



Citation: Tayloo v. Pembridge Insurance, 2024 ONLAT 22-010153/AABS

Licence Appeal Tribunal File Number: 22-010153/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:

Deanna Tayloo

Applicant

and

Pembridge Insurance

Respondent

DECISION

ADJUDICATOR: Laura Goulet

APPEARANCES:

For the Applicant: Nav Aujla, Counsel

For the Respondent: Jodie Therrien, Counsel

HEARD: By way of written submissions

OVERVIEW

- [1] Deanna Tayloo, the applicant, was involved in an automobile accident on May 24, 2021, 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, Pembridge 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:
1. 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?
 2. Is the applicant entitled to the treatment proposed by Integral Health Group as follows:
 - i. \$2,032.21 for psychological services submitted by treatment plan/OCF-18 (“plan”) on June 7, 2021, and denied on November 16, 2021?
 - ii. \$4,313.00 for physiotherapy services submitted by plan submitted on February 15, 2022, and denied on February 18, 2022?
 - iii. \$1,400.00 for physiotherapy services submitted by plan submitted on January 28, 2022, and denied on February 7, 2022?
 3. Is the applicant entitled to \$3,158.68 for psychological services proposed by Total Health & Sports Performance in a plan submitted on June 2, 2021, and denied on November 16, 2021?
 4. 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 funding limit.
- [4] As the applicant has been found to be within the MIG, it is not necessary to determine whether the disputed treatment plans are reasonable and necessary. The applicant is entitled to treatment up to the MIG limit.

[5] No interest is payable.

PROCEDURAL ISSUE

- [6] On February 16, 2024, the respondent brought a motion to exclude the photographs of the applicant's vehicle after the accident at Tab 1 and the records of Dr. Ibrahim Malik from approximately May 4, 2022, to August 31, 2023 at Tab 2 of the applicant's submissions. For the following reasons, I deny the respondent's motion.
- [7] The respondent points to the Case Conference Report and Order dated June 6, 2023, which sets out that the final date for disclosure of documents to be relied on at the hearing is 120 calendar days from the case conference dated June 1, 2023. As such, all documents were to be disclosed by no later than September 29, 2023. The respondent submits that the parties had ample time between June 1, 2023, and September 29, 2023, to produce the documents.
- [8] The applicant provided the respondent with the photographs, as well as Dr. Malik's records, on January 31, 2024, in her written submissions. The respondent submits that Dr. Malik's records have never previously been produced, even though, based on the fax cover page, the records have been in the applicant's possession since May 2023. Further, the respondent submits that the applicant had photographs of her vehicle after the accident, and they were not provided to the respondent until January 31, 2024. In addition, the applicant submitted her reply submissions to the motion past the deadline and the respondent seeks an order excluding these as well.
- [9] The respondent submits that permitting this evidence would be prejudicial as they were completely unaware of the records and are unable to investigate or respond to the late evidence.
- [10] The respondent relies on the *Licence Appeal Tribunal Rules* in making its argument that the evidence should be excluded. Since the first Notice of Case Conference in this case was issued prior to August 21, 2023, the *Common Rules of Practice and Procedure* (October 2017) ("*Common Rules*") apply. As such, Common Rule 9.4 would apply, which indicates that if a party fails to comply with an order with respect to disclosure, that party may not rely on it without consent of the Tribunal.
- [11] The respondent referred me to other decisions where the Tribunal excluded evidence in similar circumstances, however, I am not bound by these decisions.

- [12] The applicant agrees that she did not disclose the documents by the deadline and provides no reason for this. She submits that she relies heavily on these documents to illustrate the mental health impact the accident had on her.
- [13] I find that the respondent had an opportunity to review the documents and respond to them. As such, I find that there is no prejudice to the respondent because of the late disclosure. Further, I find that the documents are relevant to the issues in dispute and as such, to exclude them would be prejudicial to the applicant. For these reasons, the respondent's motion is denied, and I will admit the documents.

