Citation: Dequina v. Co-operators General Insurance Company, 2026 ONLAT 24-014355/AABS

Licence Appeal Tribunal File Number: 24-014355/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:

Delce Dequina

Applicant

and

Co-operators General Insurance Company

Respondent

DECISION

ADJUDICATOR: **Amar Mohammed**

APPEARANCES:

For the Applicant: Moninder Khattra, Counsel
Joseph Lam, Counsel

For the Respondent: Alexander Dos Reis, Counsel

HEARD: **By Way of Written Submissions**

OVERVIEW

[1] Delce Dequina, the applicant, was involved in an automobile accident on June 3, 2022, 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] The preliminary issue in dispute to be heard together with the substantive issues is:

i. Is the applicant barred from proceeding to a hearing on issues no. iv, v, and viii as listed below because the applicant failed to dispute their denial within the 2-year limitation period?

ISSUES

[3] The substantive 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 $3,934.39 for physiotherapy treatment, proposed by Align Physio and Wellness in a treatment plan/OCF-18 ("plan") submitted on December 13, 2022, and denied on December 19, 2022?

iii. Is the applicant entitled to $4,439.49 for physiotherapy treatment, proposed by Align Physio and Wellness in a plan submitted on April 14, 2023, and denied on April 24, 2023?

iv. Is the applicant entitled to $3,762.41 for physiotherapy treatment, proposed by Promed Rehabilitation in a plan submitted on September 15, 2022, and denied on September 19, 2022?

v. Is the applicant entitled to $2,400.00 for a psychological assessment, proposed by Promed Rehabilitation in a plan submitted on August 24, 2022, and denied on August 26, 2022?

vi. Is the applicant entitled to $2,918.24 for a Psychological Assessment, proposed by Align Physio and Wellness in a plan submitted on February 21, 2023, and denied on March 9, 2023?

vii. Is the applicant entitled to $2,400.00 for a Functional Cognitive Assessment, proposed by Promed Rehabilitation in a plan submitted on November 22, 2022, and denied on November 28, 2022?

viii. Is the applicant entitled to $1,364.50 for assistive devices, proposed by Promed Rehabilitation in a plan submitted on August 24, 2022, and denied on August 26, 2022?

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

RESULT

[4] I find that the applicant is barred from proceeding to a hearing on issues iv, v and viii listed above.

[5] The applicant's injuries are predominantly minor as defined in s. 3 of the *Schedule*.

[6] Since the applicant is subject to the MIG, an analysis of whether the treatment plans in dispute are reasonable and necessary is not warranted.

[7] The applicant is not entitled to interest.

ANALYSIS

Preliminary Issue

[8] I find that the applicant is barred from proceeding to a hearing on issues iv, v and viii listed above.

[9] An application under s. 280(2) of the *Insurance Act* in respect of a benefit shall be commenced within two years after the insurer's refusal to pay the amount claimed. To trigger the running of the limitation period, the insurer must provide clear and unequivocal notice of a refusal to pay benefits. In *Smith v. Co-Operators Gen. Ins. Co.*, the Supreme Court of Canada articulated the requirements that an insurer must satisfy for there to be a proper denial of benefits: straightforward and clear language to inform a person of the dispute resolution process; language directed towards an unsophisticated person;

identification of the person's rights to dispute the denial; and the relevant time limits that govern that process.

[10] Section 7 of the *Licence Appeal Tribunal Act* affords the Tribunal statutory discretion to extend the limitation period prescribed by the *Schedule* if it is satisfied that there are reasonable grounds for granting such relief. In determining whether to grant an extension, the Tribunal examines four factors: i) the existence of a bona fide intention to appeal within the appeal period; ii) the length of the delay; iii) prejudice to the other party; and iv) the merits of the appeal. See, *Manuel v. Ontario (Registrar, Motor Vehicle Dealers Act)*, 2012 ONSC 1492. The onus is on the party raising the preliminary issue, in this case the respondent, to demonstrate on a balance of probabilities that the order sought barring the applicant from proceeding to a hearing should be granted. In turn, the onus is on the applicant to demonstrate, on a balance of probabilities, that the exercise of discretion to extend the limitation period is warranted.

