



**Citation: Singh v. Waterloo Insurance, 2024 ONLAT 21-013851/AABS**

**Licence Appeal Tribunal File Number: 21-013851/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:

**Lakeram Singh**

**Applicant**

**and**

**Waterloo Insurance**

**Respondent**

## **DECISION**

**VICE-CHAIR:**

**Brett Todd**

**APPEARANCES:**

For the Applicant:

Marc Golding, Paralegal

For the Respondent:

Yalda Aziz, Counsel

**HEARD BY WAY OF WRITTEN SUBMISSIONS**

## OVERVIEW

- [1] Lakeram Singh (the “applicant”) was involved in a motor vehicle accident on September 24, 2019 and sought benefits pursuant to the *Statutory Accident Benefits Schedule – Effective September 1, 2010 (including amendments effective June 1, 2016)* (the “Schedule”). Waterloo Insurance (the “respondent”) held the applicant within the Minor Injury Guideline (“MIG”) and denied four treatment plans. The applicant submitted an application to the Licence Appeal Tribunal – Automobile Accident Benefits Service (the “Tribunal”) for resolution of the dispute.

## ISSUES IN DISPUTE

- [2] The following issues are in dispute:
1. 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 of the MIG?
  2. Is the applicant entitled to the medical benefits proposed by Inline Rehabilitation Centre, as follows:
    - a) \$1,293.11 for Chiropractic Services, in a treatment plan/OCF-18 dated February 27, 2020;
    - b) \$4,356.31 for Chiropractic Services, in a treatment plan/OCF-18 dated August 5, 2020;
    - c) \$3,421.65 for Chiropractic Services, in a treatment plan/OCF-18 dated November 24, 2021; and
    - d) \$3,416.48 for Psychological Services, in a treatment plan/OCF-18 dated February 10, 2022?
  3. Is the applicant entitled to interest on any overdue payment of benefits?
- [3] In submissions, the respondent notes that \$3,494.79 in medical benefits has been paid to the applicant under the MIG limit of \$3,500.00. This is not disputed by the applicant in his submissions. As a result, I accept that the MIG has been functionally exhausted, with just \$5.21 left within the MIG limit. The applicant must therefore be removed from the MIG to be entitled to the treatment plans in dispute here.

## RESULT

[4] I find that:

- i. The applicant has failed to demonstrate that he suffers from injuries that are not defined as minor in the *Schedule*. He remains within the MIG and its \$3,500.00 limit on treatment.
- ii. As the applicant remains within the MIG, which has been functionally exhausted, he is not entitled to the treatment plans in dispute.
- iii. As there are no benefits owing, it follows that the applicant is not entitled to interest.

## ANALYSIS

### **The Applicant Remains Within the Minor Injury Guideline (“MIG”)**

- [5] I find that the applicant has failed to demonstrate that he suffers from an injury or condition that warrants removal from the 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 minor injuries. 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 it can be established that accident-related injuries fall outside of the MIG, or if there is documentation of a pre-existing injury or condition combined with compelling medical evidence stating that the condition precludes recovery if kept within the MIG, pursuant to s. 18(2) of the *Schedule*. In addition, the Tribunal has determined that chronic pain with a functional impairment may warrant removal from the MIG, as may a documented psychological condition.
- [8] The burden is on the applicant to show, on a balance of probabilities, that his injuries fall outside of the MIG. Here, the applicant argues that he suffers from chronic pain and psychological impairments as a direct result of the accident, both of which warrant his removal from the MIG. He also makes allusions to complications regarding a number of pre-existing health issues, although he does not advance a formal argument for removal from the MIG on this basis.

- [9] The respondent counters that the applicant has not adduced sufficient medical evidence to demonstrate either chronic pain or psychological impairments. It maintains that the applicant sustained soft-tissue injuries in the accident that fall into the *Schedule*'s definition of a minor injury and were appropriately treated and resolved under the MIG. The respondent seeks a finding that the applicant be held within the MIG and its \$3,500.00 limit on treatment.
- [10] I agree with the respondent. Based on what is before me, the applicant sustained minor injuries in the accident that were appropriately treated with physical and chiropractic therapy. There is minimal evidence of chronic pain or psychological impairment. Nor is there any evidence that the pre-existing conditions referenced in the applicant's submissions precluded his recovery under the MIG.

### ***Chronic pain***

- [11] The applicant's claims of chronic pain lack sufficient support. Virtually all of the medical evidence indicates that he suffered soft-tissue neck and back injuries in the accident. Clinical notes and records ("CNRs") of Dr. Ho-Yin Lai, family physician, demonstrate that the applicant sustained whiplash associated disorder II ("WAD II") and left upper back myofascial strain as a result of the accident, conditions that fall within the minor injury definition in the *Schedule*.
- [12] Although the applicant asserts in submissions that these injuries developed into chronic pain and associated radiculopathy, the CNRs of Dr. Lai do not bear this out. The applicant saw Dr. Lai just four times for accident-related issues between September 28, 2019 and February 28, 2020. There are no specific mentions or suggestions of chronic pain in these CNRs. Nor are there any comments about functional impairment in relation to these ongoing symptoms of pain.
- [13] Also, CNRs of the last two appointments include notations that the applicant was improving. In the record of the applicant's visit on January 13, 2020, Dr. Lai wrote that the applicant's lower back was not tender, that his range of motion was normal, and that his lumbar strain had resolved. In the record of the February 28, 2020 appointment, the physician noted that physiotherapy and chiropractic treatments were "helping with back pain."
- [14] There is no mention of radiculopathy in any of these CNRs. Although the January 13, 2020 record includes a note about the applicant reporting right sided lower back pain shooting to the back of his right thigh the previous week, Dr. Lai does not refer to this as radiculopathy, mention this symptom again, or order any additional investigation or diagnostic testing to further assess this claim.

