Tribunals Ontario
Licence Appeal Tribunal

Tribunaux décisionnels Ontario
Tribunal d'appel en matière de permis

Citation: Judge v. The Personal, 2023 ONLAT 21-012954/AABS

Licence Appeal Tribunal File Number: 21-012954/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:

Habib Judge

Applicant

and

The Personal

Respondent

DECISION

ADJUDICATOR: **Bonnie Oakes Charron**

APPEARANCES:

For the Applicant: Doina Mariuescu, Paralegal

For the Respondent: Sonya Katrycz, Counsel

HEARD: **In Writing**

OVERVIEW

[1] Habib Judge, the applicant, was involved in an automobile accident on February 19, 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, The Personal, and applied to the Licence Appeal Tribunal - Automobile Accident Benefits Service (the "Tribunal") for resolution of the dispute.

[2] According to submissions, the applicant was involved in two other motor vehicle accidents apart from the subject accident. A second accident occurred on July 14, 2019, and a third on July 21, 2020.

ISSUES

[3] The issues in dispute are:

i. Are the applicant's injuries predominantly minor as defined in s. 3 of the *Schedule* and therefore subject to treatment within the $3,500.00 limit and in the Minor Injury Guideline ("MIG")?

ii. Is the applicant entitled to $3,805.76 for chiropractic services, proposed by Mediwise Health Care Centre in a treatment plan/OCF-18 ("plan") dated June 4, 2019?

iii. Is the applicant entitled to interest on any overdue payment of benefits?

RESULT

[4] I find that the applicant's injuries fall within the definition of "minor" as defined in the *Schedule*.

[5] The applicant is not entitled to the treatment plan or interest.

PROCEDURAL ISSUE

Referred questions from Motion hearing of May 4, 2023

[6] On April 11, 2023, the respondent filed a Notice of Motion requesting that the applicant be barred from relying on any documents that were not served by the production exchange deadline in accordance with the Case Conference Report and Order of September 16, 2022.

[7] At the Motion hearing, the respondent requested:

i. that the Tribunal make an order barring the applicant from relying on any documents that were not served by the production exchange deadline; and

ii. that the Tribunal draw a negative inference from the applicant's failure to disclose relevant documents.

The respondent clarified that it did not oppose the inclusion of recently received clinical notes and records ("CNRs") from the applicant's family doctor, which were in the applicant's initial submissions (for written hearing scheduled for May 19, 2023).

[8] The applicant disagreed with the respondent and submitted that there would be no additional documents.

[9] In the Motion Order, the adjudicator declined to exclude any evidence, referring both questions to the hearing adjudicator as follows:

1. to determine weight, should there be any additional records; and

2. to draw a negative inference, from the applicant's failure to disclose relevant documents.

[10] Given that the applicant did not file any additional records, I dismiss this aspect of the respondent's motion request as moot.

[11] With regard to the second question, I decline to draw a negative inference because there is too little information before me to make an informed decision. Neither party addressed the issue in written submissions for this written hearing. The Motion Order itself is brief and provides no background, and I have few details about what documents were or were not requested and exchanged, what specific records were accepted by the respondent, nor the applicant's reasons for any non-compliance with the Tribunal's document production order.

ANALYSIS

The applicant has not demonstrated that his removal from the MIG is warranted.

[12] I find that the applicant's injuries from the accident meet the definition of "minor" under s. 3 of the *Schedule*.

[13] Section 18(1) of the *Schedule* provides that medical and rehabilitation benefits are limited to $3,500.00 if the insured person sustains impairments that are predominantly a minor injury. 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."

[14] An insured person may be removed from the MIG if they can establish that their accident-related injuries fall outside of the MIG or, under s. 18(2), that they have a documented pre-existing injury or condition combined with compelling medical evidence stating that the condition precludes recovery if they are kept within the confines of the MIG. The Tribunal has also determined that chronic pain with functional impairment or a psychological condition may warrant removal from the MIG. In all cases, the burden of proof lies with the applicant.

