



**Citation: Rosemund v. The Co-operators General Insurance Company, 2021
ONLAT 19-012914/AABS**

**Released Date: 06/01/2021
File Number: 19-012914/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:

Agyekum Rosemund

Applicant

And

The Co-operators General Insurance Company

Respondent

DECISION

ADJUDICATOR: Brian Norris

APPEARANCES:

For the Applicant: Michael Ferrante, Paralegal

For the Respondent: Peter A. B. Durant, Counsel

Heard by way of written submissions

OVERVIEW

- [1] Agyekum Rosemund, (“the Applicant”), was injured in an automobile accident on April 28, 2018 and sought benefits from the Co-operators General Insurance Company (“the Respondent”), pursuant to the *Statutory Accident Benefits Schedule - Effective September 1, 2010*, O. Reg. 34/10 (the “Schedule”).
- [2] The Respondent determined the Applicant’s injuries fell within the *Minor Injury Guideline* (the “MIG”) and refused to pay for certain medical benefits. As a result, the Applicant applied to the Licence Appeal Tribunal - Automobile Accident Benefits Service (the “Tribunal”) for resolution of this dispute.

ISSUES

- [3] The disputed claims in this hearing are:
- 1) Has the Applicant sustained predominantly minor injuries as defined under the *Schedule*?
 - 2) Is the Applicant entitled to medical benefits recommended by Mackenzie Medical Rehabilitation Centre Inc., (“Mackenzie”), as follows;
 - a. \$3,696.50 for a physiotherapy treatment plan dated May 9, 2018;
 - b. \$1,977.05 for a physiotherapy treatment plan dated September 10, 2018; and
 - c. \$1,384.70 for a physiotherapy treatment plan dated October 25, 2018?
 - 3) Is the Applicant entitled to interest on any overdue payment of benefits?
 - 4) Is the Applicant entitled to an award pursuant to *O. Reg. 664*, because the Respondent unreasonably withheld or delayed the payment of benefits?

RESULT

- [4] The Applicant sustained predominantly minor injuries as defined under the *Schedule* and is subject to the \$3,500.00 funding limit.
- [5] The Applicant is not entitled to the disputed treatment plans, interest, or an award.

BACKGROUND

- [6] The Applicant lost control of the SUV she was driving and drove into her neighbour's house. She reports that paramedics attended at the scene of the accident, but she did not go to the hospital after. Instead, she met with her family physician, Dr. O. Ajisafe, a few days later and was examined. The examination of the Applicant was unremarkable. Dr. Ajisafe diagnosed the Applicant with soft-tissue injuries and advised her to engage in physiotherapy treatment for a month.
- [7] The Applicant went to Mackenzie for physiotherapy, which submitted a treatment plan dated May 9, 2018, in the amount of \$3,696.50. The Respondent denied funding for that plan and advised that the Applicant may, instead, receive pre-approved treatment pursuant to the MIG.
- [8] The Applicant disputes the Respondent's denial of the May 9, 2018 treatment plan, and the others listed above, and the characterization that her accident-related injuries are a minor injury as defined in the *Schedule*.

THE MINOR INJURY GUIDELINE

- [9] The MIG establishes a treatment framework available to injured persons who sustain a minor injury as a result of an accident. A "minor injury" is defined in the *Schedule* and includes sprains, strains, whiplash associated disorder, contusion, abrasion, laceration or subluxation and any clinically associated sequelae. The MIG provides that a strain is an injury to one or more muscles and includes a partial tear. Minor injuries are subject to the treatment methodologies outlined in the MIG and, under section 18 of the *Schedule*, injuries that are defined as minor are subject to a \$3,500.00 funding limit on treatment.
- [10] If an insurer deems an Applicant's injuries to be minor in nature, the responsibility is on the Applicant to establish that the MIG, and the related funding limit, should not apply.
- [11] If an insurer fails to respond to a treatment plan in accordance with section 38(8) of the *Schedule*, it is prohibited from taking the position that the insured person has an injury to which the MIG applies. Further, it is liable to pay for all goods and services incurred during the period of non-compliance.
- [12] The Applicant submits that she should be exempted from the MIG and the \$3,500.00 funding limit on treatment because the Respondent failed to comply with section 38(8) and because her injuries do not fall within the minor injury definition.

- [13] The Respondent submits that the Applicant suffered a minor injury per the definition in the *Schedule*. It further submits that it complied with section 38(8) when it provided the medical and other reasons for the denial of benefits and characterization of the Applicant's injuries.

