



Citation: Liu v. Allstate Insurance Company of Canada, 2025 ONLAT 24-001488/AABS

licence Appeal Tribunal File Number: 24-001488/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:

Xin Liu

Applicant

and

Allstate Insurance Company of Canada

Respondent

DECISION

ADJUDICATOR: Laura Goulet

APPEARANCES:

For the Applicant: Ryan Olson, Paralegal

For the Respondent: Andrew Rodrigues, Counsel

HEARD: By way of written submissions

OVERVIEW

- [1] Xin Liu, the applicant, was involved in an automobile accident on February 5, 2023, 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, Allstate Insurance Company of Canada, 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 \$3,897.20 for chiropractic services proposed by UHeal Rehab Centre in a treatment plan/OCF-18 (“plan”) dated July 24, 2023?
 - iii. Is the applicant entitled to \$2,144.93 for a psychological assessment proposed by Somatic Assessments in a plan dated August 8, 2023?
 - iv. Is the respondent liable to pay an award under s. 10 of Reg. 664 because it unreasonably withheld or delayed payments to the applicant?
 - v. Is the applicant entitled to interest on any overdue payment of benefits?

RESULT

- [3] The applicant’s injuries are predominantly minor as defined in s. 3 of the *Schedule* and therefore subject to treatment within the MIG.
- [4] Since the applicant has not demonstrated that his accident-related impairments warrant removal from the MIG, it is not necessary to determine the reasonableness and necessity of the disputed treatment plans.
- [5] The respondent is not liable to pay an award.
- [6] The applicant is not entitled to interest.
- [7] The application is dismissed.

ANALYSIS

Applicability of the MIG

- [8] 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.”
- [9] 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.
- [10] The applicant submits that he should be removed from the MIG based on a psychological impairment resulting from the accident.
- [11] The parties agree that the MIG limit has been exhausted.

The applicant does not have a psychological condition as a result of the accident

- [12] The applicant has not met his onus of proving on a balance of probabilities that he has a psychological condition because of the accident that warrants removal from the MIG.
- [13] The applicant submits into evidence the following clinical notes and records (“CNRs”) from his family physician, Dr. Xiao Qing Li:
- i. January 5, 2023: the applicant tested positive for COVID and reported a cough to Dr. Li.
 - ii. February 6, 2023: the applicant reported right shin and lower back pain because of the accident. Dr. Li assessed muscle strain and soft tissue injury, recommended Tylenol or Advil for pain, and advised to consider physiotherapy and massage if it did not get better.

- iii. May 10, 2023: the applicant reported a “sleep problem” since February 5, 2023 that was triggered by the accident, and a cough for the previous three months. He indicated that he had no difficulty falling asleep, but he had difficulty staying asleep, he felt very tired the next day, and had decreased concentration. He indicated that he had no depression or anxiety. Dr. Li assessed the applicant with “Insomnia/Sleep disorder” and provided him with recommendations such as avoiding stimulants and performing relaxation techniques before bed, sleep hygiene, yoga, meditation, and exercise, and cognitive behavioral therapy (extinguish the negative association between the bed and undesirable outcomes such as wakefulness, frustration, and worry). Dr. Li ordered chest x-rays for the cough.
- iv. X-rays of the chest dated May 12, 2023 indicated no abnormalities.
- v. May 23, 2023: the applicant saw Dr. Li, reporting that the cough he had for the past two to three months was not better. He reported that the cough was worse at night and affected his sleep. Dr. Li did not know the cause of the cough and referred the applicant to a respirologist.
- vi. June 22, 2023: letter from Dr. David Yoo, respirologist, noting that the applicant’s cough occurred throughout the day and night and woke him up. The applicant had COVID in January 2023, and the cough lasted for two months after that. The cough was better for a month but then it came back. Dr. Yoo suggested allergy and GI assessments.
- vii. August 10, 2023: letter from Dr. Yoo, who assessed the applicant’s cough. Dr. Yoo indicated that he suspected the cough was related to reflux and gastritis.
- viii. November 1, 2023: letter from Dr. Derek Chu, physician, from Allergy Clinic, who assessed the applicant’s cough. Dr. Chu indicated that the applicant had symptoms since 2020. Dr. Chu determined the applicant had allergies to tree and weed pollen.
- ix. November 17, 2023: the applicant reported a “sleep problem” to Dr. Li, advising that it started on February 5, 2023, and that it was triggered by the accident. He reported not having difficulty falling asleep, but he did have difficulty remaining asleep due to bad dreams and felt very tired the next day. The applicant also reported decreased concentration and memory, that his hand sweats when driving, but that he had no depression or anxiety. Dr. Li assessed the applicant with “Insomnia/Sleep disorder,”

