Citation: Morris v. Co-operators General Insurance Company, 2026 ONLAT 24-004867/AABS

Licence Appeal Tribunal File Number: 24-004867/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:

Mellissa Morris

Applicant

and

Co-operators General Insurance Company

Respondent

DECISION

ADJUDICATOR: **Steve Gilchrist**

APPEARANCES:

For the Applicant: Linda Spurrell, Paralegal

For the Respondent: Alexander Dos Reis, Counsel

HEARD: In Writing

OVERVIEW

[1] Melissa Morris, the applicant, was involved in an automobile accident on November 29, 2019, 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, Co-Operators General Insurance Company, and applied to the Licence Appeal Tribunal - Automobile Accident Benefits Service (the "Tribunal") for resolution of the dispute.

PRELIMINARY ISSUE

[2] Is the applicant barred from proceeding to a hearing for the following benefit: the treatment plan identified in para 4(i) below, because the applicant failed to dispute their denial within the 2-year limitation period?

ISSUES

[3] 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?

[4] Is the applicant entitled to chiropractic services proposed by Whitby Physiotherapy and Rehab Clinic as follows:

i. $3,324.84 in a treatment plan/OCF-18 ("plan") submitted July 22, 2020; and,

ii. $3,101.07 in a plan submitted November 6, 2023?

[5] Is the applicant entitled to interest on any overdue payment of benefits?

PRELIMINARY ISSUE IN DISPUTE

[6] The preliminary issue to be decided in this matter is whether the applicant is barred from proceeding to a hearing for the following benefit: the treatment plan identified in para 4(i) above, because the applicant failed to dispute their denial within the 2-year limitation period?

RESULT

[7] For the reasons that follow, I find that the applicant did not dispute the denial ("the denial letter") of the treatment plan identified in para 4(i) within the 2-year limitation period and is therefore barred from proceeding to a hearing on that benefit.

[8] On the remaining substantive issues, I find that:

(a) The applicant's injuries are predominantly minor, and her treatment should be held within the Minor Injury Guideline.

(b) The applicant is not entitled to the treatment plan in the amount of $3,101.07 submitted November 6, 2023.

(c) The applicant is not entitled to interest as there are no payments overdue for the benefits claimed.

ANALYSIS

[9] The applicant submitted an OCF-18, dated July 22, 2020, in the amount of $3,324.84 which was denied by the respondent on the basis that the applicant was to be held within the Minor Injury Guideline ("MIG"). The respondent submits that the OCF-18 was actually filed on July 29, 2020. This difference doesn't impact my decision but, for the purpose of this analysis, I will use the date from the Case Conference Report and Order, namely July 22, 2020.

[10] The respondent issued a denial letter, which was delivered by email, on August 12, 2020.

[11] Section 56 of the *Schedule* provides that an application to the Tribunal in respect of a benefit shall be commenced within two years after the respondent's refusal to pay the amount claimed. However, pursuant to section 7 of the *Licence Appeal Tribunal Act, 1999*, S.O. 1999, c. 12, Sched. G (the "*LAT Act "),* the Tribunal has the authority to extend the limitation period beyond the two-year mark outlined by section 56 of the *Schedule*.

[12] The parties do not dispute that the applicant filed her application with the Tribunal on April 17, 2024, which was well beyond the 2-year limitation period.

[13] The applicant claims that the treatments proposed in the OCF-18 of July 22, 2020, were re-assessed by the respondent on April 29, 2022, and suggests that that subsequent re-assessment should create a new effective denial date. She

claims the denial by the respondent, to the original OCF-18, should not be considered valid, as the denial letter failed to address several medical issues, including a positive Kemps test and suggested that the applicant required no further treatment for her shoulder when the treatment plan was also meant to address neck and back injuries.

[14] In addition, the applicant submits that the denial letter for the OCF-18 was not compliant with s. 38(8) of the *Schedule* in that the respondent failed to provide the medical reasons and/or the supporting documentation to justify the denials.

