



Citation: Lyu v. Aviva General Insurance Company, 2025 ONLAT 23-013029/AABS

Licence Appeal Tribunal File Number: 23-013029/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:

Yun Lyu

Applicant

and

Aviva General Insurance Company

Respondent

DECISION

ADJUDICATOR: Roderick Walker

APPEARANCES:

For the Applicant: Sareena Samra, Counsel

For the Respondent: Branson Wong, Counsel

HEARD: By Way of Written Submissions

OVERVIEW

[1] Yun Lyu, the applicant, was involved in an automobile accident on February 1, 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 Aviva General Insurance Company, the respondent, 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 limit (“MIG”)?
 - ii. Is the applicant entitled to \$2,200.00 for a Psychiatric Assessment, proposed by Somatic Assessments and Treatment Clinic in a treatment plan/OCF-18 (“plan”) dated April 12, 2022?
 - iii. Is the respondent liable to pay an award under s. 10 of Reg. 664 because it unreasonably withheld or delayed payments to the applicant?
 - iv. Is the applicant entitled to interest on any overdue payment of benefits?

RESULT

- [3] I find on a balance of probabilities that the applicant has a psychological impairment that would remove her from the MIG.
- [4] I find that the applicant is entitled to \$2,200.00 for a psychiatric assessment.
- [5] No award is granted.
- [6] Interest is applicable under s. 51 of the *Schedule*.

ANALYSIS

MIG

- [7] 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.”

- [8] 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 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.
- [9] In this case, the applicant submits that she should be removed from the MIG on the basis of a psychological condition. I agree. The respondent suggests that the applicant has not proven her onus and should remain in the MIG.

The applicant does suffer from a Psychological Impairment that would remove her from the MIG.

- [10] I find that the applicant does have an accident-related psychological impairment that warrants removal from the MIG.
- [11] I reiterate that it is the applicant's onus to prove on a balance of probabilities that her injuries do not fall within the MIG. The applicant submits as evidence the disputed plan for a Psychiatric assessment from Somatic Assessment and Treatment Centres. As well, a psychological consultation report by Dr. M. Pojhan, psychologist and Ms. W. Lee, registered psychotherapist, noting in the report the applicant was experiencing frustrations with anxiety, nightmares, insomnia, cognitive difficulties, irritation and fatigue. The applicant also relies on the Clinical Notes and Records (“CNRs”) of her family doctor, Dr. K. Cheng, GP.
- [12] The respondent relies on the applicant’s own evidence that she has not met her onus that she suffers a psychological impairment. The respondent also suggests that a pre-accident condition of Graves Disease/ hyperthyroidism is the cause of the applicant’s psychological injuries and that there is no medical professional that has indicated that the applicant has suffered a psychological impairment as a result of the accident. I disagree with the respondent.
- [13] In Dr. Cheng’s clinical notes dated May 10, 2024, it is recorded that the applicant expressed concerns regarding psychological symptoms, specifically anxiety and insomnia. In response, Dr. Cheng referred her to the Toronto Chronic Diseases

Centre for further evaluation and management of her ongoing physical and psychological issues. Observations of persistent anxiety, palpitations, and frequent anxiety attacks led to a recommendation for cognitive behavioural therapy. This evidence is significant as it indicates that the applicant's family physician took her psychological complaints seriously following the accident.

- [14] In the report of Dr. M. Pojhan, dated February 9, 2022, Dr. Pojhan indicates that the applicant has become more fearful, has poor appetite, depression, poor mood, increased irritability as a result of the accident and now avoids driving on highways and going near the accident location. Dr. Pojhan opined that due to the presence of a psychological impairment, the applicant's injuries should not fall under the MIG. I find this evidence, along with the CNR's persuasive that the applicant is suffering from a psychological impairment as a result of the accident.
- [15] For these reasons, and on a balance of probabilities, I find that the applicant has established an accident-related psychological impairment warranting removal from the MIG.

Is the applicant entitled to \$2,200.00 for a Psychiatric Assessment, proposed by Somatic Assessments and Treatment Clinic in a treatment plan/OCF-18 dated April 12, 2022?

- [16] I find that the applicant is entitled to the above treatment plan.
- [17] The applicant's evidence by the disputed plan gives rise to her psychological injuries as stated in part 6 in the OCF-18 proposed by Somatic Assessments and Treatment Clinic under injuries and sequelae information described as: specific phobias, headaches, nightmares, nonorganic sleep disorders, irritability and anger. The goals in the plan are listed as pain reduction and return to a normal life.
- [18] The respondent argues that the applicant has not established that the assessment would be reasonable and necessary, and the applicant must show that there are objective grounds for such a plan.
- [19] I find that the proposed psychiatric assessment is reasonable and necessary. Dr. Dr. M. Pojhan, psychologist, found that the applicant has become more fearful, has poor appetite, depression, poor mood, and increased irritability as a result of the accident and now avoids driving on highways and going near the accident location. Also the CNR's and the report, I find there are grounds on which to believe the psychological condition exists which would warrant further investigation by way of an assessment.

[20] I find, on a balance of probabilities, given the above evidence from Dr. Pojhan, solely, and without contrary evidence from the respondent, that the treatment plan is reasonable and necessary for the applicant to investigate her claims of an accident-related psychological impairment.

Interest

[21] Interest is payable pursuant to s. 51 of the *Schedule*.

Award

[22] Pursuant to section 10 of Regulation 664, the Tribunal may award up to 50% of the total benefits payable plus interest if it determines that the insurer unreasonably withheld or delayed the payment of benefits. The Tribunal has determined that an award is justified where the delay or withholding of benefits by the insurer is unreasonable conduct, meaning behaviour, which is excessive, imprudent, stubborn, inflexible, unyielding, or immoderate. The onus is on the applicant to prove, on a balance of probabilities, that the respondent's conduct meets these criteria. I find that the applicant has not established that an award is warranted. Although I have found that this plan is payable, this would not automatically entitle an applicant to an award, without evidence of unreasonable withholding or delay. In this regard, I find that the applicant has not made specific submissions or referred me to evidence to support such an unreasonable withholding.

ORDER

[23] I find that the applicant is removed from the MIG due to her psychological injuries, and that the applicant is entitled to the plan in dispute for a psychiatric assessment.

[24] Interest is payable pursuant under s. 51 of the *Schedule*.

[25] No award is granted.

Released: November 14, 2025

**Roderick Walker
Adjudicator**