



Citation: Pierre-Webster v. Economical Insurance Company, 2023 ONLAT 20-014688/AABS

Licence Appeal Tribunal File Number: 20-014688/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:

Myles Pierre-Webster

Applicant

and

Economical Insurance Company

Respondent

DECISION

ADJUDICATOR: Lisa Yong

APPEARANCES:

For the Applicant: Elena Pelz, Counsel

For the Respondent: Paul Irish, Counsel

HEARD: In Writing

OVERVIEW

- [1] Myles Pierre-Webster, the applicant, was involved in an automobile accident on November 16, 2018, 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 Company, and applied to the Licence Appeal Tribunal - Automobile Accident Benefits Service (the “Tribunal”) for resolution of the dispute.

ISSUES

- [2] 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?
 - ii. Is the applicant entitled to \$2,198.80 for a psychological assessment, proposed by Imperial Medical Assessment in a treatment plan/OCF-18 (“plan”) which was denied on May 27, 2019?
 - iii. Is the applicant entitled to \$250.00 for the cost of pre-screening interview, proposed by Imperial Medical Assessment in a plan which was denied on May 27, 2019?
 - iv. Is the applicant entitled to \$3,438.13 for psychological services, proposed by Imperial Medical Assessment in a plan which was denied on September 4, 2019?
 - v. Is the applicant entitled to \$1,895.20 for physical therapy services, proposed by Physiocare in a plan which was denied on October 25, 2019?
 - vi. Is the applicant entitled to interest on any overdue payment of benefits?

RESULT

- [3] I find that the applicant has not demonstrated that his accident-related injuries warrant removal from the MIG.
- [4] As the treating limit of the MIG has been exhausted, the applicant is not entitled to the disputed treatment plans and interest is not payable.

[5] The application is dismissed.

ANALYSIS

Minor Injury Guideline (MIG)

[6] 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.”

[7] 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.

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

[8] I find that the applicant sustained predominantly minor injuries as a result of the accident and did not sustain any psychological impairment that would warrant him being taken out of the MIG.

[9] The applicant submits that the physical injuries sustained from the subject accident have continued to impact his work, life and mental health. He submits that he sustained psychological impairments to the extent that he requires treatment beyond the funding limit of the MIG. He relies on the clinical notes and records (CNRs) from his family physician, Dr. Lisbi Eapen, the hospital records from Lakeridge Health, a pre-screening psychological interview dated May 2019, and a psychological assessment report by Ms. Sarvin Sabet Ghadam dated July 30, 2019 to support his claim.

[10] The respondent submits that the applicant did not lead compelling medical evidence to establish his onus of proof that his injuries were not minor in nature or that he sustained psychological impairment that would warrant him to be taken out of the MIG. The respondent relies on the s. 44 Psychological Assessment report dated July 10, 2019 by Dr. Marc Mandel, psychologist, the CNRs of Dr. Eapen and Investigation Reports dated May 4, 2022 and July 26, 2022.

- [11] The hospital records of Rouge Valley Health from the day of the accident were handwritten and largely illegible. The treating doctor only wrote “MVC” as the diagnosis and “Rt shoulder XR CXR” under diagnostic imaging which I take to mean that x-rays of the right shoulder and chest were taken. The applicant self-reported that he had a dislocation two days before the accident. However, no diagnostic imaging results were tendered in evidence. The applicant was discharged on the same day with no prescribed medications nor further recommendations such as to follow up with any specialist or his family doctor. The lack of evidence of immediate objective injury, the lack of a diagnosis, the lack of prescriptions or specialist referrals, and the relatively short hospital visit indicate that the applicant sustained only minor injuries as a result of the accident.
- [12] The applicant did not see his family doctor, Dr. Eapen until April 17, 2019, which was five months after the accident and subsequently on April 25 and May 13, 2019. It is noted that Dr. Eapen’s CNRs during these visits were all handwritten and illegible, and as such, of little assistance to the applicant.
- [13] There was a referral to the Shoulder Centre at Lakeridge Health by Dr. Eapen dated April 17, 2019, for the applicant’s shoulder dislocation issue. There was no indication of the cause of the issue and whether it involved both shoulders or one shoulder, but only that the dislocation was “not put back” at the hospital. Again, the applicant did not lead any evidence such as any diagnostic imaging results of the shoulder or CNRs from the Shoulder Centre at Lakeridge Health.
- [14] The applicant did not see Dr. Eapen again until October 7, 2020, when he reported that he returned to full time work, albeit indoor work due to pain caused by the accident. It is noted that Dr. Eapen did not order further diagnostic scans nor prescribe any medications and did not provide any diagnosis. These actions by Dr. Eapen do not indicate that the applicant’s injuries were anything other than minor. It is also noted that the applicant did not make any psychological or cognitive complaints to Dr. Eapen.
- [15] Dr. Eapen’s CNR dated November 12, 2020, noted the applicant reported lower back and neck pain; “shoulders keep dislocating; weak shoulders”. Again, Dr. Eapen did not provide a diagnosis, refer the applicant to any specialist or prescribed any medications. On February 23, 2021, Dr. Eapen first noted the applicant’s report of insomnia, however she did not provide any diagnosis or prescribed any medications to the applicant.
- [16] On September 1, 2021, Dr. Eapen noted that the applicant reported being involved in another “motor vehicle accident that happened two weeks ago” (“2nd

