



**Citation: Francis v. Allstate Insurance Company of Canada, 2023 ONLAT 20-009149/AABS**

**Licence Appeal Tribunal File Number: 20-009149/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:

**Ali Francis**

**Applicant**

and

**Allstate Insurance Company of Canada**

**Respondent**

**DECISION**

**ADJUDICATOR: Brian Norris**

**APPEARANCES:**

For the Applicant: Terio Francis, Counsel

For the Respondent: Yann Grand-Clement, Counsel

**HEARD: By way of written submissions**

## OVERVIEW

- [1] Ali Francis (“the Applicant”) was involved in an automobile accident on October 8, 2018 and sought benefits from Allstate Insurance Company of Canada (“the Respondent”) pursuant to the Statutory Accident Benefits Schedule – *Effective September 1, 2010 (including amendments effective June 1, 2016)* (“the Schedule”).
- [2] The Respondent determined that the Applicant sustained a minor injury, subjected him to the Minor Injury Guideline (“the MIG”), denied him entitlement to income replacement benefits (“IRBs”) and the treatment and assessment plans listed in dispute. The Applicant submitted an application to the Licence Appeal Tribunal - Automobile Accident Benefits Service (“Tribunal”) for resolution of this dispute.

## ISSUES

- [3] The issues to be decided in the hearing are:
1. Are the Applicant’s injuries predominantly minor as defined in section 3 of the *Schedule* and therefore subject to treatment within MIG and the \$3,500.00 funding limit for medical and rehabilitation benefits?
  2. Is the Applicant entitled to a medical benefit in the amount of \$2,100.00 for psychological services, proposed by Qualia Counselling Services in a treatment plan dated December 6, 2019?
  3. Is the Applicant entitled to a medical benefit in the amount of \$69.75 for physiotherapy services, proposed by PT Health Fairview in a treatment plan dated December 16, 2019?
  4. Is the Applicant entitled to a medical benefit in the amount of \$99.75 for physiotherapy services, proposed by PT Health Fairview in a treatment plan dated January 9, 2020?
  5. Is the Applicant entitled to a medical benefit in the amount of \$199.50 for physiotherapy services, proposed by PT Health Fairview in a treatment plan dated February 4, 2020?
  6. Is the Applicant entitled to a medical benefit in the amount of \$897.75 for physiotherapy services, proposed by PT Health Fairview in a treatment plan dated February 4, 2020?

7. Is the Applicant entitled to IRBs in the amount of \$400.00 per week for the period from October 25, 2018 to November 8, 2018?
8. Is the Respondent liable to pay an award under s. 10 of O. Reg. 664 because it unreasonably withheld or delayed payments to the applicant?
9. Is the Applicant entitled to interest on any overdue payment of benefits?

## **RESULT**

- [4] I find that the Applicant sustained a predominantly minor injury as a result of the accident. He is subject to the MIG and the \$3,500.00 funding limit on medical and rehabilitation benefits.
- [5] The treatment and assessment plans in dispute are not reasonable and necessary because they propose goods and services that fall outside the MIG.
- [6] The Applicant is not entitled to IRBs as claimed.
- [7] No interest or award is payable

## **BACKGROUND**

- [8] The Applicant navigated a turn on a rural road too quickly and lost control of the vehicle he was driving, causing it to roll over onto the roof. He exited the vehicle on his own but was taken by ambulance to the hospital where he was assessed. At the hospital, he received sutures for a laceration in his left foot and was discharged with no additional injuries identified. A few days later he returned to the hospital complaining of body aches, loose sutures, and fluid discharge from his foot. He was diagnosed with left foot cellulitis, given a prescription for antibiotics, and discharged without any follow-up instructions.
- [9] The Applicant visited his family physician, Dr. B. Loewith, on October 12, 2018, and complained of pain in the left foot, knee and shoulder. The Applicant was examined and presented as “doing okay” with full range of motion (“ROM”) throughout his body, and minimal tenderness near his sutures. The Applicant was diagnosed with a laceration and soft tissue injuries and given a note to refrain from work for 4 weeks. The Applicant returned on October 29, 2018 to have his sutures removed, was noted to be “doing okay”, and advised to complete the antibiotics prescribed to him at the hospital. The Applicant returned to Dr. Loewith on December 4, 2018, and complained of back, neck, and shoulder pain. He was referred for physiotherapy and commenced treatment pursuant to the MIG on December 18, 2018.

