



Citation: Dankyi v. TD General Insurance Company, 2023 ONLAT 21-011613/AABS

Licence Appeal Tribunal File Number: 21-011613/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:

Daniel Dankyi

Applicant

and

TD General Insurance Company

Respondent

DECISION

ADJUDICATOR: Kate Grieves

APPEARANCES:

For the Applicant: Maka Metreveli, Paralegal

For the Respondent: Yann Grand-Clement, Counsel

HEARD: By Way of Written Submissions

OVERVIEW

- [1] Daniel Dankyi (the “applicant”) was involved in an automobile accident on September 24, 2019 and sought benefits from TD General Insurance Company (the “respondent”) pursuant to the *Statutory Accident Benefits Schedule - Effective September 1, 2010 (including amendments effective June 1, 2016)* (the “Schedule”).
- [2] The respondent characterized the applicant’s injuries as falling within the Minor Injury Guidelines (the “MIG”) as outlined in s. 3 of the *Schedule* and denied funding for the treatment and assessment plans in dispute. The applicant disagrees and applied to the Licence Appeal Tribunal - Automobile Accident Benefits Service (the “Tribunal”) for resolution of the dispute.

ISSUES

- [3] The issues to be decided in the hearing are:
 - 1. Are the applicant’s injuries predominantly a minor injury as defined in section 3 of the *Schedule* and therefore subject to the MIG and the \$3,500.00 funding limit for minor injuries?
 - 2. Is the applicant entitled to a medical benefit in the amount of \$3,257.16 for chiropractic treatment proposed by Malton Spine Clinic & Chronic Pain Centre in a treatment plan/OCF-18 dated January 17, 2020?
 - 3. Is the applicant entitled to a medical benefit in the amount of \$3,861.85 for chiropractic treatment proposed by Malton Spine Clinic & Chronic Pain Centre in a treatment plan/OCF-18 dated November 5, 2021?
 - 4. Is the applicant entitled to interest on any overdue payment of benefits?

RESULT

- [4] The applicant sustained a minor injury as a result of the accident. He is subject to the MIG and the \$3,500.00 funding limit for a minor injury.
- [5] The applicant is not entitled to the treatment and assessment plans in dispute, nor interest, because they propose goods and services that fall outside the MIG and the \$3,500.00 funding limit for a minor injury. No interest is payable.

PROCEDURAL ISSUES

- [6] The case conference report also identified non-earner benefits as an issue in dispute; however, the applicant made no submissions on this issue, therefore the claim is dismissed.

BACKGROUND

- [7] The applicant saw his family doctor, Dr. Ajisafe, two days after the accident, and was diagnosed with whiplash and soft tissue injury to the back. He recommended the standard protocol of rest, ice, compression, and elevation, and to follow up in two weeks.

ANALYSIS

Minor Injury Guideline (“MIG”)

- [8] 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 s. 18 of the *Schedule*, injuries that are defined as minor are subject to a \$3,500.00 funding limit on treatment.
- [9] The onus is on the applicant to demonstrate that he sustained an injury that is not included in the minor injury definition outlined in section 3 of the *Schedule*.
- [10] The applicant submits that he had pre-existing conditions and sustained physical injuries including a rotator cuff injury and that fall outside the definition of a minor injury in s. 3 of the *Schedule*.
- [11] For the following reasons, I find that the applicant sustained a minor injury as a result of the accident.

Pre-Existing Condition

- [12] The presence of pre-existing conditions alone is not sufficient to remove the applicant from the MIG. The applicant bears the onus and must adduce evidence to demonstrate not only that the pre-existing condition exists but also that it prevents him from achieving maximal recovery within the MIG. The applicant did not point me to any evidence that demonstrates this.

