



Citation: Tassie v. Economical Mutual Insurance Company, 2025 ONLAT 24-001337/AABS

Licence Appeal Tribunal File Number: 24-001337/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:

Maraizu Kelechi Tassie

Applicant

and

Economical Mutual Insurance Company

Respondent

DECISION

ADJUDICATOR: Amar Mohammed

APPEARANCES:

For the Applicant: Michael Agulefo, Paralegal

For the Respondent: Nathalie Rosenthal, Counsel

HEARD: By Way Of Written Submissions

OVERVIEW

[1] Maraizu Kelechi Tassie, the applicant, was involved in an automobile accident on April 28, 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 an income replacement benefit in the amount of \$92.85 per week from May 6, 2022 to ongoing?
- iii. Is the applicant entitled to \$2,254.72 for a Psychological Assessment, proposed by Holistic Mind and Body Wellness in a treatment plan/OCF-18 (“plan”) submitted June 28, 2022?
- iv. Is the applicant entitled to \$87.19 (\$200.00 less \$112.81 approved) for a Disability Certificate expense submitted on a claim form (OCF 6) submitted June 28, 2022?
- v. Is the applicant entitled to \$200.00 for a Clinical Notes and Records expense submitted on a claim form (OCF 6) submitted October 17, 2022?
- vi. Is the applicant entitled to the medical services proposed by Mackenzie Medical Rehab, as follows:
 - a. \$1,525.84 for physiotherapy services, in a plan submitted October 26, 2022;
 - b. \$1,776.03 for a physiotherapy services, in a plan submitted September 16, 2022;
 - c. \$1,300.00 for physiotherapy services in a plan submitted August 8, 2022; and

- d. \$3,622.73 for physiotherapy services in a plan submitted on June 13, 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?

RESULT

- [3] The applicant's injuries are predominantly minor as defined in s. 3 of the *Schedule*. The applicant is not entitled to an income replacement benefit. As the applicant is in the MIG, it is not necessary to consider if the plans for treatment and assessment or the OCF-6s are reasonable and necessary. The respondent is not liable to pay an award. The application is dismissed.

PROCEDURAL ISSUE

- [4] By letter dated March 18, 2025 addressed to the Tribunal and to the applicant, the respondent requested that I strike the applicant's reply for introducing new evidence beyond that referred to in the applicant's initial submissions. Essentially, the respondent alleged that the applicant is splitting his case. The respondent refers me to, and I am persuaded by a prior decision of this Tribunal, *A.Y. v Aviva Insurance Company*, 2019 CanLII 119734 (ON LAT). The decision concludes that the right to reply is a limited one and parties are generally expected to make the entirety of their cases in their initial submissions. For the reasons that follow, the applicant's reply submissions relying on new evidence and new arguments not contained in initial submissions are struck because the new issues raised are not properly before me.
- [5] The applicant's initial submissions refer me to exhibits 1 through 12. The applicant has filed three separate documents with file names marking 12 exhibits contained within them. These three documents are not indexed, bookmarked/tabbed or consecutively page numbered as required by the CCRO. These three files or 12 exhibits are the entirety of the applicant's evidence referred to in his initial submissions.
- [6] Separately, the applicant has filed a 6-tab evidence and authority brief along with reply submissions. The applicant not only tenders fresh evidence but also makes fresh arguments not made in his initial submissions.

- [7] The reply submissions are 7 consecutive paragraphs. I find that paragraphs 2-6 are improper for introducing fresh evidence and fresh arguments. I also find that the evidence and arguments could have been relied upon in the applicant's initial submissions but were not. The applicant did not indicate the reason the evidence and arguments were not included with initial submissions. For example, the applicant alleges that the plan listed as issue 2.iii. was denied without the support of any medical evidence and was denied 212 days after submission to the respondent. The applicant similarly alleges that the plans listed as issues 2.vi.a. and c. were denied more than 10 business days after the respondent received them, contrary to s. 38(8) of the *Schedule*. However, the applicant did not argue that the plans were payable under ss. 38(8) and 38(11) in his initial submissions. By splitting his case, the applicant has restricted the respondent's opportunity to respond to his fresh evidence and submissions. After striking the offending paragraphs, I find the remaining submissions restate the applicant's initial submissions and add a reference to caselaw which also could have been included in the applicant's initial submissions. Therefore, the issue of compliance with s. 38(8) is not properly before me.
- [8] For the reasons above, I find that the applicant improperly tendered fresh evidence and arguments in his reply submissions. The applicant's reply submissions, paragraphs 2-6 are struck and are not considered in deciding the substantive issues in dispute.

