



Citation: Smith v. Intact Insurance Company, 2025 ONLAT 24-001921/AABS

Licence Appeal Tribunal File Number: 24-001921/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:

Moreen Smith

Applicant

and

Intact Insurance Company

Respondent

DECISION

ADJUDICATOR: Brian Norris

APPEARANCES:

For the Applicant: Gordon W. Harris, Counsel

For the Respondent: Sonya Katrycz, Counsel

HEARD: By way of written submissions

OVERVIEW

- [1] Moreen Smith (“the Applicant”) was involved in an automobile accident on November 10, 2017, and sought benefits from Intact Insurance Company (“the Respondent”) 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 and applied to the Licence Appeal Tribunal - Automobile Accident Benefits Service (the “Tribunal”) for resolution of the dispute.

ISSUES IN DISPUTE

- [2] The preliminary issue to be decided is:
- 1) Pursuant to section 55 of the *Schedule*, is the Applicant barred from proceeding to a hearing for substantive issues 1, 2 and 3 as listed below, because she failed to attend insurer’s examinations (“IEs”) under section 44?
- [3] The substantive issues to be decided in the hearing are:
- 1) Is the Applicant entitled to a medical benefit in the amount of \$1,700.00 for an occupational therapy assessment, proposed by Rehabilitation Occupational Therapy Inc. in a treatment plan/OCF-18 (“plan”) dated January 31, 2022?
 - 2) Is the Applicant entitled to a medical benefit in the amount of \$5,850.00 for a physiatry assessment, proposed by Rehab First Inc in a treatment plan dated April 28, 2022?
 - 3) Is the Applicant entitled to a medical benefit in the amount of \$2,200.00 for a neuropsychological assessment, proposed by Storrie, Velikonja and Associates in a treatment plan dated May 18, 2022?

- 4) Is the Applicant entitled to \$2,500.00 for an accountant's report submitted on a claim form ("OCF-6") dated August 24, 2022?
- 5) Is the Applicant entitled to a medical benefit in the amount of \$804.00 for transportation/mileage to assessment, submitted on an OCF-6 dated May 6, 2022?
- 6) Is the Applicant entitled to a medical benefit in the amount of \$40.32 for transportation/mileage expenses, submitted on an OCF-6 dated January 27, 2023?
- 7) Is the Applicant entitled to a medical benefit in the amount of \$156.96 for transportation/mileage expenses, submitted on an OCF-6 dated November 7, 2022?
- 8) Is the Respondent liable to pay an award under section 10 of Regulation 664 because it unreasonably withheld or delayed payments to the Applicant?
- 9) Is the Applicant entitled to interest on any overdue payment of benefits?

RESULT

- [4] I find that the Applicant never attended IEs in which she received compliant notice thereof. As a result, she is barred from disputing her entitlement to the OT treatment plan in the amount of \$1,700.00, dated January 31, 2022, the psychiatry assessment plan in the amount \$5,850.00, dated April 28, 2022, and the neuropsychological assessment plan in the amount of \$2,200.00, dated May 18, 2022.
- [5] The Applicant is not demonstrated on a balance of probabilities that she is entitled to the benefits claimed.
- [6] No award or interest is payable.

BACKGROUND

- [7] The Applicant was the driver of a vehicle which was struck from behind while travelling on a rural highway. Following the collision, the Applicant was able to steer her vehicle to the side of the road and exit it independently. Police and ambulance attended at the scene of the accident, but the Applicant declined an examination and chose to go home.
- [8] Two days later, the Applicant attended at the hospital and complaints of a sore back, neck, and shoulders. She was assessed the hospital and diagnosed with soft-tissue injuries and discharged.
- [9] Since the Accident, the Applicant reports suffering from headaches, neck and back pain, cognitive changes, depression and anxiety, as well as sleep issues.

