Citation: Admassu v. Definity Insurance Company, 2026 ONLAT 24-015615/AABS

Licence Appeal Tribunal File Number: 24-015615/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:

Michael Yaregal Admassu

Applicant

and

Definity Insurance Company

Respondent

DECISION

ADJUDICATOR: **Bruce Stanton**

APPEARANCES:

For the Applicant:	Michael Yaregal Admassu, Applicant (self-represented)
For the Respondent:	Rovina Sehdev, AB Specialist Jordan Hochman, Counsel

Heard by Videoconference: **January 6 & 7, 2026**

OVERVIEW

[1] Michael Yaregal Admassu, the applicant, was involved in an automobile accident on March 25, 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, Definity Insurance Company, 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 ("MIG")?

ii. Is the applicant entitled to an income replacement benefit ("IRB") in the amount of $400.00 per week from April 2, 2023 to the date of the case conference?

iii. Is the applicant entitled to $1,628.37 for physiotherapy services, proposed by Revive Health Centres Inc. in a treatment plan/OCF-18 ("plan") submitted August 23, 2023?

iv. Is the applicant entitled to $1,508.37 for physiotherapy services, proposed by Revive Health Centres Inc. in a plan dated March 16, 2024?

v. Is the applicant entitled to $1,469.15 for physiotherapy services, proposed by Revive Health Centres Inc. in a plan dated June 26, 2024?

vi. Is the applicant entitled to interest on any overdue payment of benefits?

RESULT

[3] The applicant's injuries are predominantly minor and therefore subject to the $3,500.00 limit prescribed in the MIG.

[4] As the applicant is in the MIG, it is not necessary to consider if the three treatment plans for physiotherapy are reasonable and necessary.

[5] The applicant is not entitled to an income replacement benefit.

[6] The applicant is not entitled to interest.

PROCEDURAL ISSUES

Late-filed documents

[7] The respondent sought to exclude the applicant's weekly Uber pay statements from evidence. It submitted that the records were only disclosed well after the deadlines (for disclosures and the serving of documents for the hearing) set by the Case Conference Report and Order of March 20, 2025 ("CCRO"), which left insufficient time to have them reviewed by an expert or call a witness regarding them. In the alternative, the respondent submits the Uber records should be assigned significantly diminished weight, owing to the significant prejudice they would impose on the respondent if relied upon.

[8] The applicant acknowledges that his documents for the hearing were served late; on December 24, 2025, eight days after the December 16, 2025 deadline. He submitted that he has been representing his own interests in this matter since September 2025 when his legal representative went off-record. He thought that the previous counsel had filed the required disclosures, including the Uber statements, in accordance with the CCRO. He submits that there was a delay in getting the relevant documents from his former counsel and that this, in turn, delayed his serving and filing of documents for the hearing.

[9] Rule 9.3 of the *Licence Appeal Tribunal Rules, 2023* ("Rules") stipulates that if a party fails to comply with a direction or order with respect to disclosure, production, or exchange of documents, that party can only rely on the document with the permission of the Tribunal. In granting permission for the party to rely on such documents, the Tribunal may consider any relevant factor, including:

i. The reasons for non-compliance;

ii. Whether a party will be prejudiced by the admission or exclusion of the evidence and the extent to which that prejudice can be mitigated;

iii. The extent which the substance of the information lies within the knowledge of the other party;

iv. Whether the other party opposes the admission of the evidence; and

v. The relevance of the document to an issue in dispute in the proceeding.

[10] I allow the applicant to rely on the Uber statements despite them being filed late and despite prejudice to the respondent by their late filing, because they are directly relevant to the issue of IRBs and the applicant's reasons for non-compliance are not unreasonable considering that he has been self-represented the last four months. In addition, any prejudice created by their admittance into evidence may be mitigated by the respondent's opportunity to argue that they be given diminished weight, and the respondent has been in receipt of them for nearly two weeks.

Accessible Parking Permit Application

[11] The respondent objected to the applicant being able to rely on a copy of an application form he filed for an Accessible Parking Permit, dated April 12, 2025, because it was filed late and was previously unknown to the respondent.

[12] The applicant submits that he provided the document to his former counsel and believed that it had been disclosed. He submits that because of his limited knowledge of the procedures in this matter, he neglected to ensure the document was served and filed at the correct time.

[13] I allow the applicant to rely on the document because it has relevance to the issues in dispute. I have considered the prejudice that may be created by admitting the document. The prejudice can be mitigated by the respondent's ability to argue that it have diminished weight in the Tribunal's consideration of the evidence, and that it has been in receipt of the document nearly two weeks.