ANALYSIS

Applicability of the Minor Injury Guideline

- [14] For the following reasons, I find the applicant's injuries are predominantly minor as defined in the *Schedule*.
- [15] 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."
- [16] An insured may be removed from the MIG if they can establish that their accident-related injuries fall outside of the MIG. The Tribunal has also determined that chronic pain with functional impairment or a psychological condition may warrant removal from the MIG. Further, jurisprudence has established that concussions are not part of the definition of minor injury. In all cases, the burden of proof lies with the applicant.
- [17] The applicant submits that her injuries fall outside of the MIG as she has suffered from a concussion, a psychological impairment, as well as Chronic Pain Syndrome, because of the accident. The applicant relies on family doctor's records as well as a physiatry assessment to support her position. The respondent submits that the applicant has not met her onus of establishing that she suffered from a concussion, a psychological impairment, or chronic pain with a functional impairment.

The applicant did not sustain a concussion as a result of the accident

- [18] I find that the applicant has not established on a balance of probabilities that she suffered from a concussion because of the accident.
- [19] The MIG definition of a minor injury does not include a concussion or post-concussion syndrome. The applicant must present evidence to support her claim that because of the accident she sustained a concussion that would take her out of the MIG.
- [20] In her submissions, the applicant refers to appointments with her family physician, Dr. Ibrahim Malik in June, July, and September of 2021, as well as in January of 2022. However, upon a review of the medical records, it is clear from the records that her family doctor at the time was Dr. Humaira Ali.
- [21] The applicant had a phone appointment with Dr. Ali on May 25, 2021, where she advised her doctor of the accident. She reported that she had lost consciousness, but denied dizziness, nausea, and vomiting. On June 5, 2021, the applicant reported having white spots in front of her eyes, getting blurred vision, shaking, and getting anxious when she drives. Further, she reported having headaches in the morning and feeling dizzy at times. The doctor noted that she could not be examined since this was a phone consultation. Dr. Ali questioned whether she might have a concussion. He referred the applicant to a concussion clinic and to an optometrist and advised her to avoid screens.
- [22] During a phone appointment on July 11, 2021, the applicant reported headaches, high pitched sounds in her ears, wearing sunglasses indoors, and that she avoided screens. She denied vomiting and nausea, and she reported that her eye exam was normal. Dr. Ali questioned whether she had “Post concussion” and ordered a requisition for an MRI be sent for the applicant to sign.
- [23] On July 29, 2021, the applicant complained of headaches. Dr. Ali noted that the applicant had not sent the MRI requisition back yet and had not yet done an ECG. The doctor advised her of the importance of following up on the investigations requested.
- [24] Dr. S.W. Joseph Wong, Physiatry Consultant, conducted an interview and examination of the applicant via WhatsApp video conference on May 3, 2022. There is no indication that the applicant’s family doctor referred her to a physiatrist. Based on Dr. Ali’s records and the applicant’s complaints during the interview, Dr. Wong diagnosed her with myofascial injury of the cervical spine paraspinal muscles, post-traumatic headache, concussion with migraine

features, myofascial injury of the lumbar spine muscles with reference to pain to the left leg, post-traumatic insomnia, psychological problems, as well as chronic pain and Chronic Pain Syndrome.

- [25] I place very little weight on Dr. Wong's diagnosis of "concussion with migraine features." Dr. Wong did not conduct a physical examination of the applicant. He interviewed her on WhatsApp and made a diagnosis based on her reported complaints, as well as upon a review of Dr. Ali's medical records. Dr. Ali, the applicant's family doctor, who treated her regularly in the year following the accident, never diagnosed a concussion based on the applicant's self reports. He referred the applicant for tests to determine whether she had sustained a concussion, and the applicant did not follow through with these tests. For this reason, I am unpersuaded by Dr. Wong's diagnosis of a concussion, based on Dr. Ali's records and an interview of the applicant on one occasion via WhatsApp.
- [26] On May 4, 2022, the applicant met with Dr. Malik for the first time as a new patient. The applicant reported to the doctor having post concussive syndrome. Dr. Malik observed that she looked well, and no acute distress was noted. During phone appointments with Dr. Malik on June 8 and August 31, 2023, the applicant reported experiencing migraines following her post traumatic concussion, and Dr. Malik prescribed medications.
- [27] The applicant was never diagnosed with a concussion, or post traumatic concussion by her family doctor. Dr. Ali questioned whether the applicant sustained a concussion, referred her to a concussion clinic, and ordered an MRI and an ECG. No MRI or ECG results were filed, nor were any records filed from a concussion clinic. Dr. Malik provided the applicant with medications based on her report to him that she had post concussive syndrome.
- [28] Without any supporting medical evidence such as records from a concussion clinic or an MRI, and without a clear diagnosis from the applicant's family doctor, who is in the best position to make such a finding, I am not persuaded on a balance of probabilities that the applicant sustained a concussion because of the accident.