and provided him with the same recommendations that were made on May 10, 2023.

- x. January 30, 2024: the applicant reported to Dr. Li that he had a cough for the previous six days that became worse at night and affected his sleep. Dr. Li noted that the applicant was COVID negative and that the cough was most likely due to a viral infection.
- xi. May 31, 2024: the applicant reported insomnia and decreased concentration since the accident. The applicant also advised Dr. Li that he was “still feeling stressed when he needs to drive in the morning,” “remembering airbag was popped out,” that he had difficulty falling asleep and staying asleep. Dr. Li assessed the applicant with insomnia and “possible PTSD.” Dr. Li provided the applicant with the same recommendations that were made on May 10, 2023, and recommended psychotherapy. Dr. Li advised the applicant to follow up if he was not better.
- xii. The last of Dr. Li’s CNRs that were submitted into evidence were dated June 26, 2024. The applicant saw Dr. Li for a rash. There was no mention of the accident or insomnia.

[14] The applicant submits that Dr. Li’s CNRs note complaints of insomnia, decreased concentration and memory, driving anxiety, fatigue, and bad dreams since the accident, and that he reported on numerous occasions that the symptoms were triggered by the accident. The applicant points out that Dr. Li concluded multiple times that the applicant is suffering from a sleep disorder, and recommended psychotherapy after consistent psychological complaints were made approximately 1.5 years following the accident.

[15] The applicant also relies on his consultation with Dr. Svetlana Gabidulina, psychologist, on July 26, 2023, where he expressed frustration with the psychological aftermath of the accident, including anxiety, poor mood, insomnia, deterioration in memory and concentration, driving anxiety, increased irritability, fatigue, and avoidance behaviour. Dr. Gabidulina concluded that the applicant’s injuries should not fall within the MIG as he suffers from psychological impairment that constitutes a significant barrier to recovery. The applicant submits that the symptoms noted in Dr. Gabidulina’s report correspond directly to those made to Dr. Li.

[16] The applicant further submits that these psychological symptoms also correspond directly to those noted in the s. 44 Insurer’s Psychological

Examination report dated January 19, 2024, prepared by Dr. Sharleen McDowall, psychologist, where the applicant reported suffering from sleeping difficulties, nightmares, driving anxiety, difficulties focusing, and a decrease in memory since the accident. The applicant points out that during psychological testing, he obtained an above-average score for anxiety during the Patient Pain Profile test and was in the “severe” range for depression under the Beck Depression Inventory-II test, and that there were no validity issues. The applicant states that, despite these results, Dr. McDowall concluded that the applicant did not exhibit accident-related psychological symptoms warranting a DSM-5 diagnosis.