[15] The applicant submits that his injuries from the accident are not minor, and that he suffers from chronic pain and psychological symptoms that warrant removal from the funding limits of the MIG. He relies on records from Credit Valley Hospital the day of the accident and CNRs from his visits to Apple Tree Medical Centre to consult his general practitioner ("GP"). The applicant's GP referred him to Mediwise Healthcare Centre where he received chiropractic, physiotherapy, and massage therapy treatments in the months following the accident.

[16] A chiropractor at Mediwise provided an OCF-3 for a short-term disability period, and progress notes from the facility indicate that he experienced some improvement from his treatment sessions. The Mediwise healthcare team recommended continued physical and psychological treatment to facilitate his recovery from the accident. The applicant submits that he attended sessions at Mediwise consistently, incurring the expense of the treatment.

[17] The respondent submits that the applicant has failed to provide compelling medical evidence that his injuries warrant removal from the MIG. It points to the hospital records and x-rays the day of the accident which found only muscle strain and no serious injuries. It points to the recommendations of the applicant's doctor shortly after the accident which were consistent with soft tissue injuries – rest, ice, physiotherapy, and massage. The respondent funded a first round of treatment based on the doctor's recommendation. However, a second treatment plan was denied as there was no recommendation from the applicant's GP for further treatment.

[18] The respondent also challenges the findings of the OCF-24 (minor injury treatment discharge report) prepared by a chiropractor at Mediwise, noting that

there are few details provided about the applicant’s condition that warrant removal from the MIG. Further, the OCF-24 contradicts the information on the OCF-3 prepared by a different chiropractor at the facility, about whether the applicant was working or not at the time of the accident. There is no explanation or other evidence provided by the applicant to account for the discrepancy. Due to the lack of detail as well as contradictory statements, I give these documents less weight.

[19] I agree with the respondent. The applicant’s documented injuries are muscle strain and soft tissue injuries that fit within the definition of “minor”. The diagnosis from the initial hospital visit is “muscle strain”, and x-rays taken show no serious injuries. This diagnosis is consistent with the findings of the applicant’s GP who made recommendations appropriate for soft tissue injuries, including a referral for a short-term treatment plan at Mediwise. In addition, the OCF-24 prepared by a chiropractor at Mediwise is not persuasive. It discharged the applicant from the MIG but lacked detailed reasons for doing so. Moreover, the document included contradictory information about the applicant’s work status from the information recorded in an OCF-3 from the same facility.

[20] The applicant remains subject to the $3,500.00 MIG funding limit.

The applicant has not demonstrated that they developed chronic pain with functional impairment.

[21] I find that the applicant’s injuries from the accident do not rise to the level of chronic pain with functional impairment.

[22] The applicant submits that his ongoing symptoms included chronic back pain, headaches, joint pain, lack of sleep, decreased appetite and loss of energy. Despite this claim, the applicant stopped receiving physical treatment at Mediwise sometime in July 2019, and did not visit his doctor again until approximately one year after the third accident on July 21, 2020. There were no family doctor visits in 2021, nor 2022, except for one visit on an unrelated matter.

[23] The respondent submits that if the applicant experienced ongoing symptoms, they do not rise to the threshold for removal from the MIG. I agree with the respondent.

[24] The respondent cites *17-007825 v Aviva Insurance Canada, 2018 CanLII 98282 (ON LAT)*, where the Tribunal found that the six criteria for making a chronic pain diagnosis, found in the American Medical Association (AMA) Guides, can provide

a useful framework for understanding an individual's functional capacity. Those six criteria are as follows:

i. Use of prescription drugs beyond the recommended duration and/or abuse of or dependence on prescription drugs or other circumstances;

ii. Excessive dependence on health care providers spouse or family;

iii. Secondary physical deconditioning due to disease and or fear-avoidance of physical activity due to pain;

iv. Withdrawal from social milieu, including work, recreation, or other social contacts;

v. 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

vi. Development of psychosocial sequelae after the initial incident, including anxiety, fear-avoidance, depression or nonorganic illness behaviors.

