



Citation: Li v. Allstate Insurance Company of Canada, 2025 ONLAT 24-006532/AABS

Licence Appeal Tribunal File Number: 24-006532/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:

He Li

Applicant

and

Allstate Insurance Company of Canada

Respondent

DECISION

ADJUDICATOR:

Melanie Malach

APPEARANCES:

For the Applicant:

Rakesh Sharma, Counsel

For the Respondent:

Jodie A. Therrien, Counsel

HEARD:

By way of written submissions

OVERVIEW

- [1] He Li, the applicant, was involved in an automobile accident on May 24, 2023, 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. 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 the treatment proposed by Total Recovery Rehab Centre as follows:
 - (a) \$56.41 (\$1,300.00 less \$1,243.59 approved) for chiropractic services, in a treatment plan dated August 2, 2023; and
 - (b) \$4,393.90 for chiropractic services, in a treatment plan dated September 13, 2023?
 - iii. Is the applicant entitled to \$2,200.00 for a psychological assessment proposed by Somatic Assessments and Treatment Clinic, in a treatment plan dated August 17, 2023?
 - iv. Is the respondent liable to pay an award under s. 10 of Reb. 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] I find that the applicant’s accident-related injuries are predominantly minor and she is therefore subject to treatment within the \$3,500.00 MIG limit.
- [4] I find that the applicant is not entitled to the treatment plans in dispute for chiropractic services or a psychological assessment.

[5] I find that the applicant is not entitled to interest and an award is not payable.

PROCEDURAL ISSUE

Section 54 of the *Schedule*

- [6] The applicant in her submissions refers to s. 54 of the *Schedule*. She submits that she does not have the onus to disprove the case made out by the respondent that is not based on the denial reasons served upon the applicant under s. 54 of the *Schedule*.
- [7] Section 54 of the *Schedule* provides that if an insurer refuses to pay a benefit or reduces the amount of a benefit that a person is receiving, the insurer shall provide the person with a written notice advising the person of his or her right to dispute the refusal or reduction.
- [8] I find that the applicant is attempting to assert that the respondent is not allowed to make new submissions in this hearing, that were not specifically noted in the respondent's denial letters of the benefits in dispute. The applicant has provided no authority to support this interpretation, nor do I find that it is remotely accurate based on a plain reading of the section. There is no indication in s. 54 of the *Schedule* that the respondent in a hearing before the Tribunal can only make submissions based on its denial letters or that it is not permitted to make new submissions. Rather, s. 54 simply requires an insurer provide a clear and unequivocal denial letter and advise the insured of their right to dispute the refusal. It says nothing about the respondent's right to make submissions at a hearing or that its submissions are confined to those contained in a denial letter.
- [9] I find that the respondent has complied with s. 54 of the *Schedule* and provided the applicant with clear and unequivocal denials. It further advised the applicant of her right to dispute the refusal within these denials, as required by s. 54. I further find that the respondent is entitled to present its case as it sees fit, including submissions on its position and responses to the applicant's submissions and evidence.

ANALYSIS

The applicant sustained predominantly minor injuries as defined under the *Schedule*

- [10] The applicant sustained predominantly minor injuries as defined under the *Schedule*.

- [11] I find that the applicant sustained a minor injury as a result of the accident and, therefore, is subject to the \$3,500.00 funding limit on treatment.
- [12] 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) of the *Schedule* defines a “minor injury” as “one or more of a strain, sprain, whiplash associated disorder, contusion, abrasion, laceration or subluxation and includes any clinically associated sequelae to such an injury.”
- [13] 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) of the *Schedule*, that they have a documented pre-existing condition combined with compelling medical evidence stating that the condition precludes maximal medical 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.
- [14] The applicant states that she “will not be making any submissions solely on the applicability of the MIG but will dispute applicability of the MIG with respect to the denied substantive issues”. She submits that the statutory requirement upon her is to make a claim for medical and rehabilitation treatments/assessments, other than those payable under the MIG, that is compliant with s. 38(3) of the *Schedule*, which sets out the requirements of a treatment and assessment. The applicant therefore submits that as the treatment plans submitted comply with s. 38(3), her onus is only to disprove on a balance of probabilities the denial reasons served upon the applicant in the notice under s. 54 of the *Schedule*, in order to prove entitlement to the denied treatment plans and removal from the MIG. The applicant argues that in order for the denial notices under s. 54 of the *Schedule* to be valid, the respondent must comply with the provisions of s. 38(8) of the *Schedule* and provide medical and all other reasons as to why the goods and services are not reasonable and necessary. The applicant then sets out the reasons why she believes that the denial notices do not comply with s. 38(8) of the *Schedule*. The applicant further submits that there is no statutory requirement under s. 38 of the *Schedule* to attach any other medical records to the submitted treatment plan in support of the proposed treatment being necessary for rehabilitation of the applicant.