- [17] The applicant argues that Dr. McDowall did not sufficiently consider the severity of the psychometric testing results and the cultural barriers to the applicant admitting that he is suffering from psychological issues during the clinical interview. The applicant further submits that Dr. McDowall did not sufficiently consider Dr. Li’s CNRs in the paper review dated June 7, 2024, given that Dr. McDowall concluded that her clinical opinion remained unchanged, without mentioning any of the contents of the CNRs or the complaints made by the applicant to Dr. Li, and without providing any reasoning for her opinion.
- [18] The applicant takes the position that, given the consistency in his psychological complaints and the testing results during the psychological assessment, he suffers from significant psychological impairments resulting from the accident which are outside the MIG.
- [19] The respondent submits that:
- i. There are only limited references to the accident in Dr. Li’s CNRs.
 - ii. Where the applicant reports sleep difficulties and a cough that worsens at night, this indicates a possible connection between the two.
 - iii. Any reported issues with memory and concentration can be attributed to the applicant’s positive COVID test results, which have long-lasting effects commonly referred to as “Long COVID.” The respondent refers to an article that was published online on August 23, 2024 by the Mayo Clinic entitled “Long COVID: Lasting effects of COVID-19,” which lists, among others, the following side effects of COVID that may last for months: extreme tiredness, problems with memory, sleep problems, and cough.
 - iv. Dr. Li’s CNRs indicate that the applicant’s sleep issues are directly related to a cough or viral infection, for which multiple specialist referrals were

made. There is also the possibility that these issues are connected to the applicant's positive COVID diagnosis earlier in 2023. Therefore, if the applicant's poor sleep contributes to ongoing problems, these issues are linked to health concerns that are not related to the accident.

- v. The applicant's reporting of having "bad dreams" itself does not constitute a psychological impairment that warrants removal from the MIG as a psychological injury must be more than just psycho-social sequela from the accident.
- vi. Dr. Li only formally diagnosed the applicant with clear MIG-defined injuries, i.e. muscle strain and soft tissue injury.
- vii. There is no preliminary or potential diagnosis advanced in Dr. Gabidulina's report, nor does it refer to any specific impairment. Further, no psychological testing was done.

[20] The respondent relies on Dr. McDowall's psychological assessment. I have reviewed Dr. McDowall's report, and I note the following:

- i. The applicant reported that his mental health was good, that he was not sad, and he denied feelings of worthlessness and guilt.
- ii. He reported sleeping roughly six hours at night, and at times waking in the middle of the night and struggling to fall back asleep. He said that sometimes has bad dreams or nightmares.
- iii. He is sometimes nervous while driving.
- iv. He finds himself struggling to focus for extended periods and is at times forgetful.
- v. Dr. McDowall noted that the assessment lasted two hours. The applicant did not exhibit signs of emotional distress and often laughed as he spoke. He did not exhibit any difficulties surrounding memory, concentration and pace.

[21] Dr. McDowall conducted the following psychological assessments on January 9, 2024:

- i. Miller Forensic Assessment of Symptoms Test, which is used to assess the likelihood that a person may be feigning a psychiatric illness. The applicant's score was not suggestive of malingering.

- ii. Trauma Symptom Inventory-2, which highlights difficulties a person may experience after a traumatic event. The assessment requests information relevant to areas of PTSD. The applicant's validity score suggested his responses were valid and his other scores did not reveal a clinically significant elevation in any of the clinical scales.
- iii. Patient Pain Profile, which is designed to identify patients who are experiencing emotional distress associated with primary complaints of pain. The applicant's scores were deemed to be valid. His other scores suggested that he experienced a level of depression that is average for the pain patient population; he experienced anxiety that is in the above average range for the pain patient population; and he experienced a level of somatization that was below average for the pain patient population.
- iv. Beck Depression Inventory-II, which is a 21-item category assessment of symptoms typically noted in people with depression. The applicant obtained a score indicating a severe degree of depressive symptoms.
- v. Beck Anxiety Inventory, a 21-item questionnaire highlighting symptoms typically associated with anxiety. The applicant's score was consistent with a mild degree of anxiety.

[22] Based on the results of the assessment, Dr. McDowall opined that the applicant did not meet the criteria for an accident-related DSM-5 diagnosis. Dr. McDowall indicated that, despite the elevated scores on the Beck Depression Inventory-II, the applicant largely denied having struggled with any significant accident-related psychological symptoms that may have significantly impacted his daily, social, or occupational functioning, and that any symptoms he may continue to experience fall within the subclinical range of functioning.

