Citation: Pigeau v. Co-operators General Insurance Company, 2026 ONLAT 24-010521/AABS

Licence Appeal Tribunal File Number: 24-010521/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:

Connie Pigeau

Applicant

and

Co-operators General Insurance Company

Respondent

DECISION

ADJUDICATOR: **Harouna Saley Sidibé**

APPEARANCES:

For the Applicant: Joshua Lindzon, Counsel

For the Respondent: Peter Durant, Counsel

HEARD: **By way of written submissions**

OVERVIEW

[1] Connie Pigeau, the applicant, was involved in an automobile accident on July 4, 2024, 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.

ISSUES

[2] 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?

ii. Is the applicant entitled to a non-earner benefit ("NEB") of $185.00 per week from August 1, 2024, to ongoing?

iii. Is the applicant entitled to $3,929.99 for chiropractic services, proposed by Mount Dennis Weston Physiotherapy & Chiropractic Centre in a treatment plan/OCF-18 ("plan") dated July 19, 2024?

iv. Is the applicant entitled to $2,311.00 for psychological services, proposed by Mount Dennis Weston Physiotherapy & Chiropractic Centre in a treatment plan dated July 31, 2024?

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

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

[3] The MIG is not exhausted, as $3,300.00 remains.

RESULT

[4] For the reasons below, I find that:

1. The applicant's injuries remain within the MIG; therefore, the MIG's monetary limit applies.

2. Because the applicant stays within the MIG, I don't need to evaluate the reasonableness of the disputed treatment plans beyond the MIG limits. The applicant is eligible for benefits up to the $3,500.00 MIG cap.

3. The applicant is not entitled to an NEB.

4. The applicant is not entitled to interest or an award.

ANALYSIS

Are the applicant's injuries predominantly minor?

[5] I find that the applicant's impairments are predominantly minor because she has not established removal from the MIG.

[6] 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."

[7] 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.

[8] The applicant submits that MIG removal is warranted, given documented pre-existing conditions and psychological impairments.

Pre-existing conditions

[9] I find that the applicant has not demonstrated that she has a pre-existing condition that would warrant removal from the MIG.

[10] The applicant argues that the respondent unreasonably kept her in the MIG despite compelling medical evidence and the aggravation of significant pre-existing issues. She relies on treatment plans and her clinical presentation to assert that recovery cannot occur within the MIG limits and to seek payment for the disputed treatment.

[11] The respondent submits that the injuries the applicant attributes to the accident, back strain and left leg numbness, fall squarely within the definition of minor injury. It further submits that the applicant has not provided compelling medical evidence that any documented pre-existing condition would preclude recovery if confined to the MIG. The respondent argues that OCF-18s, including the disputed plan marked "out of MIG," are not, on their own, sufficient medical evidence and do not address the statutory test.

[12] The medical notes and records show that, post-accident, the applicant presented with back strain and left-leg numbness. The materials also acknowledge substantial pre-existing conditions.

[13] The applicant's medical history includes a left hip tear dating back to an injury on October 12, 2017 (see clinical notes and records ("CNRs") from Dr. Joshua Charles, Mount Dennis Weston Physiotherapy and Chiropractic Centre. The same condition was later assessed by Dr. Zeev Maizlin (physician) on ultrasound on November 2, 2023; by Dr. Tommy Chan (orthopaedic surgeon) on April 18, 2024; and by Dr. C. J. Peskun (orthopaedic surgeon) on February 29, 2024.

[14] In CNRs dated November 5 and November 21, 2024, Dr. Benjamin Baranek, a family physician, diagnosed ongoing hip pain.

[15] The applicant was diagnosed with diverticulitis in early July 2022 (see CNRs dated August 11, 2022, from Dr. Osman Ahmed, a family doctor) and referred to dietician Andrea Scalzo. The diverticulitis was followed by anxiety about introducing new foods and concerns about symptom triggers.

[16] I accept that the applicant has documented pre-accident medical conditions. However, the question is does the pre-existing condition preclude recovery under the MIG?

[17] MIG removal under s. 18(2) requires more than a pre-existing condition. The applicant must establish both: (1) a documented pre-existing medical condition; and (2) compelling medical evidence that the condition would preclude recovery if treatment were limited to the MIG.

[18] On August 7, 2024, the applicant reported to Dr. Baranek that the accident worsened her ongoing symptoms. She also relies on OCF-18s to assert that her pre-existing conditions preclude recovery under the MIG.

