



Citation: Raheja v Aviva Insurance Company of Canada, 2025 ONLAT 23-008460/AABS

Licence Appeal Tribunal File Number: 23-008460/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:

Ashley Raheja

Applicant

and

Aviva Insurance Company of Canada

Respondent

DECISION

ADJUDICATOR:

Estella Muyinda

APPEARANCES:

For the Applicant:

Bianca Pirrotta-Iaccino, Paralegal

For the Respondent:

Alexander Dos Reis, Counsel

HEARD:

By Way of written submissions

OVERVIEW

- [1] Ashley Raheja, the applicant, was involved in an automobile accident on August 24, 2020, and sought benefits pursuant to the *Statutory Accident Benefits Schedule - Effective September 1, 2010 (including amendments effective June 1, 2016)* (the “Schedule”).
- [2] The applicant was denied benefits by the respondent, Aviva Insurance Company of Canada. The applicant applied to the Licence Appeal Tribunal - Automobile Accident Benefits Service (the “Tribunal”) for resolution of the dispute.

ISSUES

- [3] The issues in dispute are:
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 Minor Injury Guideline limit (“MIG”)? The parties agree that the MIG limits have been exhausted.
 2. Is the applicant entitled to \$2,350.00 for a chronic pain assessment, proposed by Ontario Independent Assessment Centre Inc., in a treatment plan/OCF-18 (“plan”) dated November 30, 2022?
 3. Is the applicant entitled to \$3,157.39 for chiropractic and massage therapy services proposed by Alma Rehab Inc. in a plan dated July 19, 2021?
 4. Is the applicant entitled to \$2,912.56 for chiropractic and massage therapy services proposed by Alma Rehab Inc. in a plan May 24, 2022?
 5. Is the applicant entitled to interest on any overdue payment of benefits?
- [4] In her written submissions, the applicant indicated that issue 3.ii as stated in the Case Conference Report and Order, for psychological services dated January 11, 2024, was withdrawn.

RESULT

- [5] The applicant has not met her onus of proving that her accident-related injuries warrant removal from the MIG.

- [6] As the MIG limits have been exhausted, it is not necessary for me to consider the reasonableness and necessity of the disputed treatment plans for chiropractic services and a chronic pain assessment.
- [7] As no benefits were unreasonably withheld or delayed, no interest is payable to the applicant.
- [8] The application is dismissed.

ANALYSIS

Minor Injury Guideline (“MIG”)

- [9] I find the applicant has not met her burden in establishing that her accident-related injuries fall outside the definition of a minor injury as set out in s. 3(1) of the *Schedule*.
- [10] 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.”
- [11] 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 from any accident-related minor injury if they are kept within the MIG confines. The Tribunal has also determined that chronic pain with functional impairment or a psychological condition may warrant removal from the MIG.
- [12] In all cases, the burden of proof in establishing removal from the MIG lies with the applicant.
- [13] The applicant relies on a Disability Certificate (OCF-3) dated September 21, 2021; clinical notes and records prepared by Dr. Abdulhusein, the applicant’s family doctor, dated January 14, 2016, to February 12, 2024; Treatment and Assessment Plan OCF-18 for chiropractic and massage therapy services dated July 19, 2021, and May 24, 2022, respectively, prepared by Alma Rehabilitation Clinic Inc.

- [14] The applicant submits that she should be removed from the MIG because she suffers from chronic pain as a result of the accident. The respondent disagrees.
- [15] The respondent submits that the applicant should remain in the MIG because Dr. Abdulhusein, (family doctor) and her doctors at Cornerstone diagnosed accident-related impairments as sprains and strains and no other injuries.

Chronic Pain

- [16] I find on a balance of probabilities that the applicant has not met her burden to demonstrate that she should be removed from the MIG on the basis of chronic pain.
- [17] Although the applicant refers to chronic pain in relation to the treatment plan for a chronic pain assessment that is in dispute, she does not make submissions in support of her removal from the MIG on the basis of chronic pain. Therefore, I find she has not met her onus on this basis.
- [18] Further, having reviewed the evidence of chronic pain, I find that the applicant has not established that she has chronic pain with a functional impairment that warrants removal from the MIG. In support of her submission that the OCF-18 for a chronic pain assessment is reasonable and necessary, the applicant claims that she meets three out of the six criteria for chronic pain that are within the American Medical Association's Guides ("AMA Guides") criterion two, three, and five. I find that she does not meet these criteria for the following reasons.
- [19] While not incorporated into the *Schedule*, the Tribunal has found that the criteria in the AMA Guides are a useful analytical tool. The six criteria laid out in the AMA Guides to assess chronic pain are as follows:
1. Use of prescription drugs beyond the recommended duration and/or abuse of or dependence on prescription drugs or other substances;
 2. Excessive dependence on health care providers, spouse, or family;
 3. Secondary physical deconditioning due to disuse and/or fear–avoidance of physical activity due to pain;
 4. Withdrawal from social milieu, including work, recreation, or other social contracts;

