Citation: Gerasimopoulos v. Co-operators General Insurance Company, 2026 ONLAT 24-003018/AABS

Licence Appeal Tribunal File Number: 24-003018/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:

Anastasios Gerasimopoulos

Applicant

and

Co-operators General Insurance Company

Respondent

DECISION

ADJUDICATOR: **Brian Norris**

APPEARANCES:

For the Applicant: Kristoffer Diocamp, Counsel

For the Respondent: Eric Grossman, Counsel

HEARD: **By way of written submissions**

OVERVIEW

[1] Anastasios Gerasimopoulos (“the Applicant”) was involved in an automobile accident on February 24, 2017, and sought benefits from Co-operators General 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 sought a determination that he sustained a catastrophic impairment as a result of the accident, which the Respondent denied. The Applicant 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. Has the Applicant sustained a catastrophic impairment under criterion 4 as defined by the *Schedule*?

ii. Is the Respondent liable to pay an award under section 10 of Regulation 664 because it unreasonably withheld or delayed payments to the Applicant?

RESULT

[3] The Applicant has not demonstrated that he sustained a catastrophic impairment pursuant to criterion 4 of the *Schedule*.

[4] No award is payable.

BACKGROUND

[5] The Applicant was the driver of a vehicle which was struck on the front corner on the driver’s side by another vehicle making a left turn on a busy suburban roadway. He exited the vehicle independently and was mobile at the scene of the accident when emergency medical services arrived. The Applicant was taken by ambulance from the scene of the accident to the hospital and was examined.

[6] Clinical notes and records (“CNRs”) from the hospital indicate that the Applicant initially reported general body pain, mostly in the low back, but the CNRs note that no neck pain was reported, and no neurological deficits were noted. Later, upon reassessment, the Applicant reported pain in the left side of his neck and that his back pain was radiating down his legs. The Applicant was discharged

from the hospital after x-rays were taken and indicated no evidence of trauma in the neck and back. Notably, the CNRs from the hospital do not mention that the Applicant hit his head in the accident, nor do the records endorse complaints of confusion or cognitive dysfunction.

[7] The Applicant followed up with his family physician, Dr. M. Bibi, on March 6, 2017. There it is noted that the visit was “post mva – concussion - ”. Dr. Bibi identified that the Applicant sustained whiplash/sprains, and recommended physiotherapy, acupuncture and massage therapy and vimovo as required.

[8] The Applicant complained to Dr. Bibi of issues with memory and concentration following the accident and was eventually referred to an MRI and SPECT scan, which occurred on November 13, 2019. Dr. Y. H. Siow, radiologist, reviewed the imaging and noted the MRI of the Applicant’s brain was unremarkable and non-contributory except to demonstrate no anatomic abnormalities to account for the brain SPECT findings.

[9] Dr. Siow found that the SPECT scan demonstrated perfusion abnormalities in the anterior temporal lobes and the right inferior frontal lobe, and that this is the most common location for traumatic brain injury to be seen on a SPECT scan. Additional, Dr. Siow noted that the appearance and distribution of perfusion defects on brain SPECT is often seen in previous traumatic brain injury and that the Applicant’s headaches and confusion could be the result of previous brain trauma. It was also noted that the moderate increased profusion of the left basal ganglia has been described in anxiety disorders and that clinical correlation is recommended for confirmation of the imaging findings.

[10] The Applicant’s complaints of cognitive issues continued, and he was assessed by Dr. D. Kurzman, neuropsychologist. Dr. Kurzman issued a report, dated April 15, 2020, and concluded in it that the Applicant sustained a catastrophic impairment pursuant to criterion 4 of the *Schedule*. This determination was based on the findings in the November 13, 2019 SPECT scan, and Dr. Kurzman’s conclusion that the Applicant met the criteria for a Lower Moderate Disability (Lower MD) on the Extended Glasgow Outcome Scale (“GOS-E”) scale.

