



**Citation: Ederaro v. Definity Insurance Company, 2026 ONLAT 24-004209/AABS**

**Licence Appeal Tribunal File Number: 24-004209/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:

**Godwin Ederaro**

**Applicant**

and

**Definity Insurance Company**

**Respondent**

**DECISION**

**ADJUDICATOR: Sarah Guergis**

**APPEARANCES:**

For the Applicant: Sofia Katyshev, Paralegal

For the Respondent: Sikander Duha, Counsel

**HEARD: In Writing**

## OVERVIEW

- [1] Godwin Ederaro, the Applicant, was involved in an automobile accident on November 9, 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 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:
1. 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? The Respondent submits that there is \$317.05 remaining in the Minor Injury Guideline limit.
  2. Is the Applicant entitled to \$3,273.00 for physiotherapy services, proposed by the Oshawa Physiotherapy and Rehabilitation Centre in a treatment plan/OCF-18 (“plan”) denied September 8, 2022?
  3. Is the Applicant entitled to the assessments proposed by All Health Medical Centre, as follows:
    - i. \$2,200.00 for a psychological assessment, in a treatment plan denied May 18, 2022;
    - ii. \$2,200.00 for an occupational therapy assessment, in a treatment plan denied May 19, 2022;
    - iii. \$2,200.00 for a functional cognitive assessment, in a treatment plan denied May 24, 2022;
    - iv. \$1,860.00 for a concussion assessment, in a treatment plan denied June 3, 2022;
    - v. \$2,460.00 for an orthopedic assessment, in a treatment plan denied July 26, 2022;
    - vi. \$2,260.00 for a chronic pain assessment, in a treatment plan denied December 23, 2022;

- vii. \$2,200.00 for a chronic pain assessment, in a treatment plan denied June 15, 2022; and
  - viii. \$2,200.00 for a psychological assessment, in a treatment plan denied December 14, 2023?
- 4. Is the Respondent liable to pay an award under s. 10 of Reg. 664 because it unreasonably withheld or delayed payments to the Applicant?
  - 5. Is the Applicant entitled to interest on any overdue payment of benefits?

## RESULT

- [3] The Applicant has not demonstrated that their accident-related impairments warrant treatment beyond the MIG. None of the treatment plans, interest, or an award are payable.

## ANALYSIS

### 1. *Minor Injury Guideline*

- [4] I find that the Applicant is not removed from the 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 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.

### ***Exacerbation of pre-subject MVA injuries***

- [7] The Applicant submits that the injuries sustained by the Applicant as a result of the November 9, 2021, motor vehicle accident fall outside the MIG due to the presence of pre-existing conditions and psychological impairments that have been exacerbated by this accident. He was previously injured in a motor vehicle accident in 2019, where he sustained both physical and psychological impairments. He submits that his treating physician, Dr. Veronica Odu, stated the “first accident took a toll on him” and that the “second accident made the symptoms of the first accident worse.”
- [8] Further, he submits that his psychological condition has also declined. The Applicant submits that he has anxiety while in vehicles, low mood, irritability, and nightmares, symptoms which did not fully resolve following the 2019 accident but have now been significantly exacerbated. He also submits that he has difficulty with short-term memory, concentration, and attention, which has significantly interfered with his ability to care for himself, perform household tasks, and engage with his children.

### ***Medical Records pre accident***

- [9] Regarding the Applicant’s injuries from the 2019 MVA, they point me to the clinical notes and records (“CNRs”) from Dr. Odu. On April 22, 2019, this visit was regarding the 2019 MVA and he was prescribed naproxen (anti-inflammatory medication).
- [10] In CNRs from April 25, 2019, he spoke to Dr. Odu again and stated that he is experiencing pain in his neck, shoulders and upper back. That he is tired and lacks energy. Dr. Odu wrote that he is able to perform full range of motion of bilateral shoulders but “pt c/o pain when trying to perform range of motion”. The Applicant mentioned whiplash and Dr. Odu recommend stretching, strengthening of affected areas and advised heat/ cold application and range of motion exercises as well as Tylenol, physio and massage therapy.
- [11] In CNRs from July 15, 2019, the Applicant saw Dr. Odu and reported that he was in an MVA a month prior and was currently in physiotherapy treatment. He reported flashbacks when driving across that area (of the 2019 MVA) and requested pain relief. Dr. Odu wrote that he appears to be active, alert with full range of motion in neck and lower back, power and tone intact in his lower limbs and that his mental state was stable. He further reported musculoskeletal back pain and Dr. Odu recommended massage therapy, physiotherapy and NSAIDs (anti-inflammatory medications).

