Citation: Walters v. Allstate Insurance, 2026 ONLAT 23-015626/AABS

Licence Appeal Tribunal File Number: 23-015626/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:

Errol Walters

Applicant

and

Allstate Insurance

Respondent

DECISION

ADJUDICATOR: **Jeff Chatterton**

APPEARANCES:

For the Applicant: Hermia Leung, Paralegal

For the Respondent: Simran Walia, Counsel

HEARD: In Writing

OVERVIEW

[1] Errol Walters, the applicant, was involved in an automobile accident on December 20, 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, Allstate Insurance, 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 (the "MIG") limit?

2. Is the applicant entitled to the assessments and services proposed by Prime Healthcare Inc, as follows:

    i. $3,406.56 for chiropractic services, in a treatment plan/OCF-18 ("plan") dated February 1, 2022?

    i. $1,847.45 for chiropractic services, in a plan dated April 4, 2022?

    ii. $1,563.72 for chiropractic services, in a plan dated April 4, 2022?

    iii. $1,606.16 for chiropractic services, in a plan dated May 25, 2022?

    iv. $2,200.00 for a psychological assessment, in a plan dated March 22, 2022?

    v. $2,000.00 for a functional ability assessment, in a plan dated April 12, 2022?

    vi. $2,200.00 for a chronic pain assessment in a plan dated May 30, 2022?

3. Is the respondent liable to pay an award under s. 10 of Reg. 664 because it unreasonably withheld or delayed payments to the applicant?

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

RESULT

[3] The applicant is being held to the MIG, and is subject to the $3,500 treatment limit.

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

[5] Neither interest nor an award are payable.

ANALYSIS

Is the applicant held to the MIG and the $3,500 treatment limit?

[6] The applicant is being held to the MIG.

[7] 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."

[8] 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.

[9] The applicant argues he should be removed from the MIG due to Chronic Pain. To support his claim, he is relying upon the Clinical Notes and Records ("CNRs") of Chiropractor Dr. Chad Hefford, from Prime HealthCare. He also relies upon the CNRs from his family physicians, Dr. Dennis Kim, and Dr. Michael Wong.

[10] The applicant argues the CNRs show a clear pattern of complaints to health practitioners due to consistent and ongoing pain to his neck and back. He further relies on *TS v Aviva Insurance*, 2018 CanLII 83520 (ON LAT), where the LAT ruled that ongoing pain was chronic and is enough to remove an injured person from the MIG.

[11] The respondent disagrees, and states that the applicant has not met his onus to warrant removal from the MIG. To support their argument, the respondent relies on the s.44 Multi-Disciplinary Report conducted by GP Dr. Michael Ko and Psychologist Dr. Fabio Salerno, dated July 28, 2022.

[12] Dr. Ko diagnosed the applicant with sprain and strain type injuries of the cervical and lumbar spine as well as the bilateral trapezii. Dr. Ko further goes on to opine "His injuries are predominantly minor," and "he has reached maximum medical recovery," with no objective clinical evidence of ongoing musculoskeletal injuries or nerve impingement. Dr. Salerno opined that "Mr. Walters does not exhibit an accident-related psychological impairment."

[13] The applicant argues that Dr. Ko's report should be excluded from consideration because it is outdated and incomplete. I note that the date of Dr. Ko's report is July 2022, which is contemporaneous to the treatment plans in dispute in this application, which is why I have included it in my consideration.

[14] I have also carefully reviewed the records from both of the applicant's family doctors, and note that the applicant did not appear to visit his family doctor for a year following the accident (throughout most of 2022).

[15] The following year, 2023, I see multiple visits for non-accident related concerns. I note that the applicant complained of pain on nine occasions in 2023, and mentions that he was still dealing with chronic pain, but reported various levels of success in keeping the pain in control with over the counter medication. It was unclear to me the severity of the applicant's complaints, or how the complaints were connected to the accident. Critically, I was not led to any CNRs from the family physician where the doctor recommended ongoing treatment or recommendations for chronic pain. The CNR's appear to reflect the applicant's self-reporting. I was not led to diagnoses or treatment recommendations, and therefore, I give the CNR's less weight.

[16] Dr Hefford's CNR's echo the family physicians, in that the applicant has a history of neck and bilateral shoulder pain. Hefford's CNR's are quite limited and appear to be limited to two paragraphs in support of the treatment plans in dispute.

[17] However, even if I were satisfied that the applicant has ongoing accident-related pain, this would not, in and of itself, merit removal from the MIG because the Tribunal has established that chronic pain, in and of itself, is not enough to warrant removal from the MIG. Rather, what is required for removal from the MIG is chronic pain with a functional impairment. While the onus is on the applicant to prove that he is suffering from chronic pain with a functional limitation, I have only

been presented with “he is unable to pick up his toddler son” in written argument. Submissions are not evidence, and I have not been led to supportive medical evidence to indicate the nature and scope of any functional limitations. Therefore, I find regardless of whether the applicant suffers from chronic pain or not, he has not met the second part of that test, that being “functional impairment.”

[18] In summary, the respondent’s s.44 General Practitioner has indicated that the applicant has achieved maximal medical recovery. Meanwhile, the applicant’s own family physician has not recommended treatment for chronic pain, and I have not been presented with objective medical evidence to indicate the degree of any functional limitations.

[19] For these reasons, I find, on the balance of probabilities, that the applicant has not met his onus to warrant removal from the MIG on the basis of chronic pain with a functional impairment.

Treatment Plans

[20] As I have ruled that the applicant is being held to the MIG, it is not necessary for me to do a reasonable and necessary analysis on the treatment plans in dispute.

Interest

[21] Interest applies on the payment of any overdue benefits pursuant to s. 51 of the *Schedule.* As no benefits are overdue, no interest is owing.

Award

[22] The applicant sought an award under s. 10 of Reg. 664. Under s. 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.

[23] As I have ruled that the insurer has not unreasonably withheld or delayed payment of benefits, no award is payable.

ORDER

[24] The application is dismissed.

i. The applicant is being held to the MIG and the $3,500 treatment limitation.

i. As the applicant is being held to the MIG, it is not necessary for me to determine whether the treatment plans in dispute are reasonable and necessary.

ii. Neither interest nor an award are payable.

Released: January 16, 2026

_____

Jeff Chatterton
Adjudicator