Applicant's claim of a medical outcome that he is not qualified to make

[14] The respondent objected to oral evidence provided by the applicant in which he claimed the accident injuries exacerbated his pre-existing heart condition. The respondent submitted that the applicant has no professional qualification to draw such a conclusion.

[15] The applicant did not make submissions on the objection.

[16] I find the objection is overruled because I interpreted the applicant's oral evidence as being what he understood, from his physician's comments, about the implications of his accident injuries upon his heart condition. Put another way, I interpreted the applicant's oral evidence not as a professional opinion, which I agree, he is not qualified to render on this subject, but, rather, as what his physician had relayed to him. The applicant was essentially providing hearsay evidence which is allowed in Tribunal proceedings.

Independence of Dr. Pohani's evidence

[17] The applicant submitted that Dr. Gina Pohani, a s. 44 assessor who testified at the hearing and authored an insurer's examination report, should be considered unreliable and her evidence given little weight because she claimed, under cross examination, that she had never been called as a witness by the respondent counsel's firm, Zarek Taylor Grossman Hanrahan LLP, ("ZTGH"), yet the ZTGH.com site includes Tribunal decisions that relied on Dr. Pohani's testimony as a s. 44 assessor. The applicant submits that Dr. Pohani's testimony should be rejected for lack of credibility.

[18] The respondent submitted that the Tribunal decisions posted on ZTGH.com referred to by the applicant, relate to written hearings for a different respondent and they have no relevance to the matter currently before the Tribunal. The respondent submitted that the applicant has produced no evidence of bias and there are no reasons to doubt her independence.

[19] Dr. Pohani testified that this was her first time being called as a witness in an oral hearing before the Tribunal.

[20] I find Dr. Pohani's evidence will not be excluded, and I find no basis for the applicant's allegations of bias. The applicant appears to be alleging bias on the part of Dr. Pohani, but he has not produced any evidence of bias. I am not persuaded that Dr. Pohani's role as a s. 44 assessor in other accident benefits disputes, which happen to have been represented by the ZTGH law firm, have any relevance to the matter before me.

ANALYSIS

Minor Injury Guideline

[21] I find the applicant's injuries are predominantly minor, therefore he is subject to the limits of the MIG. He has not met his burden to demonstrate that his injuries fall outside of the MIG.

[22] 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."

[23] 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 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.

[24] The applicant submits that his injuries from the accident are documented in the OCF forms (Application for Accident Benefits – OCF-1, Treatment and Assessment Plans – OCF-18s, and Disability Certificate – OCF-3) which he submitted to the respondent. He refers me to the list of injuries reported in the OCF-18s, which include anxiety disorders, headache, radiculopathy, sleep disorders, injuries of muscle and tendon of the neck, thoracic spine, abdomen, shoulder, wrist, and lower leg, and sprain and strain of ribs and sternum.

[25] The applicant directs me to treatments recommended in the OCF-18s including an active rehabilitation program to increase range-of-motion, decrease pain, increase strength and stabilization of his core, shoulder and knee, and increase overall functionality. They also recommend massage therapy to increase circulation and restore muscular mobility.

[26] As an indication of his accident injuries' persistence, the applicant directs me to an Application for an Accessible Parking Permit dated April 12, 2025, signed by Bradley Sugar, chiropractor, who identifies the applicant's health condition as "Ability to walk is severely limited due to an arthritic, neurological, musculoskeletal or orthopaedic condition."

[27] The applicant relies on the clinical notes and records ("CNRs") of his family physician, Dr. Veejai Sawh, between March 30, 2023 to January 8, 2025, which, he submits, document his pain complaints in relation to the motor vehicle accident.

[28] The applicant relies on the CNRs of his cardiac surgeon, Dr. R. Yanagawa between December 19, 2022 and June 19, 2023, which, he submits, document his worsening heart condition following the accident. The applicant testified that he had a pre-existing heart condition before the accident and refers me to Dr. Yanagawa's CNRs of December 19, 2022, which state that he has a moderate mitral valve stenosis. He referred me to Dr. Yanagawa's clinical record four months later, on April 24, 2023, which reveal that his heart condition has worsened to a "moderate-to-severe" mitral stenosis. The applicant underwent heart surgery (valvuloplasty) in September 2023 to address it.

[29] The applicant submits that, based on his discussion with his care team, he believes that the stress and trauma of his accident injuries worsened his heart condition.

[30] The applicant submits that, based on the medical evidence, and that he continues to experience pain from the accident, his injuries are beyond minor, as defined in the *Schedule*, and that he should be removed from the MIG.