- [12] In CNRs from Dr. Odu on August 20, 2019, she notes that the Applicant has pain in his shoulders and back, is having flashbacks, right sided headaches when driving, is “always conscious of the car coming his back” and is finding it difficult to work. Dr. Odu notes he has normal cognition, is well oriented, has no structural abnormalities of the shoulder, normal gait. The Applicant mentioned chronic pain syndrome and PTSD and she offered Lyrica for pain as the NSAIDs were not working and offered a referral to a pain clinic.
- [13] In CNRs from Dr. Odu on August 29, 2019, in a follow-up, she wrote that the Applicant needs a referral to a pain clinic and that again his head, neck, chest, cervical spine and abdomen were all normal and that his mental health is stable.

### ***Medical Evidence Post-MVA***

- [14] The Applicant relies on medical records from Dr. Odu where she notes that the “first accident took a toll on him” and that the “second accident made the symptoms of the first accident worse.”
- [15] The Applicant relies on treatment at a pain clinic, as well as a pharmacological regiment as part of his recovery process. The Applicant refers me to Tab 7 of their evidence, which spans 185 pages. Much of it is distorted due to photocopying, making it unclear precisely what portion the Applicant intends for me to consider. It appears that the pharmacological regiment they refer to is within the various CNRs from Dr. Odu.
- [16] In the pain management consultation referral form from Dr. Odu, dated October 13, 2021, she writes that following the subject accident, the Applicant continued to suffer from worsened physical and psychological symptoms, including neck, back, and joint pain, muscle weakness, fatigue, headaches, and poor sleep. In this report, Dr. Odu wrote that the Applicant’s wife is a physiotherapist and has been taking care of him.
- [17] In CNRs from Dr. Odu dated December 11, 2021, the Applicant attended a phone consultation due to the COVID-19 pandemic. Dr. Odu writes that the Applicant stated they were calling in regard to a recent accident, that they were nursing a lot of pain, the subject accident made his symptoms from the 2019 accident worse, and he has gone to a pain clinic where “a medication” was recommended.
- [18] There are further CNR’s from November 11, 2021, where the Applicant saw Dr. Odu in clinic. These CNR’s state that the Applicant is suffering from anxiety, feels disorganized and unstable, is having flashbacks and that his insurance advised

he attend physiotherapy. Dr. Odu also wrote that his head, neck, chest, CVS, abdomen were all normal and that his mental health is stable.

- [19] The Applicant also relies on a psychological pre-screen Interview by Hanna Myschkowski (OT) from January 31, 2022. Here the Applicant discusses his ongoing treatment. This report states that the Applicant returned to the same physiotherapy clinic in Oshawa where he went for treatment after the 2019 accident. He has been going there twice a week, once for physiotherapy and once for massage. He said he has found it helpful. He indicated that from a physical perspective, the second accident has only caused him minimal harm. Further, this report states that the Applicant saw a pain specialist in November 2021 in North York. He said that this doctor prescribed him with medication that he took for three months. He went back for follow up, and then the doctor prescribed him with another medication. He is supposed to finish this medication in two months' time and then will return to his specialist for follow up. He said that the medication has been helping him to relax.
- [20] This report concludes that there is no clear and reliable indication that the claimant has sustained any psychological impairment as a result of the accident. There is no clear indication of any pre-existing psychological condition that would prevent him from achieving maximal psychological recovery within the MIG. Further, that at most, he may be experiencing adjustment difficulty at a subclinical level. Further, that there are no outside factors that would prevent the claimant from achieving maximal psychological recovery.
- [21] The Applicant further relies on *T.S. vs. Aviva General Insurance Company*, 2020 ONLAT 18-011433/AABS, where it was established that chronic pain is not considered a minor injury. However, the Applicant has not pointed me to the medical evidence where there is an official diagnosis of chronic pain. Nor have they pointed me to their reasoning on how three of six AMA Guidelines criterion are met which would establish chronic pain.
- [22] The Applicant also relies on *17-005791 v Aviva Insurance Canada*, 2018 CanLII 112107 (ON LAT) which holds that post-traumatic stress is not captured within the definition of the MIG. However, the Applicant does not direct me to the medical evidence where there is an official diagnosis of post-traumatic stress.
- [23] The Respondent submits that the Applicant has not sustained an injury or condition that would remove him from the MIG and that the Applicant has wholly failed to discharge his burden of proof in this case. Further, that he has not tendered objective medical evidence in support of the contention that he has suffered a non-minor injury.

