



Citation: Balboa v. Definity Insurance Company, 2025 ONLAT 24-005258/AABS

Licence Appeal Tribunal File Number: 24-005258/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:

Conie Balboa

Applicant

and

Definity Insurance Company

Respondent

DECISION

ADJUDICATOR:

Jeff Chatterton

APPEARANCES:

For the Applicant:

Julia Logoutova, Paralegal

For the Respondent:

Jodie A Therrien, Counsel

HEARD:

In Writing

OVERVIEW

- [1] Conie Balboa, the applicant, was involved in an automobile accident on January 14, 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, Definity 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:
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 \$2,641.62 for physiotherapy services, proposed by 2430307 Ontario Ltd. in a treatment plan/OCF-18 (treatment plan) dated July 22, 2022?
 3. Is the applicant entitled to the treatment plans proposed by Wynford Health Clinic, as follows:
 - i. \$2,227.73 for a physiotherapy services, in a treatment plan dated November 4, 2022;
 - ii. \$3,068.81 for a physiotherapy services, in a treatment plan dated June 3, 2022;
 - iii. \$1,749.00 for a physiotherapy services, in a treatment plan dated March 31, 2023; and
 - iv. \$1,270.27 for a physiotherapy services, in a treatment plan dated August 28, 2023?
 4. Is the applicant entitled to the assessments proposed by 2430307 Ontario Ltd., as follows:
 - i. \$1,293.80 for a functional abilities evaluation assessment, in a treatment plan dated March 25, 2022;

- ii. \$2,300.00 for a chronic pain assessment, in a treatment plan dated September 9, 2022; and
 - iii. \$2,000.00 for a neurological assessment, in a treatment plan dated July 8, 2022?
5. Is the applicant entitled to interest on any overdue payment of benefits?

RESULT

- [3] The applicant is being held to the MIG. The applicant is not entitled to any of the treatment plans in dispute, or interest.
- [4] The application is dismissed.

ANALYSIS

Should the applicant be removed from the Minor Injury Guideline?

- [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 injury or 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 lies with the applicant.
- [7] The applicant’s submissions challenge the nature of the denial letters she has received from the respondent. The submissions do not address the MIG.
- [8] Although the onus is on the applicant to demonstrate that they should be removed from the MIG, no submissions were made by the applicant regarding this issue. Therefore, I find, on a balance of probabilities, that the applicant has not met the onus to warrant removal from the MIG.

Is the applicant entitled to the treatment plans in dispute due to non-compliance with s. 38(8) of the Schedule?

- [9] I find that the denial letters for the treatment plans are compliant with s. 38(8) of the *Schedule*. The applicant is not entitled to payment under s. 38(11).
- [10] Section 38(8) requires an insurer to inform an insured person, within 10 business days after it receives the treatment plan, of the medical and other reasons why it considered the goods and services not to be reasonable and necessary if it denies a plan. Pursuant to s. 38(11), if an insurer fails to comply with its obligations under s. 38(8), it must pay for the goods and services that relate to the period starting on the 11th business day after the insurer received the application and ending on the day the insurer gives a notice described in s. 38(8). The insurer is also prohibited from taking the position that the insured person has a impairment to which the MIG applies.
- [11] The applicant submits that the denial letters for the treatment plans in dispute are not compliant with the s. 38(8) of the *Schedule*, submitting that they did not identify the goods, services, assessments and examinations that the insurer agrees to pay for, and the insurer does not agree to pay for.
- [12] I do not find the applicant has established that any of these denial letters breach s. 38(8). I shall identify each treatment plan and denial in turn.

Has the respondent issued compliant denial letters for the physiotherapy services treatment plans (issue 3)?

- [13] To support her submissions, the applicant has enclosed a copy of the denial letters for the physiotherapy services treatment plans identified in issue 3. The letters are dated:
- i. November 21, 2022 (issue 3i, \$2,227.73);
 - ii. June 22, 2022 (issue 3ii, \$3068.81);
 - iii. April 11, 2023 (issue 3iii, \$1,749.00); and
 - iv. August 28, 2023 (issue 3iv, \$1,270.27)
- [14] The applicant submits that the denial letters are drafted identically, using similar structure and format. She argues this makes it difficult to even determine whether the treatment plan at issue proposed treatment sessions or an assessment.

