



Citation: Page v. Aviva Insurance Company of Canada, 2025 ONLAT 22-012526/AABS

Licence Appeal Tribunal File Number: 22-012526/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:

Dugon Page

Applicant

and

Aviva Insurance Company of Canada

Respondent

DECISION

ADJUDICATOR: Gary Harvey

APPEARANCES:

For the Applicant: Doina Marinescu, Paralegal

For the Respondent: Branson Wong, Counsel

HEARD: By Way of Written Submissions

OVERVIEW

- [1] Dugon Page, the applicant, was involved in an automobile accident on June 23, 2020, 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, Aviva Insurance Company of Canada, 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 Minor Injury Guideline limit? Note: The parties agree the MIG limits have been exhausted.
 - ii. Is the applicant entitled to \$2,026.55 for chiropractic services, proposed by Mackenzie Medical Rehabilitation Centre Inc., in a treatment plan/OCF-18 (“plan”) submitted November 4, 2020, and denied November 17, 2020?
 - iii. Is the applicant entitled to \$1,417.70 for chiropractic services, proposed by Mackenzie Medical Rehabilitation Centre Inc., in a plan submitted December 11, 2020, and denied December 15, 2020?
 - iv. Is the applicant entitled to \$2,000.00 for a psychological assessment, proposed by Scarborough Medical Centre, in a plan submitted January 6, 2021, and denied January 11, 2021?
 - v. Is the applicant entitled to \$3,739.23 for psychological services, proposed by Svetlana Gabidulina, in a plan submitted August 19, 2021, and denied August 26, 2021?
 - vi. Is the applicant entitled to \$3,696.50 for chiropractic and massage therapy services, proposed by Mackenzie Medical Rehabilitation Centre Inc., in a plan submitted July 20, 2020, and denied July 30, 2020?
 - vii. Is the applicant entitled to \$634.55 (\$1,734.55 less \$1,100.00 approved) for assistive devices (a mattress), proposed by Q Medical, in a plan submitted September 8, 2020, and denied September 21, 2020?

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

RESULT

[3] I find that the applicant has not met his onus of proving that his accident-related impairments warrant removal from the Minor Injury Guideline (“MIG”). According to submissions of the parties, the MIG limits have been exhausted, so it is unnecessary for me to consider the reasonableness or necessity of the disputed treatment plans. The applicant is also not entitled to interest. The application is dismissed.

ANALYSIS

THE MINOR INJURY GUIDELINE (MIG)

- [4] The MIG establishes a framework available to injured persons who sustain a minor injury as a result of the accident. A “minor injury” is defined in s. 3(1) of the *Schedule* as, “one or more of a strain, sprain, whiplash associated disorder, contusion, abrasion, laceration or subluxation and includes all clinically associated sequelae to such an injury.” The terms, “strain”, “sprain”, “subluxation”, and “whiplash associated disorder” are defined in the *Schedule*.
- [5] Section 18(1) limits recovery for medical and rehabilitation benefits for predominantly minor injuries to \$3,500.00. An applicant may receive payment for treatment beyond the \$3,500.00 cap under s. 18(2) if they can demonstrate that a pre-existing condition, documented by a medical practitioner, prevents maximal medical recovery under the MIG. The Tribunal has also found that a psychological impairment or chronic pain with a functional impairment may merit removal from the MIG.
- [6] It is the applicant’s burden to establish entitlement to coverage beyond the \$3,500.00 cap on a balance of probabilities.
- [7] Immediately after the accident on June 23, 2020, the applicant rode his bicycle home some 6 to 7 kilometers before attending Humber River Hospital Emergency Department where he was examined and was diagnosed with soft tissue injuries which fall within the definition of minor injury under s. 3.1 of the *Schedule*.
- [8] The applicant submits his progress evidently requires treatment far beyond the scope of the MIG as he struggled with his social situation and ongoing impacts of the injuries on his daily life and mental health. Although it is evident that the applicant did have struggles that existed pre-accident, the applicant has failed to

prove that his recovery from same would be prevented from maximal recovery if he is kept within the MIG.

