



**Citation: Ye vs. Allstate Insurance Company of Canada, 2024 ONLAT 22-012258/AABS**

**Licence Appeal Tribunal File Number: 22-012258/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:

**Jun Hua Ye**

**Applicant**

and

**Allstate Insurance Company of Canada**

**Respondent**

**DECISION**

**VICE-CHAIR: Tyler Moore**

**APPEARANCES:**

For the Applicant: Yu Denise Jiang, Paralegal

For the Respondent: Jodie Therrien, Counsel

**HEARD: By Way Of Written Submissions**

## OVERVIEW

[1] June Hua Ye, the applicant, was involved in an automobile accident on October 26, 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, 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. Is the applicant entitled to non-earner benefits (“NEBs”) of \$185.00 per week from November 24, 2021 to date and ongoing?
  - ii. Is the respondent liable to pay an award under s. 10 of Reg. 664 because it unreasonably withheld or delayed payments to the applicant?
  - iii. Is the applicant entitled to interest on any overdue payment of benefits?

## RESULT

- [3] The applicant is not entitled to NEBs.
- [4] As no benefits are payable, the applicant is not entitled to interest or an award.

## ANALYSIS

### **NEBs**

- [5] I find that the applicant is not entitled to NEBs. He has not established that he suffers a complete inability to carry on a normal life as a result of the accident.
- [6] Section 12(1) provides that an insurer shall pay an NEB to an insured person who sustains an impairment as a result of the accident, if the insured person suffers a complete inability to carry on a normal life as a result of and within 104 weeks after the accident. Section 3(7)(a) defines a “complete inability to carry on a normal life” as “an impairment that continuously prevents the person from engaging in substantially all of the activities in which the person ordinarily engaged before the accident.”

- [7] It is well established that the test for NEBs is set out in the decision of *Heath v. Economical Mutual Insurance Company* 2009 ONCA 391 (“Heath”), wherein the Court of Appeal held that the analysis focuses on a comparison of the applicant’s pre- and post-accident activities over a reasonable period of time.
- [8] The applicant submits that prior to the accident he was in good health and fully independent with all personal care and housekeeping tasks. Since the accident, his neck/shoulder/back pain is aggravated by standing and sitting which limits his ability to perform a number of housekeeping tasks. He also suffers from dizziness, disrupted sleep, fatigue, and weakness.
- [9] The applicant relies on the clinical notes and records of his family doctor, Dr. Heung-Wing Li, dated October 27 and November 8, 2021 confirming episodic localized back pain aggravated by standing and flexion, and a diagnosis of back sprain/strain following the accident. The applicant also relies on the in-home occupational therapy assessment report of Raymond Wong dated July 12, 2023 and the psychological report of Dr. Sharleen McDowell, dated May 29, 2022. The applicant submits that Mr. Wong’s report supports his difficulty with personal care, walking, bending, sitting/standing, lifting, and carrying after the accident, and Dr. McDowell’s report supports his deterioration in sleep that contributes to daytime fatigue and poor mood.
- [10] The respondent submits that the applicant was not in good health at the time of the accident and that he had numerous pre-existing conditions, including Type II diabetes. The respondent also submits that Dr. Li recommended the applicant go out and socialize and start playing games he enjoyed, like Mah-jong in December 2021. The respondent argues that there is no evidence of ongoing impairments or diminution of activities after the accident that would support a complete inability to carry on a normal life.
- [11] The respondent relies on the s. 44 psychiatry report of Dr. Alfonse Marchie and the s.44 psychological report of Dr. Karen Spivak, both dated April 20, 2022. Both assessors concluded that the applicant could perform and engage in the vast majority of his pre-accident activities, and he did not suffer a complete inability to carry on a normal life.
- [12] Dr. Marchie reported that the applicant’s typical pre-accident day consisted of waking up, eating breakfast, doing some exercises, and doing all household duties. The applicant also enjoyed going for brunch, playing Mah-Jongg, and going to the casino. According to Dr. Marchie, the applicant did not report significant changes to his pre-accident normal life activities, but he had less interest in playing Mah-jong and was stressed because he was getting older.

- [13] Dr. Spivak's report corroborates the applicant's self-report and the findings of Dr. Marchie. Dr. Spivak noted that the applicant continued to perform all of his pre-accident household chores, meal preparation, and grocery shopping. He continued to be independent with all personal care, perform his pre-accident household chores and meal preparation, walked to the grocery store, used public transit as needed, and went out for meals with friends, just less frequently. The applicant also played Mah-jong less because his friends criticized him for being slower. Dr. Spivak concluded that despite the applicant's residual pain and depressed mood, he continued to engage in many of his pre-accident activities.
- [14] I prefer the reports of Dr. Marchie and Dr. Spivak's for the following reasons. Both assessments were conducted in person and provide a detailed comparison of the applicant's pre- and post-accident daily activities which reflect limited changes pre- and post-accident. Specifically, that the applicant does not suffer a complete inability to carry on a normal life as a result of the accident.
- [15] Dr. McDowall's assessment was conducted virtually and does not include a detailed account of the applicant's pre- and post-accident activities and function. Instead, the report places more emphasis on the applicant's post-accident function and the need for psychological treatment. Mr. Wong's report, on the other hand, provides inconsistent report of the applicant's pre-accident health that does not reflect the diagnoses and findings of Dr. Li. For example, Mr. Wong indicates that the applicant denied any history of high blood pressure or diabetes before the accident and that he was healthy, sporty, and energetic. However, Dr. Li's clinical notes and records show that the applicant was suffering from high blood pressure and diabetes before the accident. Dr. Li's clinical notes in July and August 2021 show that the applicant was complaining of bone pain and dizziness. I find that neither Dr. McDowall nor Mr. Wong make findings as to whether the applicant suffers a complete inability to carry on a normal life as a result of the accident. Dr. McDowall concludes that the applicant's psychological impairment has impeded certain aspects of his ability to function in his daily life.
- [16] While I accept that the applicant sustained injuries and impairments as a result of the accident, I find that he has failed to demonstrate on a balance of probabilities that those injuries and impairments resulted in a complete inability to carry on a normal life. For these reasons, I find that the applicant is not entitled to NEBs.

### ***Interest***

- [17] Interest applies on the payment of any overdue benefits pursuant to s. 51 of the *Schedule*. As no benefits are payable, the applicant is not entitled to interest.

**Award**

[18] 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. Although listed as an issue in dispute on the Case Conference Report and Order dated July 11, 2023, the applicant provided no submissions with respect to an award that would justify his entitlement. I therefore find the respondent is not liable to pay an award.

**ORDER**

[19] The applicant is not entitled to NEBs.

[20] As no benefits are payable, the applicant is not entitled to interest or an award.

**Released:** November 1, 2024

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**Tyler Moore**  
Vice-Chair