- [13] The applicant has directed me to no evidence which indicates that his pre-existing conditions preclude his recovery from his accident-related injuries. I agree the family doctor's notes document various conditions in the three years prior to the accident, including rib fracture and lefts shoulder injury, back ache, generalized muscle pain, congestive heart failure, hypertension, high cholesterol, tingling feet, and right leg pain following a fall. However, this satisfies only half of the test. The second half of the test is that there must be compelling evidence that the pre-existing condition would preclude recovery from the accident-related minor injury if subject to the MIG.
- [14] The applicant participated in an insurer's examination with Dr. Fung, general practitioner, on March 17, 2022. Dr. Fung noted that while the applicant denied any prior musculoskeletal complaints, Dr. Fung reviewed and considered the available file documentation which documented his various pre-existing conditions. Dr. Fung opined that none would prevent him from achieving maximum recovery from his minor injury if treated with the MIG framework. Dr. Fung provided an addendum report, dated November 15, 2022 after reviewing additional medical documentation, and concluded that his opinion was unchanged.
- [15] Dr. Ajisafe's clinical notes and records fail to indicate that any of the applicant's pre-existing conditions would preclude his recovery following the accident.
- [16] Accordingly, I find that the applicant has not demonstrated that he suffers from a pre-existing condition which precludes his recovery if subject to the MIG.

Physical Injuries

- [17] The applicant submits that he sustained injuries to his back and neck and a rotator cuff injury that removes him from the MIG.
- [18] For the reasons that follow, I find that the applicant sustained minor injuries as a result of the accident.
- [19] The applicant's left rotator cuff injury pre-dated the accident. In December 2016 imaging revealed a pre-existing full thickness tear. At the initial post-accident visit with Dr. Ajisafe, the applicant reported pain in his neck, lumbar spine, left lower arm and right knee. There were no complaints of left shoulder pain made to the family doctor around the time of the accident. He was diagnosed with whiplash and soft tissue injuries to his low back by Dr. Ajisafe, which fall squarely within the definition of a minor injury. Following the initial post-accident visit, the applicant didn't see Dr. Ajisafe until December 15, 2020 for unrelated issues. The

applicant didn't report left shoulder pain to Dr. Ajisafe until February 2021, but that it had only been for the previous five weeks, suggesting it was not accident related. At that point, the accident had occurred approximately 17 months prior. There was no mention of the MVA or any accident-related complaints after the initial visit in September 2019. No doctor has diagnosed the applicant with a rotator cuff injury as a result of the accident.

- [20] To Dr. Fung, the applicant described pain in his right trapezius area and low back. He did not describe left shoulder pain. Dr. Fung examined the applicant and diagnosed soft tissue injuries to the right trapezius and low back, consistent with the diagnosis of the family doctor.
- [21] The applicant submits that the records from Malton Spine Clinic in support of his position that he suffered a rotator cuff injury as a result of the accident. However the applicant didn't specify where in the records such a diagnosis was made, and having reviewed the records I was unable to locate such a diagnosis.
- [22] The bulk of the medical evidence indicates that the applicant sustained soft tissue injuries to his neck and back as a result of the accident, which are captured by the minor injury definition. I am not satisfied that the applicant has established on a balance of probabilities that he sustained physical injuries as a result of the accident that would warrant removal from the MIG.

Treatment Plans

- [23] The treatment and assessment plans in dispute propose goods and services that fall outside the MIG and the \$3,500.00 funding limit for a minor injury. The applicant is not entitled to these benefits because he sustained a minor injury and is limited to benefits within the MIG and the \$3,500.00 funding limit.

Interest

- [24] Interest applies on the payment of any overdue benefits pursuant to s. 51 of the *Schedule*. Having found no benefits payable, it follows that no interest is payable.

CONCLUSION AND ORDER

- [25] 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 for a minor injury.
- [26] The applicant is not entitled to the treatment and assessment plans in dispute, nor interest.

[27] The application is dismissed.

Released: October 16, 2023

A handwritten signature in cursive script, appearing to read "K. Grieves", positioned above a horizontal line.

Kate Grieves
Adjudicator