The denial triggered the limitation period

[15] Section 38(8) of the *Schedule*, relied on by the applicant and which pertains to medical and rehabilitation benefits, states that within 10 business days of receiving a treatment plan, the insurer shall give the insured person notice outlining the medical reasons and all other reasons why the insurer considers any goods, services, assessments and examinations, or the proposed costs of them, not to be reasonable and necessary.

[16] The wording in section 56 of the *Schedule* which sets out the limitation period is different from section 38(8). In section 56, the only requirement for the 2-year limitation period to be triggered is that the insurer must refuse to pay the amount claimed. Section 56 does not require medical or any other reasons in order for the limitation period to begin. (see *Patton v. Aviva Insurance Co. of Canada,* 2025 ONSC 4234 (CanLII) at para. 47).

[17] In order for the denial to trigger section 56, it must comply with the principles set out in *Smith v. Co-operators General Insurance Co*., 2002 SCC 30 (CanLII) ("*Smith*"). According to *Smith*, the information in a denial notice must be provided in straightforward and clear language, directed towards an unsophisticated person. The information should also include a description of the most important points of the dispute resolution process, and the relevant time limits that govern the process.

[18] The applicant does not dispute that the denial letter was clear and/or unequivocal, or that there was information provided about the dispute resolution process, or even that they included information about the limitation period.

[19] In the denial letter dated August 12, 2020, the respondent advised the applicant that her injuries fell within the designation of the Minor Injury Guideline ("MIG"). The denial letter provided the definition of MIG and advised that this designation carries a maximum medical and rehabilitation benefit limit of $3,500.00. The

denial letter identified the individual treatment plan submitted and the amount for which it is denied in full.

[20] In my opinion, the denial letter clearly and unequivocally explains the denial in a way that an unsophisticated person would understand, and it is clear that the respondent would not be paying the amount claimed. As noted above, whether reference to the MIG satisfies the requirement of "medical reasons and all of the other reasons" stipulated at section 38(8) is not a consideration here.

[21] The letter also includes "right to dispute" information setting out the process to dispute the denials. Regarding the 2-year limitation period, I note that the letter includes the following:

> **WARNING: TWO YEAR TIME LIMIT**
>
> **You have TWO YEARS from the date of your insurance company's refusal to pay, or reduction of a benefit, to file an application with the Licence Appeal Tribunal – Automobile Accident Benefits Service. If you do not apply within two years, you will lose the right to dispute the determination.**

[22] I find that the denial letter satisfies the requirements as set out in *Smith*. As such, the 2-year limitation period was triggered as of August 12, 2020.

[23] The applicant has claimed that the provision of additional medical information which prompted correspondence from the respondent on April 29, 2022, effectively re-set the 2-year limitation period.

[24] On that point, the respondent cited *Landa v. The Dominion of Canada General Insurance Company*, 2024 ONSC 2871 (CanLII), paras 29, 34, 35, 37, and 40, wherein the Divisional Court held that "a limitation period is triggered by the first valid refusal…. Subsequent denials, insurer requests for more information, and notices of Insurer's Examinations (IEs) do not detract from a valid denial or restart the limitation period".

[25] The respondent further cited *Sietzema v. Economical Mutual Insurance* Company, 2014 ONCA 111 (CanLII), para 13 and *Turner v. State Farm Mutual Automobile Insurance Co.*, 2005 CanLII 2551 (ON CA), para 8 in support of the proposition that the essential criteria for determining when the limitation period clock commences is that the denial letter clearly and unequivocally indicates that the insurer is denying the benefit.

[26] The applicant provided no case law or reference to the Act or Schedule which would provide a counterargument to the authorities cited by the respondent.

[27] I find that the original denial letter sent by the respondent on August 12, 2020, was clear and unequivocal in its denial of the requested benefit.