- [15] The respondent submits that the applicant has not discharged her onus of proving that she sustained anything more than minor injuries as a result of the accident. The respondent argues that where limited or no evidence of a chronic pain diagnosis or a psychological impairment is led by the applicant, the applicant has not met her onus to prove that her accident-related impairments warrant removal from the MIG. (see: *Ling v. Allstate Insurance Company of Canada*, 2024 CanLII 94145 (ON LAT).)
- [16] In response to the applicant's submissions that its denial notices did not comply with s. 38(8) of the *Schedule*, the respondent submits that its denial notices meet the requirements of the *Schedule*. The respondent further submits that consequences of s. 38(11) of the *Schedule* only apply to the treatment plans themselves. An improper denial of a treatment plan does not result in the applicant being removed from the MIG. (see: *Chehab v. TD General Insurance Company*, 2024 CanLII 121083 (ON LAT).)
- [17] The respondent submits that by letters dated August 21, August 30 and September 27, 2023, it invited the applicant to provide documentation to support that her injuries fall outside of the MIG. In addition, it requested the clinical notes and records ("CNRs") of Dr. Mehrdad Pojhan, psychologist, who completed the treatment plan recommending a psychological assessment, dated August 17, 2023. Despite these requests, no records were provided to support her removal from the MIG.
- [18] The respondent relies upon the Insurer Examination ("IE") report of Dr. Nicole Azizli, psychologist, dated January 3, 2024, that found no significant psychological impairment. It also relies upon the IE report of Dr. Alborz Oshidari, psychiatrist, dated January 3, 2024, which found that the applicant's injuries fit under the MIG.
- [19] With respect to the MIG limits, the respondent submits that it has approved benefits up to \$3,500.00 to date.
- [20] Section 38(8) of the *Schedule* provides that an insurer shall respond to a treatment and assessment plan within 10 days of receiving it by identifying the goods and services, assessments and examinations described in the plan that the insurer does and does not agree to pay for. The insurer must also provide the medical and all other reasons why it has determined that the treatment and assessment plan is not reasonable and necessary.

- [21] If an insurer fails to comply with s. 38(8), the *Schedule* sets out two consequences under s. 38(11). First an insurer who fails to provide the insured with an adequate notice of the reasons for its denial is prohibited by s. 38(11)(1) from taking the position that the insured person has an impairment to which the MIG applies. Second, s. 38(11)(2) provides that if an insurer fails to provide proper notice of the reasons for its denial it must pay for all incurred goods, services, assessments and examinations described in the treatment and assessment plan that related 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 notice as described in s. 38(8).
- [22] I find that the applicant has not met her onus of proving that her accident-related injuries warrant removal from the MIG. I find that the applicant's position that her only requirement is to prove that the respondent's denial notices are not compliant with s. 38(8) of the *Schedule* is incorrect. This is not the test. It is well settled that the applicant is required to submit evidence and make submissions to support that her injuries warrant removal from the MIG. (See: *Scarlett v. Belair Insurance*, 2015 ONSC 3635 (Div. Ct.). An analysis of s. 38(8) of the *Schedule* is only conducted with respect to whether the treatment plan in dispute was properly denied. Pursuant to s. 38(11)(1), if proper notice is not provided, the insurer cannot take the position that the applicant has an impairment to which the MIG applies to deny the treatment plan. An improper denial of a treatment plan does not mean that an applicant is then automatically removed from the MIG for the duration of their claim.
- [23] I find that the applicant has not made any submissions regarding her removal from the MIG based on chronic pain or a psychological condition. Rather, she has simply attached the treatment plans in dispute and set out the reasons why she believes that the respondent's denial notices were not compliant with s. 38(8) of the *Schedule*. The Tribunal has consistently found that a treatment plan itself is not sufficient medical evidence to prove removal from the MIG. I find that other than the treatment plans submitted by the applicant, no further medical evidence has been submitted or relied upon by the applicant.
- [24] Upon review of the treatment plan recommending a psychological assessment, dated August 17, 2023, it lists the applicant's injuries as specific (isolated) phobias, headache, nightmares, nonorganic sleep disorders, irritability and anger. In the psychological pre-screen noted in the treatment plan, the comments are based solely on the self-reporting of the applicant without any contemporaneous evidence to support his complaints. I find that no medical evidence was reviewed, no psychometric objective testing was performed and

there is no diagnosis provided. This is insufficient evidence to support that the applicant suffers a psychological condition that warrants removal from the MIG.

