



**Citation: Arulanatham v. Economical Insurance, 2023 ONLAT 21-000004/AABS**

**Licence Appeal Tribunal File Number: 21-000004/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:

**Arunsheeyaah Arulanatham**

**Applicant**

and

**Economical Insurance**

**Respondent**

## **DECISION**

**VICE-CHAIR:**

**Monica Ciriello**

**APPEARANCES:**

For the Applicant:

Cary Schneider, Counsel

For the Respondent:

Jonathan White, Counsel

**HEARD:**

**By Way of Written Submissions**

## OVERVIEW

- [1] Arunsheeyaah Arulanatham, the applicant, was involved in an automobile accident on May 29, 2019, and sought benefits pursuant to the *Statutory Accident Benefits Schedule - Effective September 1, 2010 (including amendments effective June 1, 2016)* (the “Schedule”). The applicant was denied benefits by the respondent, Economical Insurance, and applied to the Licence Appeal Tribunal - Automobile Accident Benefits Service (the “Tribunal”) for resolution of the dispute.

## ISSUES

- [2] The follow issues are to be decided:
- i. Are the applicant’s injuries predominately minor as defined by the *Schedule* and subject to the treatment limit under the Minor Injury Guideline (“MIG”)?
  - ii. Is the applicant entitled to \$159.95 (\$1,259.85 less \$1,100.00 approved) for physiotherapy services, proposed by One Life Wellness in a treatment plan (“OCF-18”) dated September 6, 2019?
  - iii. Is the applicant entitled to \$1,192.88 for physiotherapy services, proposed by One Life Wellness in an OCF-18 dated January 14, 2020?
  - iv. Is the applicant entitled to \$2,179.22 for a psychological assessment, proposed by Dr. Keeling, in an OCF-18 dated February 4, 2020?
  - v. Is the applicant entitled to \$2,486.00 for a chronic pain assessment proposed by Dr. Wilderman, in an OCF-18 dated January 12, 2021?
  - vi. Is the respondent liable to pay an award under section 10 of Ontario Regulation 664 because it unreasonably withheld or delayed payments to the applicant?
  - vii. Is the applicant entitled to interest on any overdue payment of benefits?

## RESULT

- [3] The application is dismissed, and I find that:
- i. The applicant’s injuries are predominately minor and therefore subject to the treatment within the \$3,500.00 limit of the MIG;

- ii. The treatment plans in dispute are not payable; and
- iii. The applicant is not entitled to interest or an award.

## **ANALYSIS**

- [4] The applicant was involved in a motor vehicle accident on May 29, 2019. The airbags to her vehicle did not deploy. She did not lose consciousness, police and paramedics did not attend the scene, and the applicant did not attend the hospital.

### ***Applicability of the Minor Injury Guideline (“MIG”)***

- [5] 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 associated sequelae to such an injury.”
- [6] Section 18(1) of the *Schedule* provides that medical and rehabilitation benefits are limited to \$3,500.00 if the applicant sustains an impairment that is predominantly a minor injury in accordance with the MIG.
- [7] Section 18(2) of the *Schedule* states that an applicant may receive payment for treatment beyond the \$3,500.00 limit if she can demonstrate that a pre-existing condition, documented by a medical practitioner, prevents maximal medical recovery of the minor injury sustained in the accident if they were kept in the MIG, or if she provides evidence of an injury sustained in the accident that is not included in the minor injury definition in s.3(1). The Tribunal has also determined that chronic pain with functional impairment or a psychological condition may warrant removal from the MIG.
- [8] It is the applicant’s burden to establish entitlement to coverage beyond the \$3,500.00 cap on a balance of probabilities.

### ***Did the applicant suffer physical injuries that warrant removal from the MIG?***

- [9] The clinical notes and records (“CNRs”) of Dr. Baburam Earampamoorthy, family practitioner, reveal that the applicant visited Dr. Earampamoorthy six times since the accident. Dr. Earampamoorthy diagnosed the applicant with whiplash injury, cervical strain and myofascial back pain. Dr. Earampamoorthy did not order any imaging. The applicant was advised to attend massage therapy and physiotherapy and was prescribed a muscle relaxant. The applicant has not

produced any other medical evidence to demonstrate that her physical injuries are more than minor injuries and would warrant removal from the MIG. For these reasons, I find that the applicant has not met her onus in proving on a balance of probabilities that her physical injuries do not fit within the minor injury definition and therefore she remains subject to the MIG.