[10] The Applicant claims that he has developed chronic pain, cellulitis infection, and psychological injuries as a result of the accident. He submits that these injuries fall outside of the minor injury definition. The Respondent submits that the Applicant has failed to meet his onus to demonstrate that he sustained an injury that is not included in the minor injury definition.

[11] Additionally, the Applicant claims that he missed about 3 weeks of work due to accident-related injuries and claims entitlement to IRBs for that period.

## **ANALYSIS**

[12] The onus is on the Applicant to demonstrate on a balance of probabilities that he is entitled to the benefits claimed.

## **MIG**

[13] 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. Under section 18 of the *Schedule*, injuries that are defined as minor are subject to a \$3,500.00 funding limit on treatment.

[14] I find that the Applicant sustained a minor injury as defined in the *Schedule*. The Applicant’s accident-related injuries are predominantly soft tissue injuries which fall within the minor injury definition.

## **The Applicant does not suffer from a chronic pain condition as a result of the accident**

[15] The report by Dr. K. A. Boekestein, physician, dated August 5, 2021, demonstrates that the Applicant sustained a predominantly minor injury and does not support a finding that he suffers from chronic pain. The report included an objective assessment, which noted that the Applicant’s ROM was normal throughout his body with no neurological or psychological symptoms. Dr. Boekestein diagnosed the Applicant with acute chronic thoracolumbar back pain but made no clinical treatment or care recommendations. My interpretation of the minor injury definition would provide that acute chronic thoracolumbar back pain, absent any functional or psychological impairment, is sequelae of the Applicant’s soft tissue injuries and within the minor injury definition.

[16] The Applicant does not meet the criteria in the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, 6<sup>th</sup> Edition (“the *AMA Guides*”). While the *AMA Guides* are not the definitive test to determine whether someone suffers from chronic pain, it can be a helpful tool to guide the decision maker. The *AMA Guides* provide that chronic pain sufferers generally meet at least three of the six following criteria:

1. Use of prescription drugs beyond the recommended duration and/or abuse of or dependence on prescription drugs or other substances;
2. Excessive dependence on health care providers, spouse, or family;
3. Secondary physical deconditioning due to disuse and or fear-avoidance of physical activity due to pain;
4. Withdrawal from social milieu, including work, recreation, or other social contracts;
5. 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
6. Development of psychosocial sequelae after the initial incident, including anxiety, fear-avoidance, depression, or nonorganic illness behaviours.

[17] At most, the Applicant meets 2 of the 6 criteria outlined in the *AMA Guides*. The Applicant advised Dr. Boekestein that he tried some prescription pain medication from a family member once and found it provided relief. This appears to be a minor issue as he was counselled on the spot regarding taking medication prescribed for other patients, and there is no other evidence of prescription drug abuse or misuse. While he has demonstrated some psychosocial sequelae following the accident, I remain unconvinced that it is as a result of the accident or accident-related injuries. These symptoms arose more than a year following the accident and appear to be related to situational stressors which will be addressed later in greater detail.

[18] Otherwise, the Applicant does not meet any of the other criteria in the *AMA Guides*. There is no evidence that demonstrates he is excessively dependent on family or healthcare providers. The Applicant has tendered no evidence demonstrating he was physically deconditioned due to disuse and/or fear avoidance. Additionally, the Applicant returned to work following the accident and fully restored his pre-accident function.

- [19] The Applicant is subject to the MIG despite recommendations for additional physiotherapy and massage therapy. I acknowledge that, on a few occasions, Dr. Loewith prescribed physiotherapy and massage therapy for the Applicant's ongoing intermittent back pain. However, the minor injury determination is independent of the recommendation for ongoing or further treatment. It remains that the Applicant sustained predominantly soft tissue injuries as a result of the accident.
- [20] I find that the causal connection between the accident and the Applicant's ongoing intermittent back pain is unclear. The Applicant complained of low back pain prior to the accident during a consultation with Dr. Loewith on June 28, 2018 and made no accident-related complaints of back pain at the scene of the accident, or at the hospital immediately thereafter. Likewise, he never complained of back pain during his initial visits to Dr. Loewith. His first complaint related to back pain occurred on December 4, 2018, or approximately two months post-accident, and only one additional time during the course of the next year. Otherwise, it is difficult to connect the Applicant's current complaints with the accident given the timing of his complaints.
- [21] The Applicant's medical records demonstrate that he sustained soft tissue injuries as a result of the accident. There is no evidence demonstrating that he suffers from an ongoing functional impairment due to pain, or that his soft tissue injuries have developed into a chronic pain condition that would be considered to be an injury that is more than sequelae of the soft tissue injuries sustained in the accident.

