Citation: Alkarasneh v. Co-operators General Insurance Company, 2026 ONLAT 25-000888/AABS

Licence Appeal Tribunal File Number: 25-000888/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:

Kefah Alkarasneh

Applicant

and

Co-operators General Insurance Company

Respondent

DECISION

ADJUDICATOR: **Matthew Frontini**

APPEARANCES:

For the Applicant: Rania Hafez, Paralegal

For the Respondent: Simran Walia, Counsel

HEARD: **By way of written submissions**

OVERVIEW

[1] Kefah Alkarasneh, the applicant, was involved in an automobile accident on December 19, 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.

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 January 19, 2022 to December 19, 2024?

iii. Is the applicant entitled to $1,681.57 for physiotherapy services, proposed by Mackenzie Medical Rehabilitation Centre in a treatment plan/OCF-18 ("treatment plan") dated June 20, 2023?

iv. Is the applicant entitled to $1,293.80 for functional abilities assessment, proposed by 2430307 Ontario LTD. in a treatment plan dated May 5, 2023?

v. Is the applicant entitled to $2,023.03 for medical services, proposed by Mackenzie Medical Rehab in a treatment plan dated May 9, 2023?

vi. Is the applicant entitled to $2,300.00 for psychological services, proposed by 2430307 Ontario LTD. in a treatment plan dated Mach 21, 2023?

vii. Is the applicant entitled to $1,050.88 for occupational therapy assessment, proposed by 2430307 Ontario LTD. in a treatment plan dated May 21, 2023?

viii. Is the applicant entitled to $200.00 ($1,300.00 less $1,100.00 approved) for chiropractic services, proposed by Mackenzie Medical Rehab Centre in a treatment plan dated May 9, 2023?

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

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

RESULT

[3] I find that:

i. 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;

ii. The applicant is not entitled to a non-earner benefit of $185.00 per week from January 19, 2022 to December 19, 2024;

iii. As the applicant is in the MIG, it is not necessary to consider if the disputed treatment plans are reasonable and necessary;

iv. The respondent is not liable to pay an award under s. 10 of Reg. 664; and

v. The applicant is not entitled to interest on any overdue payment of benefits.

[4] The application is dismissed.

ANALYSIS

The applicant is not entitled to an NEB from January 19, 2022 to December 19, 2024

[5] I find that the applicant has not established on a balance of probabilities that she is entitled to an NEB.

[6] 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 "NEB Test"). 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.

[7] The applicant's submissions do not specifically reference the NEB Test or any evidence that would support her entitlement to this benefit. Rather, she submits in a single paragraph that she is entitled to the NEB and the disputed treatment plans because they are reasonable and necessary and supported by medical evidence. Respectfully, these submissions do not assist the applicant in establishing entitlement to an NEB. It is the applicant's onus to establish on balance of probabilities with compelling medical evidence that she meets the NEB Test.

[8] The applicant's submissions and evidence do not establish that she is entitled to an NEB. In *Heath* at paragraph 50, the Court of Appeal emphasized that:

> i. Consideration of a claimant's activities and life circumstances prior to the accident requires more than taking a snapshot of a claimant's life in the time frame immediately preceding the accident. It involves an assessment of the appellant's activities and circumstances over a reasonable period prior to the accident, the duration of which will depend on the facts of the case.
>
> ii. In order to determine whether the claimant's ability to continue engaging in "substantially all" of his or her pre- accident activities has been affected to the required degree, all of the pre-accident activities in which the claimant ordinarily engaged should be considered.
>
> iii. It is not sufficient for a claimant to demonstrate that there were changes in his or her post-accident life. Rather, it is incumbent on a claimant to establish that those changes amounted to him or her being continuously prevented from engaging in substantially all of his pre-accident activities.

[9] In *Heath*, the plaintiff provided virtually no evidence concerning his pre-accident activities or concerning the extent to which she was prevented from engaging in those activities within the two-year period following the accident. He failed to establish a change to his activities after the accident. The dearth of evidence relating to his pre-accident activities precluded a finding that he qualified for an NEB.

[10] This case is similar to *Heath*. The applicant's submissions do not identify evidence related to any pre-accident activities. Her submissions also do not describe the extent to which she is prevented from engaging in any specific pre-accident activities as a result of her accident-related impairments. In fact, the applicant's submissions do not allege that she has an impairment that continuously prevents her from engaging in substantially any specific activity in which she ordinarily engaged before the accident.

[11] I find that the applicant's submissions and evidence do not establish that she has met the NEB Test on a balance of probabilities, and therefore, I find that she is not entitled to an NEB.

The applicant is not removed from the MIG

[12] The applicant is not removed from the MIG. She has not established on a balance of probabilities that he has suffered more than a minor injury because of the accident.

[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 to such an injury."

[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 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.

[15] The applicant claims that she is entitled be removed from the MIG because she suffers from Chronic Pain Syndrome or, alternatively, chronic pain with functional impairment as a result of the accident.

