



Citation: He v. Pembridge Insurance Company, 2026 ONLAT 24-004898/AABS

Licence Appeal Tribunal File Number: 24-004898/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:

Zi Qing He

Applicant

and

Pembridge Insurance Company

Respondent

DECISION

ADJUDICATOR: Brian Norris

APPEARANCES:

For the Applicant: Sareena Samra, Counsel

For the Respondent: Sonya Katrycz, Counsel

HEARD: By way of written submissions

OVERVIEW

- [1] Zi Qing He (“the Applicant”) was involved in an automobile accident on November 26, 2021 and sought benefits from Pembridge Insurance Company (“the Respondent”) 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 and applied to the Licence Appeal Tribunal - Automobile Accident Benefits Service (the “Tribunal”) for resolution of the dispute.

PRELIMINARY ISSUE

- [2] The preliminary issue in dispute is:
- i. Is the Applicant barred from proceeding to a hearing related to her entitlement to a chiropractic treatment and assessment plan (“plan”), dated March 2, 2022, because she failed to dispute the denial within the two-year limitation period?

SUBSTANTIVE ISSUES

- [3] The substantive issues in dispute are:
- i. Is the Applicant entitled to income replacement benefits (“IRBs”) in the amount of \$209.31 per week for the period from November 21, 2022 to August 1, 2023?
 - ii. Is the Applicant entitled to a medical benefit in the amount of \$4,303.90 for a chiropractic treatment plan proposed by Total Recovery Rehabilitation, dated March 2, 2022?
 - iii. Is the Applicant entitled to a medical benefit in the amount of \$1,968.80 for psychological treatment proposed by Somatic Assessments & Treatment Clinic in a plan, dated January 6, 2023?
 - iv. Is the Applicant entitled to a medical benefit in the amount of \$2,804.10, less \$2,056.10 approved by the Respondent, for psychological services proposed by Somatic Assessments & Treatment Clinic in a plan, dated November 3, 2023?
 - v. Is the Applicant entitled to a medical benefit in the amount of \$2,200.00 for an occupational therapy (“OT”) assessment plan proposed by Complex Medical & Health Services, dated December 7, 2022?

- vi. Is the Applicant entitled to interest on any overdue payment of benefits pursuant to section 51 of the *Schedule*.
- vii. Is the Applicant entitled to an award pursuant to section 10 of Regulation 664?

RESULT

- [4] The Applicant has not demonstrated on a balance of probabilities that she disputed entitlement to the chiropractic treatment plan within the two-year limitation period. She has not demonstrated that the deadline to file her appeal should be extended pursuant to section 7 of the *Licence Appeal Tribunal Act* ("LAT Act"). She is barred from disputing entitlement to this plan as a result.
- [5] The Applicant has not demonstrated on a balance of probabilities that she is entitled to IRBs.
- [6] The Applicant has not demonstrated on a balance of probabilities that she is entitled to the psychological treatment plans dated January 6, and November 3, 2023,
- [7] The Applicant has not demonstrated on a balance of probabilities that she is entitled to the OT assessment plan dated December 7, 2022.
- [8] No interest or award is payable.

BACKGROUND

- [9] The Applicant was the front seat passenger of a vehicle which was struck on the passenger side by another car exiting a commercial plaza. She sought no medical attention at the scene of the accident, or in the few months following the accident. The Applicant claims that she has developed bilateral arm pain and psychological injuries as a result of the accident. She claims entitlement to IRBs and the treatment and assessment plans in dispute due to her accident-related issues.

ANALYSIS

The Applicant has demonstrated that she is an unreliable witness

- [10] I find that the Applicant is an unreliable witness and give no weight to any information stemming from her. Accordingly, I give no weight to reports that rely solely on her self-reported issues.

- [11] The Applicant provided false information in her affidavit, dated September 26, 2024. In the affidavit, the Applicant swore under oath that she had not returned to work since the accident, and that she has made no attempts to return to work, and that she does not feel that she would be able to maintain employment. However, in the Examination Under Oath, dated October 21, 2024, the Applicant confirmed that she returned to work following the accident, contrary to her affidavit. She initially testified that her affidavit was accurate and then, when pressed on the issue, reported that she in fact did return to work following the accident, contrary to her sworn affidavit. Later in the examination, the Applicant reported that, in addition to returning to work at her pre-accident employment, she found work at a florist in August 2023, working 20-30 hours per week, and that she maintained this employment through to December 2023.
- [12] Accordingly, the Applicant has demonstrated that her reports are untrustworthy and cannot be relied upon without corroborating evidence.

