



Citation: Francis v. TD General Insurance Company, 2026 ONLAT 25-001046/AABS

Licence Appeal Tribunal File Number: 25-001046/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:

Shenice Francis

Applicant

and

TD General Insurance Company

Respondent

DECISION

ADJUDICATOR: Bernard Trottier

APPEARANCES:

For the Applicant: Andrew Bergel, Counsel

For the Respondent: Jonathan White, Counsel

HEARD: By way of written submissions

OVERVIEW

- [1] Shenice Francis, the applicant, was involved in an automobile accident on March 17, 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 TD General Insurance Company, the respondent, 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:
1. Is the applicant entitled \$2,787.06 for chiropractic services, proposed by Finch Health Centre Inc. in a treatment plan/OCF-18 (“OCF-18”) dated July 5, 2024?
 2. Is the applicant entitled to \$1,950.00 for a functional abilities evaluation (“FAE”), proposed by Finch Health Centre Inc. in an OCF-18 dated October 30, 2023?
 3. Is the applicant entitled to interest on any overdue payment of benefits?

RESULT

- [3] The applicant is not entitled to the proposed OCF-18 for chiropractic services.
- [4] The applicant is not entitled to the proposed FAE.
- [5] As no benefits are payable, no interest is payable.

PROCEDURAL ISSUES

Motion to exclude treatment plans not in dispute as evidence

- [6] The respondent submits that the applicant relies on five OCF-18s that are not in dispute, as part of her evidence brief. The respondent moves that these should not be considered in the decision, as the Tribunal has held on multiple occasions, citing *Eli v. Definity Insurance Company*, 2025 CanLII 31130 (ON LAT) and *Sfalcin v. Aviva Insurance Company of Canada*, 2025 CanLII 28492 (ON LAT), that OCF-18s are not considered medical evidence.

[7] Under Rule 15.2 of the *Licence Appeal Tribunal Rules, 2023* (the “Rules”), I may hear a motion at a scheduled adjudicative event. The applicant made no submissions on this procedural motion. I agree with the respondent that OCF-18s are not generally considered to be medical evidence by the Tribunal. I will disregard the five OCF-18s that are not in dispute.

Motion to exclude surveillance records

- [8] In the Case Conference Report and Order of June 2, 2025 (the “CCRO”), the respondent agreed to produce all surveillance, including investigators’ entire files and correspondence between the respondent and investigators, no later than 45 days from the case conference.
- [9] In her reply submissions, the applicant submits that the respondent failed to produce the complete surveillance records, including correspondence between the respondent and the investigation company, Xpera Investigations (“Xpera”). The applicant argues that the unproduced records undermine the veracity of the surveillance reports. For this reason, the applicant moves that the surveillance relied upon by the respondent should be excluded from the evidentiary record, or that I should give it little weight. The respondent was not afforded a sur-reply, so it did not make submissions on this procedural motion.
- [10] I find that the respondent provided a 24-page report, detailing the requestor, the investigators (with their licence numbers), and the surveillance dates and times. The report also provided a link for the applicant to view the complete, unedited surveillance video, and explained that a copy of the video was edited to exclude any extraneous footage which did not depict the applicant. I find that the applicant has not demonstrated that the respondent failed to produce the complete surveillance records.
- [11] Regarding correspondence between the respondent and Xpera, the applicant would need to persuade me, under Rule 9.3, that she would be prejudiced by the non-production of the correspondence, that other measures could not mitigate that prejudice, and that the claimed prejudice outweighs the prejudice to the respondent in excluding evidence that it considers relevant.
- [12] I find that any prejudice to the applicant resulting from the non-production of the correspondence could have been mitigated by a motion in the months between the initial production deadline and the hearing. In the alternative, the motion could have been raised in her initial hearing submissions. I find that it is procedurally unfair to the respondent to raise this motion in her reply submissions, without the respondent’s ability to respond.

[13] I find that the claimed prejudice to the applicant does not outweigh the prejudice to the respondent in excluding evidence that it considers relevant, and any prejudice to the applicant could have been mitigated. For the reasons above, I do not grant the applicant's request to exclude the surveillance from the evidentiary record.

Motion to exclude insurer's examination reports

[14] Also in her reply submissions, the applicant submits that the respondent failed to produce the complete files of insurer's examination ("IE") facilities and report coordinators related to the issues in dispute. In the CCRO, the respondent agreed to produce the complete files of IE facilities/report coordinators by the initial production date of 45 days from the case conference. As with the surveillance, the applicant argues that the unproduced records undermine the veracity of the IE reports. Accordingly, the applicant requests that the IE reports be excluded from the evidentiary record, or that I should give them little weight. The respondent was not afforded a sur-reply to respond to the applicant's request to exclude the IE reports from the evidentiary record.

