



Citation: He v. Pembridge Insurance Company, 2025 ONLAT 23-013276/AABS

Licence Appeal Tribunal File Number: 23-013276/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:

Yan He

Applicant

and

Pembridge Insurance Company

Respondent

DECISION

ADJUDICATOR: Roderick Walker

APPEARANCES:

For the Applicant: Aylina Dhanji, Counsel

For the Respondent: Jodie A. Therrien, Counsel

HEARD: By Way of Written Submissions

OVERVIEW

[1] Yan He, the applicant, was involved in an automobile accident on October 27, 2021, 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 Pembridge Insurance Company, the respondent, 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 \$3,749.56 for physiotherapy services, proposed by Total Recovery Rehab Centre in a treatment plan/OCF-18 (“plan”) dated October 26, 2023?
 - iii. Is the applicant entitled to \$2,200.00 for a psychological assessment, proposed by Somatic Assessments and Treatment Clinic in a plan dated December 23, 2021?
 - 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] I find that the applicant’s injuries fall within the MIG, and that the applicant is not entitled to an award or interest.
- [4] As I have found the applicant is remaining in the MIG, it is not necessary for me to determine if the disputed treatment plans are reasonable and necessary.

ANALYSIS

MIG

- [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 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] In this case, the applicant submits that he should be removed from the MIG on the basis of chronic pain and a psychological condition.

The applicant has not established that he has chronic pain with a functional impairment warranting removal from the MIG.

- [8] The applicant has not met his onus to demonstrate on a balance of probabilities that he suffers from chronic pain with a functional impairment warranting removal from the MIG.
- [9] The applicant’s evidence is as follows: Clinical Notes and Records (CNR’s) from Dr. S. Ngo, family doctor; CNR’s of physiotherapist, Dr. A. Afifi, of Total Recovery Rehab Centre; and the one disputed plan for physiotherapy services. The injuries are right knee pain, shoulder pain, left wrist pain, left eyelid could not stop twitching, unable to do repetitive bending and also twisting weakness in shoulder area as well as decrease in range of motion.
- [10] The applicant submits that he suffers from the injuries above as well as he also has difficulties falling asleep and bad dreams from the subject accident. He submits that removal from the MIG is warranted because of a chronic pain and psychological impairments.
- [11] The respondent’s evidence in this case is a section 44 insurer’s examination from Dr. A. Oshidari, physiatrist. In his report dated November 27, 2023, Dr. Oshidari

states that the applicant's physical injuries are soft tissue in nature and fall within the scheme of the MIG.

- [12] In the applicant's submissions, the applicant summarizes that Dr. Ngo's records indicate pain in the applicant's right knee, shoulders and left wrist, however, after reviewing the records of Dr. Ngo, I find that the applicant's right knee, shoulders and left wrist are not accident-related injuries.
- [13] Rather, I find one week after the accident, on November 2, 2021, the applicant consulted his family doctor, Dr. Ngo. The applicant advised Dr. Ngo that his left wrist pain improved recently and has resolved. Also, the applicant at that time reported that his right knee pain was improving despite him failing to utilize the prescription that was prescribed by Dr. Ngo. The applicant reported no new symptoms at the time and Dr. Ngo proceeded to diagnosed him with NVL wrist strain. Further, physiotherapist Afifi noted the applicant was suffering from a a difficulty sleeping, low energy, fatigue, difficulty with housekeeping tasks, unable to do tasks that required repeating of bending and twisting. I find that there is limited evidence to support that these symptoms were as a result of the accident or are grounds on their own for removal from the MIG.
- [14] I find in the s. 44 report of Dr. Oshidari dated December 7, 2023, he diagnosed the applicant with a soft tissue injury contusion to the wrist and also to the cervical spine. The applicant informed Dr. Oshidari at that time that he attended Total Recovery Rehab Centre post accident five to six times where he stated that his symptoms were under control, and he decided to stop attending therapy. The applicant also informed Dr. Oshidari that his neck pain resolved, and he regularly attends the gym. Dr. Oshidari observed the applicant was very muscular and all of the tests were performed pain free and with free range of motion. Dr. Oshidari concludes that his injuries were soft tissue in nature and most of the soft tissue injuries have resolved prior to his assessment.
- [15] I find in respect to chronic pain that the applicant has not been diagnosed with chronic pain and the evidence does not support a finding that he has chronic pain with functional impairment because the report of Dr. Oshidari's does not support chronic pain the functional impairment based on the applicant's own self reporting.
- [16] For the above reasons, I find the applicant has not met his onus that he suffers from chronic pain with a functional impairment that warrants removal from the MIG.