The Applicant may not proceed with her claim for the March 2, 2022 plan

- [13] I find that the Applicant is barred from disputing her entitlement to the March 2, 2022 chiropractic treatment plan.
- [14] The Applicant tendered no submissions and never directed me to any evidence to suggest that she disputed this denial of benefits within 104 weeks. Likewise, she tendered no submissions and never directed me to any evidence to suggest that the deadline to dispute entitlement should be extended in accordance with section 7 of the *LAT Act*.
- [15] Accordingly, I find that the Applicant is barred from disputing her entitlement to this plan.

Income replacement benefits (“IRBs”)

- [16] I find that the Applicant returned to work following the accident and has not met her onus to demonstrate entitlement to IRBs.
- [17] To be eligible for IRBs, the Applicant must demonstrate that she suffers a substantial inability to complete the essential tasks of her employment at the time of the accident, pursuant to section 5 of the *Schedule*. To demonstrate this, the Applicant should provide a clear description of her employment and the essential tasks it involves and explain how his accident-related injuries prevent her from completing those tasks.

- [18] The Applicant admitted under oath that she returned to work following the accident and that she stopped her employment due to pressure from studying, not due to accident-related injuries. In the October 21, 2024 EuO, the Applicant initially reported that she never returned to work following the accident, then she reported that she could not work because she was unable to keep up with the pace of the job of a server in a restaurant, implying that she returned to work in some capacity. The Applicant again altered her reason for not working in the EuO, and later stated that she felt the pressure to study and did not have enough time to go back to work.
- [19] There is no contemporaneous medical evidence to support the Applicant's claim that she is impaired from working as a server in a restaurant. The clinical notes and records ("CNRs") from Dr. P. Chan, the Applicant's family physician, do not indicate that the Applicant is disabled from working as a server. In fact, the Applicant met with Dr. Chan on July 7, 2022, for a routine examination, which found her in good health. At most, Dr. Chan's CNRs indicate that the Applicant complained of bilateral wrist discomfort for the past six to eight months, which was assessed by Dr. Y.-F. Chen, neurophysiologist, on October 10, 2023. Dr. Chen determined the issue to be mild bilateral carpal tunnel syndrome for which wrist splints were recommended. Nothing in Dr. Chan or Dr. Chen's CNRs indicate that the Applicant's carpal tunnel syndrome occurred due to the accident or that she is unable to work due to accident-related injuries.
- [20] I give no weight to the CNRs from Somatic Assessments because they rely solely on the Applicant's self-reports, which have been demonstrated to be inaccurate. For example, the report by Dr. S. Naisi, psychologist, dated December 15, 2022, relies on the Applicant's self-report that she never returned to work following the accident, despite records indicating – and the Applicant admitting under oath - that she returned to work as a server in a restaurant for nearly a year following the accident, until November 29, 2022. The treatment records from Somatic Assessments do not include any recommendation for the Applicant to refrain from working, and do not indicate that the Applicant's psychological impairments are precluding her from completing the essential tasks of a server at a restaurant.
- [21] I place weight on the IE reports by Dr. J. Auguste, orthopaedic surgeon, and Dr. F. Salerno, psychologist, dated November 7, 2022, which concluded the Applicant is not impaired from working as a server in a restaurant. Dr. Auguste assessed the Applicant in-person and found that she had full range of motion throughout her body and did not suffer a substantial inability to perform the essential tasks of a server. Dr. Salerno assessed the Applicant in-person,

including conducting psychometric testing, and found that the Applicant suffered from an accident-related adjustment disorder, despite her test results falling below the expected range for motivated responders on multiple trials. Dr. Salerno concluded that the Applicant could return to her employment as a server in a restaurant. The Applicant has not directed me to any contemporaneous evidence to upset the findings of Dr. Auguste and Dr. Salerno. I note that Dr. Salerno's report and conclusion occurred nearly two years prior to the Applicant's affidavit and EuO in which it was demonstrated that she is willing to misrepresent facts to advance her claims.

- [22] Accordingly, I find on balance that the Applicant has not demonstrated that she suffers a substantial inability to complete the essential tasks of a server in a restaurant. Thus, she is not entitled to IRBs as claimed.

Psychological treatment plan, dated January 6, 2023

- [23] I find that the Applicant has not met her onus to demonstrate that this plan is reasonable and necessary as a result of the accident.
- [24] The basis for the Applicant's claim is that she incurred the plan and is not subject to the Minor Injury Guideline ("the MIG"). The Respondent submits that the Applicant cannot be found to be entitled to this plan because she has made no submissions on whether this plan is reasonable and necessary as a result of her accident-related impairments.
- [25] I agree with the Respondent and find that the Applicant has not met her onus to demonstrate that this plan is reasonable and necessary as a result of the accident. No insured person is automatically entitled to psychological services because they are no longer subject to the MIG. The insured person must still demonstrate that the services are reasonable and necessary as a result of the accident. This is no different for the Applicant. Indeed, she was found to have sustained psychological injuries as a result of the accident, but such a finding does not render all psychological treatment plans to be reasonable and necessary.
- [26] Additionally, I find on a balance of probabilities that the Applicant has not demonstrated that psychological treatment is reasonable and necessary as a result of the accident. The Applicant has demonstrated that she will misrepresent facts when advancing her claims. Here, the Applicant's psychological complaints hold no weight because they rest entirely on her self-reporting and are unsupported by the CNRs from her family physician, Dr. Chan. At no point did the Applicant report psychological issues to Dr. Chan. When the Applicant's self-

reports are discounted due to misrepresentation, there remains no evidence left indicating that she suffers from an accident-related psychological impairment that warrants treatment.

