Citation: Dobrovolskaia v. Aviva General Insurance Company, 2026 ONLAT 24-015188/AABS

Licence Appeal Tribunal File Number: 24-015188/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:

Evguenia Dobrovolskaia

Applicant

and

Aviva General Insurance Company

Respondent

DECISION

ADJUDICATOR: **Nadia Mauro**

APPEARANCES:

For the Applicant: Kateryna Vlada, Counsel

For the Respondent: Suzanne Clarke, Counsel

HEARD: **By way of written submissions**

OVERVIEW

[1] Evguenia Dobrovolskaia, the applicant, was involved in an automobile accident on September 27, 2016, 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, Aviva General Insurance Company, and applied to the Licence Appeal Tribunal - Automobile Accident Benefits Service (the "Tribunal") for resolution of the dispute.

[2] This matter was scheduled to be heard by way of written hearing on consent of the parties.

ISSUES

[3] The issue in dispute is:

i. Has the applicant sustained a catastrophic impairment as defined by the *Schedule*?

RESULT

[4] The applicant is not catastrophically impaired in accordance with the *Schedule* under Criterion 6, 7, and 8.

ANALYSIS

The applicant has not sustained a catastrophic impairment as defined by the Schedule

[5] The applicant seeks a catastrophic ("CAT") impairment determination under paragraphs 6, 7, and 8 of s. 3.1(1) of the *Schedule*, referred to as Criteria 6, 7 and 8, respectively, as a result of her accident-related impairments. Based on the evidence and submissions provided, the applicant has not established, on a balance of probabilities, that she sustained a CAT impairment. The following are my reasons after a consideration of the submissions and evidence relating to these criteria.

The applicant does not meet the CAT threshold under Criterion 6

[6] To qualify for CAT status under Criterion 6, the applicant must prove that she has a physical impairment or combination of physical impairments that, in accordance with the *American Medical Association's Guides to the Evaluation of Permanent Impairment*, 4th Edition, 1993 (the "AMA Guides"), results in 55 per cent or more physical whole person impairment ("WPI").

[7] The applicant relies on the multidisciplinary CAT assessments conducted by Galit Liffshiz and Associates Inc. (GLA). The assessments were completed by Lori MacFayden, occupational therapist (OT); Dr. Steve Blitzer, physician; Dr. Dragica Visnjevac Fink, psychologist; and Dr. Andrea Herschorn, physician. The GLA assessors determined that the applicant had a 59% WPI.

[8] The respondent relies on the multidisciplinary CAT assessments and summary, dated January 9, 2024, of Dr. Howard Platnick, family physician; Dr. Gary Moddel, neurologist; Dr. Joel Eisen, psychologist; and Ms. Anghela Sivananthan, occupational therapist, to conclude that the applicant has sustained a 5% WPI.

[9] The following chart summarizes the WPI ratings assigned by each parties' assessors under Criteria 6.

Impairment	**Applicant's WPI**	**Respondent WPI**
Total spine impairment	15-28% Dr. Blitzer	
Total upper extremity impairment	11% Dr. Blitzer	0% Dr. Platnick
Total lower extremity impairment	7% Dr. Blitzer	0% Dr. Platnick
Headaches impairment	10-16% Dr. Blitzer	0% Dr. Platnick/Dr. Moddel
Jaw/TMJ/mastication impairment	2% Dr. Blitzer	
Sleep/fatigue impairment	7% Dr. Blitzer	
Neurocognitive mental status impairment	5% Dr. Blitzer	0% Dr. Moddel
Tinnitus/hearing impairment	2% Dr. Blitzer	0% Dr. Platnick
Adjustments for treatment	3% Dr. Blitzer	3% Dr. Platnick

[10] In accordance with the chart above, the parties agree that the applicant has sustained a 3% WPI for adjustment for effect of treatment or lack of treatment (medication use). Therefore, my analysis will focus on the medical evidence of the areas of disagreement, as outlined below.

Total Spine Impairment

[11] I find the applicant has established a 15% WPI of total spine impairment.

[12] The applicant relies on the report of Dr. Steve Blitzer, dated June 7, 2022, to support that her spinal impairments span the cervicothoracic, thoracic, and lumbosacral regions, resulting in chronic pain, paresthesia, and marked restrictions in mobility and range of motion.

