the Saxenda. Allstate based its denial on the April 20, 2017 insurer's examination ("IE") Assessment Paper Review Report by Dr. Hasnain Khandwala, internist and endocrinologist,² and Dr. Khandwala's subsequent December 19, 2018 Addendum Report³ as Dr. Khandwala found that Ms. Tomson's diabetes was not accident-related. As a result, Allstate was of the opinion that Saxenda, a medication used for the management of diabetes, was not reasonably required as a result of Ms. Tomson's accident-related impairments.
- [10] In order to determine entitlement to the Saxenda, Ms. Tomson is required to prove, on a balance of probabilities, that the accident caused her diabetes. The applicable test in making this determination is the "but for" test: whether Ms. Tomson would not have had diabetes but for the accident.⁴ The accident is not required to have been "the cause" – that is, the accident need not be the sole cause or have been sufficient in itself to have caused Ms. Tomson's diabetes. Rather, the accident need only to have been a "necessary cause."⁵ On the evidence, I find that Ms. Tomson has failed to prove on a balance of probabilities that but for the accident, she would not have had type 1 diabetes or latent auto immune diabetes of adults ("LADA").
- [11] Ms. Tomson was originally misdiagnosed with type 2 diabetes by her family doctor, Dr. Yubo Ren, on December 23, 2014.⁶ In his April 20, 2017 IE report,⁷ Dr. Khandwala suggested that Ms. Tomson instead suffered from late onset type 1 diabetes or LADA.⁸ All other assessors after this time agreed that Ms. Tomson

² Hearing Submissions of the Respondent, tab A.

³ Hearing Submissions of the Respondent, tab B.

⁴ *Sabadash v. State Farm et al.*, 2019 ONSC 1121 (CanLII).

⁵ *Ibid.* at para. 39.

⁶ Applicant's Written Submissions, tab 5.

⁷ Applicant's Written Submissions, tab 7.

⁸ *Ibid.* at page 2.

suffered from type 1 late onset (LADA) type diabetes.⁹ The distinction is an important one, as Ms. Tomson's position is that her emotional stress following the accident was the trigger of the onset of her type 1 diabetes.¹⁰

- [12] It is not disputed that Ms. Tomson sustained significant psychological impairments following the accident. For example, in the October 18, 2016 Catastrophic IE Medical Examination by Dr. Ken Suddaby, psychiatrist,¹¹ Ms. Tomson was diagnosed with the following conditions: major depression, single episode, severe with psychosis; post-traumatic stress disorder, severe, chronic; and somatic symptom disorder with predominant pain, persistent, severe.¹² Further demonstrating the severity of Ms. Tomson's psychological impairments as a result of the accident, Dr. Suddaby assigned Ms. Tomson a class 4 marked impairment rating in all four of the domains under criterion 8 for a catastrophic impairment determination due to a mental or behavioural disorder.¹³
- [13] I find, however, that there is no evidence before me that supports Ms. Tomson's position that the accident caused her type 1 diabetes. Ms. Tomson relied upon the April 21, 2020 Independent Medical Evaluation by Dr. Tyceer Abouhassan, endocrinologist,¹⁴ to support her position regarding causation. However, at no time in his report does Dr. Abouhassan opine that Ms. Tomson's diabetes was caused by the accident. Instead, Dr. Abouhassan stated that, "with the information provided, the exact initiation of her diabetes cannot be determined,"¹⁵ and that there was no certainty that Ms. Tomson's diabetes, as the IE assessors reported, was pre-existing prior to her accident.¹⁶ Dr. Abouhassan's opinion that he is not certain whether Ms. Tomson's diabetes were pre-existing does not equate to an opinion that her diabetes was caused by the accident.
- [14] Further, while Dr. Abouhassan's report did state, "it should be noted, both anecdotally and in research literature, there is evidence that emotional stress can trigger the onset of type 1 diabetes in both children and adults,"¹⁷ Dr. Abouhassan did not provide any further analysis or opinion as to whether or not

⁹ See: the July 30, 2019 IE Paper Review Report by Dr. Joel Maser, internal medicine, Hearing Submissions of the Respondent, tab C, page 6; and the April 21, 2020 Independent Medical Evaluation by Dr. Tyceer Abouhassan, endocrinologist, Applicant's Written Submissions, tab 8, page 4.

