



Citation: Yusaf v. Cooperators General Insurance Company, 2025 ONLAT 23-009972/AABS

Licence Appeal Tribunal File Number: 23-009972/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:

Bebe Yusaf

Applicant

and

Co-operators General Insurance Company

Respondent

DECISION

ADJUDICATOR:

Kathleen Wells

APPEARANCES:

For the Applicant:

Michelle Arzaga, Counsel

For the Respondent:

Alexander Dos Reis, Counsel

HEARD:

By way of written hearing

OVERVIEW

- [1] Bebe Yusaf, the applicant, was involved in an automobile accident on September 9, 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, Co-operators General 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:
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 (MIG) limit?
 2. Is the applicant entitled to the assessments proposed by Assessment Services 2430307 Ontario Ltd., as follows:
 - (i) \$1,050.88 for an attendant care assessment, in a treatment plan/OCF-18 (treatment plan) submitted October 28, 2022;
 - (ii) \$2,300.00 for a psychological assessment, in a treatment plan dated submitted November 2, 2022;
 - (iii) \$2,300.00 for an orthopaedic assessment, in a treatment plan submitted April 13, 2023;
 - (iv) \$2,300.00 for a neurological assessment, in a treatment plan submitted May 19, 2023;
 - (v) \$2,300 for a chronic pain assessment, in a treatment plan submitted July 13, 2023; and,
 - (vi) \$6,633.35 for psychological services, in a treatment plan submitted August 1, 2023?
 3. Is the applicant entitled to the services proposed by Wynford Health Clinic, as follows:
 - (i) \$3,185.19 for chiropractic services, in a treatment plan submitted January 31 2023;

- (ii) \$1,050.57 for chiropractic services, in a treatment plan submitted April 13, 2023;
 - (iii) \$1,270.27 for chiropractic services, in a treatment plan submitted August 17, 2023;
 - (iv) \$1,749.00 for chiropractic services, in a treatment plan submitted June 6, 2023;
 - (v) \$1,270.27 for chiropractic services, massage therapy, acupuncture, in a treatment plan, submitted September 14, 2023; and,
 - (vi) \$1,270.27, for chiropractic services, massage therapy, acupuncture, in a treatment plan, submitted October 13, 2023?
- 4. Is the respondent liable to pay an award under s. 10 of Reg. 664 because it unreasonably withheld or delayed payments to the applicant?
 - 5. Is the applicant entitled to interest on any overdue payment of benefits?

RESULT

[3] I find that:

- 1. The applicant sustained a predominantly minor injury as a result of the accident. She remains subject to the MIG and its \$3,500.00 limit.
- 2. It is not necessary to determine whether the disputed treatment plans are reasonable and necessary as a result of the accident.
- 3. No interest is owing.
- 4. The applicant is not entitled to an award.
- 5. The application is dismissed.

ANALYSIS

Applicability of the MIG

- [4] I find that the applicant has not met her onus to prove on a balance of probabilities that her accident-related impairments warrant removal from the MIG.
- [5] 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.”
- [6] 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 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.
- [7] The applicant submits that she suffers from a psychological impairment and chronic pain which warrant her removal from the MIG. The applicant relies on the clinical notes and records (CNRs) of her family doctor, Dr. Yostina Bichay.
- [8] The applicant also relies on the OCF-1, dated September 18, 2022, the OCF-3, dated September 21, 2022 and the treatment plan, dated May 29, 2023, all prepared by Dr. Paul Bruni, chiropractor. The applicant also relies on the treatment plan, dated October 28, 2022 prepared by Dr. Fariba Touyeh, psychologist.
- [9] The applicant further relies on the reports of Dr. Mohammed Khodabandehloo, orthopedic surgeon, and the independent psychological assessment of Viktoria Tolmatshov, social worker, prepared under the supervision of Dr. Cody Eriksen, psychologist, and dated August 8, 2023. Additionally, the applicant relies on the addendum report, dated December 6, 2022, and the progress report dated January 18, 2023 prepared by Dr. Bruni.
- [10] The respondent submits that the applicant has not met her onus to prove that her accident-related injuries warrant removal from the MIG. The respondent relies on the Insurer’s Examination reports (“s. 44 reports”) of Dr. Gerald Dancyger,

psychologist, dated April 19, 2023, Dr. Sangita Sharma, chronic pain physician, dated April 19, 2023, and Dr. Michael Angel, neurologist, dated August 3, 2023.

- [11] The respondent argues that Dr. Bruni's reports should be afforded no weight, in part, because he is a chiropractor, and not qualified to make psychological diagnoses, and in part, because he is not qualified to diagnose the applicant with chronic pain, as he is not a medical doctor. Further, the respondent contends that Dr. Bruni's reports offer insufficient explanation or corroboration for his conclusions.
- [12] I agree with the respondent that psychological and chronic pain diagnoses are outside of Dr. Bruni's scope of practice as a chiropractor. I also find that, in his reports, Dr. Bruni relies on the observations of other healthcare providers, without providing the providers' names, credentials, or the context for their findings. Further, Dr. Bruni's conclusions are not corroborated by other contemporaneous medical evidence. For these reasons, I assign no weight to Dr. Bruni's December 6, 2022 addendum report or his January 18, 2023 progress report.

