Citation: Jing v. Pembridge Insurance Company, 2025 ONLAT 23-013447/AABS

Licence Appeal Tribunal File Number: 23-013447/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:

Qing Jing

Applicant

and

Pembridge Insurance Company

Respondent

DECISION

ADJUDICATOR: **Amar Mohammed**

APPEARANCES:

For the Applicant: Ryan Olson, Paralegal
Sareena Samra, Counsel

For the Respondent: Jodie A Therrien, Counsel

HEARD: **By Way Of Written Submissions**

OVERVIEW

[1] Qing Jing, the applicant, was involved in an automobile accident on March 10, 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 the respondent, Pembridge Insurance Company, 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 $4,149.56 for chiropractic services, proposed by Total Recovery Rehab Centre in a treatment plan/OCF-18 ("plan") dated March 2, 2022?

iii. Is the applicant entitled to $2,200.00 for a psychological assessment, proposed by Somatic Assessments and Treatment Clinic in a plan dated May 10, 2022?

iv. Is the respondent liable to pay an award under s. 10 of *Reg. 664* because it unreasonably withheld or delayed payments to the applicant?

v. 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.

[4] The applicant is not entitled to the plan for $4,149.56 proposed by Total Recovery Rehab Centre.

[5] The applicant is entitled to $2,200.00 for a psychological assessment, proposed by Somatic Assessments and Treatment Clinic in a plan dated May 10, 2022, once incurred.

[6] The respondent is not liable to pay an award under s. 10 of *Reg. 664*.

[7] The applicant is entitled to interest.

PROCEDURAL ISSUES

[8] The respondent raises a procedural issue regarding tabs 5 and 6 of the applicant's evidence and requests that they be excluded as a matter of procedural fairness due to late production.

i. Tab 5 is an account summary from the service provider, Somatic Assessments and Treatment Clinic, showing as of November 8, 2023 there is a $2,200.00 balance in the Not Approved column relating to an OCF-18. The document is dated April 25, 2024.

ii. Tab 6 is an Explanation of Benefits dated May 17, 2022 ("EOB") referencing an earlier and unrelated claim from 2020, ("2020 Claim") and denying the plan at issue under that claim on the basis that the claim had already been settled and paid out. It also includes the plan, which contains the entirety of the Psyc Report in the additional comments section but refers to it as a Pre-Screening Report.

[9] The Case Conference Report and Order ("CCRO") set two final document exchange deadlines:

i. By no later than 60 calendar days from the case conference, both parties shall exchange all other documents and things not previously exchanged that they intend to rely on as evidence at the hearing.

ii. By no later than 90 calendar days after the case conference, the parties shall exchange any additional documents or things responsive to documents or things that have already been exchanged or produced that they intend to rely on as evidence at the hearing.

[10] Since the case conference was held on May 13, 2024, the applicable final deadlines were July 12, 2024 and August 12, 2024. The respondent submits that the applicant delivered the account summary dated April 25, 2024 for the first time together with her written submissions, on January 8, 2025. Further, that the EOB was provided on January 3, 2025.

[11] The applicant's argument on this point is that the respondent suffers no prejudice in the applicant's reliance on these documents while the applicant would be highly prejudiced if the documents are excluded. The applicant focuses her argument on the EOB having been issued by the same respondent and adjuster. I find that it is reasonable that the applicant relies on an EOB that was originally

produced by the respondent. Also, she argues the statement of account was emailed to the respondent on May 10, 2024 and provides a screen shot of an email confirming this.

[12] For the reasons above, I find, on a balance of probabilities, that the applicant had provided the statement of account to the respondent on May 10, 2024, and that the respondent was already in possession of its own EOB in advance of the deadlines set for final document exchange in the CCRO.

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?

[13] I find that the applicant's injuries sustained in the accident are predominantly minor as defined by the *Schedule*.

[14] 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."

[15] 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.

[16] The applicant argues she should be removed from the MIG because her injuries prevent her from achieving maximal recovery within the confines of the MIG. The applicant also argues removal from the MIG based on a psychological impairment resulting from the subject accident. The applicant does not point to any pre-existing injuries in making this argument. The applicant supports her position by reference to a Psychological Consultation Report ("Psyc Report") and an Insurer Examination Section 44 (In Person) Physiatrist's Report of Dr. Alfonsie Marchie ("IE Physiatry Report").

