



Citation: Torres v. Economical Insurance Company, 2025 ONLAT 23-014963/AABS

Licence Appeal Tribunal File Number: 23-014963/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:

Marilou Torres

Applicant

and

Economical Insurance Company

Respondent

DECISION

ADJUDICATOR: **Ulana Pahuta**

APPEARANCES:

For the Applicant: Felicia Moutinho, Counsel

For the Respondent: Hooman Zadegan, Counsel

HEARD: **By way of written submissions**

OVERVIEW

- [1] Marilou Torres, the applicant, was involved in an automobile accident on October 13, 2021, 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 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 an income replacement benefit in the amount of \$400.00 per week from October 20, 2021, to December 31, 2021?
 - iii. Is the applicant entitled to \$2,994.50 for an attendant care/in-home assessment, proposed by Medex Assessments Inc. in a treatment plan (“OCF-18”) submitted November 15, 2021?
 - iv. Is the applicant entitled to \$2,325.10 for chiropractic services, proposed by R. Avala Chiropractic and Wellness Ltd. in an OCF-18 submitted May 6, 2023?
 - v. Is the applicant entitled to \$2,486.00 for an attendant care/in-home assessment, proposed by Access Rehab in an OCF-18 submitted September 13, 2022?
 - vi. Is the applicant entitled to \$1,868.08 for chiropractic services, proposed by R. Avala Chiropractic and Wellness Ltd. in an OCF-18 submitted November 26, 2022?
 - vii. Is the respondent liable to pay an award under s. 10 of Reg. 664 because it unreasonably withheld or delayed payments to the applicant?
 - viii. Is the applicant entitled to interest on any overdue payment of benefits?

- [3] In her written hearing submissions the applicant confirmed that the issue of attendant care benefits in the amount of \$3,000.00 per month (issue no. 7 as identified in the Case Conference Report and Order) was withdrawn.

RESULT

- [4] I find that:
- i. The applicant has not established accident-related impairments that warrant removal from the MIG;
 - ii. The applicant is not entitled to income replacement benefits; and
 - iii. The applicant is not entitled to the treatment plans in dispute, an award or interest.

ANALYSIS

Minor Injury Guideline

- [5] 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.”
- [6] 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 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.

Parties’ Positions

- [7] The applicant submits that she has sustained serious accident-related impairments, including: a disc bulge in her lower back as confirmed by a December 2, 2021 MRI, a suspected partial thickness tear to her left shoulder, and a diagnosis of Bell’s Palsy. The applicant further argues that her ongoing impairments, including lower back pain, should not be considered to be “minor injuries”.

- [8] The respondent submits that the applicant has not established any non-minor accident related injuries. It argues that the suspected partial thickness tear falls within the definition of a minor injury, and that the applicant's back impairments and pain pre-dated the accident. The respondent further submits that the applicant has not led any evidence that the Bell's Palsy diagnosis could be related to the accident. It relies on the Insurer's Examination ("IE") report of Dr. James Stewart, who found that the applicant's musculoskeletal injuries had fully resolved, that she had full range of motion in her neck, back and limbs, and that the applicant's injuries met the definition of a "minor injury".
- [9] The respondent further argues that the applicant has failed to direct the Tribunal to any supporting evidence for her submissions for this written hearing. While the applicant's submissions refer to various clinical notes and records ("CNRs"), hospital records and diagnostic imaging, this evidence was not included as appended Tabs to the submissions or in an evidence brief. Further, the footnotes identifying the evidence were incomplete and included question marks rather than Tab or page numbers.
- [10] The applicant, in her reply submissions, stated that the incomplete references in the footnotes were an error by her representative and should not prejudice her claim. Moreover, she argues that the majority of the medical documents identified in her submissions had been included in her prior Case Conference Summary, and as such, the respondent would have been aware of these documents.

The applicant has not established injuries that warrant removal from the MIG

- [11] I find that the applicant has not met her evidentiary onus to prove, on a balance of probabilities, that she has sustained non-minor accident-related impairments. Although her submissions make reference to various medical documents, these documents were not entered into evidence as Tabs, or specifically identified in footnotes.
- [12] The Case Conference Report and Order dated May 13, 2024 ("CCRO") expressly specified that the parties' submissions must make "specific reference to the evidence by tab and page number." The applicant has not made any such specific reference to evidence supporting her claim for removal from the MIG. I further am not persuaded by the applicant's argument that most of these documents had been provided as part of her Case Conference Summary. The Case Conference Summary had been provided in preparation for the May 8, 2024 case conference, not as evidence in this written hearing. Moreover, the CCRO clearly specified that parties must exchange and file with the Tribunal all documents and evidence that they intend to rely on in this hearing.

