



Citation: Joseph v. Pembridge Insurance Company, 2024 ONLAT 22-011313/AABS

Licence Appeal Tribunal File Number: 22-011313/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:

Terrance Dave Joseph

Applicant

and

Pembridge Insurance Company

Respondent

DECISION

ADJUDICATOR: Brian Norris

APPEARANCES:

For the Applicant: Adam Mofteh, Counsel

For the Respondent: Jodie A. Therrien, Counsel

HEARD: By way of written submissions

OVERVIEW

- [1] Terrance Dave Joseph (“the Applicant”) was involved in an automobile accident on June 14, 2019, and sought benefits from Pembridge Insurance Company (“the Respondent”) 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 and applied to the Licence Appeal Tribunal - Automobile Accident Benefits Service (the “Tribunal”) for resolution of the dispute.

PRELIMINARY ISSUES

- [2] The preliminary issues in dispute are:
- i. Is the Applicant barred from proceeding to a hearing for all benefits claimed in this application because he never attended an insurer’s examination (“IE”)?
 - ii. Is the Applicant barred from proceeding to a hearing for the treatment and assessment plan dated February 13, 2020 because he never disputed the denial within the two-year limitation period?

ISSUES

- [3] The substantive issues in dispute are:
- i. Are the Applicant’s injuries predominantly a minor injury as defined in section 3 of the *Schedule* and therefore subject to the Minor Injury Guideline (“the MIG”) and the \$3,500.00 funding limit for a minor injury?
 - ii. Is the Applicant entitled to medical benefits proposed by Revive Health Centres Inc. as follows;
 - i. \$1,000.71, for a physiotherapy treatment plan, dated March 21, 2022;
 - ii. \$1,289.02 for a physiotherapy treatment plan, dated February 13, 2020;
 - iii. \$1,254.54 for a physiotherapy treatment plan, dated April 17, 2021;
 - iv. \$1,169.93 for a physiotherapy treatment plan, dated August 21, 2021;

- v. \$1,085.32 for a physiotherapy treatment plan, dated January 15, 2022; and
- vi. \$1,000.71 for a physiotherapy treatment plan, dated September 20, 2022?

RESULT

- [4] The Respondent withdrew the first preliminary issue.
- [5] The Applicant sustained a minor injury as a result of the accident and is subject to the MIG and the \$3,500.00 funding limit for a minor injury.
- [6] The Applicant is not entitled to the treatment and assessment plans in dispute because they propose goods and services that fall outside the MIG and beyond the \$3,500.00 funding limit for a minor injury.
- [7] A determination on whether the treatment and assessment plan dated February 13, 2020 was disputed within the two-year limit is moot considering my findings above.

PROCEDURAL ISSUES

- [8] This matter was ordered to a hearing by way of written submissions. The Applicant was ordered to make initial submissions, the Respondent was ordered to make responding submissions within the next two weeks, and the Applicant was ordered to make reply submissions within a week thereafter, if any.
- [9] The time came and passed for the Applicant to make his initial written submissions, but he never issued any submissions or evidence.
- [10] The time for the Respondent's responding submissions came, and the Respondent submitted to the Tribunal that the Applicant failed to issue his initial submissions and evidence, therefore failing to meet his burden to prove entitlement to the benefits claimed.
- [11] The Applicant then issued submissions and evidence, following the Respondent's submissions. He acknowledges that his submissions failed to comply with the Tribunal order and were made following the Respondent's submissions.
- [12] The Respondent never replied to the Applicant's submissions.

- [13] Having reviewed the Applicant's submissions and evidence, I find that he has not met his onus to demonstrate entitlement to the benefits claimed. Accordingly, the procedural issues arising out of the Applicant's failure to comply with the deadlines to present his submissions and evidence are moot.