- [9] The respondent submits that it does not appear that the applicant is arguing for removal from the MIG via physical impairment or injury such as an injury that does not fall outside of the MIG. The respondent submits that the medical evidence suggests that none of the pre-existing injuries being claimed require treatment outside of the MIG.
- [10] Concerns with the MIG cap of \$3,500.00 have been submitted by the applicant. The Tribunal does not have the authority to remove the applicant from the MIG unless the applicant can demonstrate that a pre-existing condition exists, documented by a medical practitioner, prevents maximal medical recovery under the MIG, or if they provide evidence of a non-minor injury, such as psychological impairment or chronic pain with a functional impairment. This threshold has not been established. The Tribunal resolves disputes in accordance with the *Schedule per s. 280(4) of the Insurance Act*. The Tribunal does not have jurisdiction to override or ignore the *Schedule*.
- [11] I find that the applicant has not met his burden of proving that his impairments require treatment beyond the MIG on the basis of a pre-existing condition, chronic pain, and/or a psychological impairment.

Pre-existing Condition

- [12] Section 18(2) of the *Schedule* provides that insured persons with minor injuries who have a pre-existing medical condition may be exempted from the \$3,500.00 cap on benefits. The applicant must provide compelling evidence to establish:
- (i) There was a pre-existing medical condition that was documented by a health practitioner before the accident; and
 - (ii) The pre-existing condition will prevent maximal recovery from the minor injury if the person is subject to the \$3,500 on treatment costs under the MIG.
- [13] The applicant argues that he has a pre-existing condition, which was due to his family, social and living situation which caused him to seek counselling pre-accident at the Jane Finch Family Health Team. The applicant also argues that the accident caused the initiation of supportive counselling to manage pain and psychological distress along with the need for physical therapy and mindfulness exercises. The applicant submits that he faced periods of stagnation and

frustration as he struggled with his social situation and the ongoing impact of his injuries on his daily life and mental health.

- [14] The respondent argues that the applicant never had a formal history of past psychological issues. The respondent submits that the applicant had told his s.25 assessor, that he was in a “bad mental state” in 2018. Prior to the accident the applicant had been seeing a social worker nine times for supportive counselling and therapy at the Jane Finch Family Health Team. During a September 30, 2019, visit he indicated that he wanted to get continuous counseling for the rest of his life.
- [15] The arguments for removal from the MIG by the applicant do not support that it will prevent the applicant from achieving maximal recovery from the minor injury if the applicant is subject to the limit or is limited to the goods and services authorized under the MIG. The applicant submitted that his improvements in mood and self-esteem were fleeting, overshadowed by the recurring need for supportive counseling, coping strategies along with sleep issues and the ongoing job hunting and mental health challenges, however the medical evidence that I was directed to does not support this. I prefer the psychological assessment report of Dr. Salerno over that of Dr. Carriere, as Dr. Carriere did not review any of the clinical notes and records from the Jane Finch Family Health Team where the applicant attended pre-accident, as neither doctor had a previous professional relationship with the applicant. Dr. Salerno’s report also shows the diminishing factors in comparison to those reported in the initial assessment with Dr. Carriere. The applicant has not provided other evidence of the requirement for removal of the MIG, so I have to rely on the assessments. The physical injuries from the accident are all soft tissue in nature.
- [16] When analyzing s. 18(2) of the *Schedule*, it is undisputed that the applicant may have a pre-existing undiagnosed medical condition and that the pre-existing medical condition was documented by the Jane Finch Health Team prior to the accident. But I have not been convinced that the applicant’s assessing practitioner determined and provided compelling evidence that the pre-existing psychological condition will prevent maximal recovery from the minor injury if the person is subject to the MIG limit, especially when taking into consideration the assessment of Dr. Salerno.
- [17] I find that the applicants pre-accident statements as captured in the clinical notes and records of the Jane Finch Family Health Team indicating reporting of some psychological issues by the applicant but does not constitute a pre-existing condition documented pre-accident, as no diagnosis of such was ever made by a

medical professional. The applicant failed to properly address the second step of the test. A documented pre-existing condition is not sufficient to remove the applicant from the MIG in and of itself. The onus lies with the applicant to establish that a pre-existing condition would preclude maximal recovery. Since the applicant failed to address this second step, I find that they have failed to meet their onus.