***Do the applicant's pre-existing injuries warrant removal from the MIG?***

- [10] The applicant began to experience alopecia in March 2019 and listed it as a pre-existing medical condition in her submissions. On March 12, 2019, the applicant saw Dr. Aaron King, dermatologist, who diagnosed her with alopecia areata, and began to administer triamcinolone injections of 2.5 mg/ml. The injection type and dosage remained consistent post-accident. The applicant relies on the September 20, 2022, report of Dr. Earampamoorthy that provides the applicant self-reported more hair loss following her motor vehicle accident. While I accept the alopecia areata diagnosis, I am not persuaded that the condition would warrant removal from the MIG, as the applicant did not provide compelling evidence that these pre-existing conditions would prevent her maximal medical recovery from her accident-related minor injuries if she is subject to the MIG, as required by s. 18(2).

***Do the applicant's psychological injuries warrant removal from the MIG?***

- [11] An applicant may be removed from the MIG if they sustain a psychological impairment as a result of the accident, as psychological impairments are not captured within the definition of minor injuries under section 3(1) of the *Schedule*.
- [12] In order to be removed from the MIG due to psychological impairments, the applicant must show that she has an actual psychological impairment and not just post-accident sequelae. A psychological diagnosis requires the progression of ongoing, post-accident symptomatology, or clinically significant psychological impairments.
- [13] I find that the applicant has not provided me with persuasive evidence to demonstrate that she has psychological impairments that justify her removal from the MIG.
- [14] The applicant relies on the psychological assessment dated February 13, 2020 of Mr. Sathis Kumar Srinivasan, RP, under the supervision of Dr. Kenneth Keeling, psychologist. The applicant expressed suffering from sadness, depressed moods, anxiety, irritability, and hopelessness. The applicant was diagnosed with suffering from an adjustment-like disorder with prolonged duration of more than

six months and a somatic symptom disorder with predominant pain, persistent, moderate. Mr. Srinivasan reported that her psychological health is due to a combination of her pre-existing childhood trauma, the length of time of her persistent post-trauma pain, and psychological dysfunction. Mr. Srinivasan recommended multiple sessions of cognitive behavioural therapy. The applicant was unable to afford the treatment prescribed.

- [15] The applicant also relies on the medical report, dated September 20, 2022 of Dr. Earampamoorthy that states the applicant has developed persisting anxiety symptoms. Dr. Earampamoorthy opined that she required cognitive behavioral therapy for her anxiety symptoms. The applicant submits this is supported by the CNR of March 4, 2020, when the applicant reported poor sleep and anxiety, and Dr. Earampamoorthy noted mild depression and anxiety. I note that there was no reference to the accident in the CNR, and the applicant refused any medication.
- [16] The respondent relies on the section 44 Insurer Examinations (“IE”) of Dr. Mile Stefanac, general practitioner, Dr. Mile Stefanac, general practitioner, and Dr. Ricardo Harris, psychologist. The November 4, 2019, report of Dr. Stefanac, provided that the applicant expressed no issues with depression, anxiety or post-traumatic stress disorder. During the March 22, 2021, report of Dr. Stefanac, the applicant reported no pre- or post-accident issues with depression, anxiety or PTSD. The April 18, 2022, report of Dr. Harris determined that the applicant did not qualify for any psychiatric diagnosis. The report recites the applicant advising Dr. Harris that she experienced an 85% improvement since the accident, and that she had some anxiety while driving, but denied social isolation, or low self esteem.
- [17] The respondent took issue with the September 20, 2022, medical report of Dr. Earampamoorthy, finding it to be a stark contrast to the CNRs. The respondent submits that the medical report was directed to and authored at the request of the applicant’s counsel. Furthermore, Dr. Earampamoorthy’s CNR dated November 10, 2019, records that the applicant’s lawyer requested psychological physiological counselling for her, and that the applicant “reports she doesn’t know why lawyer office is requesting for referral.” The CNRs reveal that Dr. Earampamoorthy did not refer the applicant for a psychological assessment, did not diagnose the applicant or make mention of any accident-related psychological issues.
- [18] I prefer the findings of Dr. Stefanac, Dr. Harris and the CNRs of Dr. Earampamoorthy. I find that these medical opinions are independent and result in consistent findings that the applicant does not have a psychological

impairment as a result of the accident. I find that the September 20, 2022, medical report of Dr. Earampamoorthy is at odds with the CNRs from the applicant's appointment. Furthermore, I am persuaded that the references to psychological impairments were prompted by the applicant's legal counsel, not medical professionals, and as such underscores that the applicant did not sustain a psychological impairment from the accident. Dr. Earampamoorthy's CNRs reference that the applicant is unsure why psychological treatment is being requested by her lawyer. Lastly, I prefer the diagnosis of Dr. Harris over those of Mr. Srinivasan and of Dr. Keeling, as Dr. Harris reviewed fulsome medical documentation, while Mr. Srinivasan did not review the applicant's medical records for his report, yielding inconsistent findings from the bulk of the medical evidence.