BACKGROUND AND EVIDENCE

- [14] The Applicant was the driver of a pickup truck which was struck from behind while in stop-and-go traffic on a major highway. He was taken to the hospital from the scene of the accident, with complaints of chest pain from the seatbelt, as well as neck and back pain. X-rays were taken at the hospital and negative for any fractures, and the Applicant was discharged in stable condition.
- [15] He followed up with his family physician, Dr. J. Rogerson, on June 17, 2019, and was referred to rehab. He followed up with Dr. Rogerson about a month later for an issue unrelated to the accident. He never saw Dr. Rogerson after that.
- [16] The Applicant found a new family physician and met with Dr. G. Lai on April 14, 2023 for an introduction. It was noted that the Applicant had a medical history involving high blood pressure, but no other historical health issues were listed. The Applicant met with Dr. Lai again on May 5, 2023, and complained of a stiff neck following an accident "years ago" with occasional headaches. Dr. Lai queried whether the symptoms were concussion related. In another visit with Dr. Lai on June 13, 2023, the Applicant advised that his neck and back pain is persisting, and he was referred to a concussion and pain clinic.
- [17] In addition to the above, the Applicant has provided an insurer's examination report by Dr. J. Gordon, dated August 1, 2023, to support his claim. He has not provided any other evidence, including any CNRs from the concussion and pain clinic, nor is there a consultation report following the June 13, 2023 referral from Dr. Lai.

ANALYSIS

Minor Injury Guideline ("MIG")

- [18] The MIG establishes a treatment framework available to injured persons who sustain a minor injury as a result of an accident. A "minor injury" is defined in the *Schedule* and includes sprains, strains, whiplash associated disorder, contusion, abrasion, laceration or subluxation and any clinically associated sequelae. The MIG provides that a strain is an injury to one or more muscles and includes a

partial tear. Under section 18 of the *Schedule*, injuries that are defined as minor are subject to a \$3,500.00 funding limit on treatment.

- [19] The onus is on the Applicant to demonstrate that he sustained an injury that is not included in the minor injury definition outlined in section 3 of the *Schedule*.
- [20] For the following reasons, I find that the Applicant sustained a minor injury as a result of the accident.

The Applicant's injuries are predominantly soft tissue injuries

- [21] The Applicant has not provided evidence of a non-minor injury.
- [22] The above evidence demonstrates that the Applicant sustained soft-tissue injuries as a result of the accident. The hospital records include x-rays negative for fractures and include no indication of an injury other than a soft-tissue injury. Dr. Rogerson's CNRs identify only soft-tissue injuries and no fractures or psychological injury.
- [23] I find that Dr. Lai's CNRs indicate that the Applicant sustained a minor injury. Dr. Lai's CNRs post-date the accident by nearly four years and the applicant provided no evidence regarding his health during the period between his last visit to Dr. Rogerson and Dr. Lai. Nevertheless, while Dr. Lai queried whether the Applicant sustained a concussion previously due to the accident, the hospital records make it clear that he did not. He never struck his head in the accident and did not complain of headaches or other concussion symptoms immediately following the accident. I am unable to conclude that the Applicant sustained a concussion on this evidence and without the CNRs from the concussion and pain clinic.
- [24] The IE report of Dr. Gordon concluded that the Applicant sustained a minor injury as a result of the accident. Dr. Gordon assessed the Applicant and diagnosed him with uncomplicated soft tissue injuries and found that his injuries fit the definition of a minor injury. The examination from this report revealed normal neurological symptoms, full neck range of motion ("ROM"), and lumbar spine ROM within normal limits. It was also noted that the Applicant returned to his personal and self-care activities, as well as his employment as a pool installer. While Dr. Gordon noted a guarded prognosis due to the chronicity of the Applicant's injuries, it does not make the Applicant's injuries anything other than a minor injury, nor does it upset the findings described above.

[25] Considering the above, I find that the Applicant sustained a minor injury as a result of the accident and is subject to the MIG and the \$3,500.00 funding limit for a minor injury.

The treatment and assessment plans in dispute

[26] The treatment plan in dispute proposes treatment that falls outside the MIG and the \$3,500.00 funding limit for a minor injury. Having determined that the Applicant sustained a minor injury, it follows that he is not entitled to goods and services outside the MIG.

[27] A determination on whether the treatment and assessment plan dated February 13, 2020 within the two-year limit is moot considering my findings above.

CONCLUSION AND ORDER

[28] The Applicant sustained a minor injury as a result of the accident.

[29] The Applicant is not entitled to the treatment plan in dispute because it proposes goods and services that fall outside the MIG.

Released: November 21, 2024

Brian Norris
Adjudicator