



Citation: Barnes v. Aviva General Insurance, 2025 ONLAT 22-014040/AABS

Licence Appeal Tribunal File Number: 22-014040/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:

Jannet Barnes

Applicant

and

Aviva General Insurance

Respondent

DECISION

ADJUDICATOR: Kenneth Nixon

APPEARANCES:

For the Applicant: Linda M Spurrel, Paralegal

For the Respondent: Jodie Therrien, Counsel

HEARD: By way of written submissions

OVERVIEW

- [1] Janet Barnes, the applicant, was involved in an automobile accident on July 3, 2020, 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, Insurer, 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 limit?
 - ii. Is the applicant entitled to \$2,635.40 for chiropractic services, proposed by Mackenzie Medical Rehab Centre in a treatment plan/OCF-18 (“plan”) submitted November 17, 2020?
 - iii. Is the applicant entitled to \$2,026.55 for chiropractic services, proposed by Mackenzie Medical Rehab Centre in a treatment plan submitted December 29, 2020?
 - iv. Is the applicant entitled to interest on any overdue payments of benefits?

RESULT

- [3] I find that the applicant’s injuries meet the definition of “minor” injury under the Schedule. The applicant is therefore subject to treatment with the MIG limits.
- [4] As the applicant continues to be within the MIG and the MIG limits have been exhausted, the applicant is not entitled to the treatment plans in dispute.
- [5] As a result of the above, there are no overdue payments of benefits and accordingly no interest is payable by the respondent.

ANALYSIS

The Minor Injury Guideline (“MIG”)

- [6] Section 18(1) of the Schedule provides that medical and rehabilitation benefits are limited to \$3,500.00 if the insured person sustains impairments that are predominantly minor injuries. 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.
- [7] An insured person may be removed from the MIG if it can be established that accident-related injuries fall outside the MIG, or under s.18 (2) if there is documentation of a pre-existing injury or condition combined with compelling medical evidence stating that the condition precludes recovery if 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.
- [8] Based on the evidence before me, I find that the applicant has not met the burden of proof, proven on a balance of probabilities that pre-existing injuries are a factor, and that the condition precludes recovery if kept within the confines of the MIG, and as a result their injuries fall within the MIG.

Does the applicant have a pre-existing medical condition?

- [9] The applicant submits that they should be removed from the MIG because of pre-existing condition as a result of a fall two months prior to the subject motor vehicle accident which were still predominant on the left side of her body at the time of the accident.
- [10] The applicant relies on:
- (a) The x-ray report of Peel Memorial Peel Memorial Hospital on the date of loss that indicated mild osteoarthritis and chronic degenerative disc disease.
 - (b) The July 9, 2020, report of family doctor Lin who suggested to continue physiotherapy and massage and the follow up with Dr. Lin on September 21, 2020, which the applicant complained of neck, left shoulder pain radiating to the left hand, left upper and lower back pain and trouble sleeping. Dr. Lin prescribed Celebrex and Restoril for sleep.

- (c) The report of Chad Hefford, Chiropractor at Mackenzie Medical Rehabilitation who examined the applicant on September 22, 2020, and noted activity limitations of sitting, standing, and walking as well as discomfort with lifting and bending her head/neck. The injuries were listed as, injuries of muscle(s) and tendon(s) of the rotator cuff of shoulder and dislocation, sprain and strain of joints and ligaments at neck level and various sprains and strains.
- (d) The report of Marco Bianchi a treating massage therapist who noted the same diagnosis of Chad Hefford, Chiropractor above.

[11] The respondent relies on:

- (a) The report of Memorial Hospital where medical imaging of her cervical spine showed “no evidence of acute traumatic injury”.
- (b) The report of the January 5, 2021, s.44, assessment of Dr. Gilbert Yee which diagnosed the applicant with cervical and thoracolumbar strains and recommended physiotherapy. During a follow up telephone appointment with Dr. Lin, he noted “left shoulder pain and left side of body pain-from a fall”.
- (c) The consultation report to Dr. Lin from the Sleep Disorder Centre detailed that the applicant was diagnosed with obstructive sleep apnea and there is no suggestion that this is accident related.
- (d) The September 22, 2020, report of Sabrina Madhani, Physiotherapist of Queen Square Physical Therapy & Rehab who completed a Minor Injury Treatment Discharge Report (OCF-24) which indicated that the applicant was discharged from treatment because she was non-compliant, not attending sessions or voluntarily withdrew from treatment. The report also indicated that the applicant did not have difficulty performing regular activities.
- (e) On October 9, 2020, the applicant reports that, contrary to the discharge report from Queens Square, she was continuing to attending physio. There are no further records from Dr. Lin.

- (f) The January 5, 2021, section 44 report of Dr. Gilbert Yee, Orthopaedic Surgeon that diagnosed the applicant with residual symptomology related to myofascial strains of the cervical and thoracolumbar spine. Dr. Lee also reported that the applicant reported independence with her personal care tasks and had returned to driving and continued to engage in a home exercise program.
- (g) The applicant reported to Dr. Yee that her 2017 wrist injury had resolved with therapy. Dr. Yee concluded that her pre-existing age-related degenerative changes were not likely significantly affected by the accident, and that her minor injuries remained within the MIG.
- [12] I find that the applicant has not proven on a balance of probabilities that they should be removed from the MIG. The evidence of the respondent demonstrates that the pre-existing injury did not preclude maximal recovery in the MIG. While there is evidence of a pre-existing wrist injury, I find that the applicant has not provided compelling medical evidence stating that this condition precludes recovery if kept within the confines of the MIG.
- [13] Further, I find that the applicant reported to Dr. Yee that her wrist injury had resolved with therapy and that the applicant was discharged from Queen Square Physical Therapy & Rehab. I also find that the records from Dr. Lin do not indicate that the applicant continues to suffer from any injuries relating to the accident. While I took the reports of Chiropractor Chad Hefford and Massage Therapist Marco Bianchi into consideration, the evidence does not show that they opined that the applicant's pre-existing precluded her recovery within the MIG.
- [14] I was not directed to any evidence provided by the applicant that the degenerative conditions were caused as a result of the accident, or clinical notes and records linking an exacerbation of the degenerative conditions.
- [15] I find that the applicant has not established on a balance of probabilities that she should be removed from the MIG.

Treatment plans not payable

- [16] As the applicant continues to be within the MIG and the MIG limited have been exhausted, the applicant is not entitled to the treatment plans in dispute.

Interest

- [17] As a result of the above, there are no overdue payment of benefits and accordingly no interest is payable by the respondent.

Order

[18] For the reasons outlined above, I find:

- i. The applicant's injuries are subject to the MIG treatment limits.
- ii. As the MIG limits are exhausted, the applicant is not entitled to the treatment plans in dispute.
- iii. The applicant is not entitled to interest.

Released: January 10, 2025

Kenneth Nixon
Adjudicator