[15] I find, again, that the applicant had the opportunity to raise a motion regarding the non-production of IE files in the months between the initial production date and the hearing. Also, the applicant could have raised this motion in her initial submissions. I find it is procedurally unfair to the respondent to raise this motion in her reply submissions, without the respondent's ability to respond.

[16] I find that the claimed prejudice to the applicant does not outweigh the prejudice to the respondent in excluding evidence that it considers relevant, and any prejudice to the applicant could have been mitigated. For the reasons above, I do not grant the applicant's request to exclude the IE reports from the evidentiary record.

ANALYSIS

Background

[17] The CCRO indicated that the issues in dispute included \$2,200.00 for a chronic pain assessment. Subsequently, the parties agreed that this assessment was approved on May 28, 2024, and paid to the clinic on November 13, 2024. It was withdrawn as an issue by the applicant prior to the written hearing.

The OCF-18 for chiropractic services is not reasonable and necessary

- [18] To receive payment for a treatment and assessment plan under s. 15 and 16 of the *Schedule*, the applicant bears the burden of demonstrating on a balance of probabilities that the benefit is reasonable and necessary as a result of the accident. To do so, the applicant should identify the goals of the treatment, how the goals would be met to a reasonable degree, and that the overall costs of achieving them are reasonable.
- [19] The applicant directed me to the disputed OCF-18 dated July 5, 2025, submitted by Dr. Christopher Haluskay, chiropractor with Finch Health Centre, where it indicated that the goals of the proposed chiropractic services were to reduce pain, increase strength, increase range of motion and return the applicant to activities of normal living. The OCF-18 indicated the following diagnoses:
1. Whiplash associated disorder, grade 2, with complaint of neck pain and musculoskeletal signs; and
 2. Sprain and strain of thoracic spine, lumbar spine and shoulder joint.
- [20] The applicant directed me further to the note of Dr. Andrew Haluskay, also a chiropractor with Finch Health Centre, dated July 7, 2025, where he opines that the applicant was still having issues with stiffness and pain from her accident-related injuries, which required more treatment to reduce pain and increase her function.
- [21] The applicant directed me, also, to the clinical notes and records (“CNRs”) of her family physician, Dr. Olugbenga Ojedokun, who noted on October 8, 2024, that the applicant had ongoing back pain and arm-swelling, and he provided differential (i.e., potential) diagnoses of “soft tissue injury, nerve impingement, chronic pain syndrome”.
- [22] The applicant relies further on Dr. Grigory Karmy, chronic pain specialist, who opined in his report dated October 30, 2024, that the applicant suffered from chronic pain syndrome and mechanical neck, back and shoulder pain. In his report, Dr. Karmy recommends an active exercise program and passive modalities, including physiotherapy, acupuncture, aquatherapy, massage therapy, chiropractic adjustments and spinal decompression therapy.
- [23] The applicant argues that her diagnosis of chronic pain syndrome from Dr. Karmy, corroborated by the CNRs of Dr. Ojedokun, warrant further chiropractor treatment to alleviate the applicant’s pain symptoms and restore her function.

- [24] The respondent submits that the applicant's post-accident medical history does not corroborate chronic pain. The respondent submits that, on the day of the accident, the triage notes from the hospital emergency department indicated that the applicant was alert, oriented, ambulatory and appeared to be in no pain. Medical imaging on that day was unremarkable, and the applicant was discharged the next day.
- [25] The respondent submits, further, that the applicant's 2024 visits with Dr. Ojedokun were sparse. The applicant had an initial visit on March 25, 2024, and a follow-up visit on October 8, 2024. On the follow-up visit, Dr. Ojedokun, provided his differential diagnosis of nerve impingement and chronic pain syndrome, and he ordered an MRI of the spine and referred the applicant for nerve testing.
- [26] The respondent submits that Dr. Adam Patterson, neurologist, in his report dated November 25, 2024, indicated that he was unable to identify the source of the applicant's pain complaints and he opined that there was a low probability of a neurological cause.
- [27] In a visit with the applicant on December 13, 2024, the respondent submits that Dr. Ojedokun made no musculoskeletal diagnosis, and he did not prescribe any pain medication or recommend any treatment for the reported pain complaints. The respondent submits, also, that the MRI report of January 23, 2025, indicated no nerve root compression of spinal canal narrowing.
- [28] The respondent relies on the opinion of Dr. Hashmat Khan, general practitioner, who completed an insurer's examination ("IE") paper-review report on December 17, 2024, based on the applicant's medical documentation. Dr. Khan opined that there was no compelling objective finding that would necessitate the proposed chiropractic treatment for her soft tissue injuries, at that point in her recovery.
- [29] The respondent argues that, although it agreed to fund the chronic pain assessment of Dr. Karmy, the applicant has failed to demonstrate a chronic pain condition that would justify funding the disputed treatment plan. The respondent disputes, contrary to what Dr. Karmy claims, that the applicant meets the criteria for the diagnosis of chronic pain as described in the *American Medical Association's Guides, 6th edition* (the "AMA Guides") for evaluating chronic pain claims. The six criteria in the *AMA Guides* are:
1. Use of prescription drugs beyond the recommended duration and/or abuse of or dependence on prescription drugs or other substances;

