



**Citation: Tang v. Allstate Insurance Company of Canada, 2022 ONLAT 20-013729/AABS**

**Licence Appeal Tribunal File Number: 20-013729/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:

**Xi Jin Tang**

**Applicant**

and

**Allstate Insurance Company of Canada**

**Respondent**

**DECISION**

**ADJUDICATOR: Derek Grant**

**APPEARANCES:**

**For the Applicant: Yu Jiang, Paralegal**

**For the Respondent: Sonya Katrycz, Counsel**

**HEARD: By way of written submissions**

## **BACKGROUND**

- [1] The applicant, XJT, was involved in an automobile accident on September 28, 2019, and sought benefits from the respondent, Allstate, pursuant to the *Statutory Accident Benefits Schedule - Effective September 1, 2010 (including amendments effective June 1, 2016)* (the “Schedule”). XJT was denied several benefits by Allstate because it had determined that her injuries fell within the Minor Injury Guideline (the “MIG”). XJT applied to the Licence Appeal Tribunal - Automobile Accident Benefits Service (the “Tribunal”) for resolution of the dispute.

## **ISSUES IN DISPUTE**

- [2] The following issues are in dispute:
- a. Are XJT’s injuries predominantly minor as defined in the *Schedule* and subject to a \$3,500.00 limit under the MIG?
  - b. Is XJT entitled to a non-earner benefit in the amount of \$185.00 per week from October 27, 2019 to July 28, 2020?
  - c. Is the medical benefit in the amount of \$3,989.56 for physiotherapy, recommended by Total Recovery Rehab Centre in a treatment plan (OCF-18) denied on August 26, 2020, reasonable and necessary?
  - d. Is the cost of examination expense in the amount of \$2,200.00 for a psychological assessment, recommended by Somatic Assessments and Treatment Clinic in an OCF-18 denied on January 23, 2020, reasonable and necessary?
  - e. Is XJT entitled to interest on any overdue payment of benefits?

## **FINDING**

- [3] XJT sustained predominantly minor injuries that are treatable within the MIG. As a result of her injuries being captured within the MIG, the disputed OCF-18s are not reasonable and necessary. XJT has not shown that she suffered a complete inability to carry on a normal life and is therefore not entitled to a NEB.

## ANALYSIS

### *The applicability of the MIG*

- [4] Section 18(1) of the *Schedule* provides that medical and rehabilitation benefits are limited to \$3,500.00 if the insured sustains impairments that are predominantly a minor injury in accordance with the MIG. Section 3(1) defines a “minor injury” 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.” An insured may be removed from the MIG if they can establish that their accident-related injuries fall outside of the MIG. The Tribunal has also determined that chronic pain with functional impairment or a psychological impairment warrant removal from the MIG. In all cases, the burden of proof lies with the applicant.
- [5] XJT relies on the clinical notes and records (CNRs) of her family physician, Dr. Chung, and an October 5, 2019 Disability Certificate (OCF-3) completed by chiropractor, Dr. Georgia Palantzas, to support that her accident-related injuries require treatment beyond the MIG. In addition, XJT submits that she has suffered psychological impairments and now suffers from chronic pain, all of which are not captured or treatable within the MIG limits.
- [6] Allstate’s position is that XJT has failed to provide any objective, supportive evidence which warrant removal from the MIG. It relies on the s. 44 physiatry, psychiatric and psychological reports prepared in response to her NEB and OCF-18 claims. It submits that XJT injuries are captured within the MIG, and she has not demonstrated a complete inability to carry on a normal life, or that the disputed OCF-18s are reasonable and necessary.
- [7] On the evidence, I agree with Allstate. The records from Scarborough Hospital show that XJT attended on the day of the accident, underwent a chest x-ray, which showed normal results, and was discharged home on the same day. The records do not support any diagnosis. XJT was prescribed Toradol, however, the prescription summary does not indicate the prescription was filled.
- [8] XJT saw Dr. Chung on October 11, 2019 and was diagnosed with whiplash. There is no record of any prescription. Diagnostic imaging results of XJT’s cervical and thoracic spine and knees were normal. There is no indication that XJT reported any functional limitation to Dr. Chung.
- [9] While XJT refers to a June 17, 2020 report of Dr. Corrin, neurologist, this report contains no mention of the accident, or any accident-related impairments. Dr.

