



**Citation: Thomas v. Economical Mutual Insurance Company, 2025 ONLAT 23-009670/AABS**

**Licence Appeal Tribunal File Number: 23-009670/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:

**Dylon Thomas**

**Applicant**

and

**Economical Mutual Insurance Company**

**Respondent**

**DECISION**

**ADJUDICATOR: Roderick Walker**

**APPEARANCES:**

For the Applicant: Michelle Arzaga, Counsel

For the Respondent: Sonya Katrycz, Counsel

**HEARD: By Way Of Written Submissions**

## OVERVIEW

- [1] Dylon Thomas, the applicant, was involved in an automobile accident on May 31, 2022, 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 Mutual 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 Minor Injury Guideline (“MIG”) limit?
  - ii. Is the applicant entitled to the services/assessments proposed by 2430307 Ontario Ltd., as follows:
    - i. \$2,300.00 for a Neurological Assessment, in a treatment plan/OCF18 (“plan”) dated April 20, 2023.
    - ii. \$2,300.00 for a Psychological Assessment, in a plan dated October 13, 2022.
    - iii. \$2,300.00 for a Chronic Pain Assessment, in a plan dated June 7, 2023.
    - iv. \$1,050.88 for an Attendant Care Assessment, in a plan dated October 13, 2022.
    - v. \$6,633.35 for psychological services, in a plan dated January 24, 2024.
    - vi. \$3,185.19 for chiropractic services, in a treatment plan dated March 14, 2023; and
    - vii. \$2,227.73 for chiropractic services, in a plan dated June 7, 2023?
  - iii. Is the respondent liable to pay an award under s. 10 of Reg. 664 because it unreasonably withheld or delayed payments to the applicant?

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

## RESULT

- [3] The applicant injuries are predominantly minor and remains in the MIG.
- [4] As the applicant remains in the MIG, it is not necessary to consider if the treatment plans in dispute are reasonable and necessary.
- [5] No interest is owing.
- [6] The respondent is not liable to pay an award.

## ANALYSIS

### ***Minor Injury Guideline (MIG)***

- [7] Section 18(1) of the *Schedule* provides that medical and rehabilitation benefits are limited to \$3,500.00 if the insured 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.”
- [8] An insured 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 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.
- [9] Here, the applicant submits that he should be removed from the MIG on the basis of chronic pain and a psychological impairment.
- [10] I find the applicant should not be removed from the MIG on the basis of chronic pain with functional impairment.
- [11] The evidence submitted to me by the applicant is one disability certificate dated October 13, 2022 prepared by a Dr. P. Bruni, D.C., that listed injuries and sequelae of headaches, mid back pain, low back pain, shoulder pain, increased stress, anxiety, disordered sleep, psycho-emotional symptoms, dizziness, cognitive difficulties and significant loss of function. A report dated October 5,

2023 from Dr. Paul Perlon from GSH Medical - Headache, Migraine & Pain Centre, as well as the disputed OCF-18, s (plans) least three of the six criteria.

- [12] The respondent relies on evidence from the CNRs of the Insurer's examination report by Dr. G. Pohani, GP, dated May 11, 2023, as well as a physiatry Insurer's examination report by Dr. H. Platnick, dated November 13, 2023. The respondent also cites the case of *Scarlett v. Belair Ins. Co.*, 2015 ONSC 3635 (Div. Ct.), The respondent argues that the applicant has not proven that the injuries suffered in relation to the subject accident are more than minor in nature.
- [13] In respect to his chronic pain injuries, I find that the CNRs of Dr. Khanna do not support the applicant's claim that he suffers from chronic pain with a functional impairment. Dr. Khanna does mention some lower back pain in the entry on November 5, 2022, that the applicant's pain comes and goes, and he uses heating pads that he said helped with his pain. While Dr. Khanna prescribed Baclofen, the applicant declined this medication. Dr. Khanna referred the applicant to Lifemark Treatment Centres for physical treatment sessions for his physical injuries on or about June 21, 2022. The applicant stopped this treatment two and a half months later. The CNRs of Dr. Khanna do not capture ongoing functional impairments that the applicant suffers as a result of the accident. Additionally, there is no discussion in the CNRs that demonstrate any physical functional impairments suffered by the applicant.
- [14] Further, I find that Dr. Pohani, GP report persuasive. She concluded that no physical or neurological impairment was found. Dr. Polani agreed with the applicant's GP and determined that the only accident-related diagnosis was a lumbar strain which has resolved. This, I find, also does not support the applicant's claim that he suffers from chronic pain with a functional impairment. Also, I find that, on November 13, 2023, the applicant underwent a physiatry assessment with Dr. Platnick. Like Dr. Pohani and the applicant's GP, Dr. Platnick diagnosed a WAD-I cervical myofascial strain and a minor lumbosacral myofascial strain that had resolved. Dr. Platnick concluded that the applicant's minor and uncomplicated soft tissue injuries from the accident had fully and completely resolved. This is compelling because the injuries are minor and therefore treatable within the MIG.
- [15] The applicant also argues that he meets three of the six criteria for chronic pain in the AMA Guides.
- [16] The Guides are not incorporated into the *Schedule*, but the Tribunal has found them to be a useful analytical tool for evaluating chronic pain claims in the

absence of a diagnosis. The AMA Guides require three of the below criteria to be met for a diagnosis of chronic pain:

