



Citation: Zang v. Co-operators General Insurance Company, 2026 ONLAT 24-007467/AABS

Licence Appeal Tribunal File Number: 24-007467/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:

Daikun Zang

Applicant

and

Co-operators General Insurance Company

Respondent

DECISION

VICE-CHAIR:

Robert Maich

APPEARANCES:

For the Applicant:

Ryan Olson, Paralegal

For the Respondent:

Simran Walia, Counsel

HEARD: In Writing

OVERVIEW

- [1] Daikun Zang, the applicant, was involved in an automobile accident on June 30, 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, Co-operators General Insurance Company, and applied to the Licence Appeal Tribunal - Automobile Accident Benefits Service (the “Tribunal”) for resolution of the dispute.
- [2] On June 30, 2023, the applicant was the driver and sole occupant of a 2017 Honda Pilot. She was rear-ended as she travelled on Kennedy Road near Ellesmere Road in Scarborough. There was no secondary collision, airbags did not deploy, and she did not lose consciousness.

ISSUES

- [3] 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 (“MIG”) limit? Note: The parties agree the MIG limits have been exhausted.
 - ii. Is the applicant entitled to \$2,200.00 for a psychological assessment, proposed by Somatic Assessments and Treatment Clinic (“SATC”) in a treatment plan/OCF-18 (“plan”) dated September 26, 2023?
 - iii. Is the respondent liable to pay an award under s. 10 of Reg. 664 because it unreasonably withheld or delayed payments to the applicant?
 - iv. Is the applicant entitled to interest on any overdue payment of benefits?

RESULT

- [4] I find the applicant’s injuries are predominantly minor as defined in s. 3 of the *Schedule* and therefore subject to treatment within the \$3,500.00 MIG limit.
- [5] I find the applicant is not entitled to \$2,200.00 for a psychological assessment, proposed by SATC.
- [6] I find the respondent is not liable to pay an award under s. 10 of Reg. 664.
- [7] The applicant is not entitled to interest as no benefits are payable.

ANALYSIS

Background

- [8] The applicant submitted as a result of the accident she sustained serious physical and psychological injuries. Following the accident, the applicant consulted with her family doctor, Dr. Liu, with complaints of nausea and vomiting, a “foggy head”, neck pain, and right leg numbness.
- [9] Further, the applicant submitted she also had been consulting with Somatic Assessments & Treatment Clinic (“SATC”) due to her stress and post-accident psychological symptoms affecting her daily activities. Dr. Pojhan, psychologist, recommended the applicant to undergo a psychological assessment, as he noted she was experiencing symptoms associated with individuals suffering from post-accident psychological impairment. The applicant also submitted that she had no psychological difficulties prior to the accident.
- [10] The respondent submitted emergency services were not engaged, the applicant did not seek immediate post-accident medical attention, she reported the accident at a collision centre and her vehicle was subsequently repaired. The respondent submitted the applicant also suffered pre-accident from rheumatoid arthritis and reported poor mood and anxiety.

MIG

- [11] I find the applicant’s injuries are predominantly minor as defined in s. 3 of the *Schedule* and therefore subject to treatment within the \$3,500.00 MIG limit.
- [12] The MIG establishes a treatment framework available to injured persons who sustain a minor injury as a result of an accident. A “minor injury” is defined in the *Schedule* and includes sprains, strains, whiplash associated disorder, contusion, abrasion, laceration or subluxation and any clinically associated sequelae. The MIG provides that a strain is an injury to one or more muscles and includes a partial tear. Under section 18 of the *Schedule*, injuries that are defined as minor are subject to a \$3,500.00 funding limit on treatment.
- [13] The onus is on the applicant to demonstrate that she sustained an injury that is not included in the minor injury definition outlined in section 3 of the *Schedule*.
- [14] The applicant submitted that the records from Dr. Liu prior to the subject accident do not indicate any psychological difficulties, however, the physician’s clinical notes and records indicate that after the accident the applicant’s complaints included low mood, sleeping difficulties, low energy, difficulties concentrating,

suicidal thoughts, bad dreams, and night sweats. Dr. Liu assessed the applicant was suffering from depression and prescribed duloxetine to address the symptoms. These complaints correspond directly with the psychological pre-screen consultation report by Dr. Pojhan, psychologist, dated September 12, 2023.

- [15] Further the applicant submitted the insurer's assessor Dr. Marchie, psychiatrist, in his report dated March 15, 2024 noted that since the accident, the applicant developed worsening mood, increased anxiety, poor sleep and increasing irritability. These symptoms correspond with those noted in both the clinical notes and records of Dr. Liu and the report of Dr. Pojhan.
- [16] The respondent submitted that an insured person must prove that she has sustained an actual psychological impairment as a direct result of the accident and must prove on a balance of probabilities that her psychological complaints are not merely psychological sequelae in order to be removed from the MIG. The respondent submitted that the applicant had not proven that she met this threshold.
- [17] I find the applicant has not established a psychological impairment nor has she met her burden of proof that her injury is not minor as defined by the *Schedule*. The applicant relied upon the notes of Dr. Liu, I find the clinical note and records of Dr. Liu did not link depressive issues with the accident. Further, the applicant relied upon the screening by Dr. Pojhan who found symptoms of depression, however I find there is no linkage established to the accident.
- [18] I find the applicant's injuries to be minor and within treatment of the limitations of the MIG.

Is the applicant entitled to \$2,200.00 for a psychological assessment?