An extension of the 2-year limitation period is denied

[28] Section 7 of the *LAT Act* allows the Tribunal to extend a limitation period for filing an appeal. In considering whether to exercise its discretion to extend the limitation period, the Tribunal must consider the following four factors set out in *Manuel v. Registrar*, 2012 ONSC 1492 (CanLII) ("*Manuel*"):

i. The existence of a *bona fide* intention to appeal within the the limitation period;

ii. The length of delay;

iii. The prejudice to the other party; and

iv. The merits of the appeal.

[29] The onus is on the applicant to establish reasonable grounds for an extension under section 7 of the *LAT Act*.

Bona fide intention to appeal

[30] The applicant has not provided any submissions nor supplied evidence of correspondence that would suggest any effort was made to appeal the denial of the OCF-18 by the respondent on August 12, 2020, within the 2-year limitation period. Rather than resetting the 2-year timeline, it would be more appropriate to characterize the April 29, 2022 correspondence by the respondence as a reminder of the original denial from August 12, 2020. Despite this reminder, which came well before the expiration of the 2-year limitation, the applicant clearly failed to react to that second rejection of the treatment plan in a timely fashion. Therefore, the applicant has not met her onus to establish a bona fide intention to appeal the denial.

Length of delay

[31] The evidence would suggest that there was a delay of over three and a half years between the denial of the treatments proposed in the OCF-18 submitted on July 22, 2020, and the filing of this appeal. Therefore, the applicant filed his

application a year and a half after the expiration of the limitation period. I find this to be a significant delay.

Prejudice to the respondent

[32] In its submissions, the respondent doesn't specifically make reference to prejudice but does strongly oppose the suggestion that the original denial letter failed to meet all the obligations under the Schedule.

[33] The LAT Act clearly anticipated the need to pursue accident benefit disputes in a timely fashion and determined that the 2-year filing deadline struck an appropriate and fair balance between the rights of the applicant and the obligations of the respondent. I find that the delay and the lack of a foundation for the appeal of this issue would create significant prejudice to the respondent.

Merits of the appeal

[34] The applicant's position is that missing medical information or incomplete consideration of the medical issues by the respondent form the basis for a valid appeal of the Issue in para 4(i).

[35] I find that the form and content of the denial letter of the respondent met all the requirements of Section 56 of the *Schedule.* Nothing cited as deficiencies, by the applicant, are requirements under Section 56.

[36] Accordingly, I am not persuaded that the appeal of the Issue in para 4(i) has any merit.

Summary of the Manuel *factors*

[37] In weighing the factors to determine if the matter warrants an extension of time under section 7, I find that the applicant has not met any of the four factors and therefore has not met her onus in demonstrating the limitation period should be extended. As such, I decline to use the discretion provided to me under section 7 of the *LAT Act* to extend the limitation period.

[38] For the reasons provided above, the applicant is barred from proceeding to a hearing on the Issue listed in para 4(i) of her appeal.

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?

[39] I find that the applicant's injuries are predominantly minor, and her treatment should be held within the Minor Injury Guideline("MIG").

OVERVIEW

[40] 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".

[41] 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.

[42] The applicant submits that she suffers from pre-existing injuries, and chronic pain and should be excluded from the MIG. The respondent disagrees.

Applicant's Evidence

[43] The applicant suffered from diabetes and high blood pressure, prior to the accident, but her evidence is that both were controlled by medication and neither produced any physical or psychological impairments. There are no submissions from the applicant that her pre-existing conditions have had any effect on her recovery from the motor vehicle accident.

[44] The accident was caused by the applicant's vehicle being rear-ended by another vehicle causing the applicant almost immediate neck and back pain.

[45] The applicant visited her family doctor, Dr. Leung, the day after the accident. After examination, the doctor noted bruising and tenderness in the applicant's chest and upper trap muscles, cervical spine and lower back. The doctor prescribed physiotherapy, massage therapy, Mexolicam and Baclofen.

[46] During her next visit to Dr. Leung, two months after the accident, on January 27, 2020, the applicant complained of pain in her upper and lower back, lumbar, top of right foot, both shoulders and her right elbow. There is no evidence that the doctor altered his original diagnosis. At her next visit to Dr. Leung, on February 27, 2020, the applicant was diagnosed with tennis elbow.