- i. Use of prescription drugs beyond the recommended duration and/or abuse of or dependence on prescription drugs or other substances.
- ii. Excessive dependence on health care providers, spouse, or family.
- iii. Secondary physical deconditioning due to disuse 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 need; and
- vi. Development of psychosocial sequelae after the initial incident, including anxiety, fear-avoidance, depression, or nonorganic illness behaviors.

- [17] The applicant argues that he meets three or more criteria for chronic pain syndrome, namely physical deconditioning, failure to restore pre-injury function, psycho-social sequelae development. However, I find that the applicant has not told me how his chronic pain has interfered with his daily activities, or the pain level of discomfort that he has when doing such activities.
- [18] I find the evidence does not support a finding that fact that he meets three out of the six criteria for chronic pain impairment. The CNRs of Dr. Khanna do not refer to any functional impairment suffered by the applicant. As the applicant has not described his chronic pain functionality in detail, I find that even if the applicant did meet three of six AMA criteria, the applicant has not provided persuasive evidence about any functional impairment arising from that chronic pain that would therefore warrant his removal from MIG.
- [19] He has not established that he meets any of the criteria required to establish chronic pain under the AMA Guides.
- [20] For the reasons above, and on a balance of probabilities, I conclude the applicant has not met his onus of establishing chronic pain. The applicant is not removed from the MIG on this basis.

***The applicant does not suffer from a psychological impairment.***

- [21] The applicant has not proven, on a balance of probabilities, that he suffers from a psychological impairment as a result of the subject accident.
- [22] The applicant submits that he suffers from a psychological condition as a result of the accident. The applicant's evidence is a psychological assessment OCF-18, dated October 13, 2022, from Dr. Bruni, and the report from Viktoria Tolmatshov, psychotherapist, supervised by Dr. Julia Gosselin, psychologist, dated January 29, 2024.
- [23] The respondent evidence is a s. 44 assessor report from Dr. Terra Seon, psychologist, dated April 24, 2024, which is contrary to the applicant's report of a psychological injuries with a functional impairment.
- [24] The applicant submits that he sustained injuries to his throat, cervical spine, shoulders, back, sacrum, hips, along with headaches, nervousness, insomnia, driving anxiety, depression, anxiety, psycho-emotional symptoms, dizziness, cognitive difficulties, and significant loss of function as a result of the accident. The applicant also submits that he is experiencing sleeping problems, and he does not feel rested when he wakes up. The applicant submits that he suffers from having accident-related nightmares, and feeling sleepy and fatigued during the day.
- [25] I find that the applicant does not suffer from a psychological impairment. Dr. Bruni, as a chiropractor, is not qualified to make psychological diagnoses. Further, the applicant relies on an assessment conducted under a registered psychotherapist, Ms. Tolmatshov. However, like chiropractors, registered psychotherapists in Ontario are not qualified to make psychological diagnoses. Ms. Tolmatshov's diagnoses are not reliable because it is unclear if her supervisor, Dr. Gosselin, ever had any input or reviewed Ms. Tolmatshov's report to verify a psychological impairment.
- [26] Dr. Seon's report, dated April 24, 2024, concludes that the applicant did not suffer from any psychological illness or impairment under the DSM. I find that Dr. Seon's report includes further important context that the applicant returned to his full-time job after the accident and has increased his participation in social activities, and continued to own and operate the same vehicle he was operating when the accident happened.
- [27] I find that the applicant has not proven, on a balance of probabilities, that he suffers from a psychological impairment as a result of the subject accident. As

such, the applicant has not established that his accident-related impairments warrant removal from the MIG.

### ***Treatment Plans***

- [28] As the applicant has been found to remain in the MIG, there is no need to conduct the reasonable and necessary analysis of the disputed treatment plans. I also note that the MIG limits are exhausted.

### ***Interest***

- [29] Interest applies on the payment of any overdue benefits pursuant to s. 51 of the *Schedule*. As there are no overdue benefit payments, no interest is owing.

### ***Award***

- [30] The respondent is not liable to pay an award, because no benefits are payable to the applicant.

### **ORDER**

- [31] I find that:
- i. The applicant injuries are predominantly minor and remains in the MIG.
  - ii. As the applicant remains in the MIG, it is not necessary to consider if the treatment plans in dispute are reasonable and necessary.
  - iii. No interest is owing, and the respondent is not liable to pay an award.
  - iv. The application is dismissed.

**Released:** August 28, 2025

  
**Roderick D. Walker**  
**Adjudicator**