Citation: Okromelidze v. Aviva General Insurance Company, 2025 ONLAT 24-012914/AABS

Licence Appeal Tribunal File Number: 24-012914/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:

Eter Okromelidze

Applicant

and

Aviva General Insurance Company

Respondent

DECISION

ADJUDICATORS:	**Rebecca Hines** **Gurleen Thethi**
APPEARANCES:	
For the Applicant:	Christopher Steinburg, Counsel Danijela Obradovic, Counsel
For the Respondent:	Peter Durant, Counsel
Court Reporters:	Kyle Climans, Victory Verbatim Alyssa Scott, Professional Court Reporters
Interpreter:	George Mariamuli (Georgian Language)
Heard by videoconference:	**July 14, 15, 16 and 17, 2025**

OVERVIEW

[1] Eter Okromelidze, the applicant, was involved in an automobile accident on **June 1, 2017**, 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 General Insurance Company, and applied to the Licence Appeal Tribunal - Automobile Accident Benefits Service (the "Tribunal") for resolution of the dispute.

ISSUES

[2] The issue in dispute is:

i. Has the applicant sustained a catastrophic ("CAT") impairment as defined by the *Schedule*?

RESULT

[3] After considering both parties submissions and all of the evidence we find the applicant did not sustain a CAT impairment pursuant to the *Schedule*.

BACKGROUND

[4] On June 1, 2017, the applicant was a front seat passenger in a vehicle which t-boned another vehicle while turning left at a traffic light. The applicant struck her head but did not lose consciousness. An ambulance was not called to the scene and she did not go to the hospital. The applicant's pain began a couple days post accident and gradually worsened. She has been diagnosed with soft-tissue injuries which developed into chronic pain and has also been diagnosed with psychological impairments.

ANALYSIS

Has the applicant sustained a CAT impairment as defined by the *Schedule?*

[5] The applicant did not sustain a CAT impairment pursuant to s. 3.1 ("Criterion 8") of the *Schedule*.

[6] To qualify as CAT under Criterion 8, an individual must sustain a Class 4 ("marked impairment") as a result of the accident in three out of the four spheres of functioning or a class 5 impairment (extreme impairment) in one or more areas of function, outlined in Chapter 14 of the American Medical Association's *Guides*

to the Evaluation of Permanent Impairment, 4th edition, 1993 ("*Guides*"), due to a mental or behavioural disorder. The burden of proof is on the applicant.

[7] The *Guides* set out that mental and behavioural impairments are rated according to how seriously they affect a person's useful daily functioning. The below chart sets out the four spheres of functioning and the levels of impairment.

Area or Aspect of Functioning	Class 1: No Impairment	Class 2: Mild Impairment	Class 3: Moderate Impairment	Class 4: Marked Impairment	Class 5: Extreme Impairment
Activities of Daily Living	No impairment is noted	Impairment levels are compatible with most useful functioning	Impairment levels are compatible with some, but not all useful functioning	Impairment levels significantly impede useful functioning	Impairment levels preclude useful functioning
Social Functioning					
Concentration, Persistence and Pace					
Adaptation (Deterioration in a work-like setting)					

[8] In support of her position that she meets CAT status under Criterion 8, the applicant relies on the s. 25 CAT assessment reports of Dr. Shahmalak, psychiatrist, and Julian Amchislavsky, occupational therapist ("OT Amchislavsky"), undertaken in April 2022 and January 2021. Dr. Shahmalak opined that the applicant has marked impairments in Social Functioning, Concentration, Persistence and Pace, and Adaptation. The applicant argues that the Tribunal should accept Dr. Shahmalak's opinion because both the s. 25 and s. 44 CAT OT assessments confirmed that she had significant functional limitations as a result of her accident-related psychological impairment. In addition, her performance during both assessments was valid because none of the assessors concluded that she was malingering. Finally, Dr. Shahmalak diagnosed the applicant with Somatic Symptom Disorder which is more consistent with her symptoms and post-accident function.

[9] The respondent relies on the CAT insurer examination ("IE") report of Dr. Rosenblatt, psychiatrist, completed in November 2022 and February 2023. The respondent also relies on the CAT IE of Amanda Garnett, occupational therapist ("OT Garnett"), completed in April 2023. Dr. Rosenblatt concluded that the applicant has a moderate impairment in all four spheres of functioning. The respondent submits that the applicant has not met her onus in proving that she sustained a CAT impairment because there is a huge gap in the medical records.