ANALYSIS

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 MIG limit?

- [9] I find, on a balance of probabilities, that the applicant's injuries sustained in the accident are predominantly minor as defined by the *Schedule*.
- [10] 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."
- [11] 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 medical 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 is on the applicant.

- [12] The applicant argues he should be removed from the MIG because he suffers from chronic pain as a result of the accident to his neck, shoulder, lower back, right leg and foot. Although chronic pain is the sole reason argued in relation to removal from the MIG, the applicant also refers to psychological impairments preventing him from reaching maximal recovery within the MIG. For this reason I will address the applicant's evidence relating to removal from the MIG from both a chronic pain and a psychological perspective.
- [13] The applicant refers me to the clinical notes and records ("CNRs") of his family doctor, Dr. Saad Bahodi, a Psychological Report by Dr. Gloria Fiati and Osei Dugan, Psychotherapist dated July 18, 2022, and a Disability Certificate ("OCF-3") dated June 10, 2022 completed by Dr. Edwin Wong, Chiropractor.
- [14] The respondent refers me to the insurer's examination Physician Assessment Report dated March 21, 2023 by Dr. Sabrina Ming-Wai Tu, and Psychological Assessment Report dated March 21, 2023 by Dr. Neil Weinberg.

Chronic pain with functional impairment

- [15] I find that the applicant has not established that he has chronic pain with a functional impairment that warrants removal from the MIG.
- [16] I find that the applicant has not been diagnosed with chronic pain and there are at most two visits to his family doctor that are related to the subject accident, both in June 2022. There are no direct submissions addressing a functional impairment in the context of chronic pain. I also find the applicant's self-reporting inconsistent and there is a lack of evidence establishing the applicant's missed work which could assist me in assessing a functional impairment. I find on a balance of probabilities that the applicant has not established that he suffers from chronic pain with a functional impairment that may warrant removal from the MIG.

Family Doctor's Clinical Notes and Records

- [17] The family doctor's CNRs note a telephone visit on the date and time of the accident, at 6:20PM, but there is no mention of the accident in the April 28, 2022 CNR despite the consultation happening later in the day, after the accident. The applicant's next visit after April 28, 2022, to his family doctor was also over the

telephone, on May 18, 2022, but there is no mention of the accident. It is not explained why the applicant would not share his complaints with his family doctor post-accident despite having the opportunity to do so. The applicant's first accident-related visit was on June 13, 2022, when Dr. Bahodi requisitioned x-ray imaging of the applicant's spine. The applicant's subsequent telephone visit on June 20, 2022, was to discuss the finding of degenerative disc disease based on the x-ray results but I am not referred to any medical opinion connecting this to the accident.

[18] I am not referred to any evidence that the applicant visited his family doctor for any accident-related complaints other than the single visit on June 13, 2022. There is no mention of the accident in prior notes and the reason for the subsequent visit on June 20 was to discuss over telephone the findings of the x-ray imaging. The respondent submits that the findings of the x-ray imaging are not accident related. The respondent is correct that I have not been referred to any accident-related findings arising out of the imaging from June 2022.

[19] The next visit occurred almost a year after the subject accident, on March 7, 2023, and it seems the applicant was in a subsequent accident based on the CNRs. It is noted that he was driving when the vehicle slipped on ice and hit a concrete barrier. This note is contained in the applicant's copy of the CNRs but is not included in the respondent's copy. Neither party made any submissions regarding this 2023 accident or this CNR to assist me. The CNRs continue until August 2023 but are unrelated to any accident-related complaints. This means that the only family doctor visits related to the accident that is the subject of this application are in June 2022.