PROCEEDURAL HISTORY

- [10] This is the Applicant's third application before the Tribunal.
- [11] In *Smith v. Intact Insurance*, 2021 CanLII 28712 (ON LAT), the Tribunal concluded that the Applicant was barred from proceeding with her claim for income replacement benefits ("IRBs") because she had not submitted a disability certificate to commence her claim for IRBs. This decision was upheld in reconsideration: 2021 CanLII 73539 (ON LAT).
- [12] In *Smith v. Intact Insurance*, 2024 CanLII 2637 (ON LAT), the Tribunal determined that the Applicant was non-compliant with section 44 of the *Schedule* because she never attended IEs on February 3, 5, & 20, 2020, and March 5, 2020. It also determined that the Applicant did not meet her onus to demonstrate entitlement to attendant care benefits, psychological, neurological, chronic pain assessments, as well as some psychological and physical treatment plans. The decision was upheld in reconsideration: 2024 CanLII 59532 (ON LAT).
- [13] The Applicant is currently before the Tribunal seeking entitlement to benefits from the Respondent in relation to the same accident. She seeks funding for

occupational therapy, neuropsychological, and psychiatry assessments, as well as expenses related to the production of a report to calculate her IRBs and for mileage expenses related to her attendance at various appointments.

- [14] The Respondent submits that the Applicant is barred from proceeding with her application connected to the assessment plans because she has failed to attend insurer's examinations related those plans. Otherwise, the Respondent submits that the benefits claimed are either not reasonable and necessary, or not payable because they were incurred more than five years after the accident.

PRELIMINARY ISSUE

- [15] On the preliminary issue, I must first determine whether the Respondent provided notice of the IE in compliance with section 44 of the *Schedule*. Pursuant to section 44(5), the Respondent must provide the medical and other reasons for the IE, whether the Applicant's attendance is required, the name of the assessor and the regulated health profession they belong to (including any designation indicating their specialization), and the date, time and location of the IE. Pursuant to section 44(6), the notice must be delivered to the insured person no less than 5 business days before the assessment.
- [16] I must also assess whether the request for an IE is done not more than reasonably necessary, as set out in section 44(1). The Tribunal has consistently adopted the six factors set out in *Al-Shimasawi v. Wawanesa*, 2007 ONFSCDRS 94 ("*Al-Shimasawi*") to consider: the timing of the request, the possible prejudice to both sides, the number and nature of the previous insurer's examinations, the nature of the examination(s) being requested, whether there are any new issues being raised in the claim that require evaluation, and whether there is a reasonable nexus between the examination requested and the reported injuries.

The Respondent's notices of examination are compliant with the Schedule

- [17] I find that the notices of examination for the subject IEs are compliant with the *Schedule*.

- [18] The valid notices were issued on February 3, 2022, May 12, 2022, and June 9, 2022. The details of the notices are as follows.
- [19] The February 3, 2022 notice was provided in response to the OT cognition and learning assessment plan dated January 31, 2022, in the amount of \$1,700.00. The notice includes medical reasons referring to the lack of objective evidence to support a finding of ongoing cognitive and learning impairments in the Applicant's family physician's clinical notes and records ("CNRs"). The notice also notes that the Applicant indicated some concentration and focus issues but had yet to be referred to a specialist for this. The notice includes the name of the neuropsychologist who will conduct the examination as well as their credentials. The notice also includes the date, time and location of the assessment, and that the Applicant's attendance is required. The notice was issued more than five business days prior to the IE. This satisfies the notice component in section 44 of the *Schedule* and is therefore a valid notice.
- [20] The May 12, 2022 notice was provided in response to the plan in the amount of \$5,850.00, dated April 28, 2022, seeking funding for a psychiatry assessment. The notice advises that the Applicant's claim indicates soft tissue injuries sustained, and that the Respondent previously determined that there was no objective evidence of an ongoing physical or neurological impairment and that a second opinion was required to determine if the assessment was reasonable and necessary in addition to the care and assessments completed at the time. The notice identifies the general practitioner physician who will be conducting the examination as well as their credentials. The notice also includes the date, time, and location of the assessment, and specified that the Applicant's attendance is required. The notice was issued more than five business days prior to the IE. This satisfies the notice component in section 44 of the *Schedule* and is therefore a valid notice.
- [21] The June 9, 2022 notice was provided in response to the plan in the amount of \$2,200.00, dated May 18, 2022, seeking funding for a neuropsychological