¹⁰ Applicant's Written Submissions, para. 20.

¹¹ Applicant's Written Submissions, tab 7.

¹² *Ibid.* at page 13.

¹³ *Ibid.* at pages 13-14. The four domains are activities of daily living, social functioning, concentration, pace and persistence and adaptation.

¹⁴ Applicant's Written Submissions, tab 8.

¹⁵ *Ibid.* at page 5.

¹⁶ *Ibid.*

¹⁷ *Ibid.*

emotional stress from the accident was the trigger of the onset of diabetes for Ms. Tomson.

- [15] While I appreciate Ms. Tomson's submissions regarding the IE assessment reports that found that she had diabetes prior to the accident and her submissions regarding reliance upon these reports given the testing used, the burden never shifts to Allstate to disprove causation. The burden is always on Ms. Tomson to prove on a balance of probabilities that her diabetes was caused by the accident and I have found that there is no evidence before me that supports such a finding.
- [16] Even if I am incorrect and the accident did cause Ms. Tomson's type 1 diabetes, I find that she has failed to meet her onus¹⁸ of proving on a balance of probabilities that the Saxenda was reasonable and necessary.
- [17] Dr. Khandwala's December 19, 2018 Addendum Report¹⁹ noted that Ms. Tomson was first prescribed Saxenda on September 20, 2018.²⁰ Dr. Abouhassan, Ms. Tomson's own assessor, noted that Saxenda is not the standard of care for the treatment of type 1 diabetics and is considered "off label" in Canada.²¹ Further, Dr. Abouhassan reported:
- Saxenda can be used in type I diabetics, but not for glycemic control, but more for weight loss, and the patient should have a BMI [body mass index] of greater than 27 kg/ m² to qualify for the use of this medication. At the time of the initiation of Saxenda, I did not come across her BMI at that time. If she had a BMI of greater than 27, then it would be reasonable to start her on this medication, especially in light of her chronic pain which limits her ability to exercise and thus lose weight.²²
- [18] It is not certain who prescribed Saxenda to Ms. Tomson on the evidence before me, but it appears to have been Dr. Hussein Abujrad.²³ I am unable to confirm this, however, as Ms. Tomson did not file Dr. Abujrad's clinical notes and records ("CNRs") as evidence for the hearing. Additionally, Dr. Ren's CNRs that were filed as evidence for the hearing only cover the period of December 9, 2014 to January 6, 2015, well before Saxenda was prescribed to Ms. Tomson. As such, I have no information before me regarding Ms. Tomson's BMI at the time that she

¹⁸ *Scarlett v. Belair Insurance*, 2015 ONSC 3635 (CanLII) at paras. 20-24.

¹⁹ Hearing Submissions of the Respondent, tab B.

²⁰ *Ibid.* at page 2.

²¹ *Supra* note 14 at page 6.

²² *Ibid.*

²³ *Supra* note 19 at page 2.

was prescribed Saxenda which would assist in determining the reasonableness and necessity of the medication according to Dr. Abouhassan's report. Absent this evidence, I have no information before me as to why Saxenda was prescribed to Ms. Tomson.

[19] For all of the reasons above, I find in the alternative that Ms. Tomson is not entitled to payment for the Saxenda as she failed to prove that it was reasonable and necessary on a balance of probabilities.

Interest

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

ORDER

[21] For the reasons outlined above, I find:

- (i) the accident did not cause Ms. Tomson's type 1 late onset (LADA) type diabetes and, therefore, she is not entitled to payment for Saxenda;
- (ii) alternatively, if I am incorrect regarding the cause of Ms. Tomson's diabetes, I find that she is not entitled to payment for the Saxenda as she has failed to prove that it was reasonable and necessary;
- (iii) No interest is payable; and
- (iv) This application is dismissed.

Released: March 18, 2021



**Lindsay Lake
Adjudicator**