[17] The respondent argues that the applicant has not met her onus on the issue of removal from the MIG. The respondent supports this argument by pointing to unanswered requests for clinical notes and records, a lack of evidence establishing any complaints to any OHIP treatment provider and points to concerns raised about the Psyc Report.

Minor Physical Injury

[18] Since the applicant's submissions alone are not evidence, the only diagnosis offered to assist me is made by Dr. Marchie, diagnosing the applicant with cervical, right shoulder, and lumbosacral sprain and strain, confirming she sustained soft tissue injuries as a result of the accident. Such soft tissue strains and sprains fall within the definition of a "minor injury". Further, no diagnostics, imaging or other medical evidence, was submitted to support removal from the MIG from a physical perspective.

[19] The applicant stated to Dr. Marchie at the physiatry insurer examination that she has increased anxiety, poor sleep, and nightmares. However, Dr. Marchie also notes that she is not taking any medication other than Tylenol, and she did not visit her family doctor. The applicant saw Dr. Marchie 6 months after the accident, in September of 2022. The respondent submits that the applicant has not provided evidence of any accident-related complaints to any OHIP treatment provider, and I have not been pointed to any records to the contrary.

Documented Pre-Existing Medical Condition

[20] I find that the applicant has not met her burden in establishing removal from the MIG on this ground, because the applicant has not offered evidence of a documented pre-existing medical condition combined with compelling medical evidence stating that the condition precludes recovery if she is kept within the confines of the MIG. The Psyc Report confirms no pre-existing psychological difficulties, and the IE Physiatry Report confirms complete independence pre-accident with her activities of daily living.

Chronic Pain with a Functional Impairment

[21] The applicant made no submissions and did not point me to records supporting removal based on chronic pain with a functional impairment.

Psychological Condition

[22] Further, the applicant has not established that she suffers from a psychological condition as a result of the accident that would warrant removal from the MIG.

The Psyc Report notes the applicant's complaints of being emotionally distressed, struggling with anxiety, irritability, frustration, depression, and fatigue. The report confirmed the applicant had no pre-existing psychological difficulties, that her current mental health issues are as a direct result of the accident, and her pain and psychological challenges are affecting her daily activities.

[23] The Psyc Report was not supported by contemporaneous medical evidence such as clinical notes and records of any treating physician where psychological symptoms were reported or where the applicant was diagnosed with a psychological condition.

[24] The respondent argues the Psyc Report offered by the applicant is merely a pre-screen interview report and is flawed. I give the Psyc Report reduced weight for the following reasons:

i. it is undated,

ii. it is not signed by anyone,

iii. it does not clearly confirm the author of the report. Although it states that it is based on an interview of the applicant conducted March 22, 2022 by Mandy Fang, M.S.W. R.S.W. R.P. and supervised by Dr. Sharleen McDowall, C. Psych., it is unclear from the report who provided the clinical opinion,

iv. it does not mention a review of any records and seems to be solely based on the applicant's self-reporting at the interview,

v. it states the applicant's psychological challenges are affecting her daily activities. In contrast, according to the IE Physiatry Report of Dr. Alfonsie Marchie, on September 26, 2022 the applicant reported that while she was not working since March 2020 because of the pandemic and was enjoying her hobbies, post-accident she reduced her participation in hobbies and had returned to work around June 2022.

vi. It is written in the voice of an advocate rather than a neutral medical assessor. For example:

a. It refers to the applicant as a client rather than a patient,

b. It advocates by using language such as "this client **should NOT fall under the Minor Injury Guidelines (MIG) category**.",

c. It simultaneously recommends a full psychological assessment battery including psychometric testing and a thorough, in-depth clinical interview while also confirming severe and acute psychological impairment in addition to causation being as a direct result of the subject accident prior to completion of the assessment.

[25] For the reasons above, on a balance of probabilities, I find that the applicant's accident-related injuries are predominantly minor as defined in s. 3 of the *Schedule* and are subject to treatment within the $3,500.00 MIG limit.

Is the applicant entitled to $4,149.56 for chiropractic services, proposed by Total Recovery Rehab Centre in a plan dated March 2, 2022?