assessment. The notice includes medical reasons highlighting the duration between the accident and the submission of the plan, that a prior assessment found that the Applicant's concussion symptoms resolved and there was no indication the Applicant had ongoing psychological issues due to the accident. The notice identifies the neuropsychologist who will be conducting the examination as well as their credentials. The notice also includes the date, time and location of the assessment, and specifies that the Applicant's attendance is required. The notice was issued more than five business days prior to the IE. This satisfies the notice component in section 44 of the *Schedule* and is therefore a valid notice.

[22] Having determined that the notices comply with the *Schedule*, I must now turn my attention to whether they are being requested more often than is reasonably necessary pursuant to section 44(1) of the *Schedule*.

The IE being requested are not more than reasonably necessary

[23] I find that the above-referenced notices are not being requested more than reasonably necessary.

[24] I apply the six factors identified in *Al-Shimasawi*.

[25] The Applicant suggests that the Respondent's IE requests are excessive, and her non-attendance is justified based on her legitimate concerns conveyed to the Respondent. To the Applicant, it is "overkill" to have a neuropsychologist examine her in response to an occupational therapy plan, and she suggests that the Respondent is "expert shopping". The Applicant also insisted that the Respondent use the same examiner, a psychologist, to assess her instead of a neuropsychologist to limit the intrusiveness of the examination and protect her privacy.

[26] Later, the Applicant changed her position on whether a neuropsychological assessment is reasonable. On June 15, 2022, the Applicant advised the Respondent that she would not attend an IE with a neuropsychologist because

she intends to do a neuropsychological assessment with an assessor of her choice and that the assessments cannot be done within 12 months of each other.

- [27] On June 22, 2022, the Applicant advised the Respondent that a general practitioner physician appears to be unqualified to opine on the expert psychiatry level. She advised that there would be no benefit to returning to an IE with a general practitioner physician given that she had completed the psychiatry assessment with Dr. D. Kumbhare.
- [28] The Respondent maintains that the IEs are required and insists that the Applicant attend them. It submits that the Applicant failed to attend previously scheduled OT IEs, as outlined in the 2024 decision. It submits that the Applicant's submissions are a transparent effort to excuse her refusal to participate in IEs over two and a half years.
- [29] I find the timing of the requests to be reasonable. The requests for the neuropsychological and general practitioner physician IEs were made more than two years after the most recent psychological IE, which is a reasonable timespan between IEs. Only two IEs are being sought in relation to three plans. The Applicant raised new issues of ongoing physical and psychological impairment following prior findings of none in previous IEs. Additionally, there is a reasonable nexus for seeking neuropsychological and general practitioner IEs in light of the Applicant's request for OT (cognition and learning), neuropsychological, and psychiatry assessments.
- [30] The nature and nexus of the proposed neuropsychological and general practitioner physician IEs weigh in favour of the Respondent. The OT assessment is proposed to address the Applicant's cognition and learning abilities in light of reported increased depression and anxiety symptoms, as well as ongoing word finding difficulties. A neuropsychologist has specialized knowledge in brain injuries, such as concussions, and the effect of those injuries on a person's cognition and behaviour. Thus, a neuropsychologist is an appropriate expert to address ongoing depression and anxiety symptoms as well

as learning and cognitive issues. Likewise, a general practitioner physician treats diseases and physiological disorders and injuries. Thus, a general practitioner physician is reasonably qualified to assess whether a psychiatry assessment is reasonable and necessary.

[31] Considering the above, I find that the Applicant has not complied with her obligation to attend a properly scheduled IE.

