



Citation: James v. Pafco Insurance, 2025 ONLAT 22-011335/AABS

Licence Appeal Tribunal File Number: 22-011335/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:

Derick James

Applicant

and

Pafco Insurance

Respondent

DECISION

ADJUDICATOR:

Robert Rock

APPEARANCES:

For the Applicant:

Adam Mofteh, Counsel

For the Respondent:

Jodie Therrien, Counsel

HEARD:

By way of written submissions

OVERVIEW

- [1] Derick James, the applicant, was involved in an automobile accident on June 14, 2019, 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, Pafco Insurance, and applied to the Licence Appeal Tribunal - Automobile Accident Benefits Service (the “Tribunal”) for resolution of the dispute.

PRELIMINARY ISSUES

- [2] The following preliminary issues were listed in the case conference report and order (released July 25, 2023):
- i. Is the applicant barred from proceeding to a hearing for all of the benefits claimed in this application because the applicant failed to attend an insurer’s examination under s. 44 of the *Schedule*?
 - ii. Is the applicant barred from proceeding to a hearing for the following benefit(s): \$1,289.02 for physiotherapy services, proposed by Revive Health Centres Inc. in a plan dated February 13, 2020, and denied on March 4, 2020, because the applicant failed to dispute their denial within the 2-year limitation period?
- [3] The applicant has attended the scheduled s.44 examinations, and both parties agree that this preliminary issue is now resolved. According to the respondent, the issue regarding the limitation period remains in dispute.
- [4] Section 56 of the *Schedule* states “An application under subsection 280 (2) of the Act in respect of a benefit shall be commenced within two years after the insurer’s refusal to pay the amount claimed.”
- [5] The applicant filed this application on October 19, 2022, which is seven and a half months past the limitation period for this issue.
- [6] The applicant argues that, with the limitation period being suspended for a six-month time-period during the COVID-19 pandemic based on Ontario Reg. 73/20, the filing is only late by a month and a half. The applicant submits that the late filing was due to staff turnover and reorganization of the counsel’s office. Additionally, the applicant argues not setting aside the time limitation would unduly prejudice the applicant.

- [7] I find that the issue relating to \$1,289.02 for physiotherapy services, proposed by Revive Health Centres Inc. in a plan dated February 13, 2020, is statute-barred due to exceeding the limitation period to file. I find that s. 56 of the *Schedule* does not provide any authority to set aside the limitation period, nor provide any reasons that it can be set aside.
- [8] The applicant is statute-barred from proceeding with his claim for the \$1,289.02 for physiotherapy services, proposed by Revive Health Centres Inc. in a plan dated February 13, 2020.

SUBSTANTIVE ISSUES

- [9] The remaining substantive issues to be decided in the hearing 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 \$1,289.02 for physiotherapy services, proposed by Revive Health Centres Inc. in a treatment plan/OCF-18 ("plan") dated July 8, 2021?
 - iii. Is the applicant entitled to \$1,085.32 for physiotherapy services, proposed by Revive Health Centres Inc. in a plan dated June 2, 2022?
 - iv. Is the applicant entitled to \$1,289.02 for physiotherapy services, proposed by Revive Health Centres Inc. in a plan dated February 13, 2020?
 - v. Is the applicant entitled to \$1,085.32 for physiotherapy services, proposed by Revive Health Centres Inc. in a plan dated February 4, 2022?

RESULT

- [10] The applicant has not proven on a balance of probabilities that the injuries he suffered as a result of the subject accident are non-minor as defined in the *Schedule*.
- [11] As the applicant has been found to remain in the MIG, there is no need to conduct the reasonable and necessary analysis of the disputed treatment plans.

ANALYSIS

Minor Injury Guideline (“MIG”)

- [12] 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.”
- [13] An insured person may be removed from the MIG if it can be established that accident-related injuries fall outside of the MIG, or if there is documentation of a pre-existing condition combined with compelling medical evidence stating that the condition precludes recovery from any accident-related minor injury if they are kept within the MIG, pursuant to s. 18(2) of the *Schedule*. The Tribunal has determined that chronic pain with a functional impairment or a psychological condition may warrant MIG removal.
- [14] The burden is on the applicant to demonstrate, on a balance of probabilities, that his injuries fall outside of the MIG. In this case, the applicant submits he suffers from chronic pain with a functional impairment to warrant his removal from MIG. The respondent argues that the applicant has not met his burden of proving that he suffers from chronic pain.

The applicant does not suffer from chronic pain with a functional impairment.

- [15] I find that the applicant has not proven on a balance of probabilities that he suffers from chronic pain with a functional impairment that would warrant his removal from the MIG.
- [16] The applicant submits that his longstanding physical complaints should be grounds for his removal from MIG, and he relies on the clinical notes and records (“CNRs”) of his family doctor, Dr. Garming Lai.
- [17] I find that applicant has not proven on a balance of probabilities that his physical complaints rise to the level of chronic pain with functional impairment. The CNRs of Dr. Lai do not provide any compelling evidence of ongoing pain reporting. There are few references to the subject accident included in the CNRs, and the applicant reported to Dr. Lai in February 2020 that he was “doing well, physical therapy for his hip has been helpful, and feeling well.” There are no referrals to specialists for pain, and there is no mention of the subject accident following the

February 2020 visit. Additionally, the CNRs of Dr. Lai do not outline any functional impairments that the applicant suffers as a result of his pain reporting. While the applicant argues that his background made it more likely he would not stop working due to pain, there was no compelling evidence presented that would substantiate that claim.

- [18] I find that the applicant has not proven on a balance of probabilities that he suffers from chronic pain with a functional impairment.

Treatment Plans

- [19] As the applicant has been found to remain in the MIG, there is no need to conduct the reasonable and necessary analysis of the disputed treatment plans.
- [20] The applicant is entitled to the remaining amount of \$529.55 left in the MIG funding limit.

ORDER

- [21] For the above reasons, I find:
- i. The applicant is statute-barred from proceeding with his claim for the \$1,289.02 for physiotherapy services, proposed by Revive Health Centres Inc. in a plan dated February 13, 2020.
 - ii. The applicant remains in the MIG.
 - iii. The applicant is not entitled to the treatment plans in dispute.
 - iv. The applicant is entitled to the remaining \$529.55 left in the MIG funding limit.
 - v. The application is dismissed.

Released: March 19, 2025

**Robert Rock
Adjudicator**