#### **The Applicant suffers from no accident-related psychological injury**

- [22] The Applicant claims that his anxiety worsened following the accident and this psychological impairment is not a minor injury. However, I find no reasonable connection between the Applicant's psychological complaints and the subject accident.
- [23] There is no evidence demonstrating that the Applicant's anxiety worsened as a result of the subject accident. Dr. Loewith's clinical notes detail no psychological complaints in the two years following the accident. It was not until November 12, 2020, when the applicant made his first accident-related psychological complaint to Dr. Loewtih. The note states that the Applicant was afraid to drive since the accident and wanted a referral to counselling, which was provided. Counselling records for the period thereafter indicate that the Applicant's psychological symptoms tend to be related to situational issues such as inconsistent employment, or disputes with coworkers and neighbours.

[24] I find the insurer's examination report of Dr. C. J. Friesen, psychologist, dated January 15, 2020, to be persuasive evidence demonstrating that the Applicant's injuries fall within the minor injury definition. Dr. Friesen assessed the Applicant and determined that he does not require a mental health assessment, nor treatment as a result of the accident. Dr. Friesen noted that the Applicant reported a hesitation to drive on highways and at night but was employed in a role that required nighttime highway travel – which the Applicant was able to complete without any significant symptoms. I find Dr. Friesen's report and conclusion to be consistent with the balance of the Applicant's medical evidence.

### **Cellulitis is sequelae of the Applicant's soft tissue injury**

[25] I find that the cellulitis experienced by the Applicant is sequelae of his soft-tissue injuries.

[26] It appears that the Applicant's left foot laceration developed a minor bacterial infection where he was sutured, but it caused no impairment and required virtually no additional care. As noted previously, the Applicant went to the hospital and had his sutures examined. The nurse reported that the sutures were intact and observed no fluid. The Applicant was prescribed antibiotics and discharged. No follow-up care or instructions were provided.

[27] In any event, a bacterial infection such as cellulitis, can be treated within the MIG and the \$3,500.00 funding limit on medical and rehabilitation benefits. The MIG provides funding for supplementary services as a result of accident-related sequelae. Here, the sequelae is a bacterial infection which required antibiotics. This had no impact on the Applicant's recovery. At most, the Applicant may have been required to purchase antibiotics to address the bacterial infection. However, there is no evidence the Applicant sought reimbursement for antibiotics and such expenses can be covered under the supplementary expenses funding provided in the MIG.

### **THE DISPUTED TREATMENT AND ASSESSMENT PLANS**

[28] Having found that the Applicant sustained a minor injury as a result of the accident, it follows that he is not entitled to the disputed treatment and assessment plans because they propose goods and services that fall outside the MIG and the \$3,500.00 funding limit on treatment.

## **IRBs**

- [29] I find that the Applicant is not entitled to IRBs as claimed because he submitted a disability certificate after the period he claims entitlement to the benefit.
- [30] IRBs are payable in the event an insured person is substantially unable to complete the essential tasks of their employment as a result of an accident-related impairment. However, pursuant to section 36(3) of the *Schedule*, no IRBs are payable for any period before a completed disability certificate is submitted.
- [31] In the Applicant's case, he submitted a completed disability certificate dated December 12, 2019. The adjuster's log notes indicate that no other disability certificate was previously submitted. I am unable to order the Respondent to pay IRBs for any period prior to the submission of a completed disability certificate as it would be contrary to section 36(3) of the *Schedule*.

## **AWARD**

- [32] Pursuant to section 10 of O. Reg. 664, the Applicant may be entitled to an award if the respondent unreasonably withheld or delayed payment of a benefit.
- [33] Having concluded that the Applicant sustained a minor injury and is not entitled to the benefits claimed, it follows that no benefits were unreasonably withheld or delayed. Thus, the Applicant is not entitled to an award.

## **CONCLUSION**

- [34] The Applicant sustained a predominantly minor injury and is subject to the MIG. He is not entitled to the treatment and assessment plans in dispute because they proposed goods and services outside of the MIG and the \$3,500.00 funding limit on medical and rehabilitation benefits.
- [35] The Applicant is not entitled to IRBs for the period claimed because his claim is for a period that is entirely before a completed disability certificate was submitted.
- [36] No interest or award is payable.

**Released: April 18, 2023**



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**Brian Norris**  
Adjudicator