[19] A chiropractic OCF-18 dated July 19, 2024, indicates barriers to recovery related to prior chronic pain. A psychological OCF-18 dated July 31, 2024, indicates

similar barriers. I note that on December 5, 2024, the applicant reported to Dr. Ahmed that she was not taking medication for diverticulitis.

[20] Treatment plans, without more, do not constitute compelling medical evidence that a pre-existing condition will preclude recovery if the applicant remains within the MIG. In particular, the disputed OCF-18, without an accompanying opinion that applies the statutory test in s. 18(2) and links the applicant's specific pre-existing conditions will preclude recovery under MIG-level care, is insufficient.

[21] On the record, there is no compelling medical opinion bridging the evidentiary gap between the existence of pre-accident conditions and the statutory requirement that those conditions would prevent recovery within the MIG. The applicant has therefore not met her burden.

[22] Accordingly, on a balance of probabilities, I find that the applicant has not established that a documented pre-existing condition will preclude recovery if she remains within the MIG.

Psychological Impairments

[23] I find that the applicant has not demonstrated that she sustained psychological impairments warranting removal from the MIG.

[24] Since October 2023, before the accident, the applicant reported anxiety related to a family situation and attended group counselling for anxiety (see CNRs from Dr. Stella Iyamu, family physician). She was referred to Dr. Joshua Dias, a physician, at Humber River Hospital to learn emotional-regulation skills. Following consultation with the program psychiatrist, she was discharged from the program. The contemporaneous records do not link the anxiety to the accident.

[25] While psychological impairment can, in appropriate cases, justify removal from the MIG, the applicant bears the burden of establishing, on persuasive medical evidence, that she sustained a psychological injury caused by the accident and that it results in functional impairment warranting MIG removal. On the record, there is no medical opinion connecting the applicant's psychological symptoms to the accident.

[26] Accordingly, on a balance of probabilities, I find that the applicant has not established psychological impairments that warrant removal from the MIG.

[27] Therefore, the applicant's accident-related impairments are predominantly minor. The applicant has not met the evidentiary burden of showing that her documented pre-existing conditions, either alone or in combination with psychological symptoms, would preclude recovery while she remains within the MIG. She therefore remains subject to the MIG.

Is the applicant entitled to the disputed treatment plans?

[28] Because the applicant remains within the MIG, I am not required to assess the reasonableness and necessity of the disputed treatment plans beyond the MIG limits. The applicant is entitled to medical and rehabilitation benefits up to the $3,500 MIG cap.

Is the applicant entitled to an NEB?

[29] I find that the applicant is not entitled to an NEB.

[30] Section 12(1) provides that an insurer shall pay an NEB to an insured person who sustains an impairment as a result of the accident, if the insured person suffers a complete inability to carry on a normal life as a result of and within 104 weeks after the accident. Section 3(7)(a) defines a "complete inability to carry on a normal life" as "an impairment that continuously prevents the person from engaging in substantially all of the activities in which the person ordinarily engaged before the accident." The Court of Appeal set out the guiding principles for NEB entitlement in *Heath v. Economical Mut. Ins. Co.*, 2009 ONCA 391, (*Heath*), which generally focuses on a comparison of the applicant's pre- and post-accident activities.

Pre-accident activities and functioning

[31] In her December 30, 2024, affidavit, the applicant describes her life before the accident. She reports that she: lived independently, performed housekeeping and home maintenance, drove, took long walks and rode a bicycle, maintained close family ties, and frequently babysat her grandchildren.

[32] However, the medical record shows that her pre-accident functioning was already significantly affected by ongoing health issues. The evidence includes longstanding musculoskeletal problems, ongoing physiotherapy, cortisone injections on March 27, 2023, and May 3, 2024, and documented functional limitations in activities of daily living.

[33] The OCF-1 confirms that she was unemployed at the time of the accident, and the OCF-3 indicates she was receiving disability benefits pre-accident. This

supports the conclusion that the applicant's baseline already included material impairments and activity restrictions.

Accident-related impairments

[34] The OCF 3 dated July 17, 2024, states that the applicant suffers a complete inability to carry on a normal life. However, the explanatory section is incomplete; it lacks a functional analysis or comparison, and the opinion is conclusory and unsupported.

[35] Given the lack of reasoning and baseline assessment, I assign it limited weight.