Disability Certificate and Inconsistent Self-Reporting

[20] The applicant's accident was on April 28, 2022, the applicant first visited Mackenzie Medical Rehabilitation Centre ("MMRC") for an initial consultation on June 10, 2022 after referral to the clinic by his legal representative. I give less weight to the evidence that relies entirely on the applicant's self-reporting because his self-reporting is inconsistent. For example, the applicant provides varying answers regarding losing consciousness at the time of the accident. The initial consultation note from MMRC states the applicant suffered a loss of consciousness ("LOC") as a result of the accident. The applicant's first accident-related visit to his family doctor was on June 13, 2022 and there is no reference to a LOC despite being only three days after the MMRC consultation. There is no LOC noted during the psychological assessment on July 5, 2022. On February 28, 2023, the applicant specifically denied a LOC to Dr. Weinberg. The Physician

Assessment Report dated March 21, 2023 by Dr. Sabrina Ming-Wai Tu notes a report of loss of consciousness. I note that whether the applicant lost consciousness is not relevant to whether he suffers from chronic pain with a functional impairment that may warrant removal from the MIG. However, the inconsistency is relevant to the weight I assign to evidence that is based on his self-reporting.

[21] The applicant's submissions do not directly address functional impairment. However, the Disability Certificate ("OCF-3") dated June 10, 2022, completed by Dr. Edwin Wong, Chiropractor, opines that the applicant is substantially unable to perform the essential tasks of his employment, that he suffers a complete inability to carry on a normal life, and a substantial inability to perform housekeeping and home maintenance services. Dr. Wong opined that this level of disability would likely last between 9-12 weeks.

[22] I find that the details of the applicant's disability are self-reported and inconsistent. Further, that they are not based on objective testing establishing any functional limitations due to accident-related pain, which weakens this evidence. The Application for Accident Benefits ("OCF-1") dated June 13, 2022, notes injuries to the applicant's back, shoulder, right leg and foot which resulted in the applicant's inability to work or perform caregiving duties immediately post-accident:

Due to my injuries sustained during the MVA, I have been unable to work and subsequently unable to perform my normal caregiving activities.

[23] As it relates to caregiving, the OCF-1 explanation is blank and does not provide any particulars. The OCF-3 states the applicant was not performing caregiving duties pre-accident which seems to contradict the OCF-1.

[24] As it relates to the applicant's work, the OCF-1 states the applicant was a driver for Uber working 70 hours per week and the injuries from the accident prevented him from working. The OCF-3 states the last date the applicant worked pre-accident was April 11, 2022. The gap between April 11, 2022 to the date of the accident on April 28, 2022 is left unexplained. Dr. Fiati's Psychological Report as of the assessment on July 5, 2022 stated the applicant had not worked since the accident due to pain complaints. Dr. Sabrina Ming-Wai Tu's report states that the applicant was working 56-70 hours per week prior to the accident and returned to work after the accident gradually increasing his working hours to 40 hours per week. The reason provided for the modified hours are specifically as a result of driving anxiety which is not the reasoning noted by Dr. Fiati. However, there is

further inconsistency because Dr. Weinberg notes the applicant reported “that he did not take any time off work after the subject accident”. The applicant did not refer me to evidence that may assist me in establishing a reliable set of facts related to his work to resolve these inconsistencies and did not directly address the functional limitations I should consider in the context of removal from the MIG. The applicant did not refer me to evidence corroborating his working hours or his income pre- or post-accident which could have assisted me on the issue of removal from the MIG and also the income replacement benefit, which is also in dispute on this application.