- [27] Accordingly, I find on a balance of probabilities that the Applicant has not met her onus to demonstrate that this plan is reasonable and necessary as a result of the accident.

Psychological treatment plan, dated November 3, 2023

- [28] I find that the Applicant withdrew her claim for entitlement to this plan. Alternatively, I find that the Applicant has not demonstrated that this plan is reasonable and necessary as a result of the accident.
- [29] This partially approved plan was listed as an issue in dispute according to the Case Conference Report and Order, dated September 9, 2024. However, the Applicant never listed it as an issue in dispute when she reiterated the issues in her submissions. Additionally, the Applicant made no submissions on whether the unapproved balance of this plan is reasonable and necessary as a result of the accident. I infer from this information that the Applicant has withdrawn her claim for this plan.
- [30] In addition, if I am wrong in my inference, I find that the Applicant has not met her onus to demonstrate that the plan is reasonable and necessary as a result of the accident. The Applicant has not identified the plan, nor any medical evidence to support a finding that the plan is reasonable and necessary as a result of the accident.

Occupational therapy assessment plan, dated December 7, 2022

- [31] I find that the Applicant has not demonstrated that the OT assessment plan is reasonable and necessary as a result of the accident.
- [32] The Applicant made no submissions on what this plan is meant to assess, nor how an OT assessment would benefit her recovery. This alone is sufficient to find that the Applicant has not met her onus to demonstrate entitlement to the plan.
- [33] Additionally, I find that an in-home attendant care assessment is not reasonable and necessary as a result of the accident. Upon review of the plan in evidence, I find that it proposes an in-home attendant care assessment. Yet, there is no evidence indicating that it is reasonable and necessary to assess whether the Applicant requires attendant care services because she is not functionally impaired as a result of the accident. As noted previously, the Applicant returned

to work following the accident, indicating that she is functional. Likewise, she made virtually no accident-related complaints to her family physician, Dr. Chan, and had full range of motion throughout her body when assessed by Dr. Auguste and reported in the November 7, 2022 IE report. Thus, there is no need to assess whether the Applicant requires attendant care services.

- [34] Accordingly, I find that the Applicant has not met her onus to demonstrate on a balance of probabilities that this plan is reasonable and necessary as a result of the accident.

Interest

- [35] Interest applies on the payment of any overdue benefits pursuant to section 51 of the *Schedule*. Having found no benefits payable, it follows that no benefits went overdue, and no interest is payable.

Award

- [36] I find no award payable.
- [37] The Applicant sought an award under section 10 of Regulation 664. Under section 10, the Tribunal may grant an award of up to 50 per cent of the total benefits payable if it finds that an insurer unreasonably withheld or delayed the payment of benefits.
- [38] The Applicant claims that the Respondent ignored medical records when adjusting her claim and that such behaviour needs to be deterred. However, she never identified what records were ignored. The Respondent submits that there is no evidence it acted in a manner that led to the unreasonable withholding or delayed payment of benefits.
- [39] I agree with the Respondent and find no evidence it unreasonably withheld or delayed the payment of benefits. As outlined above, the Applicant never met her onus to demonstrate that she was unable complete the essential tasks of her employment as a server due to accident-related injuries. Additionally, she misrepresented her post-accident employment status.
- [40] Likewise, the Applicant has not demonstrated that she is entitled to the plans in dispute, thus she has not demonstrated that they were unreasonably withheld or delayed by the Respondent.

CONCLUSION AND ORDER

- [41] The Applicant has not demonstrated on a balance of probabilities that she disputed entitlement to the chiropractic treatment plan within the two-year limitation period. She has not demonstrated that the deadline to file her appeal should be extended pursuant to section 7 of the LAT Act. She is barred from disputing entitlement to this plan as a result
- [42] The Applicant has not demonstrated on a balance of probabilities that she is entitled to IRBs.
- [43] The Applicant has not demonstrated on a balance of probabilities that she is entitled to the psychological treatment plans dated January 6, and November 3, 2023.
- [44] The Applicant has not demonstrated on a balance of probabilities that she is entitled to the OT assessment plan dated December 7, 2022.
- [45] No interest or award is payable.

Released: January 20, 2026



Brian Norris
Adjudicator