The applicant does not have a psychological impairment

- [29] I find that the applicant has failed to prove on a balance of probabilities that she should be removed from the MIG because of a psychological impairment.
- [30] Psychological impairments, if established, fall outside the MIG, because such impairments are not included in the prescribed definition of "minor injuries." The

applicant submits that she suffers from anxiety because of the accident. The applicant refers to family doctor's records, an Emergency Report, and a psychiatry report to support her claim. The respondent submits that the applicant has not sustained a psychological impairment because of the accident.

- [31] During a phone consultation with Dr. Ali on June 5, 2021, the applicant reported that she gets anxious when she drives.
- [32] An Emergency Report dated July 4, 2021, was filed. The applicant was taken to the hospital from a friend's home where she had been drinking and socializing throughout the day. She had an argument with a friend and became less responsive and began trembling. She advised that she suffered from anxiety since the accident one month prior and takes Lorazepam. It was noted she had no headaches, dizziness, or visual disturbances. The applicant was discharged and not admitted to hospital.
- [33] On July 24, 2021, during a phone appointment with Dr. Ali, the applicant reported that she was seen by a psychologist and requested a referral as insurance did not cover it. She advised that she was feeling better, and her headaches resolve by the evening. She advised her doctor that she had been drinking with friends, did not take medication and had trouble breathing, was unable to talk and her chest felt heavy. Her friends had an altercation. Dr. Ali diagnosed her with panic attacks and referred her to a psychologist.
- [34] On October 18, 2021, an Insurer Examination was conducted by Dr. Tatiana Dumitrascu, Psychologist. The applicant was interviewed in person and five psychological tests were administered. The applicant's test results revealed a tendency to symptom magnification, and no valid results were obtained on the administered psychometric measures. Dr. Dumitrascu indicated that the applicant's overall clinical presentation was highly inconsistent with her endorsements on the psychometric measures. Based on her examination and the test results, Dr. Dumitrascu found that the applicant did not meet the DSM-5 criteria for a psychological disorder as a result of the accident.
- [35] On February 3, 2022, the applicant reported to Dr. Ali that she has had anxiety issues for the past two years, and that she had issues in her post grad years. She thought it was normal. She had sweaty hands, a pounding heart, and felt her airway was closing. She did not have counseling at that time. The applicant now reported feeling anxiety lasting an hour or longer, mostly at night, when she was alone. Dr. Ali assessed her with "anxiety" and referred her for an ECG. The accident occurred on May 24, 2021. According to the applicant's report to her

family doctor on February 3, 2022, she had anxiety for the past two years, well prior to the accident on May 24, 2021. The applicant did not file any ECG results.

- [36] During an appointment with Dr. Ali on January 17, 2022, the doctor noted that they discussed anxiety, however the applicant advised that she spoke to a psychologist, and she is not continuing as she started going back to work.
- [37] During Dr. Wong's interview on WhatsApp on May 3, 2022, the applicant reported feeling stressed and depressed due to ongoing pain. She indicated that she took Lorazepam when she felt anxiety, which also helped her sleep. Dr. Wong diagnosed the applicant with "psychological problems" because she complained of problems with stress and Dr. Ali had referred her to a psychologist. I find that Dr. Wong's diagnosis of "psychological problems" is vague and does not rise to the level of a psychological impairment.
- [38] On May 4, 2022, the applicant met with Dr. Malik for the first time as a new patient. She reported ongoing anxiety following an accident and that she had Generalized Anxiety Disorder. Dr. Malik indicated his assessment as: "New patient; would like to enrol in practice," and his observations as: "Looks well, no acute distress noted." During further appointments with Dr. Malik on September 15, 2022, and August 31, 2023, the applicant reported ongoing anxiety, and Dr. Malik assessed her with Generalized Anxiety Disorder.
- [39] I note that the applicant did not become Dr. Malik's patient until almost one year after the accident, and during her first visit, she reported to him that she had Generalized Anxiety Disorder, although this had not been diagnosed by Dr. Ali or any other medical practitioner. As such, I find that Dr. Malik confirmed this diagnosis based on the applicant's reporting to him that she had already been diagnosed with it.
- [40] Although the applicant complained to Dr. Ali of anxiety, based on her own report, she suffered from anxiety prior to the accident. Further, the applicant's report to Dr. Ali that she discontinued to see a psychologist because she returned to work, calls into question her need for psychological services.
- [41] I place significant weight on Dr. Ali's assessment, because he saw the applicant regularly from the time of the accident in May 2021 until the applicant became Dr. Malik's patient in May 2022. Throughout his medical records, he diagnosed the applicant with "anxiety," and not Generalized Anxiety Disorder. Further, the applicant did not file any records or reports from a psychologist or psychiatrist to support a diagnosis of a psychological impairment. Dr. Dumitrascu, however,

