



**Citation: Paulite v. Aviva General Insurance, 2025 ONLAT 23-014747/AABS**

**Licence Appeal Tribunal File Number: 23-014747/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:

**Rolando Paulite**

**Applicant**

and

**Aviva General Insurance**

**Respondent**

**DECISION**

**ADJUDICATOR: Amar Mohammed**

**APPEARANCES:**

For the Applicant: Lawrence Calenti, Counsel

For the Respondent: Branson Wong, Counsel

**HEARD: By Way of Written Submissions**

## OVERVIEW

- [1] Rolando Paulite, the applicant, was involved in an automobile accident on May 16, 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, Aviva General Insurance, 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 services proposed by North Toronto Rehabilitation Centre in treatment plans/OCF-18s (“plans”) as follows:
    - a. \$3,191.46 for chiropractic services, submitted June 23, 2023?
    - b. \$284.71 (\$1,300.00 less \$1,015.29 approved) for chiropractic services, submitted October 27, 2023?
    - c. \$1,495.05 for chiropractic services, submitted November 13, 2023?
    - d. \$1,382.24 for chiropractic services, submitted November 27, 2023?
    - e. \$1,239.43 for physiotherapy services, submitted March 4, 2024?
  - iii. 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 \$3,500.00 MIG limit. As the applicant is in the MIG, it is not necessary to consider if the treatment plans are reasonable and necessary. The application is dismissed.

## 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?***

- [4] The applicant's injuries are predominantly minor as defined in s. 3 of the *Schedule* and are therefore subject to treatment within the \$3,500.00 MIG limit.
- [5] 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."
- [6] 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.
- [7] The applicant solely argues that, in this case, removal from the MIG is warranted under s. 18(2) which requires evidence that they have a documented pre-existing medical condition which precludes maximal recovery if they are kept within the confines of the MIG. The applicant argues that the respondent has ignored the applicant's pre-existing neck, back, and shoulder pain and their documented post-accident exacerbation.
- [8] The respondent argues that removal from the MIG is not warranted in this case because while the applicant has led evidence of a documented pre-existing condition, he has not led compelling medical evidence stating the condition precludes recovery within the confines of the MIG to address the second prong of the test. Based on this argument, it seems to me that the respondent is conceding that there is a documented pre-existing condition. In that case, the dispute is on the second prong of this test. In either case, the applicant has not met his onus on the test for removal.

**Applicant's evidence and authorities were not filed**

- [9] I note that there is no indication in the Tribunal's file that the applicant filed any evidence or authorities. The written hearing was scheduled for February 7, 2025, the applicant was required to file written submissions, evidence, and authorities at least 30 calendar days prior to the scheduled hearing. On December 31, 2024, the Tribunal reminded the parties that their due date was approaching in advance of the deadlines set in the Case Conference Report and Order released May 22, 2024. On January 24, 2025, the Tribunal received the respondent's filed hearing materials and reminded the applicant that their materials had not been received yet by the Tribunal. In response to this correspondence, the respondent provided a copy of the applicant's submissions as delivered to its counsel on January 7. The applicant did not respond to the January 24 correspondence or reminders. On the morning of February 3, 2025, the Tribunal once again reminded the parties that the applicant had not filed any material for the February 7 hearing. On February 3, the applicant provided written submissions dated January 7, 2025, confirmed no reply submissions would be filed and that a document brief which should have been filed 30 days in advance of February 7 would follow. The Tribunal's file does not contain the applicant's evidence or authorities.
- [10] There is no indication in the Tribunal's file of the applicant's Certificate of Service for the written submissions or the applicant's evidence or authorities. I note the applicant had sufficient time and reminders to file material for consideration at this hearing. I relied on the applicant's written submissions in deciding the issues on this application.

**Evidence stating the condition precludes recovery within the confines of the MIG**

- [11] I note that the applicant's submissions did not engage with the second prong of the s. 18(2) removal test.
- [12] The respondent refers me to the Superintendent's Guideline No. 01/14 stating:
- Only in extremely limited circumstances, where compelling evidence provided by a health practitioner satisfactorily demonstrates that a pre-existing condition that was documented by a health practitioner before the accident, and that will prevent a person from achieving maximal recovery from the minor injury for the reasons described above, is the person's impairment to be determined not to come within this Guideline.

- [13] Since the applicant did not lead evidence or file a brief of evidence the applicant's onus has not been met on either prong of the test on this application.
- [14] I find, on a balance of probabilities, that the applicant's injuries are predominantly minor as defined in s. 3 of the *Schedule* and are therefore subject to treatment within the \$3,500.00 MIG limit.

***Is the applicant entitled to services proposed by North Toronto Rehabilitation Centre in the plans in dispute?***

- [15] As the applicant is subject to the MIG, it is not necessary to consider if the treatment plans in dispute are reasonable and necessary.

***Interest***

- [16] The applicant is not entitled to interest because it applies on the payment of any overdue benefits pursuant to s. 51 of the *Schedule*. There are no overdue benefits payable on this application.

**ORDER**

- [17] 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* and are therefore subject to treatment within the \$3,500.00 MIG limit.
  - ii. As the applicant is in the MIG, it is not necessary to consider if the treatment plans in dispute are reasonable and necessary.
  - iii. The applicant is not entitled to interest.

**Released: October 28, 2025**

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**Amar Mohammed  
Adjudicator**