[47] The evidence indicates that her next medical visit related to the accident occurred over one year later, on March 23, 2021, when the applicant attended Whitby Urgent Care with a complaint of a right shoulder pain when engaging in overhead activities. An x-ray and ultrasound were ordered, and the x-ray showed mild AC joint osteoarthritis. The doctor recommended physiotherapy for her left shoulder and low back pain.

[48] After a visit to Durham Bone & Joint Specialists, on July 19, 2021, the applicant was diagnosed with cervicogenic pain associated with myofascial pain and radiculopathy into the right upper extremity. Physiotherapy was recommended. The CNRs show no reference to recommendations for chiropractic or massage therapy, as suggested in the applicant's submissions

[49] On October 23, 2021, the applicant had an MRI which showed mild degenerative disc disease… with no definite evidence of nerve root impingement.

[50] Over two years later, on November 20, 2023, the applicant attended NeuPath Centre for Pain & Spine who recommended she attend a Chronic Pain Self Management Program.

[51] The applicant has included Clinical Notes and Records (CNRs) from Whitby Urgent Care but there does not appear to be evidence that connects any of the medications or visits, aside from the ones noted above, to the accident.

[52] The applicant requests release from the MIG and payment of the treatment plan proposed in the OCF-18 on November 6, 2023.

Respondent's Evidence

[53] It is the respondent's position that the injuries to the applicant were minor and that the accident, itself, was a minor one. They noted that the applicant did not lose consciousness, suffer a head injury, have paramedics attend or visit a hospital as a result of the accident.

[54] The respondent notes that the original OCF-3, from February 27, 2020, by Dr. Jerome Wong, only diagnosed the applicant with sprains, strains, and lateral epicondylitis (tennis elbow), all of which fall within the MIG.

[55] The respondent further notes that the x-ray cited by the applicant revealed a "normal finding" for the back and mild osteoarthritis in shoulder. It argues that, in the five years prior to the filing of the OCF-18, the evidence is that the applicant did not fill the two pain medications she was prescribed by her family doctor, immediately after the accident (Mexolicam and Baclofen) nor any other pain medications.

[56] The respondent notes that whatever chronic pain the applicant might have suffered, it did not meet the threshold required to take the applicant out of the MIG. The respondent cited *Cardenas v Aviva Insurance Canada*, 2024 CanLII 112985 (ON LAT), para 21, which held that chronic pain is only a consideration for removal from the MIG if it is of sufficient severity to cause functional impairment. I have been provided no evidence that the applicant has suffered any impairment in her daily activities as a result of the accident.

[57] The respondent further noted that, in order to escape the MIG on the basis of chronic pain, the onus is on the applicant to prove that she satisfies at least 3 of the 6 criteria set out in the *American Medical Association Guides, 6th ed*. Those criteria include reliance on or abuse of prescription medication, excessive dependence on health care providers or family, physical deconditioning, withdrawal from social interactions, failure to restore pre-injury function and development of psychosocial sequelae. The respondent provided numerous citations, especially *Hinds v. Travelers Insurance,* 2022 CanLII 124645 (ON LAT), paras 20-21, to support his position that the evidence of the applicant met none of those six criteria.

Analysis

[58] In particular, I note the evidence that the applicant has only reported accident-related complaints on six occasions (November 30, 2019; January 27, 2020; February 27, 2020; November 24, 2020; March 23, 2021; and April 1, 2021). There were no accident-related complaints in 23 other visits to her family doctor and none in the two and a half years prior to the submission of the OCF-18.

[59] Under those circumstances, it is unreasonable for the applicant to have waited another two and a half years to submit an additional treatment plan, while providing no supplementary medical evidence to support her claims.

[60] The applicant's evidence was limited and unconvincing and based, in large part, on the self-diagnosis of the applicant plus limited and infrequent medical references. Neither party supplied a s. 25 or s. 44 assessment of the applicant. The evidence that was provided fails to demonstrate causation for the chronic pain nor the sleep ailments the applicant is claiming.