[31] The respondent submits that the applicant has not met his burden to demonstrate that his injuries are beyond the MIG. It relies on the s. 44 insurer examination report of Dr. Gina Pohani dated March 5, 2024, which found the applicant's injuries to be minor and therefore the applicant is within the MIG. Dr. Pohani testified that the applicant sustained soft tissue injuries of the cervical spine with involvement of the upper trapezial fibers, and soft tissue injury of the left shoulder and knee in the accident, which have since resolved.

[32] I find the applicant's injuries are predominantly minor. He has not demonstrated that he sustained injuries in the accident that would remove him from the MIG. I find that his injuries are consistent with the definition of minor in the *Schedule*.

[33] I am persuaded that the applicant's injuries are minor because many of the injuries listed in the three OCF-18 forms that the applicant is relying on, are consistent with the definition of minor injuries set out in s. 3 of the *Schedule* (sprains, strains, whiplash disorder). For example, injuries of muscle and tendons in the neck, thoracic spine, abdomen shoulder, wrist and lower leg, and sprains and strains of the ribs and sternum, could generally be described as fitting the definition in s. 3. I give little weight to the applicant's evidence in relation to other injuries listed in the OCF-18s such as sleep disorders and anxiety disorders, because they are not within the expertise of a chiropractor to diagnose.

[34] I am persuaded by Dr. Sawh's CNRs that the applicant sustained injuries in the accident, but they do indicate that his injuries rise to the severity that would remove him from the MIG. They reflect what could be described as soft-tissue injuries for which Dr. Sawh prescribed anti-inflammatory medication, exercise, heat pads etc. For example, there is no record of his injuries being described as chronic pain, and there is no record of any fracture.

[35] I take notice that Dr. Sawh referred the applicant for an x-ray on June 12, 2024 regarding his pain complaints. An X-ray of the applicant's knee and shoulder, and an ultrasound of his knee, were taken on June 14, 2024. They found no bone or joint pathology or abnormality and assessed the subject areas as "grossly normal". I find the X-ray and ultrasound result supports the likelihood that the

applicant's injuries are minor, and it gives no indication he sustained the severity injury that would remove him from the MIG.

[36] Although the applicant opines that the accident negatively affected his heart condition, neither Dr. Sawh's nor Dr. Yanagawa's CNRs give any indication of it. Even if I were to consider that his accident injuries were exacerbated by his pre-existing heart condition, he has not provided any evidence that his heart condition precluded recovery of his accident injuries by being subject to the limits of the MIG, which he would need to provide if he is seeking to be removed from the MIG based on a pre-existing medical condition.

[37] I give weight to Dr. Pohani's report and oral evidence because she has nearly 20 years experience in family medicine, including at least 100 motor vehicle accident injury assessments, and she conducted a 45-minute, in-person examination of the applicant, 11 months post-accident, that included a review of medical documentation and the applicant's medical history. I am persuaded by Dr. Pohani's report that, by the time of her examination, the applicant had experienced a 60% improvement in his condition since beginning therapies, which adds to the likelihood that his injuries were minor.

[38] I give little weight to the Application for an Accessible Parking Permit ("APP") because the alleged condition (the applicant's ability to walk is impaired by an arthritic, orthopaedic, musculoskeletal, or neurological condition) is inconsistent with Dr. Sawh's and Dr. Pohani's reports of the applicant's impairments. Neither physician made reference to the medical conditions noted in the APP, nor of the applicant's inability to walk.

[39] For the reasons discussed above, I find on a balance of probabilities that the applicant's injuries are predominantly minor and he is therefore subject to the limits of the MIG.

Treatment plans for physiotherapy proposed by Revive Health Centres Inc. for $1,628.37, $1,508.37 and $1,469.15

[40] As I have found that the applicant's injuries are predominately minor, it is not necessary to consider if the treatment plans in dispute are reasonable and necessary. The applicant is entitled to treatment only up to the MIG limits.

Income Replacement Benefit

[41] I find the applicant is not entitled to an income replacement benefit.

[42] To receive payment for an IRB under s. 5(1) of the *Schedule*, the applicant must be employed at the time of the accident and, as a result of and within 104 weeks after the accident, suffer a substantial inability to perform the essential tasks of that employment. The applicant must identify the essential tasks of their employment, which tasks they are unable to perform and to what extent they are unable to perform them. The applicant bears the burden of proving, on a balance of probabilities, that they meet the test.

[43] The applicant testified that, at the time of the accident, he was working as a driver for Uber. He testified that his accident injuries prevented him from returning to work. He relies on weekly earnings statements from Uber that show his weekly earnings in the three weeks prior to the accident ranged from $600.00 to $900.00 whereas post-accident, his earnings dropped to nearly zero.