- [24] S.18(2) of the *Schedule* states that the limit in subsection (1) does not apply to an insured person if his or her health practitioner determines and provides compelling evidence that the insured person has a pre-existing medical condition that was documented by a health practitioner before the accident and that will prevent the insured person from achieving maximal recovery from the minor injury if the insured person is subject to the limit or is limited to the goods and services authorized under the Minor Injury Guideline.
- [25] I agree with the Respondent that there is no evidence to support a pre-existing medical condition documented by a health care practitioner that would prevent the Applicant from achieving maximal medical recovery if subjected to the MIG limit. Further, that the Applicant has not met his evidentiary burden in demonstrating that his pain is more than sequela from his soft tissue injuries.
- [26] The Applicant has demonstrated that he was injured in the 2019 MVA and has continued to seek treatment in the form of physiotherapy and with the use of anti-inflammatory medications, into 2022. However, I do not find that I was pointed to evidence which establishes that the physical or psychological injuries from 2019 were exacerbated by the subject accident. For example, the Applicant did not indicate whether their prescription for anti-inflammatory medication had drastically changed from 2019-2021, or whether he was engaging in psychological treatment post-subject accident to specifically address the exacerbation of psychological injuries.
- [27] I acknowledge Dr. Odu's statement that the second accident made the symptoms of the first accident worse. However, this is not enough evidence to establish that the Applicant should be removed from the MIG due to exacerbation of pre-existing conditions. Further, there is no compelling medical evidence that any of his pre-existing issues will prevent him from achieving maximum medical recovery within the MIG.
- [28] Therefore, on a balance of probabilities, I do not find that the Applicant is removed from the MIG.

## **2. Treatment plans**

- [29] As the applicant is in the MIG, it is not necessary to consider if the treatment plans in dispute are reasonable and necessary. The applicant is entitled to treatment up to the MIG limits.

**Interest**

[30] Pursuant to s. 51 of the *Schedule*, I find that interest does not apply as no benefits are payable.

**3. Award**

[31] The Applicant submits that the Respondent has unreasonably withheld and/or delayed payment of reasonable and necessary benefits, assessments and treatments.

[32] Pursuant to *17-008584 v Certas Direct Insurance Company*, 2018 CanLII 83532 (ON LAT), the bar for a special award is high, and is only awarded where the delay or withholding of benefits is unreasonable, meaning “behaviour which is excessive, imprudent, stubborn, inflexible, unyielding or immoderate.”

[33] The Applicant does not point me to evidence to establish this in their written submissions.

[34] The Respondent submits that it has complied with all of its production obligations, and it has acted in good faith and in accordance with the rules in its dealings with the Applicant. Further, that the Applicant has no basis for seeking a special award, nor has he led any evidence in support of same.

[35] I considered the parties submissions. I find that an award is not payable. The Applicant has not pointed me to evidence which would establish their request for an award.

[36] Therefore, on a balance of probabilities an award is not payable.

**ORDER**

[37] I find that the Applicant is not removed from the MIG.

[38] As the applicant is in the MIG, it is not necessary to consider if the treatment plans in dispute are reasonable and necessary.

[39] I find that interest is not payable.

[40] I find that an award is not payable.

**Released:** January 9, 2026

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**Sarah Guergis**  
Adjudicator