Psychological Impairment

- [13] I find that the applicant has not established that she suffers from a psychological impairment as a result of the accident.
- [14] The applicant submits that in their report of August 8, 2023, Ms. Tolmatshov and Dr. Eriksen diagnosed the applicant with "Major Depressive Disorder Moderate single episode and Specific Phobia, automobile fear" as a direct result of the accident, and as such the applicant should be removed from the MIG.
- [15] The respondent counters that the applicant has not met her onus to prove that she suffered an accident-related psychological impairment. The respondent submits that in his s.44 report of April 19, 2023, Dr. Dancyger opined that the applicant did not sustain a psychological impairment as a result of the accident, and the psychological assessment of Viktoria Tolmatshov and Dr. Eriksen should be given little to no weight. The respondent argues that the August 8, 2023 report does not clearly delineate what role Dr. Eriksen played in his supervision of Ms. Tolmatshov, and whether Dr. Eriksen met with the applicant. Further, the respondent argues that the report does not indicate whether the applicant's medical records were reviewed.
- [16] I agree with the respondent and place little weight on the August 8, 2023 report. I find that the August 8, 2023 report indicates that the diagnosis was based on a

clinical interview, psychometric testing and a review of “medical documentation on file,” however, it is unclear from the report what medical documentation was reviewed. Further, the report does not indicate whether one or both of Ms. Tolmatshov or Dr. Eriksen were present or participated in the activities described.

- [17] Further, the applicant’s reports to Ms. Tolmatshov about her that she was fearful and anxious when driving, and avoided being either a passenger or driver if possible are not consistent with her reports to her s.44 assessors. The applicant told Dr. Dancyger that she continued to drive, and told Dr. Sharma that she could drive independently, but with pain. Therefore, I assign little weight to the August 8, 2023 report.
- [18] I am persuaded by the s. 44 report of Dr. Dancyger, who opined that the psychometric testing did not reveal the presence of a “significant and diagnosable psychological disorder,” and that there was “no psychological impairment as a result of the accident.” Dr. Dancyger conducted an examination of the applicant which included psychometric testing, an in-person interview, and a detailed review of the applicant’s medical records, on March 10, 2023.
- [19] The applicant told Dr. Dancyger that her emotional state was “good,” which is consistent with the applicant’s statements to Dr. Sharma. Additionally, the applicant told Dr. Dancyger that she saw no need to see a psychiatrist or psychologist, and denied any emotional issues, phobias, or psychological concerns, which I find undermines the applicant’s claims.
- [20] The applicant has not directed me to any evidence that she complained of psychological symptoms to her family doctor or other medical treatment providers. I find that the applicant did report sleeping disturbances as a result of pain to her s.44 assessors, but the other psychological symptoms reported by Dr. Bruni in the OCF-1, dated September 18, 2022, and the treatment plan, dated May 29, 2023, including, anxiety, depression, personality changes, and personality disorder, are not corroborated by contemporaneous medical evidence. Therefore, I have afforded them little weight.
- [21] I further find that the treatment plan dated October 28, 2022, prepared by Dr. Touyeh, which indicated that the applicant reported suffering from anxiety attacks, nightmares, difficulties with concentration, frustration, and flashbacks is not supported by contemporaneous medical evidence. Therefore, I have afforded it little weight.

- [22] For the reasons above, I find that the applicant has not met her onus to prove on a balance of probabilities that she suffers from a psychological impairment as a result of the accident which warrants removal from the MIG.

Chronic Pain

- [23] While the applicant has established that she has experienced ongoing pain as a result of her accident-related injuries, I find that the applicant has not met her onus to prove that she suffers from chronic pain with functional impairment that warrants removal from the MIG.
- [24] The applicant submits that she has chronic pain as a result of her accident-related soft tissue injuries. The respondent argues that the applicant has not established that she has chronic pain with functional impairment as a result of her accident-related injuries.
- [25] I find that the applicant experienced ongoing pain as a result of her accident-related soft tissue injuries after the accident. In her April 19, 2023 s.44 report, Dr. Sharma diagnosed the applicant with accident-related soft tissue injuries to her back, neck, and left shoulder, hip, and knee. She noted that the applicant was experiencing pain at the examination and recommended that the applicant pursue pain management with her physician, but that she did not require any further facility-based physical therapy treatment at the time.
- [26] The applicant last reported back pain to Dr. Angel at her July 14, 2023 s.44 assessment, and continued to report shoulder and knee pain to her family physician, Dr. Bichay, until August 12, 2023, when the applicant noted that her knee pain had improved, but that she continued to experience shoulder pain. Additionally, she reported shoulder pain to Dr. Khodabandehloo on October 18, 2023, more than one year after the accident.
- [27] The applicant further argues that she meets at least three of the six criteria of the *American Medical Association Guides to the Evaluation of Permanent Impairment* ("AMA Guides") to support a finding of chronic pain, without identifying which criteria the applicant meets. The respondent contends that the applicant does not meet any of the criteria.
- [28] While the AMA Guides are not a definitive test to determine if someone suffers from chronic pain and the Tribunal is not bound by them, they nevertheless provide a helpful tool in evaluating claims of chronic pain.