Corrin diagnoses XJT with carpal tunnel syndrome, and there is no indication that this impairment is related to the accident.

- [10] The s. 44 assessor, physiatrist, Dr. Czok, in her June 27, 2020 report, which I find persuasive, noted that XJT had normal posture, full range of motion in her cervical, thoracic and lumbar spine. Shoulder movement was normal, and there was normal range of motion in her elbows, wrists, and bilateral hands. Dr. Czok's neurological testing revealed normal results. Dr. Czok opined that XJT showed no musculoskeletal or neurological impairments. Dr. Czok concluded that XJT did not suffer from any injuries that would require treatment beyond the MIG, and that there was no evidence that she suffered any injury that would result in a complete inability to carry on a normal life.
- [11] XJT directs me to the March 22, 2021 report of her assessing psychologist, Dr. Naisi. XJT reported constant headaches, neck, shoulder and right knee pain. She complained of mood disturbances, panic attacks, poor sleep, driving anxiety, reduced motivation and social isolation. She reported her physical and psychological injuries prevented her from returning to her pre-accident social, recreational, and housekeeping activities.
- [12] On testing, XJT endorsed mild depression, severe anxiety and emotional distress. Dr. Naisi diagnosed XJT with adjustment disorder with mixed anxiety and depressed mood, panic disorder, specific phobia, situational type – motor vehicle. Dr. Naisi opined that XJT's impairments are not captured under the MIG, and that she will require extended rehabilitation.
- [13] XJT was assessed by s. 44 psychiatrist, Dr. Gratzer, who noted that she reported resuming cooking, cleaning, socializing and exercising. XJT reported an inability to vacuum due to shoulder pain, and an inability to continue with online school because of blurry vision. There is no evidence of a report of blurry vision to any other treatment provider. Dr. Gratzer concluded that XJT did not suffer from a diagnosable psychological impairment. Dr. Gratzer further concluded that XJT did not require any pharmacological treatment or psychological treatment.
- [14] I place little weight on the report of Dr. Naisi for several reasons. First, I note the inconsistencies in the medical records versus what is noted in Dr. Naisi's report. For example, Dr. Naisi's report states that the airbags deployed and XJT lost consciousness, however, the Scarborough Hospital records rule out loss of consciousness and do not indicate that the airbags deployed. Second, while XJT reports several mood disturbances to Dr. Naisi, the rest of the medical documentation is silent on any such mood complaints; save for the single reference of a 'bad temper' to Dr. Chung. Lastly, Dr. Naisi's report was

completed almost two years post-accident. I find it difficult to reconcile the contemporaneous records of Dr. Chung which do not document any psychological impairment to Dr. Naisi's findings.

- [15] The *AMA Guides* identify six criteria as "major" characteristics of chronic pain syndrome, with three required to establish chronic pain syndrome:
- a. the use of prescription drugs beyond the recommended duration and/or abuse of or dependence on prescription drugs or other substances;
  - b. excessive dependence on health care providers, spouse, or family; secondary physical deconditioning due to disuse and/or fear-avoidance of physical activity due to pain;
  - c. withdrawal from social milieu, including work, recreation, or other social contacts;
  - d. a failure to restore pre-injury function after a period of disability, such that the physical capacity is insufficient to pursue work, family or recreational needs; and
  - e. the development of psychosocial sequelae after the initial incident, including anxiety, fear avoidance, depression, or nonorganic illness behaviors.