Psychological Impairment

- [18] I find that the evidence establishes that the applicant's injuries fall within the definition of minor injury under s. 3(1) of the *Schedule*.
- [19] An applicant may be removed from the MIG if they sustain a psychological impairment as a result of the accident, as psychological impairments are not captured within the definition of minor injuries under s. 3(1) of the *Schedule*.
- [20] In order to be removed from the MIG due to psychological impairments, the applicant must show that he has an actual psychological impairment and not post-accident sequelae. A psychological diagnosis requires the progression of ongoing, post-accident symptomology, or clinically significant psychological impairments.
- [21] The applicant submitted that he sustained a psychological impairment from the accident and as a result had issues, sleeping, with mood and struggled when re-attending or going near the accident location. The applicant engaged in a multifaceted treatment regimen that included physical therapy, counselling, and mindfulness exercises, yet still struggled with his social situation and the ongoing impact of his injuries on his daily life and mental health. Improvements in his mood and self-esteem were fleeting, overshadowed by the recurring need for supportive counselling and coping strategies. The applicant argues pre-existing psychological issues due to his social situation, family issues along with accident-related psychological issues causing issues with sleeping, a worsening mood, ongoing job hunting and mental health challenges.
- [22] The applicant relies on Dr. Carriere's, Psychological Assessment which was conducted remotely over the telephone due to the ongoing COVID-19 health restrictions and public health issues. It is noted that the applicant indicated that his mood is "possibly neutral or depressed". Dr. Carriere concludes her findings of an adjustment disorder with mixed anxiety and depressed mood disorder, with reports of intermittent flashbacks and heightened vigilance particularly near the accident scene.

- [23] The respondent relies on the report of Dr. Salerno which was conducted in person. Dr. Salerno closes his findings indicating that in his professional opinion the applicant has not sustained an accident-related psychological impairment and has already achieved maximum recovery from a psychological perspective in relation to the subject accident. It is noted that the applicant did indicate that he was more cautious when crossing the road and that it takes a little bit more courage to ride his bicycle.
- [24] The applicant argues that the report of Dr. Carriere should carry more weight than that of Dr. Salerno as it was conducted seven months post-accident whereas Dr. Salerno's was conducted more than two and half year's post-accident.
- [25] The respondent argues that the report of Dr. Salerno should carry more weight than that of Dr. Carriere's report, as Dr. Salerno's s. 44 assessment was made with the benefit of having the complete clinical notes and records from both Jane Finch Family Health and Humber River Hospital. Dr. Salerno also employed numerous psychological tests including the Performance Validity Measure, the Modified Somatic Perception Questionnaire, the Depression Anxiety Stress Scale, the Pain Catastrophizing Scale, and the Pain Patient Profile. The respondent argues that Dr. Carriere failed to consider the medical records of Jane Finch Family Health and that solely the OCF-18 in dispute and the screening report contained within was reviewed ahead of the assessment.
- [26] The respondent argues that the s. 25 report of Dr. Carriere was made without having reviewed any of the clinical notes and records from Jane Finch Family Health Team and seems to be entirely based on subjective self-reporting and a single psychological screening questionnaire. The respondent also argues that Dr. Salerno's assessment was conducted more recently and shows the positive progression of the applicant in his reported injuries.
- [27] I find the s. 44 report completed by Dr. Salerno far more compelling when it comes to the assessments of the applicants' psychiatric impairments. Dr. Salerno's report was conducted in person and took prior medical reports into account as opposed to Dr. Carriere's s. 25 report which was conducted remotely and based on self reporting by the applicant, without reviewing or considering any previously reported medical history. The difference in the two assessments also show the positive progression of the applicant since the first assessment was completed. In Dr. Salerno's findings it is noted that from a psychological perspective the applicant does not exhibit any accident-related impairments and I

find the noted concerns with crossing the street and riding his bicycle are post-accident sequelae in nature.

- [28] I find that there is a lack of evidence to support the applicant suffering from a psychological impairment as a result of the accident.
- [29] Overall, I prefer the evidence of Dr. Salerno over Dr. Carriere and find the applicant has not suffered a psychological injury which warrants treatment beyond the funding provided by the MIG.