[25] The respondent points out, and I agree, that the applicant has not submitted any evidence that they meet any of the six criteria that could lead to a diagnosis of chronic pain. Further, the applicant had cited *18-008335 v Unifund Assurance Company, 2019 CanLII 101709 (ON LAT)* on the point that not providing any medical evidence from a family physician does not diminish the severity of an applicant's impairments. The respondent refutes this reference, because in that case, the applicant reported her ongoing pain to a second treatment provider, although not to her family doctor. In the current case, I note that there are no ongoing complaints to either the family doctor or another healthcare provider.

[26] Although the applicant submits that he has ongoing symptoms that include chronic pain, I find that he has not established that these symptoms rise to the level of chronic pain with a functional impairment. There are no ongoing or consistent reports of pain to more than one treatment provider/facility, there is no referral by his family doctor to a chronic pain specialist, and no diagnosis of chronic pain syndrome by any healthcare professional.

[27] The applicant remains in the MIG.

The applicant has not demonstrated that they suffer from a psychological impairment.

[28] I find that the applicant’s psychological symptoms following the accident do not rise to the level of a psychological impairment as a result of the accident.

[29] The applicant submits that while attending Mediwise Healthcare Centre between February 26 and July 16, 2019, he was referred for a psychological assessment and treatment due to symptoms of anxiety, irritability, low mood, sleep problems, and fear of another accident. An evaluation was completed on March 12, 2019, with a provisional diagnosis of ‘Adjustment Disorder with mixed anxiety and depression’.

[30] The respondent submits that the applicant was not diagnosed with any psychological symptoms by his family doctor and the diagnosis at Mediwise was only ‘provisional’. Further, the respondent notes that the applicant has failed to provide any substantive evidence that his psychological symptoms have resulted in a functional impairment. Notably, while a full psychological assessment and treatment was recommended, there is no OCF-18 submitted for psychological treatment and no evidence that the applicant incurred any associated costs.

[31] The respondent points to *Y.W.C. vs. Allstate Canada*, *2020 CanLII 27386*, where the Tribunal found that merely suffering from psychological symptoms does not alone take an applicant out of the MIG, but instead there must be evidence of ongoing and significant psychological distress. This decision is a persuasive one although I am not bound by it.

[32] Although the applicant obtained a provisional diagnosis of “Adjustment Disorder” by the professionals at Mediwise, I find that he has not provided sufficient evidence to establish that he suffered a psychological impairment because of the accident. The applicant’s GP did not record any ongoing or significant psychological symptoms, diagnose any psychological issues, or refer the applicant for any psychological treatment. Further, Mediwise provided a provisional diagnosis, but there was no subsequent OCF-18 submitted with a proposed treatment plan.

[33] The applicant remains in the MIG.

The applicant is not entitled to the treatment plan.

[34] The applicant is not entitled to the treatment plan because it proposes treatment outside of the MIG and I have determined that his injuries are properly treated within the MIG.

The applicant is not entitled to interest.

[35] Interest applies on the payment of any overdue benefits pursuant to s. 51 of the *Schedule.*

[36] Given that the applicant is not entitled to the treatment plan, it follows that he is not entitled to interest.

ORDER

[37] The applicant's injuries are predominantly minor as defined in s. 3 of the *Schedule*. He remains in the MIG and is therefore subject to the $3,500.00 funding limit on treatment.

[38] The applicant is not entitled to the treatment plan because it proposes treatment above the MIG funding limit.

[39] The applicant is not entitled to interest.

[40] The application is dismissed.

Released: October 17, 2023

Bonnie Oakes Charron
Adjudicator