[13] Dr. Blitzer reports tenderness of the upper half of the applicant's thoracic spine in the midline, both sides of the upper thoracic back, lumbar paravertebral area, both upper SI joints, and to the neck posteriorly. Dr. Blitzer reports lumbar extension of 5-10 degrees, and cervical extension was 30 degrees, with rotation to the right at 25 degrees and left at 20 degrees.

[14] Dr. Blitzer reports the applicant has cervical spine-cervicothoracic spine impairment and would fit at least the DRE impairment category II, a 5% WPI; thoracic spine impairment-thoracolumbar spine impairment would be DRE impairment category II, 5% WPI; and lumbar spine-lumbosacral spine impairment would be a DRE impairment category II, 5% WPI. Dr. Blitzer notes that the applicant has pain and paresthesia symptoms in both upper extremities and lower extremities. Dr. Blitzer indicates that if there were radiculopathy, the cervicothoracic spine impairment would be DRE impairment category III which is 15% WPI, and if related to local joint problems, the lumbosacral DRE impairment category II which is 10% WPI.

[15] Conversely, Dr. Platnick reported that the applicant has 50% reduction globally in cervical range of motion with guarding, resistance and end-range reports of pain. This assessor reported the applicant was self-limited during this maneuver. Dr. Platnick also reported there was 50% reduction globally in lumbosacral range of motion with end-range reports of pain and the applicant appeared guarded/self-limited. Dr. Platnick reported that while the applicant has sustained cervical myofascial strain – WAD II, and lumbosacral myofascial strain, the applicant's reports of neck pain and back pain with minimal clinical findings results in a DRE Cervicothroacic Category I: Complaints or Symptoms, 0% WPI, and DRE Lumbosacral Category I: Complaints or Symptoms, 0% WPI. Dr. Platnick does not opine on thoracic spine impairment.

[16] The AMA Guides identify a DRE Impairment Category II as a minor impairment: clinical signs of lumbar injury/neck injury/thoracolumbar injury are present without radiculopathy or loss of motion segment integrity. I find that it is more probable than not that the applicant has sustained a minor impairment, given the objective testing performed by both Dr. Platnick and Dr. Blitzer, and their subsequent diagnosis. Therefore, taking into consideration the definition of provided by the AMA Guides and the evidence before me, I prefer the rating of assigned by Dr. Blitzer.

[17] However, I agree with the respondent's position that case law and the AMA Guides indicate that assessors should use their clinical judgment in selecting a precise rating within a range. The respondent submits that Dr. Blitzer's inappropriate use of ranges skewed the overall WPI rating because Dr. Herschorn, who completed the CAT impairment rating on behalf of the applicant with input from the other assessors, used the highest number in the ranges provided by Dr. Blitzer, without explanation. Neither Dr. Blitzer nor Dr. Herschorn provide an explanation as to why the highest range of the scores provided was used to calculate the total WPI.

[18] I am also unpersuaded by the higher rating assigned by Dr. Blitzer because it is centred around the assumption of radiculopathy and local joint problems. In my view, this is not absolute and not based on objective medical testing. Therefore, while I accept that the applicant has spine impairment, I find that the use of the lower percentage to be the most accurate when calculating the applicant's total WPI.

[19] Therefore, I find that the applicant has sustained, on a balance of probabilities, a 15% WPI on total spine impairment.

Total upper extremity Impairment and lower extremity impairment

[20] I find that the applicant has established a total upper extremity impairment of 11% WPI and total lower extremity impairment of 7% WPI.

[21] The applicant reports to both Dr. Blitzer and Dr. Platnick in support of the submission that as a result of the accident, she has sustained bilateral shoulder pain and left ankle pain.

[22] Dr. Blitzer reports the applicant's shoulder range of movement was reduced bilaterally. Dr. Blitzer opines right shoulder impairment for flexion 120 degrees is 4%; for abduction 100 degree is 4%; for adduction 30 degrees is 1%; combined is a 9% impairment of the upper extremity. Left shoulder impairment for flexion of

100 degrees is 5%; for abduction 90 degrees is 4%; for adduction 20 degrees is 1% impairment; combined is a 10% impairment of the upper extremity. Dr. Blitzer opines that left and right combined equals a 11% WPI.