The Applicant is barred from disputing entitlement to the three assessments

[32] Having determined that the Applicant did not attend a properly scheduled IE, I must now determine whether she should be barred from proceeding with her claim for those benefits. For the following reasons, I find that the Applicant is barred from disputing entitlement to the three assessments. Further, I choose not to exercise my discretion and permit her application on the three assessments.

[33] Section 55(1) of the *Schedule* provides that an insured shall not apply to the Tribunal to dispute entitlement to benefits if they have not attended a properly scheduled IE. Section 55(2) provides that the Tribunal may permit an insured person to apply despite non-compliance with section 44 of the *Schedule*. Section 55(3) permits the Tribunal to impose terms and conditions if permission is granted pursuant to section 55(2).

[34] The language in section 55 of the *Schedule* is compulsory, subject to the Tribunal being satisfied to exercise its discretion that may be premised on a reasonable excuse for the insured person's noncompliance. In this case, it bars the Applicant from disputing entitlement to the plans for OT, psychiatry, and neuropsychological assessments.

[35] I find the Applicant has not satisfied me that she has a reasonable excuse for her noncompliance and therefore I decline to permit the Applicant to dispute her entitlement to these plans. Pursuant to section 44(1) of the *Schedule*, the Respondent is permitted to have their insured "examined under this section by

one or more persons chosen by the insurer who are regulated health professionals...”. In this case, the Applicant is attempting to circumvent the Respondent’s right to choose the regulated health professional to administer the IE. Such practice is not permitted by the *Schedule*. It would be unfair to permit the Applicant to dispute her entitlement to these plans in light of her attempt to circumvent the Respondent’s right to have her examined by its chosen regulated health professional.

[36] There is nothing in the *Schedule* that prohibits insured persons from questioning the relevance of an IE or the qualifications of an examiner. However, it remains the Respondent’s prerogative to choose the examiner so long as the examiner is a regulated healthcare professional or a vocational rehabilitation expert. An insured who refuses to attend an IE in dispute of its relevance or the examiners’ qualifications runs the risk of a finding that they are not compliant with their attendance obligation outlined in subsection 44(9)(2)(iii) of the *Schedule*.

[37] Accordingly, I find that the Applicant is barred from disputing her entitlement to the plans for OT, psychiatry, and neuropsychological assessments, and I have chosen not to exercise my discretion to permit her appeal on these issues.

SUBSTANTIVE ISSUES

The Applicant is not entitled to fees relating to an accountant’s report

[38] Pursuant to section 7(4) of the *Schedule*, insurers are liable to pay an expense incurred by or on behalf of an insured person for the preparation of a report for the purpose of calculating the person’s income from employment or self-employment. Subsections 7(4)1 to 7(4)3 provide that the criteria for when the expense is payable – the insured person must be applying for income replacement benefits based on the employment or self-employment considered in the report, the report is prepared by a member of a designated body within the meaning of the *Public Accounting Act, 2024*, and the expense is reasonable and

necessary for the purpose of determining the insured person's entitlement to an income replacement benefit.

- [39] I find that the Applicant has not met her onus to demonstrate on a balance of probabilities that her report meets the criteria outlined in subsections 7(4)1 to 7(4)3.
- [40] The Applicant was previously barred from claiming entitlement to an income replacement benefit in *Smith v. Intact Insurance*, 2021 CanLII 28712 (ON LAT). This decision was released on March 10, 2021, prior to production of the report, dated August 22, 2022. The decision has not been appealed and the Applicant remains barred from claiming entitlement to an income replacement benefit. Having been barred from claiming entitlement to an income replacement benefit, the Applicant cannot satisfy the criterion in subsection 7(4)(1), which requires the report be procured for the purpose of applying for an income replacement benefit – she cannot apply for a benefit that the Tribunal already barred her from applying for.
- [41] The Applicant has submitted only an invoice and no other information confirming that the report was completed, or is to be completed, by a member of a designated body within the meaning of the *Public Accounting Act, 2004*. Thus, she has not satisfied the second criterion to entice payment from the Respondent.
- [42] Lastly, it is not reasonable and necessary to procure a report for a benefit that the Tribunal previously found that the Applicant was not entitled to. Thus, the Applicant has not satisfied the final criterion outlined in section 7(4)3.
- [43] Having not met the criteria for payment outlined in the *Schedule*, it follows that the Applicant is not entitled to be reimbursed for the accounting report.