[11] The Respondent disagrees with Dr. Kurzman’s conclusion that the SPECT scan meets the diagnostic criteria for a catastrophic impairment pursuant to criterion 4. It relies on the insurer’s examination (“IE”) report of Dr. G. Cheung, dated May 13, 2021. In the IE report, Dr. Cheung concluded that the SPECT findings do not correlate with the normal brain MRI study and are therefore nonspecific, and that there are other etiologies that may explain the Applicant’s SPECT scan results.

ANALYSIS

The criterion 4 test

[12] To meet the test for a catastrophic impairment pursuant to criterion 4, the Applicant must demonstrate that he was 18 years of age or older at the time of the accident, and that he sustained a traumatic brain injury ("TBI") that meets the following criteria:

i. The injury shows positive findings on a computerized axial tomography ("CAT") scan, a magnetic resonance imaging ("MRI") or any other medically recognized brain diagnostic technology indicating intracranial pathology that is a result of the accident, including but not limited to, intracranial contusions or haemorrhages, diffuse axonal injury, cerebral edema, midline shift or pneumacephaly.

ii. When assessed in accordance with Wilson, J., Pettigrew, L. and Teasdale, G., Structured Interviews for the Glasgow Outcome Scale ("GOS") and the ("GOS-E"): Guidelines for Their Use, Journal of Neurotrauma, Volume 15, Number 8, 1998, the injury results in a rating of:

a) Vegetative state, one month or more after the accident;

b) Upper severe disability or lower severe disability, six months or more after the accident; or

c) Lower moderate disability, one year or more after the accident.

[13] At issue for this hearing is whether the SPECT scan results meet the first prong of the criterion 4 test. That is, whether a SPECT scan is a medically recognized brain diagnostic technology. For the following reasons, I find that a SPECT scan is a screening tool and is not medically recognized brain diagnostic technology.

A SPECT scan is not medically recognized brain diagnostic technology

[14] I find that a SPECT scan is not medically recognized brain diagnostic technology based on previous Court and Tribunal decisions, and because the technology is not sufficiently reliable to identify a TBI as a result of the accident.

[15] The Respondent submits that in *Meade v. Hussein*, 2021 ONSC 7850, ("*Meade*"), the Superior Court found that the use of brain SPECT to demonstrate that someone suffered a traumatic brain injury is novel, particularly where it is

necessary to differentiate a TBI from anxiety disorders and depression. The Court also noted that the SPECT is not necessarily sufficiently reliable to be used as a forensic tool in a court of law, to prove that a person sustained a TBI.

[16] I find *Meade* to be helpful in assessing whether SPECT scans are sufficiently reliable to conclude that a person sustained a TBI. *Meade* was decided with the benefit of expert witnesses who testified to the accuracy of SPECT scans. The conclusion that SPECT scans were not sufficiently reliable to be used as a forensic tool was based on the expert evidence, and decided on a balance of probabilities, as is the standard before this Tribunal. There is no evidence or submissions before me in this hearing that challenge the analysis and conclusion in *Meade*.

[17] I similarly find *Jermane v. CAA Insurance*, 2024 CanLII 102113 (ON LAT) ("*Jermane*") to be helpful in determining whether a SPECT scan is sufficiently reliable to conclude that a person sustained a TBI. In *Jermane* the Tribunal assigned no weight to SPECT scans where the insured has a history of psychological issues pre-dating the accident, which may be captured in the SPECT scan in the same manner as a TBI. *Jermane* is analogous to the Applicant's case, with the exception that *Jermane* included testimony from expert witnesses discussing the reliability of SPECT scans.

[18] I find that Dr. Siow's radiology report, dated November 13, 2019, is outweighed by the comprehensive report by Dr. Cheung. Dr. Siow's report does not address the cause of the SPECT scan findings, and instead recommended a clinical correlation for history of significant head injury to confirm the findings. To me, this suggests that the SPECT scan results are open to multiple interpretations and are not a reliable diagnostic tool for identifying TBIs.