[61] In the CNRs of Whitby Urgent Care, Dr. Mann notes that the applicant reported that she "sleeps well". On March 23, 2021, Dr. Mann notes that (the applicant) has "good range of motion". On his next assessment, on April 1, 2021, he notes that the applicant reported "no body aches" aside from left shoulder and lower back pain. For those ailments, he prescribes heat, over-the-counter anti-inflammatory drugs, such as ibuprofen, physiotherapy and an "ortho referral". Based on the CNRs, it would appear no orthopaedic assessment was done.

[62] In the nurse's notes preceding the applicant's examination by Dr. Mann on September 15, 2021, the applicant reported "feeling some numbness in fingers of left hand" but then adds that the patient "works 16 hr shifts and feels it could be related". The diagnoses of the clinics which performed two MRI's on the patient provided conflicting evidence. In the first MRI assessment, on March 30,2021, by Impexxus Medical Imaging, the finding was "Normal Alignment. No spondylolis-thesis or fracture. No degenerative disc disease". The second MRI, was performed by GNMI Medical Imaging on October 30, 2021, six months after the first MRI. Its findings were limited to "mild degenerative disc disease" and "no definite evidence of nerve root impingement". In neither MRI report is there evidence before me to substantiate nerve or spinal damage related to the motor vehicle accident and I place less weight on the second MRI, given the extra length of time from the subject accident.

[63] On November 20, 2023, the applicant was assessed for cervicogenic pain with associated radiculopathy by Dr. Mornin at NeuPath Centre for Pain & Spine on referral from her family doctor. The result of that assessment was a recommendation that she attend a Chronic Pain Self-Management Program.

[64] In fact, Dr. Mornin makes several other recommendations, including anti-pain medication, including Lyrica and Cymbalta, gentle exercise, tai-chi or yoga, and vitamins. I have been provided no evidence that the applicant has ever taken the pain medication prescribed by Dr. Mornin or her family doctor, indeed, there are references in the CNR's of Dr. Mann that she did not. Similarly, there is no evidence that she undertook any of the exercise or other recommendations. Despite the fact that Dr. Mornin suggests that the neck is the source of the applicant's pain, there is no evidence of any imaging of the neck having been

taken. The applicant's employment and participation in activities of daily living all seem very much at odds with her self-reporting, to Dr. Mornin, that the pain that radiates through her shoulders to her hands is a "severe all the time" and "10/10".

[65] For someone to be removed from the MIG, it isn't necessary to prove chronic pain, but to demonstrate that the chronic pain has caused a functional impairment. The medical imaging and the CNRs of Whitby Urgent Care fail to provide an evidentiary basis for a finding of chronic pain with functional impairment. The applicant has continued to work as a PSW and, as Dr. Mornin reported on November 20, 2023, over two years ago, she "is able to manage her activities of daily living quite independently".

[66] More importantly, after considering all the evidence of the parties, I am satisfied that, on the balance of probabilities, the applicant's injuries fall within the definition of the Minor Injury Guideline.

[67] I find the applicant's injuries are minor and her treatment should be held within the Minor Injury Guideline.

Is the applicant entitled to chiropractic services proposed by Whitby Physiotherapy and Rehab Clinic for $3,101.07 in a plan submitted November 6, 2023?

[68] As I have found that the applicant continues to be within the MIG, it is not necessary for me to determine whether the treatment plan in dispute is reasonable and necessary, pursuant to s. 15(1) of the *Schedule*.

Interest

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

ORDER

[70] The Tribunal orders:

i. The applicant is barred from proceeding to a hearing on Issue 2(i) of her appeal.

ii. The applicant's injuries are predominantly minor, and her treatment should be held within the Minor Injury Guideline.

iii. The applicant is not entitled to the treatment plan in the amount of $3,101.07 submitted November 6, 2023.

iv. The applicant is not entitled to interest as there are no payments overdue for the benefits claimed.

Released: February 24, 2026

Steve Gilchrist
Adjudicator