2. Excessive dependence on health care providers, spouse, or family;
3. Secondary physical deconditioning due to disuse and or fear avoidance of physical activity due to pain;
4. Withdrawal from social milieu, including work, recreation, or other social contracts;
5. 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
6. Development of psychosocial sequelae after the initial incident, including anxiety, fear-avoidance, depression, or nonorganic illness behaviors.

[30] The *AMA Guides* stipulate that, for a chronic pain condition to be valid medically, an injured person must meet at least three of the six criteria.

[31] The respondent argues that the applicant has provided no prescription summaries or CNRs that would indicate that she has become dependent on prescription medication. The respondent argues, further, that the intermittent visits with Dr. Ojedokun do not indicate that she developed an excessive dependence on health care providers. The respondent argues that the applicant returned to work five months after the accident, gave birth to a child in 2023, and started full-time college studies in January of 2024, indicating that the applicant has not withdrawn from a social milieu. Lastly, the respondent directed me to the surveillance evidence that showed the applicant driving, travelling as a passenger, walking fluidly, lifting a child, and lifting and carrying objects without visible signs of pain. For these reasons, the respondent argues Dr. Karmy's chronic pain diagnosis should be assigned little weight.

[32] While I am not bound by the *AMA Guides*, I note that the Tribunal has found them to be helpful to determine whether chronic pain is medically valid. I find that the balance of the evidence before me indicates that the applicant does not suffer from chronic pain syndrome, and therefore I assign little weight to Dr. Karmy's report.

[33] I find that the applicant's self-reported use of recreational cannabis for pain, without any investigation of alternative prescription pain medications, does not satisfy me that she meets criterion (1) of the *AMA Guides*.

- [34] I find that the applicant's infrequent medical visits, at that point in her recovery, indicate that she was not excessively dependent on health care providers. Her self-report to Dr. Karmy that she is excessively dependent on her family for caregiving activities is inconsistent with the applicant's return to full-time college studies and the caregiving she provided for her child, as observed in the surveillance. I find that she does not meet criterion (2).
- [35] I find, also, that the applicant's return to full-time college studies and observed range of activities in the surveillance persuade me that the applicant does not meet criteria (4) and (5). I make no finding on criteria (3) and (6), but I find that Dr. Karmy's conclusion that the applicant meets all six criteria of the *AMA Guides* is controverted by the evidence before me, undermining his recommendation for passive modalities, including further chiropractic treatment.
- [36] I find that the conclusions of Dr. Khan are consistent with the records of both Dr. Patterson and Dr. Ojedokun from late 2024, and the MRI report of January 23, 2025, in that further chiropractic treatment was not reasonable and necessary for her soft tissue injuries at that point in her recovery.
- [37] For the reasons above, I find that the applicant has not demonstrated that the proposed OCF-18 for chiropractic service is reasonable and necessary, and it is therefore not payable.

The OCF-18 for an FAE is not reasonable and necessary

- [38] For all OCF-18s, the applicant bears the burden of demonstrating on a balance of probabilities that the benefit is reasonable and necessary as a result of the accident. To do so, the applicant should identify the goals of the assessment, how the goals would be met to a reasonable degree, and that the overall costs of achieving them are reasonable.
- [39] The proposed OCF-18 for an FAE, dated October 30, 2023, was submitted by Dr. A. Haluskay, with stated goals to reduce pain, increase range of motion, increase strength, return the applicant to activities of normal living, return to pre-accident work activities and return to modified work activities.
- [40] The applicant submits that the reasonableness and necessity of the FAE is supported by the findings of Dr. Sarvin Sabet Ghadam, psychologist, in her report dated February 15, 2023. Dr. Ghadam noted that, at the time of her assessment, the applicant felt disabled by pain-related complaints, physical restrictions, cognitive issues and emotional concerns. Dr. Ghadam diagnosed the

applicant with post-traumatic stress disorder (“PTSD”), major depressive disorder and somatic symptom disorder with predominant pain.