accident”), and that his neck was sore. Dr. Eapen referred the applicant to physiotherapy for the neck pain. In Dr. Eapen’s following CNRs dated November 2, 3 and 18, 2021, the applicant reported stress due to the 2nd accident and had stopped work for 2-3 weeks due to work related stress and anxiety. The only diagnostic imaging results tendered in evidence were the x-rays of the cervical spine and lumbar spine dated August 14, 2021 (2 years and 8 months after the subject accident). The x-rays revealed that the applicant’s cervical spine prevertebral soft tissues were normal, his lumbar spine alignment was normal, there were no acute fractures and his intervertebral disc spaces in both the cervical spine and lumbar spine were relatively preserved.

- [17] I find Dr. Eapen’s CNRs after September 1, 2021, to be attributable to the 2nd accident and a workplace dispute incident involving another colleague. This includes Dr. Eapen’s assessment to prescribe “SSRIs”, a class of depression medications, to the applicant due stress and anxiety and a referral for the applicant to see a psychiatrist. I agree with the respondent that the doctor listed on Dr. Eapen’s referral was in fact a physiatrist, not psychiatrist. However, the CNRs did not indicate that the applicant subsequently contacted Dr. Eapen to obtain a new referral to a psychiatrist. The applicant did not tender any CNRs from a psychiatrist.
- [18] The applicant submits that the 2nd accident exacerbated his physical and psychological injuries sustained from the subject accident, however there is no compelling and contemporaneous evidence that supports the applicant’s submissions. I note that the applicant bears the onus of proof, on the balance of probabilities, that his injuries sustained from the subject accident warrant removal from the MIG. The applicant’s submissions must be supported by compelling and contemporaneous evidence.
- [19] The applicant relies on the treatment plan dated May 14, 2019, where Dr. Eugene Hewchuk, psychologist, provided a provisional diagnosis of an adjustment disorder in the pre-screening psychological interview. I find that a provisional diagnosis is not a formal diagnosis. I am mindful of its provisional nature and the implicit need for further investigation to qualify that diagnosis.
- [20] The applicant also relies on a s. 25 psychological assessment report dated July 30, 2019, by Ms. Sabet Ghadam, a psychological associate, where she conducted a clinical interview, administered 13 psychometric tests and diagnosed the applicant with an Adjustment Disorder with Anxiety/Depressed Mood, Specific Phobia (situational type: driver) “to be detailed upon formal assessment”, MVA sequelae; mild symptoms/difficulty in role functioning and

recommends 14 sessions of cognitive behavioural psychotherapy and in-vehicular assessment. I agree with the respondent that Ms. Ghadam did not review any of the applicant's medical documents and her findings were based largely on the applicant's self reporting. I do not find Ms. Graham's assessment persuasive for those reasons.

- [21] I prefer the s. 44 psychological assessment report dated July 10, 2019, by Dr. Marc Mandel, psychologist, as his findings were more in line with the rest of the applicant's medical evidence. I also find Dr. Mandel's report to be persuasive because the purpose was to address the MIG and two other treatment plans.
- [22] Dr. Mandel reviewed documentation, administered psychometric tests and concluded that "there is a lack of consistent objective information present that would support DSM V diagnosis or suggest that he suffers clinically significant symptoms that would indicate a substantial psychological impairment as a direct result of the subject motor vehicle at this time" and lack of consistent objective information provided to indicate that services are required beyond the MIG from a psychological perspective.
- [23] Further, Dr. Mandel noted the applicant's results of the Structured Inventory of Malingered Symptoms (SIMS) fall beyond the acceptable standard for the normative sample and "[h]is total score was beyond the acceptable threshold, indicating the possibility of symptom magnification in certain areas. [Dr. Mandel] found elevated levels on four of five specific scales...indicating that care must be taken in interpreting complaints of these types by Mr. Pierre-Webster."
- [24] It is noted that the applicant did not refute Dr. Mandel's report even though he had the opportunity to submit reply submissions.
- [25] Given that the applicant has not led any compelling and contemporaneous medical evidence of any psychological or cognitive complaints to his family doctor; he was not prescribed any psychological medications or attending any psychological treatment after the subject accident; and in conjunction with my reasons with respect to the expert reports, the applicant has failed to demonstrate that he sustained any psychological impairments that require treatment beyond the MIG.
- [26] I find that the applicant has sustained predominantly minor injuries within the definition of the MIG.

Treatment plans

[27] As I find that the applicant remains within the MIG, and since the MIG has been exhausted as confirmed in the respondent's letter to the applicant dated October 28, 2019, and all the treatment plans propose treatment outside of the MIG, it follows that he is not entitled to these plans or interest.

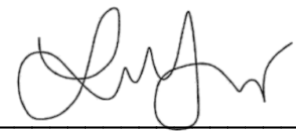
ORDER

[28] I find the applicant to have suffered predominantly minor injuries that are treatable within the MIG limit.

[29] As the treating limit of the MIG has been exhausted, the applicant is not entitled to any disputed treatment plans, or interest.

[30] The application is dismissed.

Released: October 30, 2023



**Lisa Yong
Adjudicator**