- [25] With respect to the applicant's physical complaints, the only medical evidence provided in support, are the treatment plans recommending chiropractic therapy, dated August 2, 2023 and September 13, 2023. The treatment plans list multiple injuries suffered by the applicant. Under Part 8 – Activity Limitations in the treatment plan dated September 13, 2023, it states:

Chronic and persistent MVA injuries. Pain and decreased range of motion in the cervical, thoracic lumbar spine and shoulder region. Persistent neurological symptoms in bilateral upper extremity with weakness and loss of strength. Headaches (3x/week). Difficulty with standing, sitting, walking and lifting. Unable to participate in full work, social activities, ADL's and housekeeping. Anxiety and attention deficit. Rx: Tylenol 500 mg.

- [26] I find that other than these treatment plans, there is no further documentation provided to support or corroborate the applicant's complaints. The CNRs of the clinic have not been provided to document what if any complaints were suffered by the applicant and there is no evidence provided as to the applicant's functional limitations. I find that there are no submissions made by the applicant as to her difficulties with performing her full work duties or housekeeping responsibilities. I find that it is incumbent on the applicant to provide evidence of the ongoing or recurrent pain that she experiences as a result of the accident. The applicant's reliance on these treatment plans is not sufficient evidence that she has ongoing pain or that she has a corresponding functional impairment as a result of the accident. Therefore, I do not find that the applicant suffers from a chronic pain disorder that would warrant removal from the MIG.

- [27] For the reasons outlined above, I find on a balance of probabilities, that the applicant does not suffer from a psychological condition or a chronic pain condition as a result of the accident and therefore she is not removed from the MIG on this basis.

Entitlement to the Treatment Plans in Dispute

- [28] Having found that the applicant has failed to prove that her accident-related impairments warrant treatment beyond the MIG, it is unnecessary for me to consider the reasonableness and necessity of the disputed treatment plans.

- [29] I will therefore address the applicant's submissions that the treatment plans in dispute are payable pursuant to s. 38(11) of the *Schedule*, as the respondent did not comply with the notice requirements of s. 38(11) of the *Schedule*.

Denial of the balance of the treatment plan dated August 2, 2023 for chiropractic services

- [30] The applicant claims entitlement to \$56.41 (\$1,300.00 less approved \$1,243.59) for chiropractic services, proposed by Total Recovery Rehab Centre, in a treatment plan dated August 2, 2023. The respondent advised the applicant by Explanation of Benefits ("EOB") dated August 21, 2023, that the treatment plan was partially approved up to \$1,243.59. It provides the definition of a minor injury and states that "Please be advised, an ambulance fee in the amount of \$45.00 was approved and paid out, hence there is insufficient funding remaining in your \$3,500 minor injury limit".
- [31] The applicant in her submissions does not argue that the treatment plan was improperly denied. Rather she requests that the respondent provide a breakdown of the payments made to substantiate that on the day of the partial approval, there was only \$1,243.59 available under the MIG limits to fund this treatment plan.
- [32] The respondent submits that with respect to the applicant's request for a breakdown of the payments made at the time of the denial, the time for production requests was at the Case Conference. As per the CCRO, "the applicant indicated that the respondent does not need to provide them with any documents".
- [33] I agree with the respondent that the applicant did not request any documents or information at the Case Conference. I do not find it appropriate for the applicant to ask for a breakdown of payments in his submissions as a response to the issue in dispute.
- [34] I further find that the applicant has not made any submissions with respect to the deficiencies in the respondent's denial letter dated August 21, 2023, or that the treatment plan in dispute was improperly denied by the respondent. I find that the respondent provided clear medical and other reasons in its notice, sufficient to allow the applicant to make an informed decision as to whether to accept or dispute the decision. I find this was a clear and unequivocal denial.

- [35] For the reasons outlined above, I find on a balance of probabilities, that the applicant has not met her burden of proving that the balance of the treatment plan for chiropractic services, dated August 2, 2023, is payable under s. 38(11) of the *Schedule*.