conducted an in-person interview and testing and concluded that the applicant did not have a psychological disorder.

- [42] On a consideration of the evidence, I am not persuaded on a balance of probabilities that the applicant's anxiety symptoms rise to the level of a psychological impairment.

The applicant has demonstrated that she suffers from Chronic Pain Syndrome

- [43] I find that the applicant has not met her onus of proving on a balance of probabilities that she suffers from Chronic Pain Syndrome.
- [44] The Tribunal has found that Chronic Pain Syndrome would remove an injured person from the MIG, as this diagnosis is not included in the definition of "minor injury" in s. 3(1) of the *Schedule*. The applicant submits that she suffers from Chronic Pain Syndrome due to back pain she experiences because of the accident. The respondent submits that there is no evidence that the applicant has chronic pain.
- [45] During a phone appointment with Dr. Ali on May 25, 2021, the applicant complained of pain on the left side of her body, shoulder, and neck. She advised she did not go to work. She was prescribed pain medication and advised to apply ice or heat packs as tolerated. Dr. Ali indicated they would consider physiotherapy at the next visit if there was no improvement. On June 5, 2021, she advised Dr. Ali that she would go on modified work on June 14. On September 12, 2021, the applicant reported that she went back to work full time, but her back is still hurting, and she requested a note for work as she was unable to bend or lift anything heavy. She reported that she had to lift a child and was unable to do so and back pain started. Further, she advised that she was not doing physiotherapy because of her work hours. Dr. Ali assessed her with "back pain."
- [46] On January 17, 2022, the applicant called Dr. Ali and advised that she strained her back at work twice. She advised that her back pain interferes with everything. Dr. Ali assessed her with "back pain." On January 31, 2022, the applicant complained of lower back pain and reported that she had been going for chiropractic treatments. She had six sessions remaining. She advised that she cannot lift and bend at work. Dr. Ali conducted a back examination and noted that there was some vertical tenderness in her lower back. On inspection it was normal. Her range of motion was restricted. He assessed her with "lower back pain." Dr. Ali prescribed Advil and Tylenol, discussed posture, exercises, stretching, heat packs, and ordered an x-ray of the lumbo-sacral spine. He

provided a medical note indicating that due to a “medical condition” the applicant cannot lift more than ten pounds and she is advised to avoid bending.

- [47] The applicant did not file any x-ray results into evidence. Further, there are no records to indicate that Dr. Ali referred the applicant to a chronic pain specialist.
- [48] In Dr. Wong’s physiatry report dated May 3, 2022, he describes conducting a medical examination, and having conducted many tests which involve the applicant’s response to touch, which would require him to physically examine the applicant in person. I place little weight on this report because it was done virtually which would not have provided an opportunity to assess touch.
- [49] Based on the applicant’s reporting during the video interview on WhatsApp, and a review of Dr. Ali’s medical records, Dr. Wong diagnosed the applicant with chronic pain and Chronic Pain Syndrome and indicated that the applicant met all six criteria for diagnosing Chronic Pain Syndrome in the American Medical Association *Guides to the Evaluation of Permanent Impairment*, 6th Edition, 2008 (“*Guides*”). I am not persuaded by Dr. Wong’s findings since they are based solely on a review of Dr. Ali’s records and the applicant’s reporting via video, without a proper medical examination. Further, the applicant has provided no details of Dr. Wong’s credentials to diagnose chronic pain.
- [50] The applicant relies on Dr. Wong’s diagnosis of Chronic Pain Syndrome and his findings in her submissions. She submits that she continues to suffer from pain in the neck, upper back and lower back which can affect activities with prolonged sitting, standing, bending, and lifting. Further, due to her injuries, the applicant was required to change jobs from a childcare worker to a middle school teacher’s assistant and she requires assistance with heavier housekeeping and home maintenance activities such as lawn mowing and snow shovelling. In addition, she submits that her chronic pain is further complicated by stress and insomnia and that since the accident she stopped going to the gym and seeing her friends due to her injuries.
- [51] While the test in the *Guides* is not binding or definitive, this Tribunal has long held that it provides a helpful tool for the evaluation of chronic pain. This test establishes that a person must meet at least three of six criteria to support a diagnosis of chronic pain. These criteria are:
1. Use of prescription drugs beyond the recommended duration and/or abuse of or dependence on prescription drugs or other substances.
 2. Excessive dependence on health care providers, spouse, or family.