The applicant does not suffer from a Psychological Impairment that would remove him from the MIG

- [17] I find that the applicant does not have a psychological impairment that warrants removal from the MIG.
- [18] I reiterate that it is the applicant's onus to prove on a balance of probabilities that his psychological injuries do not fall within the MIG. The applicant submits as evidence a plan for a psychological assessment and the pre-screening report from Dr. S. McDowall, psychologist, of Somatic Assessment and Treatment Centres. This report indicates that the applicant's psychological injuries are: sleep disorders, bad dreams, irritability, and fatigue.
- [19] I find that the applicant's family doctor, Dr. Ngo, referred the applicant to a sleep clinic apparently because of symptoms related to the accident. However, in the CNR's of Dr. Ngo dated November 29, 2021, Dr. Ngo referred the applicant for a sleep study for snoring, to rule out obstructive sleep apnea, with no mention that this condition was caused by the accident. There is no evidence before me that the applicant attended this sleep study. As such, I put no weight on this evidence that he suffers from a sleep disorder.
- [20] The applicant also refers to a report completed by Dr. S. McDowall dated November 3, 2021. In the report, Dr. McDowall concluded that the applicant has a psychological injury. However, I find that this is a pre-screening report, and this diagnosis is found under the additional comments on the disputed plan (OCF-18). I find that there is no indication that Dr. McDowall had any involvement or interaction with the applicant, but that Psychotherapist Ms. Mandy Fang interviewed the applicant. Ms. Fang is not qualified to make a psychological diagnosis as this is out of her scope of practice. I also find in the CNR's of Dr. Ngo and Dr. Oshidari there is no mention of a psychological impairment, which I find undermines the diagnosis in the OCF-18.
- [21] The applicant refers to his psychological injuries but does not argue or establish that they were significant enough to remove him from the MIG. I find the applicant has not met his onus and on a balance of probabilities that he should be removed from the MIG for his psychological injuries.
- [22] It is not necessary for me to analyze the respondent's medical evidence in relation to psychological impairment as it is the applicant's duty to prove that he has suffered an impairment.

[23] I have determined the applicant's injuries fall within the MIG. While an analysis into the reasonableness and necessity of the treatment plans would not be required in the normal course, I must still determine if the applicant is entitled to the disputed OCF-18's on procedural grounds, as he argues the denials were deficient.

Sufficiency of Denials for Disputed OCF-18's

[24] I find the denial letters are compliant with s. 38(8) of the *schedule*.

[25] The applicant's hearing submissions at paragraphs 38, 40 and 51 focus exclusively on the sufficiency of the respondent's reasons for denying the disputed OCF-18's.

[26] In terms of the sufficiency of the denials, the applicant argues that the denial notices issued by the respondent do not comply with the requirements of section 38(8) of the *Schedule* because they fail to provide the required medical reasons. Due to the deficiency of the denials, the applicant argues that all the disputed OCF-18's must be funded pursuant to s. 38(11).

[27] 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 section 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) and it is prohibited from taking the position that the insured person has a impairment to which the MIG applies.

[28] The respondent's submits that its denials are complete, detailed, and specific for the applicant to follow and give clear direction for him to submit additional documents to determine his eligibility for benefits pursuant to s. 33. 33. (1) An applicant shall, within 10 business days after receiving a request from the insurer, provide the insurer with the following:

1. Any information reasonably required to assist the insurer in determining the applicant's entitlement to a benefit.

33(6) The insurer is not liable to pay a benefit in respect of any period during which the insured person fails to comply with subsection (1) or (2).

33(8) If an applicant who failed to comply with subsection (1) or (2) subsequently complies with that subsection, the insurer,

(a) shall resume payment of the benefit if a benefit was being paid; and

(b) shall pay all amounts that were withheld during the period of non-compliance if the applicant provides a reasonable explanation for the delay in complying with the subsection.

[29] I find that the explanation of benefit letters dated March 2, 2022, December 30, 2021, and November 15, 2021, are sufficient in detail for the applicant to respond to the insurer for the documents needed. The respondent points out in the denials that the applicant only submitted two disputed OCF-18's. The letters explain that the applicant is missing an OCF-3 disability certificate, the completion of election of income replacement, non earner or caregiver benefit (OCF-10), and completion of activities of daily living checklist, which are documents that the respondent requires to evaluate and adjust the applicant's claim. Further, the letters stated that the applicant has failed to respond to the insurer's requests under s. 33 for this information. As a result, the letters explain that due to the limited amount of medical documentation provided by the applicant, the applicant is in violation of s. 33(1) of the *Schedule* and no benefits would be paid. Accordingly, I find that the respondent's denial letters are compliant with s. 38(8) of the *Schedule* because noncompliance with valid s. 33 requests for basic information constitute a valid "other" reason under s. 38(8). The applicant's failure to comply with these requests does not trigger the consequences of s. 38(11).

[30] In summary, I find that the disputed OCF-18's listed above are not payable to the applicant because he breached of s. 33(1) of the *Schedule*.

Interest

[31] No interest applies under s. 51 as no benefits are payable.

Award

[32] Since no benefits are awarded, the respondent is not liable to pay an award.

ORDER

[33] I find that the applicant's injuries fall within the MIG, and that the applicant is not entitled to the benefits in dispute, an award or interest.

[34] The application is dismissed.

Released: September 19, 2025

**Roderick Walker
Adjudicator**