[23] With respect to the lower extremity impairment, Dr. Blitzer reports the applicant has bilateral patellofemoral irritation. Dr. Blitzer opines that the minimum impairment without joint space narrowing is 2% WPI and is applicable to both knees. Dr. Blitzer also found decreased range of movement to the left ankle assigning a 3% WPI in the mild category. Together, Dr. Blitzer opined a combined lower extremity impairment of 7% WPI.

[24] Dr. Platnick reported that physical examination indicates range of motion of the left ankle was maintained, variable shoulder range of motion testing, and that the applicant was guarded and self-limited. Dr. Platnick did not identify accident-related impairment of the shoulder or left ankle for rating. Dr. Platnick does not comment or opine on the applicant's knee complaints.

[25] When comparing the reports of both CAT assessors, I prefer that of Dr. Blitzer with respect to the upper and lower extremity ratings because I find that this assessor engages with the AMA Guides and pinpoint references his ratings in conjunction with the guidance of the AMA Guides. I also find Dr. Platnick's report, with respect to the upper and lower extremities, to be vague and lacking in detail. Dr. Platnick does not engage with the AMA Guides or explain in what way the applicant's shoulder range of motion testing was 'variable'.

[26] Therefore, I accept Dr. Blitzers ratings of total upper extremity impairment of 11% WPI and total lower extremity impairment of 7% WPI.

Headaches Impairment

[27] I find that on a balance of probabilities the applicant has sustained a 0% WPI in headache impairment.

[28] The applicant submits that following the accident, she began to experience persistent headaches.

[29] Dr. Blitzer reports that the applicant's headaches sound multifactorial and seem to be a component of occipital neuralgia. Dr. Blitzer uses two methodologies to establish the impairment rating between 10-16% WPI.

[30] Conversely, Dr. Platnick found cranial nerve assessment to be normal, including occipital nerve and greater auricular nerve testing, and occipital nerves and greater auricular nerve were not sensitive to palpation. Dr. Platnick highlights the

AMA Guides state that “the vast majority of patients with headaches will not have permanent impairments.” Dr. Platnick did not offer a rating for the applicant’s reports of headaches. Neurologist, Dr. Moddel opined that the applicant does not have greater or lesser occipital neuralgia, and from a headache point of view, her WPI would be rated 0%. Dr. Moddel further opined that the applicant’s headaches are tension and vascular in nature.

[31] I am unpersuaded by the rating assigned by Dr. Blitzer with respect to headaches because it is not clear how this assessor came to his conclusion. Dr. Blitzer did not note any abnormalities of the applicant’s cranial nerves or nystagmus. While Dr. Blitzer reported tenderness of the occiput bilaterally, the language he uses to qualify this WPI score is “sounds like” and “seem to be”. In my view, this imprecise and vague wording undermines any weight that can put to the subsequent scoring.

[32] I therefore prefer the reports of Dr. Platnick and Dr. Moddel and find that the applicant has not established a headache impairment. As such, I accept Dr. Moddel’s WPI score of 0%.

Jaw/TMJ/mastication and tinnitus/hearing impairment

[33] I find on a balance of probabilities that the applicant has sustained a 0% WPI in jaw/TMJ/mastication impairment and a 0% WPI in tinnitus/hearing impairment.

[34] While the applicant does not make specific submissions with respect to jaw/TMJ/mastication and tinnitus/hearing impairment, Dr. Blitzer found the applicant to have sustained a 2% WPI in jaw/TMJ/mastication impairment and a 2% tinnitus/hearing impairment.

[35] The respondent submits that these conditions were not substantiated by way of documentary evidence. The respondent submits that the medical evidence is absent of a tinnitus and TMJ impairments suffered as a result of the accident.

[36] Dr. Platnick does not opine on jaw/TMJ/mastication, however, reports that the applicant did not report tinnitus or difficulties with hearing and no rating would apply.

[37] I find the report of Dr. Blitzer to be vague and unpersuasive with respect to TMJ and tinnitus/hearing impairment for two reasons. First, it is not clear from Dr. Blitzer’s report if a hearing test was administered. Despite this, Dr. Blitzer does report that the applicant’s “hearing was adequate for the assessment”. As such, I

find there is a lack of evidence of objective testing to establish the alleged tinnitus/hearing impairments.

