

**CITATION:** Biniaz-Sarabi v. Gore Mutual Insurance Company, 2023 ONSC 5379  
**DIVISIONAL COURT FILE NO.:** 23-1358  
Oshawa  
**DATE:** 20230925

**SUPERIOR COURT OF JUSTICE – ONTARIO  
DIVISIONAL COURT**

**RE:** AYNOUSH BINIAZ-SARABI, Appellant  
**AND:** GORE MUTUAL INSURANCE COMPANY, Respondent  
**BEFORE:** D.L. Corbett, McGee and Cullin JJ.  
**COUNSEL:** *Ms. Biniaz-Sarabi*, self-represented  
*Peter Durant*, for Gore Mutual Insurance Company  
**HEARD:** at Oshawa by ZOOM, September 19, 2023

**ENDORSEMENT**

**Cullin, J.**

[1] This is an appeal of the decision of Adjudicator Terry Prowse of the Licence Appeal Tribunal (“the LAT”): *Sarabi v Gore Mutual Insurance Company*, 2023 CanLII 4459, 2023 ONLAT 20-006023/AABS-R (ON LAT).

[2] The Appellant, Aynoush Biniaz-Sarabi (“the Appellant”), was involved in a motor vehicle accident on October 24, 2017. Following the accident, she applied for accident benefits to her motor vehicle insurer, Gore Mutual Insurance Company (“the Respondent”), pursuant to the *Statutory Accident Benefits Schedule – Effective September 1, 2010*, O. Reg. 34/10 (“the SABS”).

[3] After initially paying benefits to the Appellant, eventually the Respondent made decisions to terminate the Appellant’s ongoing benefits and to deny her requests for additional funding. She applied to the LAT. After a five-day hearing, Adjudicator Prowse found that she was not entitled to the benefits in dispute.

[4] The Appellant asks this Court to set aside the decision of Adjudicator Prowse and to order the reinstatement of her benefits. She also requests awards for damages and interest. For the reasons that follow, I would deny the appeal.

**Jurisdiction and Standard of Review**

[5] The LAT’s enabling statute, the *License Appeal Tribunal Act*, 1999, S.O. 1999, c. 12, Sch. G, provides at s. 11(6) that an appeal to the Divisional Court relating to the *Insurance Act* may proceed on a question of law only. The standard of review in this statutory appeal respecting a

question of law is correctness: *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 at paras. 17, 37; *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235, at para. 8.

### **Decision Under Appeal**

[6] The decision under appeal was rendered by Adjudicator Prowse on January 23, 2023. It considered the Appellant's eligibility for and entitlement to Attendant Care Benefits, Income Replacement Benefits, and Medical Benefits. With respect to the Medical Benefits, the Adjudicator considered thirteen denied Treatment Plans for rehabilitation services as well as independent medical examinations and assessments.

[7] The decision also considered the Appellant's entitlement to an award under s. 10 of Ontario Regulation 664 due to unreasonably withheld or delayed payments, interest on overdue payment of benefits, and costs.

[8] Adjudicator Prowse noted that the benefits had been denied predominantly due to the results of various section 44 insurer's examinations; some benefits were denied on the basis that they were previously approved, or that similar services had already been provided. He confirmed that the Appellant bore the onus of proving, on a balance of probabilities, that any claimed benefits were reasonable and necessary.

[9] After hearing the evidence and submissions it was determined that the Appellant was not entitled to any of the disputed or additional benefits claimed, or to any special awards, interest, or costs. The Adjudicator exercised his discretion not to award costs against the Appellant.

[10] The Appellant requested a reconsideration of the Adjudicator's decision, which was denied on June 20, 2023: *Biniaz-Sarabi v Gore Mutual Insurance Company*, 2023 CanLII 55985 (ON LAT).

### **Positions of the Parties**

[11] The Court received oral submissions from both parties in addition to considering the written submissions in their facta.