The Applicant Sustained a Minor Injury

- [14] I find that the Applicant sustained a minor injury according to the definition provided by the *Schedule*.
- [15] There is no indication that the Applicant had a pre-existing injury which would preclude recovery within the MIG, and the injuries listed in the Applicant's medical evidence are predominantly soft-tissue injuries. There is only one single note in Dr. Ajisafe's clinical notes and records ("CNRs") that includes a psychological complaint. On June 12, 2018, Dr. Ajisafe notes that the Applicant is afraid to drive and afraid as a passenger and recommended a referral to a psychologist. However, there are no other instances of psychological issues and there is no record that the Applicant ever met with or was referred to a psychologist. Likewise, the CNRs show no functional impairment as a result of pain.
- [16] The CNRs from Mackenzie provide no compelling evidence of a non-minor injury. While the initial assessments in the Mackenzie CNRs records sleep difficulty, stress, anxiety, and depression, there is no explanation or elaboration of these symptoms. Further, these symptoms are seldomly repeated in other visits to Mackenzie, but for feelings of tiredness or fatigue. These observations by a physiotherapist are unconvincing evidence of a psychological injury which would require treatment outside the MIG. Likewise, the CNRs from Mackenzie show no evidence of a functional impairment as a result of pain.
- [17] The IEs confirm that the Applicant sustained a minor injury. The IE report by Dr. G. Dancyger, psychologist, dated December 20, 2018, found that from a psychological perspective, there is no compelling evidence to suggest the Applicant has an accident-related impairment. The assessment for that report included a clinical interview and psychometric testing. The Applicant denied having any accident-related psychological complaints or concerns during the interview and psychometric testing confirmed that she had no significant or diagnosable accident-related psychological disorder.
- [18] The IE report by Dr. S. Sharma, physician, dated December 20, 2018, also confirms that the Applicant sustained a minor injury. Dr. Sharma conducted a physical assessment and found that the Applicant's range of motion in the neck,

back, shoulders, and extremities were all within normal physiological limits. Dr. Sharma concluded that the Applicant sustained soft-tissue injuries as a result of the accident that can be treated within the \$3,500.00 funding limit.

- [19] Dr. Sharma's comment in the IE, on the benefit of additional medical management for the Applicant, does not upset the predominance of her minor injury and is not evidence that she is unable to recovery within the MIG. Dr. Sharma's comment addresses the Applicant's ongoing pain complaints and report that she has seen 0% improvement in her injuries, despite the treatment received. When pondering whether the Applicant required any further treatment, Dr. Sharma opined that no further formal treatments are required, and that the Applicant would benefit from additional medical management of her pain symptoms. For this, Dr. Sharma advised that the Applicant would benefit from frequenting her family physician to optimize pain medications and continue with her return to physical activity and incorporate some core strengthening and a cardiovascular program. To me, these are options for the Applicant to seek a solution to her ongoing pain complaints. The options are not facility-based and are not a requirement for the Applicant's recovery.
- [20] The Applicant sustained a minor injury as a result of the accident and is subject to the MIG and the \$3,500.00 funding limit. She is not entitled to the treatment and assessment plans because the treatment plans propose treatment that is outside the MIG.

COMPLIANCE WITH SECTION 38 OF THE *SCHEDULE*

- [21] Despite a finding that the Applicant sustained a minor injury, she may be statutorily entitled to the disputed treatment plans if the Respondent failed to reply to the plans in accordance with section 38(8) of the *Schedule*. Pursuant to section 38(8), the Respondent is required to provide the medical and other reasons for the decisions made while adjusting the Applicant's claim. In addition, if the Respondent believes that the MIG applies, it is also required to advise the Applicant of this.
- [22] I reviewed the submissions and evidence and find that the Respondent complied with section 38(8) of the *Schedule* when it responded to the disputed treatment plans.

Treatment Plan Dated May 9, 2018

- [23] The Respondent provided medical and other reasons when it denied funding to this treatment plan. It advised the Applicant that it believed that her impairment(s)

met the minor injury definition and that the MIG applied. It outlined that the psychological impairments listed on the treatment plan are identified by a chiropractor who is not qualified to provide a psychological diagnosis, noted that it received no medical evidence of a pre-existing injury which would preclude recovery, and asked for further records. It further advised that it will pay for treatment pursuant to the MIG.

- [24] The Respondent's response to the May 9, 2018 treatment plan is in accordance with section 38(5) and is not subject to review pursuant to section 38(6). The *Schedule* provides that the Respondent may refuse to accept a non-MIG treatment plan during the period where the Applicant is entitled to receive treatment under the MIG.

Treatment Plans Dated September 10 and October 24, 2018

- [25] The Respondent provided medical and other reasons when it denied funding to these treatment plans. Both responses advised that: 1) there was insufficient evidence to confirm that the Applicant's injury is not a minor injury; 2) Dr. Ajisafe's records were indicative of minor soft-tissue injuries; and, 3) advised that it believed that the MIG applied. The response to the September 10 plan advised that the Respondent required a medical opinion to determine if the treatment plan is reasonable and necessary. The response to the October 24, 2018 plan noted that an insurer's examination was already scheduled for November 22, 2018. These medical reasons are specific to the Applicant, are adequate notices of the Respondent's denials, and are compliant with section 38(8).
- [26] Considering the above, I conclude that the Respondent is compliant with section 38(8) of the *Schedule*. Thus, the Applicant is not statutorily entitled to the disputed treatment plans.

INTEREST

- [27] Interest is only payable on any overdue payment of benefits pursuant to section 51 of the *Schedule*. As no payments are overdue, no interest is payable.

CONCLUSION

- [28] The Applicant sustained a minor injury as defined by the *Schedule*. She is subject to the funding limit prescribed by section 18 of the *Schedule*.
- [29] The treatment plan dated May 9, 2018 was denied in accordance with section 38(5) and is not subject to review pursuant to section 38(6). The remaining

disputed treatment plans are not payable because they proposed treatment outside of the MIG.

[30] No interest is owed as no payments went overdue.

Released: June 1, 2020

A handwritten signature in black ink, appearing to read "Brian Norris", is positioned above a horizontal line.

**Brian Norris
Adjudicator**