- [15] All of the above evidence—plus the applicant's discontinuation of his treatment with Dr. Lai after four appointments—indicates that the applicant suffered soft-tissue injuries in the subject accident, received treatment that largely resolved these issues as of early 2020, and stopped seeking the assistance of his primary care physician as a result. Aside from the self-reporting of the applicant, there is minimal evidence before me to demonstrate that he suffered from chronic pain or any sort of impairment that would justify his removal from the MIG.
- [16] Also, I am persuaded by the insurer's examination ("IE") report of Dr. Gina Pohani, general practitioner, dated December 30, 2022. This report, which was generated as the result of an in-person examination conducted on November 29, 2022, is the most comprehensive medical evidence before me regarding the applicant's physical condition, and I have been directed to no sufficient reason to doubt it or its conclusions. Dr. Pohani found that the applicant experienced soft-tissue injury of the cervical spine (WAD II) with involvement of the upper trapezial fibres and soft-tissue injury of the lumbosacral spine—all minor injuries by the definition of the *Schedule*. The physician also found that the applicant displayed full range of motion and normal strength, indicating that he suffered no physical impairment as a result of his injuries or any resulting pain.
- [17] Given the above rationale, I find that the applicant has not met his burden and demonstrated that he suffers from chronic pain.

### ***Psychological impairment***

- [18] There is negligible evidence that the applicant suffered a psychological impairment as a result of the accident. Psychological concerns are not noted in the CNRs of Dr. Lai. A psychological assessment was recommended by Dr. Mir Reza Nabavi, chiropractor, in the Disability Certificate/OCF-3 that he completed on October 24, 2019, although I assign this little weight as this was outside of the physician's scope of expertise.
- [19] I also assign limited weight to the actual psychological assessment report dated January 15, 2022 that resulted from this recommendation. This report, which was completed following an assessment conducted virtually on November 29, 2021 by Sabrina Simmons, psychological associate (under the supervision of Valery Kleiman, psychologist), is narrow in scope and, in my view, does not fully support the diagnoses of somatic symptom disorder and specific phobia (driving related).
- [20] Ms. Simmons did not review any medical records in the context of writing this assessment. As a result, she was unaware that the applicant had not reported any psychological concerns to Dr. Lai. Much of Ms. Simmons' report is heavily

reliant on the self-reporting of the applicant, which is of limited value without objective medical evidence supporting these claims. Test results indicated that the applicant was experiencing moderate-to-severe levels of depression and anxiety, although it is not clear if these issues were the result of the accident.

- [21] Additionally, the report does not convince me that the applicant was experiencing driving anxiety to such a level that it was impairing his functionality in a significant fashion. While test results indicated that the applicant was experiencing a certain amount of driving anxiety, Ms. Simmons noted that the applicant continued to drive, but avoided busy intersections when possible and that he no longer viewed driving as the stress break that it was before the accident. She also wrote that the applicant reported taking added caution around braking (he was rear-ended in the accident) and that he ensured that a recently purchased vehicle included all available safety features.
- [22] In all, the applicant's driving nervousness seems more like something that could well be experienced by anyone in the aftermath of an automobile collision than a psychological phobia requiring treatment outside of the MIG. Essentially, even with the added concerns noted by Ms. Simmons, the applicant was not notably impaired and generally continued to drive as he always had.
- [23] Further, I am persuaded by the IE report of Cheryl Miller, psychologist, dated December 30, 2022, which I find more comprehensive and more in accordance with the objective medical evidence. As the result of an in-person assessment conducted on December 7, 2022 that included a range of psychometric testing, Ms. Miller concluded that the applicant did not sustain any psychological injuries as a direct result of the subject accident. Most notably, Ms. Miller wrote that the applicant endorsed statements such as "I am a happy person" and "I seldom worry about anything," and that he denied experiencing any driving anxiety.
- [24] Accordingly, I find that the applicant has failed to demonstrate that he suffers from a psychological impairment as a result of the accident.

### ***MIG conclusion***

- [25] Lastly, I find that the applicant has not substantiated that he suffered from a pre-existing injury or impairment that would preclude his recovery within the MIG. In submissions, he alludes to a number of hereditary health conditions, injuries and psychological impairments sustained in a prior accident in 2009 or 2010, and a knife-related hand injury in 2019. However, he does not advance these as reasons to be removed from the MIG, nor does he direct me to any evidence that would support such a claim.

[26] For all of the above reasons, the applicant remains within the MIG and its \$3,500.00 limit on treatment.

### **The Applicant is Not Entitled to the Treatment Plans**

[27] As the applicant has been found to remain within the MIG, which has been functionally exhausted, he is not entitled to the treatment plans in dispute, nor interest.

### **ORDER**

[28] The application is dismissed and I find that:

- i. The applicant has failed to demonstrate that he suffers from injuries that are not defined as minor in the *Schedule*. He remains within the MIG and its \$3,500.00 limit on treatment.
- ii. As the applicant remains within the MIG, which has been exhausted, he is not entitled to the treatment plans in dispute.
- iii. As there are no benefits owing, it follows that the applicant is not entitled to interest.

**Released: March 1, 2024**

  
**Brett Todd**  
**Vice-Chair**