[36] The remaining medical documentation includes general statements such as "can't do a lot," "not at full function," and "MVA worsened ongoing symptoms," but none of these opinions define pre-accident functional capacity, identify specific impairments caused by the accident, or explain how these impairments continuously prevent engagement in substantially all pre-accident activities.

[37] Thus, the record does not provide a medical basis for establishing that the accident caused a qualitative shift meeting the high threshold in *Heath*.

Post-accident functioning

[38] The applicant reports that after the accident, she can no longer vacuum, remove garbage, clean the bathtub, or carry heavy groceries, nor can she maintain her former independence and confidence or engage in activities without significant pain and numbness.

[39] These points were confirmed during cross-examination.

[40] However, the evidence does not establish that she is prevented from performing all pre-accident activities substantially. In particular, the record does not show a continuous inability to drive, engage with family, participate in childcare (with modifications), perform lighter housework, mobilize in the community, or perform activities with pacing or task modification.

[41] While the applicant describes meaningful post-accident limitations, the evidence before me does not offer a detailed or consistent account of how these limitations impact her ability to perform the activities she normally engaged in prior to the accident. The medical notes and reports mention increased pain and functional difficulties but lack a clear assessment of her daily functioning, the extent to which specific pre-accident activities are now hindered, or whether any identified limitations are ongoing. This lack of functional detail creates an evidentiary gap in

determining whether the high threshold for a complete incapacity to lead a normal life has been satisfied.

[42] Overall, while the evidence shows that the applicant experiences increased pain and reduced functional capacity, the record does not prove that the accident has caused a complete inability to carry on a normal life as defined in *Heath*. The necessary qualitative comparison between her pre- and post-accident activities is not supported by sufficiently detailed evidence demonstrating that the accident has consistently prevented her from engaging in nearly all of the activities she previously performed. Consequently, the evidentiary record falls short of meeting the high threshold required for NEB entitlement.

[43] Considering all the evidence, I am not convinced, on a balance of probabilities, that the accident caused an impairment that permanently prevents the applicant from engaging in most of her pre-accident activities. The record shows significant pre-accident impairment and lacks a credible medical analysis demonstrating a continuous, qualitative restriction on activities due to the accident. The OCF-3 is merely conclusory and lacks reasoning; the clinical notes are general and do not adequately address the specific criteria of the statutory test and the factors outlined in *Heath*.

Interest

[44] Interest applies to the payment of any overdue benefits pursuant to s. 51 of the *Schedule*. As I have found no entitlement to the disputed benefits, there are no overdue benefit payments upon which interest can be awarded.

Award

[45] 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.

[46] The applicant submits that the respondent acted in bad faith in denying or delaying benefits. She argues that an award is warranted to both recognize her vulnerability and deter similar conduct by insurers. She seeks an award of up to 50% of the benefits she says were unreasonably withheld.

[47] The respondent submits that the applicant has provided no evidence of unreasonable conduct warranting an award. It argues that its benefit determinations were made in accordance with the *Schedule* and the information available at the time.

[48] An award requires evidence of conduct that is “excessive, stubborn, inflexible, or immoderate,” or otherwise unreasonable in the sense contemplated by s. 10. The remedy is not available simply because an applicant disagrees with an insurer’s adjudication decisions. In this case, the applicant’s submissions largely allege bad faith in a general manner, but do not point to specific conduct that meets the elevated threshold.

[49] I have found that the applicant has not established removal from the MIG. As a result, I did not need to determine entitlement to the disputed treatment plans, and I have concluded that the applicant is not entitled to the NEB. Given these findings, there is no evidentiary basis to support a claim that the respondent unreasonably withheld or delayed payment of any benefit under the *Schedule*. The record does not support an award under s. 10.

[50] Accordingly, I find that an award is not warranted in this case.

ORDER

[51] For the above reasons, it is ordered that:

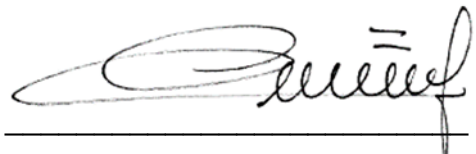
i. The applicant’s injuries remain within the MIG; therefore, the MIG’s monetary limit applies.

ii. Because the applicant stays within the MIG, I don't need to evaluate the reasonableness of the disputed treatment plans beyond the MIG limits. The applicant is eligible for benefits up to the $3,500 MIG cap.

iii. The applicant is not entitled to an NEB.

iv. The applicant is not entitled to interest or an award.

Released: March 6, 2026



Harouna Saley Sidibé
Adjudicator