- [19] For the above reasons, the applicant has not met her onus to prove on a balance of probabilities that she has psychological impairments as a result of the accident and that warrant treatment beyond the MIG.

***Does the applicant have chronic pain that warrants removal from the MIG?***

- [20] For chronic pain to take someone out of the MIG, there must be an effect on their functionality. The applicant must provide evidence that her accident-related injuries and/or pain have had a detrimental impact on her functionality.
- [21] I find that the applicant has not provided me with persuasive evidence to demonstrate that she has chronic pain that justifies her removal from the MIG.
- [22] The applicant relies on the September 20, 2022, medical report of Dr. Earampamoorthy that provides she suffers from persistent pain to her neck, and back as a result of the accident. Further, she relies on the s. 25 chronic pain medical assessment of Dr. Igor Wilderman, family physician, dated April 16, 2021, who diagnosed the applicant with chronic pain syndrome.
- [23] The respondent submits that the applicant sustained uncomplicated soft-tissue injuries to which she has obtained a full range of motion, and that she failed to establish that she meets the criteria under the *American Medical Association Guides* ("AMA Guides"). The *AMA Guides* are not binding on the Tribunal and are not incorporated into the *Schedule*. However, several of the Tribunal's decisions have found the *AMA Guides* to be a useful interpretative tool for evaluating chronic pain claims. The *AMA Guides* provide that a person can be diagnosed with chronic pain when she has three or more of the six factors. I agree with the respondent that the applicant did not provide evidence to demonstrate: dependency on prescription medication, excessive dependence on

health care providers, family or spouse since the accident (visited Dr. Earampamoorthy six times since the accident), secondary physical conditioning due to disuse or fear-avoidance as the applicant has returned to employment and engages in self-care and housekeeping tasks, social withdrawal, a failure to restore to pre-injury function, or the development of psychosocial sequelae arising from the accident, as she was never referred for psychological treatment.

- [24] I find that the CNRs of Dr. Earampamoorthy provide that the applicant suffered from uncomplicated soft tissue injuries and that the applicant refused any referral to a pain clinic by her family physician. This was supported by the October 2, 2019, functional abilities IE of Mr. Timothy Hartag, kinesiologist, where the applicant reported a 75% recovery from her injuries to date and was able to do laundry, light cleaning, drive a vehicle and was independent in her personal care. Furthermore, this evidence is consistent with the March 22, 2021, IE of Dr. Dharamshi, who diagnosed the applicant with soft-tissue injuries and noted no physical impairments. Dr. Dharamshi opined that the applicant could be treated within the MIG.
- [25] I acknowledge that Dr. Wilderman and the September 22, 2022, medical report of Dr. Earampamoorthy diagnose the applicant with chronic pain; however, I am persuaded by the consistent diagnoses of the applicant since the accident that she sustained soft-tissue injuries. On multiple occasions, Dr. Earampamoorthy diagnosed the applicant with strains, sprains and soft-tissue injuries. I prefer the evidence of Dr. Dharamshi over Dr. Wilderman, as Dr. Dharamshi's diagnosis is supported by the review of the family physician's records and full OHIP summary, Dr. Wilderman makes no reference to medical records reviewed and I am left wondering if he reviewed any as part of his diagnosis.
- [26] I find that the applicant has not met her onus to prove she has chronic pain with functional impairment that would remove her from the MIG. In addition, I find that her ongoing physical pain has not caused functional limitations.

## **THE DISPUTED TREATMENT PLANS**

- [27] The applicant is not entitled to the disputed treatment plans because the plans propose treatment outside of the MIG limit. As a result, an analysis on whether the treatment plans are reasonable and necessary is not required.

## **INTEREST AND AWARD**

- [28] Given that no benefits are overdue and no benefits were unreasonably withheld or delayed, the applicant is not entitled to interest or an award.

## ORDER

[29] The application is dismissed, and I find that:

- i. The applicant's injuries are predominately minor and therefore subject to the treatment within the \$3,500.00 limit of the MIG;
- ii. The treatment plans in dispute are not payable; and
- iii. The applicant is not entitled to interest or an award.

**Released:** October 11, 2023



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**Monica Ciriello**  
Vice-Chair