Consequently, there is very little medical evidence of the applicant's post-accident impairments. The respondent argues that we should prefer Dr. Rosenblatt's opinion because it is more consistent with the medical evidence or lack thereof. Further, it argues that the Tribunal should draw an adverse inference from the applicant's failure to produce any of the records outlined in the Tribunal's case conference report and order ("order"). For example, she did not produce any clinical notes and records ("CNRs") of any treating doctors including her family doctor, OHIP summary or collateral benefit files. It submits that the applicant did not produce these records because they either do not exist or would not help her position. In addition, the applicant chose not to call her family doctor despite the fact that they were listed on her witness list and she provided no explanation for not calling them. It asserts that the Tribunal should conclude that the testimony of the applicant's family doctor would not assist her case.

[10] We find the applicant has not met her onus in proving that she sustained a CAT impairment pursuant to the *Schedule* because other than the CAT reports and testimony of her and her witnesses, she did not present any other medical evidence such as the CNRs of her family doctor, or any other health practitioner documenting any ongoing accident-related impairment or functional limitations. In addition, it is now eight years post-accident and she did not rely on any other assessment or reports to corroborate the findings of her CAT assessors at the hearing. We do draw an adverse inference from the applicant's failure to present any other medical evidence to support her position. We find that relying on the CAT assessments on their own insufficient because as highlighted below, it is not clear whether her own assessors reviewed any medical records in coming to their conclusions and CAT ratings.

[11] We also draw an adverse inference from the applicant's failure to comply with the Tribunal's order because she has provided no explanation in response to the respondent's submissions. We conclude that either the records do not exist or would not assist the applicant's position regarding her claim that she sustained a CAT impairment. For the same reason, we draw an adverse inference from the applicant's decision not to call her family doctor as a witness without explanation and she did not rely on any CNRs. We conclude that the testimony of the applicant's family doctor would not have supported her position.

[12] We also prefer the IE CAT reports and ratings of the respondent's assessors over the applicant's assessors for the following reasons.

[13] We find the OT report and testimony of OT Amchislavsky had significant limitations. The following are some examples:

a) He confirmed during his testimony that he did not have any recollection of the applicant or the assessment and that almost all of the findings in his assessment were based on the applicant's self-reports about her impairments and function.

b) He could not recall what medical documents he reviewed in completing the assessment to reconcile any of the applicant's self-reports regarding her impairments and function. No appendix was attached to his report and he was unable to clarify whether he reviewed any medical records.

c) Many of the tests he administered were also based on the applicant's self-reports and his interpretation of the results contained errors. For example, he did not identify any limitations to the testing and pointed out that where his assessment conclusion indicates moderate-severe, this was not phrased properly and that it would be appropriate to say moderate to severe.

d) He acknowledged during cross-examination that only five out of a 1000 people had passed the grocery outing community task he assigned to the applicant. Further, his report lacked details regarding how long the community outing took.

e) His report did not indicate whether a Georgian interpreter was present for the assessment. During cross-examination, he acknowledged that he read certain tests regarding concentration and memory to the applicant in English. We find that this places significant limitations on the test results and findings of OT Amchislavsky.

[14] For the above-noted reasons, we have placed little weight on the report and testimony of OT Amchislavsky.

[15] We also find Dr. Shahmalak's report and testimony unhelpful because he heavily relied on the assessment of OT Amchislavsky in applying his marked impairment ratings. As highlighted above the therapist's report was solely based on the applicant's self reports, contained errors and was unreliable for the reasons already noted. During cross-examination, Dr. Shahmalak did little to justify his marked impairment ratings. For example, the doctor was unable to address why the applicant had a marked impairment in social functioning, despite having good relationships with her son, daughter-in-law, and daughter.

[16] In addition, it is unclear what medical documents Dr. Shahmalak considered in completing his assessment. For example, early on in his report the doctor

referred to various treatment plans and notes from the treating clinic for a period of five-months post-accident, a psychological report of Dr. Harris from 2018 and a hospital emergency note from February 2020. However, the relevant documents he highlighted as part of his CAT analysis were two disability certificates from 2009 (from a previous MVA) and 2017 and a psychological pre-screening report from 2018. We do not find these records support that the applicant has a marked impairment in any of the spheres of function. Nor did the applicant rely on these documents at the hearing. During cross-examination, the doctor was not able to direct the Tribunal to any of the medical records he reviewed which support his marked impairment ratings other than OT Amchislavsky's report. For these reasons, we do not give Dr. Shahmalak's report and testimony much weight.

[17] The applicant also relies on case law such as *Ortaugurlu v. Pembridge Insurance*, 2025 CanLII 31124 (ON LAT), *Fleming-Dorie v. Certas Home and Auto Insurance Company*, 2025 CanLII 5849 (ON LAT), and a few others, in which the Tribunal preferred the reports of the applicant's assessors. We find these decisions distinguishable from this case as they are rooted in the assessor having conducted thorough assessments and we do not find that the applicant's assessors in this case have done the same.