[12] As was the case in the hearing before Adjudicator Prowse, the Appellant's submissions focused on her dissatisfaction with the manner in which the Respondent has managed her request for a catastrophic impairment designation and related benefits. She made submissions about the Respondent's failure to provide full disclosure of the assessments that it had conducted. She advised the Court that the Respondent has denied her submitted Treatment Plans notwithstanding confirmation from its own assessors that she has sustained a traumatic brain injury and that her memory and concentration are impaired.

[13] The Respondent submitted that the Appellant had failed to identify a question of law that would warrant intervention of this Court on appeal. It argued that the Adjudicator's decision disclosed no errors of law, and that the Appellant was improperly attempting to re-litigate the issues in dispute.

[14] With respect to the submissions made by the Appellant, the Respondent advised that it had, in fact, provided full disclosure to the Appellant. It noted that the Appellant is currently eligible for standard benefits under her insurance policy; it argued that it had responded to all requests for benefits submitted by the Appellant in accordance with its obligations under the SABS.

### **Analysis**

[15] The SABS system can be challenging to navigate, particularly for self-represented litigants who are struggling from the impact of their injuries and related impairments. It is apparent from reviewing the reasons of Adjudicator Prowse that he was alive to these challenges and made every reasonable effort to consider them during the hearing and in rendering his decision.

[16] This matter was the subject of multiple case conferences and pre-hearing motions prior to the LAT hearing with the objectives of assisting the Appellant to understand and navigate the hearing process, confirming the exchange of full disclosure, narrowing the issues in dispute, and ensuring a full and fair hearing.

[17] In particular, the Adjudicator made it clear to the Appellant that the issue of catastrophic impairment was not before the LAT. In this court, she took issue with this finding. She argued that, since she is seeking benefits on the basis of catastrophic impairment, and the insurer has failed to respond adequately to her claims for those benefits, that issue was before the LAT. As was explained to her by the Adjudicator, that is not how the process works. It is for the Appellant to apply for a determination of catastrophic impairment, and it is her onus to show that she is eligible for that designation.

[18] The Appellant argued that she could not make this claim effectively because of the costs of assessments to support it. We see no merit to this position. The evidentiary basis for raising an issue of catastrophic impairment can be discharged by a physician's opinion. In many cases this is supplied by an opinion from a treating physician; it is only where the claim is not straightforward that more elaborate evidence may be required. An insurer is not called upon to fund assessments and respond where an applicant has not even initiated a claim or provided some evidentiary basis in support of that claim that would warrant further inquiry. None of that has happened in this case.

[19] The Appellant does not raise an arguable case by asserting a claim for benefits that are not available to her absent a catastrophic impairment designation.

[20] In reviewing the decision of Adjudicator Prowse it is apparent that he correctly identified and interpreted the pertinent sections of the SABS, fairly considered all relevant evidence that addressed the issues properly before him, and appropriately applied the required legal burdens and tests: *Yatar v. TD Insurance Meloche Monnex*, 2021 ONSC 2507 (CanLII), at para 28. The Adjudicator made no errors of law in arriving at his decision and, indeed, the Appellant identified no errors of law in her submissions before this Court.

[21] It is clear that the Appellant disagrees with the Respondent's position with respect to her requests for catastrophic designation assessments and catastrophic-level benefits. Exceptional efforts were made at the LAT to guide the Appellant through the SABS application process. The burden is now hers to follow that guidance; unless she properly engages the SABS process for

seeking a catastrophic impairment designation, entitlement will be assessed on the basis that she is not catastrophically impaired.

**Disposition**

[22] For these reasons, the appeal is dismissed.

[23] The Respondent requested costs in the amount of \$3,500.00. Having regard to the history of these proceedings, this request is eminently reasonable, and costs are therefore ordered to be paid by the Appellant to the Respondent in the amount of \$3,500.00.



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Cullin J.



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D.L. Corbett J.

I agree:



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McGee J.

**Date:** September 25, 2023