[26] As I have found that the applicant has not met her onus to establish that her accident-related impairments are beyond the definition of a minor injury, it is unnecessary for me to consider the reasonableness and necessity of this treatment plan. The applicant, in her written submissions, amended the issue to cover physiotherapy services rather than chiropractic services and amended the date of the plan to August 2, 2022. Although this amendment was made very late in the process, it did not affect my decision.

Is the applicant entitled to $2,200.00 for a psychological assessment, proposed by Somatic Assessments and Treatment Clinic in a plan dated May10, 2022?

[27] The applicant is entitled to the assessment in this plan, once incurred.

[28] The applicant's MIG limit has been exhausted. For this reason, it is not necessary to complete a reasonable and necessary analysis of this plan. The applicant also argues that the respondent is subject to the shall pay provision of s. 38(11) of the *Schedule* because of a defective denial of this plan. If that is the case, s. 38(11)1 establishes that the respondent may not rely on the MIG to deny such payment and a shall pay provision is triggered.

[29] In my view when s. 38 is read in context it includes an insurer's obligation to deny a treatment and assessment plan on the basis of reasons that may be medical, non-medical, or both. In the matter before me, the reason for denial provided was non-medical, that the denial was based on a settlement of the file and a pay out.

[30] The notice requirements the applicant relies on in s. 38(8) are:

> Within 10 business days after it receives the treatment and assessment plan, the insurer shall give the insured person a notice that identifies the

> goods, services, assessments and examinations described in the treatment and assessment plan that the insurer agrees to pay for, any the insurer does not agree to pay for and the medical reasons and all of the other reasons why the insurer considers any goods, services, assessments and examinations, or the proposed costs of them, not to be reasonable and necessary.

[31] S. 38(9) also required that the respondent must advise in its s. 38(8) notice if the respondent is relying on the MIG as part of its reasons to deny the plan which the respondent did not do. If an insurer does not comply with s. 38(8), a consequence is that the respondent is precluded from taking the position that the MIG applies and a shall pay provision found in s. 38(11)(2) is triggered:

> The insurer shall pay for all goods, services, assessments and examinations described in the treatment and assessment plan that relate to the period starting on the 11th business day after the day the insurer received the application and ending on the day the insurer gives a notice described in subsection (8).

[32] The applicant states that this plan was submitted by the service provider containing the correct insurance policy number and date of loss, March 10, 2022. The applicant submits that the respondent provided a denial letter referencing a different date of loss, February 18, 2020, with the reason for denial being that the 2020 Claim had already been settled. For this reason, the applicant argues the denial does not meet the requirements of the *Schedule*, triggering the shall pay provision in s. 38(11)2.

[33] The threshold for sufficiency of reasons is not whether I agree or disagree with them. The respondent's reasons should engage the specific details about the applicant's condition forming the basis for the respondent's decision and be adequate enough to allow an unsophisticated person to understand them and make an informed decision to either accept or dispute the denial. In this instance, it is clear that the insurer did not offer a principled rationale based fairly on the applicant's file to satisfy its obligation under s. 38(8) of the *Schedule*. Since the respondent's reasons ignored the relevant file completely, the respondent's notice is insufficient. The respondent provided reasons based on an unrelated file with an earlier date of loss that had previously been settled and paid out.

[34] I find that I have jurisdiction to decide this issue processed and denied under an unrelated 2020 claim whereas the 2022 claim is the subject of this hearing because the plan was submitted in relation to the 2022 date of loss. The respondent's error in processing the plan under an unrelated date of loss does

not affect my authority to deal with the plan. Additionally, I disagree with the respondent that there was a lack of notice to the respondent because the applicant was contesting a denial processed under a different claim. Since it is the respondent's denial notice to the plan that is at issue in this dispute I find that it is reasonable that the respondent had notice of its own denial letter.

[35] The respondent raises other concerns with the plan, including a missing claim number and missing signature. I was not referred to any further notice to the applicant which included these reasons for denial of the plan at issue. In that sense, the respondent is arguing it hypothetically could have denied the plan for these other or additional reasons. I find it is more appropriate to review what took place rather than what could have hypothetically taken place. The respondent cannot cure a defective denial during or following a hearing.