Transportation and mileage expenses

- [44] I find that the Applicant has not met her onus to demonstrate on a balance of probabilities that she is entitled to transportation and mileage expenses.
- [45] The Applicant claims entitlement to transportation and mileage expenses and submits that they are a result of having to attend assessments and treatment. She submits that she is entitled to reasonable travel expenses associated with attending assessments and treatment and that denying the expenses would create an undue financial burden on her and restrict access to necessary medical evaluations.
- [46] For the expense of \$804.00, the Respondent submits that the expenses are not payable because they were for the Applicant to attend at a pain clinic that it never funded and was instead OHIP-funded. For the expense of \$40.32, the Respondent submits that this was incurred after the 5th anniversary of the accident, which is outside of the policy period of 260 weeks in accordance with section 29(1)(a) of the *Schedule*. Lastly, the Respondent submits that it approved \$109.12 of the expense in the amount of \$156.96. It submits that the difference, \$47.84, relates to transportation on November 30, 2022, which is also beyond the policy period. I note, however, that the Respondent directed me to no evidence to support these submissions.
- [47] In reply, the Applicant advised the expense in the amount of \$40.32 was incurred in 2020, not in 2022, and that reference to 2022 was an error.
- [48] Within section 3(1) of the *Schedule* is the term “authorized transportation expense,” which means, in respect of an insured person, expenses related to transportation that are authorized by, and calculated by applying the rates set out in, the most recent transportation expense guideline published by the Financial Services Regulatory Authority of Ontario. The definition also notes that the expense must relate to transportation expenses incurred only after the first 50

kilometres of a trip, unless the insured person is catastrophically impaired as a result of the accident.

[49] I find that the Applicant had not demonstrated entitlement to these expenses because she has not addressed the 50-kilometre deductible outlined in the definition of “authorized transportation expense”. The Applicant has not sustained a catastrophic impairment and thus, the 50-kilometre deductible continues to apply. The Applicant has provided no evidence this was incurred, such as a receipt or invoice, and no information regarding the physical distance of her trip. Regardless of the parties’ positions or submissions on this issue, I am unable to find the expenses payable without the requisite information.

[50] Accordingly, I find that the Applicant has not met her onus to demonstrate entitlement to the expense on a balance of probabilities.

Interest

[51] Interest applies on the payment of any overdue benefits pursuant to section 51 of the *Schedule*. Having found no benefits payable, it follows that no interest is payable.

Award

[52] The Applicant sought an award under section 10 of Regulation 664. Under section 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.

[53] The Applicant claims entitlement to an award on the bases that the Respondent failed to process and approve reasonable and necessary treatment plans in a timely manner. The Respondent submits that the Applicant has not addressed any specific conduct which would merit an award.

[54] I find no award payable. Having determined that the Respondent's request for IEs were reasonable, and that the other benefits claimed are not payable, it follows that no benefits were unreasonable withheld or delayed.

CONCLUSION AND ORDER

[55] The Applicant never attended properly scheduled IEs and as a result is barred from disputing her entitlement to the OT treatment plan in the amount of \$1,700.00, dated January 31, 2022, the psychiatry assessment plan in the amount \$5,850.00, dated April 28, 2022, and the neuropsychological assessment plan in the amount of \$2,200.00, dated May 18, 2022.

[56] The Applicant is not demonstrated on a balance of probabilities that she is entitled to the benefits claimed.

[57] No award or interest is payable.

Released: November 27, 2025



Brian Norris
Adjudicator