- [19] I find the applicant is not entitled to \$2,200.00 for a psychological assessment, proposed by SATC.
- [20] Pursuant to section 15 of the *Schedule*, the respondent is liable to pay for all reasonable and necessary expenses incurred by or on behalf of the insured person as result of an accident. It is the applicant's responsibility to prove the medical benefits claimed are reasonable and necessary on a balance of probabilities.

- [21] The purpose of an assessment is to determine whether a condition exists. For an insured, they bear the onus to demonstrate that there are grounds on which to believe that a condition exists that would warrant further investigation by way of an assessment.
- [22] The applicant submitted the respondent failed to meet the requirements set out in section 38(8) of the *Schedule* and the consequences laid out in section 38(11) should apply. Specifically, the applicant submitted that the respondent failed to meet the requirements under s. 38(8) because a denial of benefits notice with medical reasons was not provided within 10 business days of receipt of the treatment plan. The treatment plan was submitted to the respondent on October 24, 2023 as shown in the submission date/time stamp on the OCF-18 form and confirmed in the denial letter of November 8, 2023 provided by the respondent, specifically 11 business days after the treatment plan was received.
- [23] The applicant submitted the respondent did not comply with the requirements set out in s. 38(8) of the *Schedule* by not responding within 10 business days after the treatment plan was submitted and s. 38(11) applies prohibiting the respondent from taking the position that the MIG applies. The applicant also submitted that since the respondent relied solely on their MIG position, the consequences of s.38(11)2 are triggered, and the remainder of the treatment plan is payable. The applicant submitted that since the *Schedule* is consumer protection legislation, the provisions of the *Schedule* should be liberally construed in favour of the insured; the applicant relies upon *Smith v. Co-operators General Insurance* (2002 SCC 30, 2 S.C.R. and *Noor v. Intact Insurance Company*, 2022 CanLII 53732 (ONLAT).
- [24] The respondent submitted that s.38(8) and s.38(11) of the *Schedule* do not apply as the treatment plan was submitted at 5:27pm on October 24, 2023 after the close of business and should be deemed to be submitted on October 25, 2023; accordingly, the November 8, 2023 letter of denial was issued within 10 business days after the treatment plan was submitted and within the time period prescribed by the *Schedule*. To establish the time of submission of the treatment plan, the respondent relies upon an excerpt from the “HCAI Activity Log”.
- [25] In the alternative, the respondent submitted that the effect of s.38(8) and s.38(11) of the *Schedule*, does not automatically entitle the applicant to the treatment plan in dispute, rather a treatment plan must be incurred to become payable under s.38(11); the respondent relies upon *Gillespie v BelairDirect*, 2024 CanLII 102101 (ON LAT) at paragraph 47, and *N.P. v Wawanesa Mutual Insurance Company*, 2021 CanLII 309 (ON LAT) at paragraphs 6 and 23. Further, the

respondent submitted the applicant did not produce any evidence that the expense had been incurred or had been incurred during the possible one-day period that any response was late and therefore is not entitled to the payment of this plan pursuant to Sections 38(8) or (11) of the *Schedule*.

- [26] In the further alternative, the respondent submitted that the applicant did not present medical evidence that the treatment plan in dispute was reasonable and necessary; rather, she suffered from a psychological sequela as she complained of low mood to her physician on only three occasions, and her physician recommended medication, not a psychological assessment.
- [27] I find the submissions of the applicant and respondent to be persuasive in part as it pertains to the operation of s.38(8) and s.38(11) of the *Schedule*. The operation of s.38 does not create an absolute entitlement to a treatment plan, rather, it erects a legal bar preventing an insurer from raising the MIG as a defence during a period of non-compliance with s.38. The period of non-compliance arising from a defective notice of denial runs from the submission date of the treatment plan in dispute until if or when, the defective notice is cured. During the non-compliance period, the insurer is liable for incurred costs under the treatment plan from the date it was submitted until the defective notice is cured, if at all; once a defective notice is cured the insurer may raise MIG as a defence for expenses incurred or proposed after the date the defective notice is cured if the insurer chooses to do so.
- [28] I find the submissions of the respondent persuasive that the treatment plan in dispute was submitted by the applicant on October 25, 2025, and I accept the respondent's evidence that the applicant submitted the treatment plan at 5:27pm on October 24, 2024. In this particular circumstance the cut-off time for close of business is a matter of legislated provision written into the *Schedule* at s.64(20); legislation denotes the treatment plan submission cut-off time regulated by the *Schedule* is 5:00pm.
- [29] I find that the respondent issued a notice of denial 10 business days after the treatment plan in dispute was submitted, and I find the respondent issued a notice of denial of benefit in accordance with s.38(8) of the *Schedule*.
- [30] I find the parties have agreed that the MIG has been exhausted. As I have previously made a finding that the applicant remains within the MIG limits, I find that it is not necessary to determine whether the treatment plan herein is reasonable and necessary as the MIG limit has been exhausted.

[31] I find the applicant is not entitled to a psychological assessment for \$2,200.00 as proposed by SATC.

Interest

[32] Interest applies on the payment of any overdue benefits pursuant to s. 51 of the *Schedule*. I find the applicant is not entitled to interest as no benefits are payable.

Award

[33] 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. I find the applicant has not proven any payment of benefit was unreasonably delayed by the respondent and is not entitled to an award.

ORDER

[34] The Tribunal's final Orders:

- i. The applicant's injuries are predominantly minor as defined in s. 3 of the *Schedule* and therefore subject to treatment within the MIG limit.
- ii. The applicant is not entitled to \$2,200.00 for a psychological assessment.
- iii. The respondent is not liable to pay an award under s.10 of Reg. 664.

Released: February 4, 2026

Robert Maich
Vice-Chair