Psychological Condition

[25] The applicant did not argue that he is relying on the Psychological Report of Dr. Fiati in the context of removal from the MIG but I am referred to the report generally. Dr. Fiati notes that the applicant went to see his family doctor a week after the accident regarding pain complaints however I could not find corroborating CNRs noting such a visit with the family doctor. The respondent argues that the Psychological Report is based on self-reporting by the applicant on July 5, 2022 without any document review and deserves little weight. Dr. Fiati opines that the applicant is experiencing:

- i. Persistent Somatic Symptom Disorder with Predominant Pain: Severe, (i.e. DSM-V Code: 300.82),
- ii. a Chronic, (i.e. more than six months)) Adjustment Disorder With Mixed Anxiety and Depressed Mood, (i.e. DSM-V Code: 309.28), and
- iii. Specific Phobia, Situational Type: Pedestrian, (i.e. DSM-V Code: 300.29)
- iv. Post Traumatic Stress Disorder (i.e. DSM-V Code 309.81)

[26] I prefer the opinion of Dr. Weinberg that the applicant is not suffering from an accident-related diagnosable psychological condition. Dr. Fiati’s report is weakened due to being completely dependant on the applicant’s self-reporting with no document review and because it was completed virtually. It is also weakened because the applicant’s self-reporting seems inconsistent in important aspects and because the report is not corroborated by the family doctor’s CNRs. The insurer’s examination Psychological Report by Dr. Weinberg is given more weight because it completes a more thorough review of details surrounding the accident, is based on a document review in addition to the applicant’s self-reporting at the assessment and because it was in-person.

- [27] In relation to the applicant's reference to Dr. Weinberg's report noting certain symptoms such as, feeling sad over how the insurance claim is going, reporting feeling depressed and a little stressed. The applicant did not make any arguments connecting these references to the test for removal from the MIG but noted that that Dr. Weinberg opined a psychological assessment was not reasonable or necessary. In the context of removal from the MIG, the respondent argues the references to the applicant's symptoms do not suggest anything more than being associated psychosocial symptoms of his minor injury referring me to *Nguyen v Wawanesa Mutual Insurance Company*, 2021 CanLII 96836. I am persuaded by the reasons in this decision in considering the applicant's symptoms being covered under the MIG as sequelae of a minor injury.
- [28] For the reasons above, I find, on a balance of probabilities, that the applicant's injuries sustained in the accident are predominantly minor as defined by the *Schedule*.

Is the applicant entitled to an income replacement benefit in the amount of \$92.85 per week from May 6, 2022 to ongoing?

- [29] The applicant is not entitled to an income replacement benefit in the amount of \$92.85 per week from May 6, 2022 to date and ongoing.
- [30] 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 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.
- [31] To receive payment for a post-104-week IRB under s. 6 of the *Schedule*, the applicant must demonstrate on a balance of probabilities that they suffer from a complete inability to engage in any employment or self-employment for which they are reasonably suited by education, training or experience.
- [32] The applicant did not make any submissions addressing the test for income replacement benefits either pre-104 weeks or post-104 weeks. The applicant did not refer me to evidence confirming details of the applicant's pre- or post-accident employment or income. The applicant did not identify the essential tasks of his employment, which tasks he is unable to perform and to what extent he is unable to perform them. It is also unclear how long he did not work, if he indeed

was off work, because he reported being at work in varying degrees to assessors.

- [33] For these reasons, I find that the applicant has not met his evidentiary burden. On a balance of probabilities, the applicant is not entitled to an income replacement benefit.

Is the applicant entitled to the two OCF-6s or the plans for a psychological assessment and physiotherapy services?

- [34] As the applicant is in the MIG, it is not necessary to consider if the treatment plans or the OCF-6s are reasonable and necessary.

Award

- [35] 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.
- [36] The applicant did not provide submissions or evidence addressing the basis for his request for an award or the amount of the award sought. For this reason, I find, the respondent is not liable to pay an award.

ORDER

- [37] For the reasons above, I make the following orders:
- i. The applicant's injuries are predominantly minor as defined in s. 3 of the *Schedule*. As the applicant remains subject to the MIG, it is not necessary to assess if the proposed plans or the OCF-6s are reasonable and necessary.
 - ii. The applicant is not entitled to an income replacement benefit.
 - iii. The respondent is not liable to pay an award.

Released: November 21, 2025



**Amar Mohammed
Adjudicator**