[11] The applicant did not address this preliminary issue in her submissions. I reviewed the relevant dates in the evidence as referred to by the respondent. I find that the applicant filed the application commencing this dispute at this Tribunal on November 21, 2024. Further, that the denial notice relating to issue iv is dated September 19, 2022, and the notices relating to issues v and viii are earlier, dated August 26, 2022. I find that the respondent has established that the application was filed outside the two-year limitation period for disputing these denials. Since the applicant did not address this issue, I find that she has not established reasons to exercise my discretion to grant an extension.

[12] Since the applicant is subject to the MIG, any analysis of whether the treatment plans in dispute are reasonable and necessary is not warranted. This includes the plans in dispute identified in the preliminary issue. Accordingly, whether the applicant is barred or not ultimately does not affect the final determination on the merits of the issues in dispute.

MIG

[13] 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."

[14] 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.

Chronic Pain

[15] The applicant has not established that she suffers from chronic pain warranting removal from the MIG.

[16] The applicant argues that her shoulder pain has been consistently reported since June 2022, persisting for years, and should be recognized as chronic pain sufficient to warrant removal from the MIG. The applicant argues, and I agree, that a diagnosis is not a requirement in order to warrant removal from the MIG on the basis of chronic pain. The applicant argues that the Tribunal has held that chronic pain can be described "as ongoing or recurrent pain, lasting beyond the usual course of acute illness of injury or more than 3 to 6 months, and which adversely affects the individual's well-being." *17-000835 v. Aviva General Insurance Canada*, 2018 CanLII 83520 (ON LAT), at para 23. I find that this case was more directly dealing with whether or not a diagnosis of Chronic Pain Syndrome falls within the definition of minor injury and clinically associated sequalae. It was not establishing a definition of chronic pain the Tribunal must use generally in a MIG removal analysis. Although I am not bound by prior decisions of this Tribunal, I note that the case was focused on a different point as described above and is therefore distinguished from the present matter. As reviewed above, to warrant removal from the MIG in this context, the applicant should address both chronic pain and functional impairment.

[17] The respondent argues that the applicant has not led evidence sufficient to establish that she has chronic pain and notes that she has not been diagnosed with chronic pain. The respondent refers me to the six criteria for chronic pain established in The American Medical Association's, Guides to the Evaluation of Permanent Impairment, 6th Edition, 2008, ("AMA Guides").

[18] The Tribunal has held that the six criteria for chronic pain are a helpful tool in the assessment of chronic pain. While the AMA Guides criteria were not incorporated into the *Schedule*, this Tribunal has consistently considered them a useful interpretive tool for assessing claims of chronic pain in accident benefits disputes in the absence of a diagnosis of chronic pain. I agree that they are a useful analytical tool. The applicant did not address these arguments or generally lead evidence that would establish that she meets at least three of the six criteria.

[19] The criteria are:

i. Use of prescription drugs beyond the recommended duration and/or abuse of or dependence on prescription drugs or other substances;

ii. Excessive dependence on health care providers, spouse, or family;

iii. Secondary physical deconditioning due to disuse and or fear-avoidance of physical activity due to pain;

iv. Withdrawal from social milieu, including work, recreation, or other social contracts;

v. Failure to restore pre-injury function after a period of disability, such that the physical capacity is insufficient to pursue work, family or recreational needs; and

vi. Development of psychosocial sequelae after the initial incident, including anxiety, fear-avoidance, depression, or nonorganic illness behaviors.

[20] In summary, the respondent addresses these criteria as follows. The evidence led by the applicant does not suggest dependence on prescription drugs, rather, the applicant denied taking any prescription drugs to her family doctor through July and August 2022. There is no evidence of dependence on healthcare providers or others. Further, that her pain complaints to her family doctor have a large gap of almost two years between January 5, 2023 and December 2, 2024. There were no accident-related pain complaints during this period despite recorded visits. This means there is at most one pain complaint in the family doctor's records during the period six months post-accident.