Denial of the treatment plan dated September 13, 2023 for chiropractic services

- [36] The applicant claims entitlement to \$4,383.90 for chiropractic services proposed by Total Recovery Rehab Centre, in a treatment plan dated September 13, 2023. The applicant argues that the treatment plan was improperly denied by the respondent.
- [37] The respondent advised the applicant by EOB dated September 27, 2023, that the treatment plan was denied on the basis that the applicant sustained a minor injury as a result of the accident. A definition of minor injury was provided. It further states that “Upon review of clinical notes and medical records provided by your family physician, we do not have compelling evidence to support that your current and pre-existing medical condition would prevent you from achieving maximum medical recovery within the Minor Injury Guidelines”. It advised the applicant that she is required to undergo a s. 44 assessment. A s. 44 IE assessment was scheduled by the respondent with Dr. Oshidari and a report was prepared dated January 3, 2024. By EOB dated January 9, 2024, the respondent denied the treatment plan in dispute based on Dr. Oshidari’s findings that the injuries sustained in the accident were minor.
- [38] I find that the applicant has not provided any submissions on any deficiencies in the September 27, 2023 denial letter. Rather she submits that the report of Dr. Oshidari is statutorily deficient because it fails to make an evaluation of the in-person examination findings with the information provided in the treatment plan. She further submits that the report does not consist of an analysis as to what maximum recovery level is based on the diagnosis of injuries and how that level has been achieved. She argues that as Dr. Oshidari’s conclusions are erroneous they cannot be relied upon to support the denial of the treatment plan.
- [39] I find that the analysis before me is whether the respondent’s EOB dated September 27, 2023 complied with s. 38(8) of the *Schedule*, and not whether the IE report of Dr. Oshidari is statutorily deficient. While the applicant may disagree with the findings of Dr. Oshidari, it does not render the notice invalid. I find that the September 27, 2023 EOB was a valid denial. I find that the EOB identified the treatment plan in dispute and specifies that it is not payable because the applicant’s injuries are minor. The denial notes that the respondent does not

have compelling medical evidence to indicate that the applicant's injuries warrant removal from the MIG and requests a s. 44 assessment. I find that the respondent provided clear medical and other reasons in its notice, sufficient to allow the applicant to make an informed decision as to whether to accept or dispute the decision. I find that this was a clear and unequivocal denial.

- [40] I further find that the respondent's EOB dated January 9, 2024 also complied with s. 38(8) of the *Schedule*. The EOB provided a copy of the report of Dr. Oshidari and advised that the treatment plan in dispute is not reasonable and necessary based on the conclusions in his report. I find that the respondent provided clear medical and other reasons in the EOB, sufficient to allow the applicant to make an informed decision as to whether to accept or dispute the decision. I find that this was a clear and unequivocal denial.
- [41] For the reasons outlined above, I find on a balance of probabilities, that the applicant has not met her burden of proving that this treatment plan for chiropractic services, dated September 13, 2023, is payable under s. 38(11) of the *Schedule*.

Denial of the treatment plan dated August 31, 2023 for a psychological assessment

- [42] The applicant claims entitlement to \$2,200.00 for a psychological assessment proposed by Somatic Assessments and Treatment Clinic in a treatment plan dated August 17, 2023. The applicant argues that the treatment plan was improperly denied by the respondent.
- [43] The respondent advised the applicant by EOB dated August 31, 2023, that the treatment plan was denied on the basis that the applicant sustained a minor injury as a result of the accident. A definition of minor injury was provided. It further states that "Upon reviewing your Accident Benefits claim, we have determined that we have insufficient medical evidence to support a finding that you suffer from a psychological impairment as a result of the accident." It requests a copy of Dr. Pojhan's "diagnostic reports including, but not limited to clinical notes and records, copies of specialists reports, diagnostic reports and any other information relied upon to determine that you have sustained a psychological impairment as a result of the motor vehicle accident."
- [44] By Notice of Examination dated September 29, 2023, the applicant advised the applicant that she was required to submit to an IE with Dr. Zubina Ladak, psychologist, on November 9, 2023, to assess entitlement to the treatment plan dated August 17, 2023. On November 8, 2023, the respondent advised the

applicant that her appointment with Dr. Ladak had been cancelled and rescheduled. A Notice of Examination dated November 8, 2023, was provided advising the applicant that she was scheduled to attend an IE with Dr. Azizli on December 15, 2023.