- [41] The applicant submits, further, that the FAE is reasonable and necessary as supported by the biopsychological assessment of Dr. Nazila Isgandarova, PhD, registered social worker (“RSW”), where she noted in her report dated June 1, 2023, that the applicant was frustrated with the quality and level of her daily functioning due to physical and emotional problems. On August 4, 2023, the respondent approved an OCF-18 for a social, emotional and executive-cognitive rehabilitation program with an occupational therapist and an RSW.
- [42] On March 25, 2024, Dr. Ojedokun confirmed the applicant’s PTSD diagnosis, and he completed a Functional Limitation Assessment form for her college, recommending accommodation due to the applicant’s musculoskeletal pain and PTSD.
- [43] The applicant submits, also, that the respondent paid for and obtained its own FAE. The applicant argues that if an FAE was reasonable and necessary for the respondent, then the same must be true for the applicant. The applicant argues that the FAE is reasonable and necessary to determine the applicant’s physical abilities and limitations, and to better construct a treatment program specifically suited to her needs.
- [44] The respondent submits that the applicant has not demonstrated that the proposed FAE is reasonable and necessary, as the medical and surveillance evidence indicates that the applicant’s functionality, at that time in her recovery, contradicts the diagnoses provided by Dr. Karmy and Dr. Ghadam.
- [45] The respondent relies on the IE conducted by Dr. Gina Pohani, general practitioner, who opined in her report dated November 21, 2022 that the applicant suffered no musculoskeletal or neurological impairment from the accident. The respondent relies, also, on the paper-review assessment of Dr. Khan, to argue that the applicant’s soft-tissue injuries did not demonstrate impairment at that point in her recovery.
- [46] The respondent submits that the applicant’s post-accident return to work and her full-time college studies demand sufficient strength, endurance and mobility, indicating that the OCF-18 for an FAE is not reasonable and necessary.
- [47] The respondent submits, further, that the surveillance shows the applicant moving fluidly, bending at the waist for sustained periods of time, loading a child and a stroller into her vehicle, and driving a vehicle.

[48] The respondent argues that the proposed cost of the FAE is not reasonable and necessary. The proposed provider of the FAE is Dr. A. Haluskay, and the proposed \$1,750 for the assessment, at the maximum hourly rate of \$112.81 for a chiropractor, would amount to about 15 hours for the assessment. The respondent argues that an FAE typically takes a third to a half of the proposed time to conduct the assessment and write a report.

[49] Lastly, the respondent submits that an FAE is not an assessment that warrants funding under s. 25 of the *Schedule*. Under s. 25(1), there are only five instances of warranted examinations:

1. for preparing a disability certificate;
2. for preparing a treatment confirmation form in accordance with the MIG;
3. for reasonable fees for reviewing an existing treatment plan under s. 38;
4. for reasonable fees for preparing an attendant care assessment under s. 42; and
5. for reasonable fees for preparing a s. 45 application for a catastrophic impairment assessment.

[50] The respondent argues that the list of examinations warranted under s. 25 is a finite, enumerated list, and that s. 25 does not give rise to an obligation for the insurer to fund the proposed OCF-18 in this case.

[51] I find that the applicant has not demonstrated that an FAE is reasonable and necessary, because she has not presented me with evidence as to how the FAE would achieve its stated goals and that the overall costs of achieving them are reasonable. I note that the applicant has undertaken a psychological assessment, a biopsychological assessment and a chronic pain assessment previously, and I find that the applicant has not directed me to opinions of assessors or her treatment providers that an FAE was a necessary further assessment for alleviating her pain complaints or for restoring her pre-accident function.

[52] I find that the Dr. Ojedokun's completion of a Functional Limitation Assessment form for the applicant's college is not material in determining whether the proposed FAE is reasonable and necessary, because the applicant has not directed me to evidence that the proposed FAE would address any of the applicant's accommodations for her post-secondary studies.

- [53] I make no finding on the length of time required to complete an FAE. Nevertheless, the applicant bears the onus to demonstrate that the cost of the assessment is reasonable in the circumstances, and I find that she has not met that onus.
- [54] I find that the applicant has not made submissions on how the FAE proposed by the applicant meets any of the criteria for payable assessments under s. 25. I find that the FAE requested by the respondent, as part of a multidisciplinary assessment report issued on December 17, 2024, was conducted to address the applicant's income replacement benefits. I find that the applicant has not directed me to evidence that the proposed FAE was reasonable and necessary, under s. 25(1)3 of the *Schedule*, to review and approve treatment under s. 38.
- [55] For the reasons above, I find that the applicant has not demonstrated that the proposed FAE is reasonable and necessary, and therefore it is not payable by the respondent.

Interest

- [56] The Tribunal may award interest to which an insured person is entitled pursuant to s. 51 of the *Schedule*. As I have found that the OCF-18s for chiropractic services and the FAE are not payable, no interest is payable.

ORDER

- [57] The applicant is not entitled to the disputed OCF-18 for chiropractic services.
- [58] The applicant is not entitled to the disputed OCF-18 for an FAE.
- [59] As no benefits are payable, no interest is payable.

Released: May 25, 2026



Bernard Trottier
Adjudicator