[16] The Tribunal has determined that an insured may be removed from the MIG if they suffer from chronic pain that causes functional impairment or if they meet three of the six criteria for chronic pain as provided by the *AMA Guides*. However, here, I am not directed to a diagnosis of chronic pain or chronic pain syndrome and XJT did not prove that she meets any of the criteria under the *AMA Guides*.

[17] When I consider the evidence of whether XJT suffers from any alleged functional impairment, I am directed by Allstate to XJT's own evidence. The CNRs and other medical documentation relevant to the period of the benefits claimed contain no evidence of any functional impairment. In addition, XJT reported to Dr. Naisi that she secured cosmetic assembly line employment in August 2020, and at the time of Dr. Naisi's report, she was still employed.

***The OCF-18s are not reasonable and necessary***

[18] Sections 14 and 15 of the *Schedule* provides that an insurer is only liable to pay for reasonable and necessary medical expenses incurred as a result of an accident. The applicant bears the onus of proving on a balance of probabilities

that the claimed medical benefits are reasonable and necessary. In order to do so, XJT should establish that the treatment goals are reasonable, that the goals are being met to a reasonable degree and that the overall cost of achieving the treatment goals is reasonable.

- [19] I have determined that XJT suffered predominantly minor injuries as a result of the accident. While the parties did not expressly indicate, it is my understanding that the \$3,500.00 MIG limit has been exhausted. As XJT has not demonstrated that treatment beyond the MIG is required, she is not entitled to the disputed OCF-18s. Allstate properly denied the claims, pursuant to s. 44 of the *Schedule*. No benefits are overdue therefore, no interest is payable under s. 51 of the *Schedule*.

***There is no entitlement to a NEB***

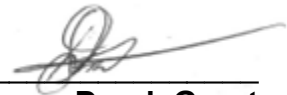
- [20] XJT sought a NEB as a result of the accident. According to s. 12, an insurer shall pay a NEB to an insured who sustains an impairment as a result of an accident and suffers a complete inability to carry on a normal life as a result of and within 104 weeks of the accident. Sections 12(3) (a) and (c) further set out that the insurer is not required to pay a NEB for the first four weeks after the onset of the disability and for any period more than 104 weeks after the accident.
- [21] Section 3(7)(a) defines a “complete inability to carry on a normal life” as “an impairment that continuously prevents the person from engaging in substantially all of the activities in which the person ordinarily engaged before the accident.” The Court of Appeal set out the guiding principles for NEB entitlement in *Heath v. Economical Mut. Ins. Co.*, 2009 ONCA 391 (CanLII) which requires a comparison of the applicant’s pre- and post-accident activities.
- [22] The OCF-3 indicated that XJT has difficulty with sustained postures, standing, walking, sitting, bending, lifting, carrying, pushing, pulling, squatting & overhead activities. However, XJT failed to engage with the principles established in *Heath*. She did not provide details of her pre-accident activities or demonstrate how her participation in those activities has been limited as a result of the accident. There are no submissions on which activities were most important to her or how her pain prevents her from engaging in the activities she normally engaged in pre-accident. That is the test that must be met. In addition, Dr. Naisi does not consider whether she suffers a complete inability to carry on a normal life.
- [23] On the evidence, I find that XJT has failed to prove on a balance of probabilities that she suffers a complete inability to carry on a normal life as a result of the

accident. Accordingly, XJT is not entitled to a NEB for the period of October 27, 2019 to July 28, 2020.

## **CONCLUSION**

- [24] XJT has not met her onus to establish that her injuries are not predominantly minor. As such, XJT is not entitled to the disputed OCF-18s.
- [25] XJT is has not demonstrated that she suffered a complete inability to carry on a normal life and is therefore not entitled to a NEB.
- [26] As no benefits are payable, interest is not payable under s. 51.
- [27] XJT's application is dismissed.

**Released: October 18, 2022**



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**Derek Grant  
Adjudicator**