5. 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;
6. Development of psychosocial sequelae after the initial incident, including anxiety, fear-avoidance, depression, or nonorganic illness behaviours

- [20] The respondent submits that the applicant does not meet any of the six criteria for chronic pain set out in the *AMA Guides*. As well, the respondent states that the applicant's family doctors did not diagnose her as suffering from chronic pain. I agree that the medical evidence does not indicate a diagnosis of chronic pain.
- [21] With respect to the *AMA Guides* criteria, I find that the applicant met with her family doctor, Dr. Abdulhusein, after the accident and she was referred to physiotherapy. The applicant received physiotherapy treatment at Cornerstone Medical Clinic. The applicant does not provide any evidence to show that there was excessive dependence on health care providers or her family. It is on that basis that I find that the applicant does not meet criterion two of the *AMA Guides*.
- [22] The applicant also asserts that she meets criterion three of the *AMA Guides*, because she feels limited in her abilities, experiences passenger related anxiety, and she prefers to drive rather than travel as a passenger. However, the applicant has not submitted evidence that supports this claim. As a result, I find that the applicant does not meet criterion three of the *AMA Guides*.
- [23] The applicant claims that she adjusted her involvement in her home activities as a result of her pain. For instance, the applicant states that she shares outdoor chores such as gardening activities and cleaning with her mother. I find that the applicant has not submitted evidence that establishes that she suffers from chronic pain that leads to avoidance of physical activity due to pain or discussed the level of pain. On this basis, I find the applicant does not meet criterion three.
- [24] The applicant asserts that she meets criterion five of the *AMA Guides*. However, the applicant has not pointed me to any evidence to support her claim that she meets this criterion. Prior to the accident, the applicant submits that she was physically and psychologically healthy. She claims that at the time of the accidents she was a student at a university studying for a degree in human resources and business management. The applicant states that she was able to continue with her studies despite having been involved in the accident. She submits that upon completing her education she started working full-time soon thereafter, as a human resource administrator.

- [25] To meet criterion five, the applicant has to show that there was a 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.
- [26] I find that the applicant was able to successfully engage in pre-injury functions immediately after the accident. Prior to the accident the applicant attended university. She was able to return to the university to complete her degree immediately after the accident. Within two months of graduating, the applicant started working full time as a human resources administrator. I find that the applicant has not shown that she could not engage in pre-injury functions or lack the physical capacity to pursue work. It is on that basis that I find that the applicant does not meet criteria five of the AMA Guides.
- [27] Considering the totality of the applicant's submission concerning her removal from the MIG because of chronic pain, I find that the applicant has not established that she meets three of the six criteria in the AMA Guides.
- [28] Finally, I find that the medical evidence does not establish that the applicant has a functional impairment related to the chronic pain. In the clinical notes from Dr. Abdulhusein, the applicant's family doctor does not mention or support the applicant assertion that she suffers from chronic pain as a result of the accident.
- [29] Accordingly, I find the applicant is not entitled to treatment outside the MIG because she has not established on a balance of probabilities that she suffers from chronic pain with a functional impairment that warrants treatment outside the MIG.

Treatment Plans

- [30] As I have found the applicant's injuries fall within the MIG, I do not need to determine if the disputed treatment plans are reasonable and necessary.

Interest

- [31] As no benefits were unreasonably withheld or delayed, no interest is payable to the applicant.

ORDER

- [32] Based on the evidence before me, I find that:
- a. The applicant has not met her onus of proving that her accident-related injuries warrant removal from the MIG.

- b. As the applicant is within the MIG, it is not necessary to consider if the treatment plans are reasonable and necessary.
- c. No interest is payable to the applicant pursuant to s.51 of the *Schedule*.
- d. The application is dismissed.

Released: May 14, 2025

A handwritten signature in black ink, appearing to read 'Estella', is written over a horizontal line.

**Estella Muyinda
Adjudicator**