[21] Additionally, the respondent questions causation as to the December 2, 2024 pain complaint because the records indicate that the applicant stated it started just one month prior whereas the accident was in June 2022. Accordingly, the respondent argues that the applicant has not established her pain has been ongoing since the accident and that the records do not indicate any physical deconditioning, muscle atrophy, or weakness. The respondent also submits that the applicant reported to her family doctor and a s. 25 psychological assessor between August 2022 and January 2023 that she had returned to work post-accident. Further, that the s. 25 psychological assessment report dated August 16, 2022 notes no withdrawal from social milieu and that the applicant remains independent in her self-care and housekeeping tasks, albeit with difficulties.

[22] I find that there are long, unexplained gaps relating to accident-related pain complaints in the medical record, which do not support the applicant's submissions of consistent pain reports. Further, that the applicant's arguments do not address key particulars to establish details regarding her pain.

[23] I find that the applicant's evidence of pain complaints to her family doctor and her treatment provider do not establish that she suffers from chronic pain that warrants removal from the MIG.

Psychological Condition

[24] I find that the applicant has not established a psychological condition warranting removal from the MIG.

[25] Although the applicant did not make any arguments supporting removal from the MIG on any basis other than chronic pain, she has sought and argued for entitlement to a psychological assessment based on it being reasonable and necessary. In her conclusion, she argues her psychological impairments are chronic in nature, and she should be removed from the MIG. I have interpreted this as an intention for the Tribunal to consider whether removal from the MIG is warranted on the basis of a psychological condition.

[26] The respondent submits that the applicant has not argued removal is warranted on the basis of a psychological condition. However, the respondent has made arguments specifically addressing why the applicant's evidence of a psychological condition does not warrant removal from the MIG. It appears that the respondent has also interpreted the applicant's submissions as intending to make an argument, although no direct argument is made.

[27] The respondent argues that the evidence does not establish a psychological condition that warrants removal from the MIG for the following reasons. It submits that the s. 25 report by Ms. Masooma Zehra (M.A. Candidate; R.P. Qualifying) and Dr. Knolly Hill, dated August 16, 2022 deserves no weight. My review of the s. 25 report indicates that there was no document review completed, or that no document review is indicated in the report. I further agree with the respondent that the family doctor's records do not corroborate the conclusions of the s. 25 report because the CNRs do not disclose any psychological complaints as a result of the accident. There is no indication of the extent of Dr. Hill's involvement or an explanation of what direct supervision entailed for this assessment and report. There is no indication that Dr. Hill ever met the applicant. Lastly, I find that the report does not establish that the applicant's complaints are beyond the associated sequalae of her minor injury, which fall within the scope of the MIG.

[28] I find that the s. 25 report conducted shortly after the accident, based on self-reporting, and with no corroborating contemporaneous medical evidence to support the conclusions, does not establish removal from the MIG is warranted.

[29] For the reasons above, on a balance of probabilities, I find that the applicant's injuries are predominantly minor as defined in s. 3 of the *Schedule*.

Treatment Plans

[30] Since the applicant is subject to the MIG, an analysis of whether the treatment plans in dispute are reasonable and necessary is not warranted.

Interest

[31] The applicant is not entitled to interest because there are no overdue benefits to which it applies, pursuant to s. 51 of the *Schedule.*

ORDER

[32] For the reasons above, I make the following orders:

i. The applicant is barred from proceeding to a hearing on the treatment plans listed as issues iv, v and viii in the issues in dispute.

ii. The applicant's injuries are predominantly minor as defined in s. 3 of the *Schedule*.

iii. Since the applicant is subject to the MIG, an analysis of whether the treatment plans in dispute are reasonable and necessary is not warranted.

iv. The applicant is not entitled to interest.

Released: April 21, 2026

Amar Mohammed
Adjudicator