- [15] The respondent disagrees, submitting that each denial is specific to the applicant's condition, and confirms that the applicant's impairment, or lack thereof, falls within the MIG, which this Tribunal has confirmed to constitute a proper denial. The respondent relies upon *Sidhu v. TD General Insurance Company*, 2020 94816 (ON LAT), which stated that confirming injuries fall within the MIG do not render a denial letter deficient.
- [16] As noted, I have reviewed the letters in question. Although I recognize the letters are similar in nature, I find each letter was written specifically to address the treatment plan being denied.
- [17] For example, the denial letter from November 22, 2022 is representative of the reasons provided in all of these denials. The respondent stated that the treatment plan was being denied. The letter stated "We have compared the information we have on our file regarding your injury, to the definition of a "minor injury" as defined in the Statutory Accident Benefits Schedule (SABS) and your injuries fit within the definition." These reasons are mirrored in the other denial letters.
- [18] Each letter clearly identifies the provider, the date the OCF-18 was submitted, and the name of the clinic who submitted the treatment plan. The letter of August 28, 2023 (regarding issue 3iv) does not identify the service provider in the narrative or cover notes, but it does include a copy of the OCF-18, which I find sufficient to identify the OCF-18 in question.
- [19] For all of these denial letters, the denial is for the entire treatment plan, which clearly indicates that the respondent does not agree to pay for all of the treatment plan in question.
- [20] I find the denial letters for the treatment plans identified in issue 3 are compliant with s. 38(8) of the *Schedule*.

Has the respondent issued compliant denial letters for the treatment plans proposing a Functional Abilities Evaluation and a Chronic Pain Assessment (issues 4i and 4ii)?

- [21] I find the denial letters for the treatment plans identified in issue 4i and 4ii are compliant with s. 38(8) of the *Schedule*.
- [22] Both parties had the same submissions for issues 4i and 4ii that they submitted for issue 3.

- [23] I have reviewed the denial letters. The Functional Abilities Evaluation was denied April 7, 2022, while the Chronic Pain Assessment was denied October 5, 2022.
- [24] My findings for 4i and 4ii echo the findings above for issue 3. I find the letters clearly identify the treatment provider, the OCF-18 in question, what services will be paid for, what services will not be paid for, and they include a medical reason for the denial – the medical reason being that the applicant has suffered a minor injury and is being held to the MIG.

Has the respondent issued a compliant denial letter in regards to the treatment plans for physiotherapy services and a neurological assessment (issues 2 and 4iii)?

- [25] The letter denying physiotherapy services and a neurological assessment is compliant with the *Schedule*.
- [26] The original denial letter was issued August 23, 2022. For this letter, my findings remain the same – this letter clearly identified the OCF-18 in question, and identified what the respondent agreed to pay for, what it did not agree to pay for, and offered a medical reason for the denial (that being the applicant’s injuries fall within the definition of the MIG). This letter further goes on to inform the applicant that the respondent intended to schedule a s. 44 Insurer’s Examination (IE).
- [27] An additional letter was sent on August 25, 2022, which clearly identified where the s. 44 IE was to be held, as well as the time and that the applicant’s presence would be mandatory.
- [28] The applicant has attempted to point out that a compliant notice under s.38(10) does not negate a non-compliant notice as per s.38(8). However, I have ruled that the notices were compliant with s.38(8) regardless, so it is not necessary to examine that argument.
- [29] Section 44(5) of the *Schedule* says, in part:
- i. If the insurer requires an examination under this section, the insurer shall arrange for the examination at its expense and shall give the insured person a notice setting out,
 - (a) the medical and any other reasons for the examination.
- [30] The applicant submits that the letter received by the applicant requesting her attendance at an IE was non-compliant because it did not advise her that the “minor injury” determination was one of the medical reasons for the examination.

- [31] However, even if I were to find the letter requesting the applicant attend an IE to be non-compliant, the penalty for non-compliance with s. 44 is that the applicant can choose not to attend the IE. The applicant has not established that a non-compliant letter under s. 44 automatically grant entitlement to the treatment plan in question. As such it is not necessary for me to examine compliance with s.44.
- [32] In summary, I find that the letter, like the others, is compliant with the schedule.
- [33] I also find that the applicant has not, on a balance of probabilities, met the onus to prove the respondent has failed to comply with the *Schedule*. She is not entitled to the treatment plans in question due to non-compliant denial letters, s. 44 notices or IEs.

Interest

- [34] Interest applies on the payment of any overdue benefits pursuant to s. 51 of the *Schedule*. As no benefits are overdue, no interest is payable.

ORDER

- [35] The application is dismissed:
- i. The applicant is held to the MIG.
 - ii. The applicant is not entitled to the treatment plans in question.
 - iii. No interest is due.

Released: December 15, 2025

Jeff Chatterton
Adjudicator