- [13] The Tribunal's role is that of a neutral arbiter, not an advocate for any party. The Tribunal cannot presume to know which evidence or portion thereof, if any, that a party intends to rely on in advancing her case. The applicant has the onus of demonstrating that she has sustained impairments warranting removal from the MIG. Given that she has not specifically directed me to, or filed evidence in support of her claim, I find that she has not met her evidentiary burden to support her removal from the MIG.
- [14] Further, even considering the medical evidence filed by the respondent for this written hearing, I find that the evidence does not support the applicant's removal from the MIG. As part of its submissions, the respondent has included the CNRs of the applicant's family physician Dr. Mark Rotundo, and IE reports of Dr. James Stewart, GP and Ms. Sarah Maddix, occupational therapist.
- [15] With respect to the applicant's suspected left shoulder partial thickness tear, I agree with the respondent that partial tears have consistently been found by this Tribunal to fall within the definition of a "minor injury". The applicant has further not led any medical evidence that her Bell's Palsy diagnosis was accident-related.
- [16] The applicant also references her December 2, 2021 MRI, which disclosed a disc bulge in her lower back. However, the applicant has not established that the diagnostic imaging revealed accident-related impairments, rather than degenerative changes. An October 15, 2021 X-ray conducted soon after the accident found normal alignment, no fracture and "mild facet degenerative changes" at L4-L5 and L5-S1. The applicant also refers to a December 2, 2021 MRI which noted a disc bulge at L1-L2 and moderate facet osteoarthritis at L4-S1. However, the applicant has not directed me to any medical opinion stating that these impairments were caused by the accident, rather than being degenerative changes.
- [17] With respect to the applicant's argument that her ongoing back pain warrants removal from the MIG, the respondent has led evidence that the applicant had similarly reported low back pain pre-accident. The applicant has not directed me to evidence in the medical record that she has been diagnosed with chronic pain as a result of the accident. Rather, at the time of Dr. Stewart's GP IE in May 2023, the applicant had presented with full range of motion in the neck, back and shoulders, and Dr. Stewart had found no accident-related physical impairments.
- [18] As such, 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.

Treatment Plans

- [19] As I have found that the applicant has failed to prove that her accident-related impairments warrant treatment beyond the MIG limits, it is unnecessary for me to consider the reasonableness and necessity of the disputed treatment plans.

Income Replacement Benefits (“IRBs”)

- [20] I find that the applicant has not established entitlement to IRBs.
- [21] To receive payment for an IRB under s. 5(1) of the *Schedule*, the applicant must be employed at the time of the accident and, as a result of and within 104 weeks after the accident, suffer a substantial inability to perform the essential tasks of that employment. The applicant must identify the essential tasks of their employment, which tasks they are substantially unable to perform and to what extent they are unable to perform them. The applicant bears the burden of proving, on a balance of probabilities, that they meet the test.
- [22] The applicant submits that she is entitled to IRBs from October 20, 2021 to December 31, 2021, when she returned to work. She submits that IRBs were improperly denied by the respondent on the basis that an OCF-3 was not signed, and therefore had not been properly submitted. However, she states that the OCF-3 had been signed by Dr. Rotundo and that she had remained off work for the period in dispute on the advice of Dr. Rotundo, who had provided a medical note stating that she was totally disabled.
- [23] The respondent argues that it is incontrovertible that an OCF-3 must be signed by an applicant. It further submits that the applicant returned to work after only six weeks, has not produced any documents relating to income loss, her extended health benefits or her short-term disability benefits, nor has the applicant provided details of the essential tasks of her employment and how her accident-related impairments prevent their completion. Finally, the respondent argues that the applicant had been off work pre-accident as well, and that Dr. Rotundo had previously provided notes stating that the applicant was totally disabled.
- [24] I find that the applicant has not met her onus to prove, on a balance of probabilities that she is entitled to IRBs for the period in dispute.
- [25] Firstly, the OCF-3 submitted into evidence at this hearing by the respondent does not appear to have been signed by the applicant and was dated July 14, 2022. However the applicant is claiming IRBs only until December 31, 2021 when she

returned to work. Section 36(3) of the *Schedule* is clear that an applicant is not entitled to IRBs for any period before a completed OCF-3 is submitted. Even if I were to accept the applicant's argument that the OCF-3 had been signed by Dr. Rotundo, it was still provided after the period that the applicant is claiming IRBs. As such, pursuant to s. 36(3), the applicant would not be entitled to IRBs for the period in dispute.

[26] The applicant further has not addressed any of the respondent's arguments that no documents have been provided relating to income loss, the applicant's extended health benefits or whether she applied for short term disability benefits. The applicant also has not provided any specific submissions or pointed me to evidence relating to the essential tasks of her employment as a personal support worker (PSW), which tasks she was unable to perform and to what extent she was unable to perform them, as required to prove entitlement under s. 5(1) of the *Schedule*.

[27] Accordingly, I find that the applicant has not met her onus to prove, on a balance of probabilities, that she is entitled to IRBs from October 20, 2021 to December 31, 2021.

Interest

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

Award

[29] 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. I find that the applicant has not established that any payment of benefits was unreasonably withheld or delayed. As such, the respondent is not liable to pay an award.

ORDER

[30] I find that:

- i. The applicant's injuries are predominantly minor and therefore subject to treatment within the \$3,500.00 limit of the MIG;
- ii. The applicant is not entitled to IRBs;

- iii. The applicant is not entitled to the disputed treatment plans, an award or interest.

[31] The application is dismissed.

Released: September 29, 2025

A handwritten signature in black ink, appearing to read "Ulana Pahuta", is positioned above a horizontal line.

Ulana Pahuta
Adjudicator