[44] The applicant relies on the disability certificate (OCF-3) dated March 27, 2023, completed by Bradley Sugar, chiropractor, which states that he is substantially unable to perform the essential tasks of his employment.

[45] The applicant testified that he has not yet returned to work and he denies receiving any other form of employment or income support since the accident.

[46] The applicant testified that, prior to the accident, he worked in catering but no longer does. He testified that the Uber earnings statements should be sufficient to support his claim for $400.00 per week in IRBs.

[47] The applicant submits that he is eligible for IRBs at $400.00 per week because he was unable to work post-accident and his Uber receipts demonstrate a sufficient drop in employment earnings.

[48] The respondent submits that the applicant has not demonstrated that he meets the test for IRBs, *i.e.,* that he suffered a substantial inability to perform the essential tasks of his pre-accident employment.

[49] The respondent submits that evidence from two exercise stress tests reveal that the applicant was able to exercise longer than he did pre-accident. It submits that the post-accident stress test indicates the applicant can likely perform his pre-accident employment.

i. The applicant testified, under cross examination, that he agreed with the report of an exercise stress test on January 4, 2023 (pre-accident) conducted at Heart Wellness Cardiac Clinics, which showed that he exercised for eight minutes and 22 seconds, achieving a maximum heart

rate of 165 beats per minute and maximum blood pressure of 130/86. There was no chest pain at the conclusion of the test.

ii. The applicant testified that he agreed with the Heart Wellness Cardiac Clinic's report of a second exercise stress test on May 25, 2023, at which he exercised for nine minutes and 59 seconds achieving a maximum heart rate of 170 beats per minute and maximum blood pressure of 142/86. The reported noted that, at the conclusion of the test, the applicant had no chest pain, but experienced shortness of breath.

[50] As noted above, the respondent submits that the Uber statements should be afforded little weight. It submits that the three weeks' record of earnings pre-accident is insufficient to calculate the quantum of the IRB, and the post-accident record is incomplete; there are many weeks in the range of earnings reports between March 27, 2023 to December 2, 2024, for which no report has been filed.

[51] The respondent submits that even if the Tribunal finds the applicant is eligible for IRBs, there is insufficient evidence to support the quantum of $400.00 per week he is claiming. It submits the applicant failed to produce the T4s and Notices of Assessment from one year prior to the accident to the date of the case conference, as ordered by the CCRO, and his Uber earnings records were late filed and incomplete.

[52] The respondent questions the validity of the applicant's claim that he has had almost zero employment income since the accident. It directs me to the cardiac ambulatory consult report of Dr. Sami Alnasser, MD, dated August 21, 2023, who reported that the applicant was "currently" working in catering.

[53] I find the applicant is not eligible for IRBs because he has not demonstrated that he suffered a substantial inability to perform the essential tasks of his employment, which is his onus. Moreover, he has not identified the essential tasks of his employment, which tasks he is unable to perform due his accident injuries, and to what extent he is unable to perform them.

[54] I give little weight to the OCF-3 as evidence of the applicant's substantial inability to perform employment tasks because it is not corroborated by other medical evidence. Dr. Sawh's CNRs made no reference to stopping or limiting work and Dr. Pohani found no impairment that would impede the applicant's ability to participate in activities of daily living. For example, she testified that the applicant's condition should not prevent him from resuming pre-accident activities such as basketball, swimming and going to the gym.

[55] I am persuaded by the stress test results as an indication of the applicant's post-accident abilities because they are consistent with Dr. Pohani's findings and indicate that the applicant can achieve a similar level of physical exertion post-accident, as he did pre-accident.

[56] I find the applicant has not demonstrated eligibility for IRBs because he has not shown that he suffered a substantial inability to perform the essential tasks of his employment. Indeed, he has not engaged any discussion on the tasks of his employment and how or why his accident injuries have prevented him from performing them. As he is not eligible for IRBs, an analysis of the quantum being claimed is not required.

[57] I find on a balance of probabilities that the applicant did not demonstrate that he meets the legal test for entitlement to IRBs.

Interest

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

ORDER

[59] I order the following:

i. The applicant's injuries are predominantly minor and subject to the Minor Injury Guideline.

ii. As the applicant is in the MIG, it is not necessary to consider if the disputed treatment plans are reasonable and necessary.

iii. The applicant is not entitled to income replacement benefits.

iv. The applicant is not entitled to interest.

Released: January 15, 2026

Bruce Stanton
Adjudicator