3. Secondary physical deconditioning due to disuse and or fear-avoidance of physical activity due to pain.
4. Withdrawal from social milieu, including work, recreation, or other social contracts.
5. Failure to restore pre-injury function after a period of disability, such that the physical capacity is insufficient to pursue work, family, or recreational needs.
6. Development of psychosocial sequelae after the initial incident, including anxiety, fear-avoidance, depression, or nonorganic illness behaviors.

- [52] I find that the applicant has submitted insufficient evidence with respect to ii, iii, iv, and v above because her evidence is based on self reporting, with a lack of corroborating medical evidence. I do not find that the applicant has exhibited excessive dependence on health care providers or her family. She reported to Dr. Ali that she discontinued physiotherapy because of her work hours and that she spoke to a psychologist and was not continuing as she started going back to work. She relies on her father to do the lawn mowing and the shovelling. I do not find that this amounts to excessive dependence. The applicant submits that she stopped seeing friends, however she attended at the hospital on July 4, 2021, after a day of socializing with friends. Further, during her assessment by Dr. Dumitrascu, she reported that she has four close friends and used to go out a lot, but lately she has been going out only on the weekends. In addition, although the applicant changed jobs to one that is less physically demanding, she can continue working. In addition to self reports, corroborating objective medical evidence such as ultrasound, MRIs, or CT scans would have been more compelling to support the applicant's claim that she has Chronic Pain Syndrome.
- [53] On May 4, 2022, the applicant met with Dr. Malik for the first time as a new patient and reported that she suffered from post traumatic neck and lower back sprain. Dr. Malik observed that she looked well, and no acute distress was noted. The applicant did not provide any further medical records where she complained of back pain to Dr. Malik.
- [54] The respondent made reference to Vice-Chair Dymond's decision, *Vigliotti v. Echelon Insurance Company*, 2024 CanLII 2639 (ON LAT), submitting that it is well settled that to be removed from the MIG based on chronic pain, the pain must be of a continued severity resulting in functional impairment. Vice-Chair Dymond also held that ongoing pain does not automatically take a person out of the MIG. While this is not binding on me, I agree.

- [55] On a consideration of all the evidence, I find there is insufficient medical evidence that the applicant's accident-related injuries have had a detrimental impact on her functionality. More is required to establish to what extent a chronic pain condition affects functionality. This opinion must be supported by medical evidence that establishes an applicant's functionality is impaired and that the chronic pain is the cause of the impairment.
- [56] Accordingly, while the applicant may have lingering pain, I find limited evidence to support her submission that it is Chronic Pain Syndrome or that she has chronic pain with a functional impairment that warrants removal from the MIG.
- [57] I find, on a balance of probabilities, that the applicant has not established that her injuries fall outside of the MIG as a result of a concussion, a psychological impairment, or chronic pain as a result of the of the accident.

Treatment plans

- [58] As I have found the applicant's injuries to be subject to treatment within the MIG, it is not necessary for me to determine whether the disputed treatment plans are reasonable and necessary. The applicant is entitled to treatment up to the MIG limit.

Interest

- [59] Interest applies on the payment of any overdue benefits pursuant to s. 51 of the *Schedule*. No treatment plans are payable; therefore, the applicant is not entitled to interest.

ORDER

- [60] 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. The applicant is entitled to treatment up to the MIG limit.
- [61] No interest is payable.
- [62] The application is dismissed.

Released: October 29, 2024

**Laura Goulet
Adjudicator**