[29] The AMA Guides state that a person must meet at least three of six criteria to support a diagnosis of chronic pain. These criteria are:

- 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 contracts.
- 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 needs.
- vi. Development of psychosocial sequelae after the initial incident, including anxiety, fear-avoidance, depression, or nonorganic illness behaviours.

[30] The medical evidence does not support a finding that the applicant meets three of the six criteria for chronic pain provided in the AMA Guides. For example, the applicant has not directed me to any medical evidence of the use of prescription drugs beyond the recommended duration, or abuse of prescription drugs or other substances as the result of her accident-related injuries.

[31] The applicant has not directed me to any evidence that she has withdrawn from her social milieu. As the respondent notes, the applicant told Dr, Sharma that she continues to see her friends one to two times a week, as she had done prior to the accident.

[32] Additionally, the applicant has not directed me to any evidence that she is excessively reliant on health care providers or her family. I note that the applicant reported to Dr. Sharma on March 28, 2023, that she remained independent with her personal care, but relied on her husband and grandson to complete her household chores, including cooking, grocery shopping, and gardening. The applicant told Dr. Angel at her July 14, 2023 s.44 examination that she was unable to garden, but had resumed cooking and grocery shopping, with some assistance from her grandson. In my view, the applicant's statements to her s.44 assessors indicate some level of reliance on her husband and grandson. However, absent submissions from the applicant, or medical or other evidence to corroborate her self-reports to her s.44 assessors, I have insufficient basis for a finding that the applicant is excessively reliant on her spouse or family.

- [33] Further, the applicant has not directed me to evidence of physical deconditioning. As the respondent notes, on March 28, 2023 Dr. Sharma observed the applicant's body was "well conditioned." On October 18, 2023, Dr. Khodabendehloo noted that the applicant has "no muscle wasting."
- [34] The applicant returned to work two weeks after the accident without modifications, and the applicant has not directed me to any evidence that she lacks the physical capacity to pursue family or recreational needs. As such, I find that the applicant does not meet criteria number five of the AMA Guides.
- [35] I found above that the applicant does not suffer from an accident-related psychological impairment, therefore the applicant does not meet criteria number six of the AMA Guides.
- [36] Therefore, I find that the applicant has not established that she meets three of the six criteria of the AMA Guides to support a diagnosis of chronic pain.
- [37] I further find that the applicant has not established that she suffers from functional impairment due to her accident-related injuries. The applicant returned to work as a crossing guard two weeks after the accident without modifications, continues to drive, and is independent in her personal care. While the s.44 reports reveal that the applicant reported some limitations with respect to her household duties and ability to exercise, the applicant also reported that she has resumed cooking, grocery shopping, and walking for exercise. Further, Dr. Bichay's CNRs do not reveal any references to the applicant's function to corroborate the applicant's self-reports to her s.44 assessors. Therefore, I find that the applicant has not met her onus to prove on a balance of probabilities that she has functional impairment as a result of the accident.
- [38] For the reasons above, I find that the applicant has not met her onus to prove on a balance of probabilities that she suffers from chronic pain with functional impairment that warrants her removal from the MIG.
- [39] Accordingly, the applicant remains within the MIG.

Treatment Plans

- [40] As the applicant remains within the MIG, it is not necessary to determine whether the treatment plans in dispute are reasonable and necessary.

Interest

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

Award

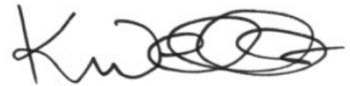
[42] The applicant sought an award under s. 10 of Reg. 664. Under s. 10, the Tribunal may grant an award of up to 50 per cent of the total benefits payable if it finds that an insurer unreasonably withheld or delayed the payment of benefits. As no payments have been withheld or delayed, I find that the applicant is not entitled to an award.

ORDER

[43] I find that:

1. The applicant sustained a predominantly minor injury as a result of the accident. She remains subject to the MIG and its \$3,500.00 limit.
2. It is not necessary to determine whether the disputed treatment plans are reasonable and necessary as a result of the accident.
3. No interest is owing.
4. The applicant is not entitled to an award.
5. The application is dismissed.

Released: August 25, 2025



**Kathleen Wells
Adjudicator**