[18] The applicant also relies on *Simmons v BelairDirect Insurance Company,* 2023 CanLII 26935 (ON LAT) in which the Tribunal held that the applicant acting appropriately in many or even most situations does not imply that she is moderately impaired. While we agree with this statement, there needs to be additional evidence that would support a marked impairment in any of the spheres of functioning.

[19] The poor persuasive strength of the applicant's evidence is enough to dismiss the application, as the applicant has failed to meet her burden of proof. However, for completeness, we will discuss the respondent's evidence and why we find it more convincing that the applicant has moderate impairment across the four spheres.

[20] In contrast to the applicant's evidence, we find Dr. Rosenblatt was able to justify his diagnoses and explain exactly why he assigned moderate v. marked impairment ratings. The following are some examples:

i. Dr. Rosenblatt testified that the applicant could complete tasks for a significant time. For instance, she would read or watch tv for two hours at a time. A marked impairment on the other hand, would constitute trouble following the program, and/or difficulty following what they are watching.

ii. Dr. Rosenblatt explained that the applicant was able to complete her tasks, and while had some difficulty with decision making or scheduling, she was generally on time.

iii. Dr. Rosenblatt explained that impaired social functioning would be demonstrated through a history of altercations, evictions, fear of strangers and social isolation. The applicant on the other hand had good relationships with her children, her daughter-in-law, her landlord and was cordial with her neighbours.

[21] Finally, based on the following reasons we do not find the applicant has a marked impairment in any of the three spheres of function.

Social Functioning

[22] We find that the applicant has a moderate impairment in the sphere of Social Functioning.

[23] The *Guides* indicate that social functioning refers to an individual's capacity to interact appropriately and communicate effectively with other individuals. Social functioning includes the ability to get along with others, such as family members, friends, neighbors, grocery clerks, landlords, or bus drivers. Impaired social functioning may be demonstrated by a history of altercations, evictions, firings, fear of strangers, avoidance of interpersonal relationships, social isolation, or similar events or characteristics.

[24] Strength in social functioning may be documented by an individual's ability to initiate social contact with others, communicate clearly with others, and interact and actively participate in group activities. Cooperative behavior, consideration for others, awareness of others' sensitivities, and social maturity also need to be considered. Social functioning in work situations may involve interactions with the public, responding to persons in authority such as supervisors, or being part of a team.

[25] The applicant testified that prior to the accident she was social and outgoing. She would get together with friends on the weekend or visit with her children. Post-accident she no longer has the desire to socialize and prefers to stay home because she avoids car travel due to panic attacks. She has lost contact with friends and extended family. The applicant's daughter testified that prior to the accident her mother was fun and enjoyed outings with friends to Niagara Falls and Muskoka on the weekend. Post-accident, she does not go out because of her physical and emotional issues and their relationship has become strained.

[26] All assessors noted that the applicant had good communication skills during the assessment, in terms of eye contact, topic initiation, and taking turns speaking, despite her mood being depressed.

[27] OT Amchislavsky provided a limited report of social functioning but indicated that the applicant was severely limited in relating to others, spending much of her time at home. Dr. Shahmalak indicated that the applicant suffers from a marked impairment in the sphere of social functioning, basing the rating on the applicant's decreased social activities, and withdrawal from her relationships.

[28] Dr. Rosenblatt opined that although the applicant's social functioning has changed post-accident her impairment levels are compatible with some, but not all useful functioning because she maintains good relationships with her parents, children, and daughter-in-law. Further, she remains friendly with her landlord and neighbours.

[29] We find the applicant's impairment level in social functioning compatible with a moderate impairment because her testimony about her post-accident social functioning was inconsistent. For example, during cross-examination she conceded that she travelled to Georgia in 2022, which is where her extended family resides. Further, we find her daughter's testimony unhelpful because she moved out of her mother's home in 2020 and has lived in Alberta since September 2021. Consequently, we find her evidence about the applicant's post-accident social function to be limited. . Moreover, the applicant's daughter conceded during cross-examination that her mother has travelled to Calgary three times since 2021 to visit, which we find does not support that their relationship is strained or that she does not leave the home because of vehicular anxiety. The applicant has also reported to assessors that she accesses the community by taking public transit. We find these facts inconsistent with someone who rarely leaves the home because of fear of vehicular travel. Finally, there was no evidence before us to suggest that the applicant has had any angry outbursts or conflict with people outside the home.

[30] For the above reasons, we accept Dr. Rosenblatt's moderate impairment rating in the sphere of social functioning.