[36] Some facts that are not in dispute include that the plan was submitted with the correct date of loss and policy number. The respondent received and decided to process the plan resulting in a denial letter being drafted and delivered to the applicant. The applicant disputed the denial on this application, and I have found that the respondent's denial did not comply with s. 38(8) of the *Schedule*. For these reasons, the shall pay provision is triggered.

[37] The respondent has additionally argued that there is no evidence of the plan having been incurred. The statement of account relied upon by the applicant only shows that a plan for $2,200.00 was not approved by the respondent. The respondent refers me to s. 38(2) which states that the respondent is not liable to pay for this plan if it was incurred prior to submitting the plan to the respondent. Therefore, any relevant evidence would have to establish that it was incurred after the plan dated May 10, 2022 was submitted. The applicant also has offered a Psyc Report which I have found to be more accurately a Pre-Screen Report. This report resulted from an interview on March 22, 2022, before the date of the plan, so it could not be evidence of the incurred plan. There is no resulting assessment report, invoice or other evidence establishing that it was incurred. The applicant did not make submissions claiming to have incurred the plan. On a balance of probabilities, I find that the applicant has not incurred the plan prior to submitting the plan to the respondent or prior to the 11th day after the respondent received the plan.

[38] For the reasons above, on a balance of probabilities, the applicant is entitled to this plan, once incurred.

Interest

[39] The applicant is entitled to interest. Interest applies on the payment of any overdue benefits pursuant to s. 51 of the *Schedule.*

Award

[40] I find that the respondent is not liable to pay an award.

[41] 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.

[42] In determining the type of conduct for which an award is appropriate, the adopted standard is set out in the Financial Services Commission of Ontario case: *Wayne Allan Plowright v. Wellington Insurance Company*, 1993 ONICDRG 66 (CanLII) ("Plowright"). According to Plowright, unreasonable conduct can include "excessive, imprudent, stubborn, inflexible, unyielding or immoderate" behaviour. In November 2024, this approach was reviewed by the Divisional Court in *McDonald v. Aviva Insurance Company*, 2024 ONSC 6030.

[43] The applicant seeks an award but did not identify the amount being sought. The applicant's submissions advance the following factors:

i. The applicant is vulnerable and has sustained serious impairments as a result of this accident;

ii. The Tribunal needs to set precedents to ensure deterrence to Insurers; and

iii. The Insurer acted in a highhanded manner.

[44] Since the application's submissions do not engage with application of the factors to assist me, I will review the factors myself. On the first factor, I find that the applicant is no more vulnerable than other insureds that seek benefits under the *Schedule* from their insurers. The applicant's degree of vulnerability is not established to be high. The applicant's injuries are not serious in so far as that may imply the applicant's injuries are beyond the MIG. I have found that the applicant has not established her injuries and impairments to be outside the definition of the MIG. Additionally, I do not have evidence of the respondent acting in a highhanded manner that would require a precedent to ensure deterrence. The respondent made an error, and, on my review, it seems the respondent did not realize the specific error it made until submissions were

exchanged at this hearing. At that point, it would be too late to cure the error as I have mentioned earlier in this decision.

[45] I find that the applicant has not established on a balance of probabilities that the respondent engaged in actions that are highhanded, or unreasonable conduct such as, “excessive, imprudent, stubborn, inflexible, unyielding or immoderate” behaviour. Rather, there was a dispute, an error was made, and I have found in favour of the applicant on that point. On these facts, there is no unreasonable delay or withholding of any payment of benefits on this application.

[46] For the above reasons, on a balance of probabilities, I find that the respondent is not liable to pay an award.

ORDER

[47] The Tribunal orders:

i. 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.

ii. The applicant is not entitled to the plan for $4,149.56 proposed by Total Recovery Rehab Centre and by Somatic Assessments and Treatment Clinic.

iii. The applicant is entitled to $2,200.00 for a psychological assessment, proposed by Somatic Assessments and Treatment Clinic in a plan dated May 10, 2022, once incurred.

iv. The applicant is entitled to interest.

v. The respondent is not liable to pay an award under s. 10 of *Reg. 664*.

Released: October 10, 2025

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Amar Mohammed
Adjudicator