- [45] By EOB dated January 9, 2024, the respondent denied the treatment plan in dispute based on Dr. Azizli's findings that it was not reasonable or necessary.
- [46] In regard to the respondent's denial dated August 31, 2023, the applicant submits that the respondent is not a regulated health professional and is not competent to render a medical opinion. She claims that the respondent's statement that her injuries are minor is tantamount to a medical opinion. She further submits that it is not clear what was reviewed in the applicant's Accident Benefits file, and this is a vague statement. She argues that the respondent completely overlooked the information in the treatment plan to make a determination. The applicant further argues that the respondent's request for a copy of the diagnostic report and CNRs relied upon by Dr. Pojhan is not authorized and is in contravention of s. 38(8) of the *Schedule*.
- [47] The applicant also submits that the respondent's denial letter did not put the applicant on notice about its intent to schedule an IE. Pursuant to s. 38(10) of the *Schedule*, the notice to schedule an IE is subject to the ten-day notice period under s. 38(8), which the respondent did not comply with. The applicant therefore argues that the IE report of Dr. Azizli, dated January 3, 2024, contravenes s. 38(8) and s. 38(11) of the *Schedule*, and is inadmissible under s. 15(2) of the *Statutory Powers Procedure Act*. The applicant requests that the report be excluded from the evidence considered by the Tribunal.
- [48] In the alternative, the applicant submits that the report of Dr. Azizli is statutorily deficient as it fails to make an evaluation of the in-person examination findings with the information provided in the treatment plan.
- [49] The respondent submits that it initially denied the treatment plan on August 31, 2023. It advised the applicant that upon review of her claim and the CNRs in her file, that there was insufficient evidence to support that she suffered from a psychological impairment. Dr. Pojhan's CNRs were requested. On September 29, 2023 and November 8, 2023, Notice of Examinations were sent which described the medical and other reasoning for the examination. On January 9, 2023, the denial was maintained as Dr. Azizli confirmed no significant psychological impairment or diagnosis. The respondent submits that the treatment plan was not reasonable or necessary and there is no countervailing opinion.

- [50] I find that the August 31, 2023 EOB was a valid denial. I find that the EOB identified the treatment plan in dispute and specifies that it is not payable because the applicant's injuries are minor. The denial further notes that the respondent has not received sufficient medical evidence to support a psychological diagnosis and requests the records of Dr. Pojhan and any other supporting medical evidence to support a psychological impairment. I do not find that the respondent's request for the additional records is in contravention of s. 38(8) of the *Schedule*. I find that the respondent is entitled to request documents to assist with the determination of the applicant's entitlement to benefits.
- [51] I find that the respondent provided clear medical and other reasons in its notice, sufficient to allow the applicant to make an informed decision as to whether to accept or dispute the decision. I find that this was a clear and unequivocal denial. Although the applicant may disagree with the respondent's stated reasons, it does not render the notice invalid.
- [52] I find that pursuant to s. 38(8) of the *Schedule* there is no requirement that the respondent request that an applicant attend an IE following receipt of a treatment plan. I find that the applicant has not directed me to any authority that this is a requirement of s. 38(8) of the *Schedule*. I further find that pursuant to s. 44(1) of the *Schedule*, an insurer is permitted to request an IE for the purposes of assisting an insurer to determine if an insured person is or continues to be entitled to a benefit, but no more than often than is reasonably necessary. Therefore, I find that the respondent was entitled to deny the treatment plan in dispute in compliance with s. 38(8) and then subsequently decide to have the applicant assessed with respect to the treatment plan in dispute pursuant to s. 44(1). I find that the applicant was provided with proper notice of the scheduled IE with Dr. Azizi which she attended. I further find that the respondent was entitled to rely on this report in its denial of the treatment plan in the EOB dated January 9, 2024.
- [53] For the reasons outlined above, I find on a balance of probabilities, that the applicant has not met her burden of proving that this treatment plan for a psychological assessment is payable under s. 38(11) of the *Schedule*.

Interest

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

Award

[55] The applicant sought an award under s. 10 of Reg. 664. Under s. 10, the Tribunal may grant an award of up to 50 percent of the total benefits payable if it finds that an insurer unreasonably withheld or delayed the payment of benefits. As I have found that the respondent did not unreasonably withhold or delay payment of any benefit, no award is warranted.

ORDER

[56] For the reasons outlined above, I find,

- i. The applicant's accident-related injuries are predominantly minor and she is therefore subject to treatment within the \$3,500.00 limit of the MIG;
- ii. The applicant is not entitled to the treatment plans in dispute for chiropractic services or a psychological assessment;
- iii. No interest or an award is payable; and
- iv. The application is dismissed.

Released: December 17, 2025

**Melanie Malach
Adjudicator**