Concentration, Persistence and Pace

[31] We find that the applicant has a moderate impairment in the sphere of Concentration, Persistence and Pace as a result of her accident-related psychological impairment.

[32] The *Guides* define this sphere as having the ability to sustain focused attention long enough for the timely completion of tasks commonly found in work settings. Deficiencies in concentration, persistence and pace are best noted from previous work attempts or from observations in work-like settings. The Guides specify that psychological tests are useful in assessing intelligence, memory, and concentration. Frequency of errors, the time it takes to complete a task and the extent to which assistance is required to complete a task are factors to consider in assessing this sphere.

[33] The applicant testified that prior to the accident she did not have any issues with attention, concentration or memory. Post-accident, her memory and cognition are poor. She misplaces things, has missed medical appointments and struggles with attention and concentration. She testified that in December 2021, she attempted to go back to work as a sous chef for a Georgian restaurant. However, she would cut parsley instead of onions and would place things in the fridge that did not belong.

[34] We find the applicant has a moderate impairment in concentration, persistence and pace. For the reasons already noted above, Dr. Shahmalak's marked impairment rating was heavily reliant on the report of OT Amchislavsky which as already noted above had serious limitations. In addition, OT Garnett's report was not helpful because the applicant carried out very little activity in that assessment. However, we note that in contrast to the assessment carried out by OT Amchislavsky, the applicant did not provide OT Garnett with consent to conduct the assessment in her home or do a collateral interview which placed OT Garnett at a disadvantage.

[35] In addition, Dr. Rosenblatt's assessment noted that the applicant spends two hours per day reading news, writing letters, and watching movies. While she experiences fatigue, the applicant is able to understand and recall what she watches on television. We find the applicant's testimony about her December 2021 return to work was not supported by any evidence such as an employment file. Nor were we referred to any other records where the applicant mentioned this employment to anyone (including her CAT assessors) to support that she either quit or was terminated because of any accident-related impairments. We also note that we do not have any evidence to support that the applicant has missed any doctor's appointments.

[36] For the above noted, reasons we find that the applicant has a moderate impairment in the sphere of Concentration, Persistence and Pace.

Adaptation

[37] We find that the applicant has a moderate impairment in the sphere of Adaptation.

[38] The *Guides* define impairment in adaptation as the repeated failure to adapt to stressful circumstances, in the face of which "the individual may withdraw from the situation or experience exacerbation of signs and symptoms of a mental disorder; that is, decompensate or having difficulty maintaining activities of daily living, continuing social relationships, and completing tasks." An impairment in adaptation affects the ability to function across all activity areas.

[39] While the applicant has had a significant reduction in her performance of household chores, neither parties' assessors concluded that the applicant had a marked impairment in activities of daily living.

[40] With respect to employment at the time of the accident, the applicant was employed as a full-time self-employed "cleaner." She has not returned to work in any capacity since 2021.

[41] Dr. Shahmalak's report states that the applicant is depressed, and poor emotional regulation would likely result in workplace conflict. He also notes that the applicant's subjective reports of cognitive difficulties (impaired memory, concentration and attention, as well as impaired multi-tasking) and anergia, would likely lead to poor decision-making, increased errors and decreased task efficiency at her workplace. We find Dr. Shahmalak's report on this sphere highly speculative and lacking thorough reasoning.

[42] Dr. Rosenblatt notes that while the applicant has difficulty following instructions, she plans her days, writes down her appointments, and is on time for them. She is having difficulty with stress but will rest or nap as a coping mechanism. Dr. Rosenblatt assessed the applicant as having suffered a moderate impairment.

[43] We agree with the findings of Dr. Rosenblatt and find the applicant has a moderate impairment in adaptation.

CONCLUSION

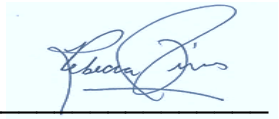
[44] We find that the applicant has not met her onus on a balance of probabilities that she has three marked impairments in the spheres of functioning under Criterion 8. Although we acknowledge that the applicant sustained some impairments as a result of the accident which have negatively impacted her life, these impairments do not meet the CAT threshold.

ORDER

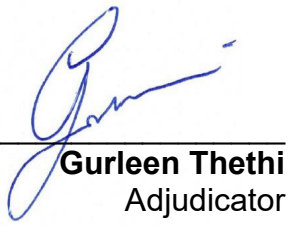
[45] For the above-noted reasons, we order as follows:

i. The applicant did not sustain a CAT impairment pursuant to the *Schedule.*

Released: October 6, 2025



Rebecca Hines
Adjudicator



Gurleen Thethi
Adjudicator