The applicant has not established that she suffers a chronic pain warranting removal from the MIG

[16] I find that the applicant has not established on a balance of probabilities that she suffers chronic pain with a functional impairment warranting removal from the MIG.

[17] The applicant submits that the medical evidence establishes that she developed psychological and physical impairments as a result of the accident which establish that she suffers chronic pain warranting removal from the MIG. However, I find that the evidence does not support the applicant's submissions that the impairments described in the applicant's submissions were the result of the accident.

[18] The applicant's submissions under the headings "Physical Impairments" and "Psychological Impairments do not refer to any specific supporting evidence. Rather, they make conclusory statements that, as a result of the accident the applicant has sustained impairments, resulting in functional limitations and reduced quality of life. The submissions go on to list physical and psychological complaints including depressive and Post-Traumatic Stress Disorder symptomology and multiple courses of psychotropic medication. The applicant submits that "multiple medical reports support the necessity of continued treatment…" but does not identify which reports are relied on or indicate if the reports are in evidence.

[19] The applicant submits that she meets the definition of chronic pain syndrome based on applying the American Medical Association *Guides to the Evaluation of Permanent Impairment*, 6th Edition, 2008 ("AMA Guides") because she meets three of six criteria set out in the AMA Guides, specifically: (1) withdrawal from social milieu, including work, recreation, or other social contacts, (2) 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 (3) development of psychosocial sequelae after the initial incident, including anxiety, fear-avoidance, depression, or nonorganic illness behaviours. It should be noted that the applicant's submissions do not connect to any specific evidence related to any of the factors.

[20] The respondent submits that the applicant has tactically omitted any reference to her pre-existing health conditions and her function prior to the accident. In this regard, the respondent notes that the applicant was diagnosed, by Dr. Antonio Gallo, neurologist, with syncope causing her headaches and dizziness prior to the accident. The respondent also notes that the applicant was referred to the Scarborough Pain Clinic for assessment and injection therapy for pain prior to the accident. This pre-accident assessment recommended physiotherapy and ongoing injection therapy to address her pain.

[21] The respondent also notes that prior to the accident, the applicant was referred to a rheumatologist, Dr. Miachael Pflug, in connection with her pre-existing impairments. Dr. Plfug's clinical notes from December 30, 2020, and October 12, 2021, indicate that the applicant was considered totally disabled from gainful employment and that her pre-accident disability was severe and increasing.

[22] The respondent further submits that the evidence establishes that the applicant suffered psychological impairments prior to the accident. Specifically, the applicant's family doctor noted depression in 2021 and referred her to a

psychiatrist, Dr. Sonbol. Dr. Sonbol diagnosed the applicant with Major Depressive Disorder with anxiety symptoms on April 30, 2021, and July 30, 2021.

[23] With respect to the AMA Guides, the respondent submits that the applicant's submissions do not identify any supporting medical evidence to establish that any of the AMA criteria are met. The respondent further notes the applicant's pre-accident history of prescribed medication and the lack of evidence regarding whether any pain medication prescriptions had been filled. Similarly, the respondent notes that absence of objective evidence that the applicant has excessively relied on healthcare providers or suffered from any secondary physical deconditioning as a result of the accident.

[24] I agree with the respondent's submissions. The applicant has not provided an analysis of how any accident-related impairments, supported by objective medical evidence, establish that removal from the MIG is warranted. Given this absence, coupled with the evidence that indicates the applicant had extensive pre-existing impairments, which are not addressed by the applicant in her submissions, I find that the applicant has not met her onus.

[25] I find that the applicant has not established on a balance of probabilities that she suffers chronic pain as a result of the accident warranting removal from the MIG.

Treatment Plans in Dispute

[26] As the applicant is in the MIG, and the parties agree the MIG limits have been exhausted, it is not necessary for me to consider if the treatment plans in dispute are reasonable and necessary.

Interest

[27] Interest applies on the payment of any overdue benefits pursuant to s. 51 of the *Schedule*. As the applicant is not entitled to the disputed treatment plans, no payments are overdue, and interest does not apply.

Award

[28] 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.

[29] As the respondent did not withhold or delay any payment of benefits, I find that the applicant has not established that she is entitled to an award.

ORDER

[30] I find that:

i. 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;

ii. The applicant is not entitled to a non-earner benefit of $185.00 per week from January 19, 2022, to December 19, 2024;

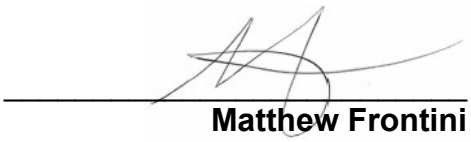
iii. As the applicant is in the MIG, it is not necessary to consider if the disputed treatment plans are reasonable and necessary;

iv. The respondent is not liable to pay an award under s. 10 of Reg. 664; and

v. The applicant is not entitled to interest on any overdue payment of benefit.

[31] This application is dismissed.

Released: May 11, 2026



Matthew Frontini
Adjudicator