[23] I am not persuaded by Dr. Gabidulina's consultation report. There is no indication with respect to whether Dr. Gabidulina met with the applicant. I note that the interview was conducted by Sherry Jiang, registered psychotherapist (qualifying), and the report was signed by Dr. Gabidulina. Based on my review of the consultation report, I find that Dr. Gabidulina's opinions were formed based on the applicant's self-reporting to Sherry Jiang, and without a review of medical records or psychological testing.

[24] I place the most weight on the applicant's reporting to his family physician, Dr. Li. I find that the applicant reported the following accident-related issues to Dr. Li: right shin pain, lower back pain, sleep issues, decreased concentration and

memory, bad dreams, his hand sweats when driving, and feeling stressed when driving in the morning.

- [25] I find that the applicant was not consistent in his reporting to Dr. Li with respect to the reasons for his “sleep problem.” Although on May 10 and November 17, 2023, and on May 31, 2024, the applicant attributed his sleep problem to the accident, he also reported on May 10, May 23, and June 22, 2023, and on January 30, 2024 that he had a cough since around the time of the accident that would get worse at night and affected his sleep.
- [26] Further, although on May 31, 2024, Dr. Li assessed the applicant with “possible PTSD,” the applicant’s results on the Trauma Symptom Inventory-2, which was administered by Dr. McDowall on January 9, 2024, indicated that the applicant did not reveal a clinically significant elevation in any of the clinical scales. As indicated above, this assessment requests information relevant to areas of PTSD.
- [27] I have considered the applicant’s submissions that I should consider the severity of the psychometric testing results obtained by Dr. McDowall. In essence, the applicant is asking me to consider these test results in isolation, without considering Dr. McDowall’s interpretation of those results. However, I accept Dr. McDowall’s opinion that these results are to be interpreted in the context of the applicant’s subjective reporting. Dr. McDowall indicated that the applicant largely denied having struggled with any significant accident-related psychological symptoms that may have significantly impacted his daily, social, or occupational functioning. I note that this is consistent with the applicant’s reporting to Dr. Li on May 10 and November 17, 2023 that he did not have depression or anxiety.
- [28] Further, although the applicant submits that there would have been cultural barriers to admitting that he was suffering from psychological issues during the interview with Dr. McDowall, he does not explain why these cultural barriers were not a factor during his interviews with Dr. Li and Dr. Gabidulina, where the applicant submits he disclosed similar psychological complaints.
- [29] Although I find that the applicant suffers from psychological symptoms because of the accident, such as fatigue, decreased concentration and memory, bad dreams, and feeling nervous driving, I am not persuaded on a balance of probabilities that these symptoms amount to a psychological condition justifying removal from the MIG. I find that these symptoms are better characterized as sequelae, which are captured by the MIG.

[30] For these reasons, I find that the applicant has not met his onus of demonstrating on a balance of probabilities that he has a psychological condition because of the accident.

[31] Accordingly, I find that the applicant's injuries are predominantly minor as defined in s.3 of the *Schedule* and therefore subject to treatment within the MIG funding limit

Treatment plans

[32] As the applicant is in the MIG, it is unnecessary to consider the reasonableness and necessity of the treatment plans in dispute.

Interest

[33] Interest applies on the payment of any overdue benefits pursuant to s. 51 of the *Schedule*. Since there are no overdue payments, no interest is ordered.

Award

[34] 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. Since no benefits were unreasonably withheld or delayed, the applicant is not entitled to an award.

ORDER

[35] For the above reasons, I find:

- i. The applicant's injuries are predominantly minor as defined in s. 3 of the *Schedule* and therefore subject to treatment within the MIG.
- ii. Since the applicant has not demonstrated that her accident-related impairments warrant removal from the MIG, it is not necessary to determine the reasonableness and necessity of the disputed treatment plans.
- iii. The applicant is not entitled to interest pursuant to s. 51 of the *Schedule*.
- iv. The respondent is not liable to pay an award.

v. The application is dismissed.

Released: November 28, 2025

**Laura Goulet
Adjudicator**