[19] I place more weight on the report of Dr. G. Cheung, radiologist, dated May 13, 2021. As a radiologist, Dr. Cheung is qualified to comment on the reliability of SPECT scan results and is the only radiologist to address whether the findings in the SPECT scan was as a result of the accident. Dr. Cheung reviewed the SPECT scan results and noted that there were no MRI findings of traumatic axonal injury, gliosis, or encephalomalacia that correlate to the brain SPECT findings. Dr. Cheung also noted that, specifically, there are no microhemorrhages in the subcortical white matter, deep grey matter or brainstem, areas typical for traumatic axonal injury. Dr. Cheung concluded that the SPECT findings do not correlate with the normal brain MRI study and are therefore nonspecific.

The Applicant has not met the first prong of the criterion four test

[20] If I am wrong, and a SPECT scan is a medically recognized brain diagnostic technology, I find on a balance of probabilities that the Applicant's SPECT scan results do not indicate that the Applicant sustained any intracranial pathology as a result of the accident.

[21] I agree with Dr. Cheung and find that the SPECT scan results from November 13, 2019 are inconclusive that the Applicant sustained a TBI as a result of the accident. To me, that the SPECT scan results can indicate other etiologies rendering it insufficiently reliable to conclude that the Applicant sustained a TBI as a result of the accident. The findings by Dr. Cheung outline how the SPECT scan results can speak to other etiologies, including:

i. Metabolic changes on SPECT are not specific to TBI;

ii. The Applicant's symptoms of sleeping difficulties, headaches, fatigue, difficulty in concentration and memory, after the accident may account for the SPECT findings;

iii. The Applicant was diagnosed with fibromyalgia and an adjustment disorder with mixed anxiety and depressed mood can also account for the SPECT findings;

iv. Increased perfusion to the basal ganglia is not consistent with TBI;

v. Prior multiple head traumas; and

vi. That Dr. Siow stated that "there may be a superimposed psychiatric condition and that clinical correlation is recommended for confirmation of the imaging findings.

[22] Dr. Cheung's conclusion that there are other etiologies that may explain the SPECT scan results is consistent with the other evidence before me. Dr. Kurzman's April 15, 2020 report included reference to multiple head traumas. The Applicant reported to Dr. Kurzman a history of playing hockey, during which it was probable he struck his head several times, and that he had prior injuries to his head which required stitches. Dr. Kurzman identified that the Applicant reported ongoing sleep and emotional issues following the accident. The Applicant reported to Dr. Kurzman that anxiety/nervousness is a significant problem, and that he has experienced panic attacks following the accident. Following a clinical interview and psychometric testing, Dr. Kurzman diagnosed the Applicant with Major Depressive Disorder, Posttraumatic Stress Disorder,

Social Phobia, and a somatization disorder. According to Dr. Cheung's uncontroverted evidence, these are all factors which could account to the November 13, 2019 SPECT scan results.

[23] To-date, the Applicant has tendered no evidence or submissions to refute Dr. Cheung's conclusion. In fact, despite being advised that his claim for a determination that he sustained a catastrophic impairment was denied based on the unreliability of the SPECT scan, the Applicant never addressed the issue in his submissions and never directed me to evidence that contests Dr. Cheung's findings in the May 13, 2021 report. Accordingly, I find that the Applicant has not met his onus to demonstrate on a balance of probabilities that he sustained intracranial pathology as a result of the accident.

[24] Having found that the Applicant has not met the first prong of the criterion 4 test for a catastrophic impairment, it follows that I find the Applicant has not met his burden to demonstrate that he sustained a catastrophic impairment as a result of the accident.

Award

[25] Pursuant to section 10 of Regulation 664, 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.

[26] The issues for this hearing include whether the Applicant is entitled to an award however, no submissions were made on the issue. Having tendered no submissions on the issue, and not directed me to any evidence demonstrating that the Respondent unreasonably withheld or delayed the payment of benefits, it follows that the Applicant has not met his onus to demonstrate entitlement to an award.

CONCLUSION AND ORDER

[27] The Applicant has not demonstrated that he sustained a catastrophic impairment pursuant to criterion 4 of the *Schedule*.

[28] No award is payable.

Released: January 6, 2026

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Brian Norris
Adjudicator