Chronic Pain

- [30] I find that the applicant has not proven on a balance of probabilities that he has chronic pain with functional impairment that would warrant removal from the MIG.
- [31] The applicant submits that he suffers from chronic pain as a result of the accident. On August 13, 2020, the applicant had a phone consultation with Dr. Shelton from the Jane Finch Family Health Team where it is noted that the applicant told his physician about the accident and that he was having difficulty sleeping. He complained of having pain to his left arm, leg and back. It is noted on the chart that no examination was able to be completed as it was a phone consultation. This is inconsistent with future visits documented by the Jane Finch Family Health Team.
- [32] On October 14, 2020, the applicant has another phone consultation with Dr. Shelton and it is noted in the CNRs that the applicant indicates that he is not anxious, has no panic attacks and he feels happy in life, the applicant also stated that he has no issues, and his sleep and appetite is better.
- [33] On November 6, 2020, the applicant has a phone consultation with S. Kalathiparambil, a Registered Social Worker, CNRs state that the applicant indicates that he is not anxious, coping techniques are working better and that his sleep is getting a little better.
- [34] On December 17, 2020, in a phone consult with S. Kalathiparambil, the applicant indicated that he is having difficulty sleeping but is managing well. On another follow up on January 25, 2021, the applicant indicated that he is doing great and wanted a counsellor/mediator for his life. Then on February 22, 2021, the applicant has another follow up with S. Kalathiparambil and indicated that he is having little difficulty sleeping but is managing well.
- [35] On May 17, 2021, the applicant saw Dr. Strasberg, Family Physician at the Jane Finch Family Health Team where it is indicated that the applicant requires a

physical for his lawyer and she advised the applicant that they won't be able to comment on his initial injuries as they have not seen him for the accident-related injuries prior to this physical.

- [36] The applicant reported sleeping issues and soreness near the onset of the accident. On May 20, 2021, the applicant sees A. Balasingam, Nurse Practitioner at the Jane Finch Family Health Team for a physical. It is noted in the CNRs that the applicant's spine has full range of motion with no paraspinal tenderness, no tenderness to palpitation on his shoulder, his sleep has improved to sleeping 6-8 hours per night and that the applicant's shoulder, back and leg pain is resolved.
- [37] The respondent submits and highlights two things in the post-accident medical records. The first was that the initial phone call in August 2020, and that the applicant only had three subsequent visits with three separate doctors for any accident-related concerns. The applicant's next visit was in May 2021, nearly a year later with Dr. Strasberg, noted that she was unsure of the applicant's injuries due to the lack of medical examinations post-accident. The third was Nurse Practitioner, A. Balasingam, whom he reported being diagnosed with a concussion at Humber River Hospital, which was not the case and only was diagnosed with soft tissue injuries in the CNRs. During this visit the applicant told the Nurse Practitioner that he had finished his physio sessions and that his shoulder, back and leg pain had resolved. Balasingam's assessment did not reveal any actual physical or psychological issues.
- [38] There is a lack of substantive evidence to determine that the applicant suffers from chronic pain to remove him from the MIG. The applicant first complains of pain and sleep issues post-accident on August 13, 2020, to Dr. Shelton, but then in future follow ups there are no pain complaints noted and the applicant indicates that he is sleeping 6-8 hours. Closing out with the applicant's physical on May 20, 2021, where the CNRs indicate that the applicant's shoulder, back and leg pain is resolved.
- [39] Therefore, I find that the applicant has not proven on a balance of probabilities that he suffers from chronic pain with functional impairment that would warrant his removal from the MIG. Within less than a year of the accident he reported sleeping durations that are typical of most people that do not suffer chronic pain complaints and the applicant's shoulder, back and leg pain was documented as resolved.

TREATMENT PLANS

[40] As I have found that the applicant is not entitled to treatment beyond the MIG and it is agreed by the parties that the MIG is exhausted. I find that it is not required to review the treatment plans in dispute to determine if they are reasonable and necessary.

INTEREST

[41] As there are no benefits owing, no interest is payable.

ORDER

[42] For the reasons outlined above, I find that:

- i. The applicant sustained predominantly minor injuries as defined under the *Schedule*. Accordingly, it is not necessary for me to determine whether the treatment plans are reasonable and necessary because the maximum amount of \$3,500.00 for medical and rehabilitation benefits under the MIG has been exhausted.
- ii. No interest is payable.
- iii. The application is dismissed.

Released: March 19, 2025

Gary Harvey
Adjudicator