[38] Second, with respect to the jaw/TMJ, Dr. Blitzer relies on the applicant's self-reported limitation, such as avoiding eating when she has flare ups of her symptoms to prevent exacerbation. Dr. Blitzer assigns this a scale of 5-19% WPI, however, he concludes this rating would apply to the applicant intermittently. Dr. Blitzer subsequently opines "to be conservative I will just apply a rating of 2% WPI. This is subject to further review." I am not satisfied that applying a conservative percentage presents an accurate picture of the applicant's WPI in lieu of further information. Neither am I persuaded that the rating reflects this intermittent nature of her report symptoms, without further explanation. What is more, I am not pointed to any corroborating evidence that would establish the applicant has sustained TMJ or tinnitus/hearing impairment as a result of the accident.

[39] As such, I find the applicant has sustained a 0% WPI in both jaw/TMJ/mastication impairment and tinnitus/hearing impairment.

Sleep/fatigue impairment

[40] I find that the applicant has sustained a 7% WPI for sleep/fatigue impairment.

[41] The applicant submits as a result of the accident she has experienced sleep disruption.

[42] The respondent submits that while Dr. Blitzer provided impairment ratings for sleep and fatigue, these are properly covered under the mental and behavioural impairment.

[43] Dr. Platnick indicates in his CAT Rating Summary report, dated January 9, 2024, that the applicant "has reports of poor sleep and daytime fatigue. Any issues with sleep will be adequately captured in the mental and behavioural rating provided by Dr. J. Eisen (psychiatrist)." Dr. Eisen also indicates that the applicant reported impairment in her sleep due to pain, however, Dr. Eisen states "assessment under Criterion 6 is beyond the scope of my assessment." Dr. Eisen does not assign a WPI% for sleep/fatigue impairment.

[44] Given the evidence supports that the applicant has reported consistently to the various medical practitioners of her sleep disruption and given that there is no opinion provided by the respondent's assessors, I accept, on a balance of probabilities, Dr. Blitzer's rating of 7% WPI for sleep/fatigue impairment.

Neurocognitive mental status impairment

[45] I find that on a balance of probabilities the applicant has sustained a 0% WPI in neurocognitive mental status impairment.

[46] The applicant submits as a result of the accident she has sustained cognitive decline – including poor concentration and memory loss – leading to a diagnosis of post-concussion syndrome with intracranial pathology.

[47] Dr. Blitzer opined that the applicant has memory, concentration, and cognitive issues and that "they do sound subsequent to the accident." Dr. Blitzer further opined that a minimal rating regarding neurocognitive impairments would be in the range of 5%. However, I am unpersuaded by Dr. Blitzer's rating because immediately following his WPI rating, Dr. Blitzer comments "I did not evaluate cognition in detail. I would apply this rating subject to further review."

[48] Given this, I prefer the neurological CAT assessment report of Dr. Moddel, wherein he opined "there is no evidence of any neurological impairment or neurological disability, and therefore, from a neurological perspective, her WPI would be rated as 0%." Dr. Platnick affirms this rating and comments that the accident was a relatively minor rear-end collision wherein the applicant did not sustain a loss of consciousness, no head strike, no reduced level of awareness, and no retrograde or post-traumatic amnesia.

[49] Therefore, I find that the applicant has sustained a 0% WPI in neurocognitive mental status impairment.

Conclusion

[50] I find that as a result of the accident the applicant has sustained a 36% WPI under Criterion 6.

[51] In sum of my findings above, I applied the combined values chart to be used in accordance with the AMA Guides to be as follows:

Impairment	**Tribunal's Finding**
Total spine impairment	15%
Total upper extremity impairment	11%
Total lower extremity impairment	7%
Headaches impairment	0%
Jaw/TMJ/mastication impairment	0%
Sleep/fatigue impairment	7%

Neurocognitive mental status impairment	0%
Tinnitus/hearing impairment	0%
Adjustments for treatment	3%
Total	**36%**

[52] Accordingly, I find on a balance of probabilities that the applicant is not catastrophically impaired under Criterion 6.

The applicant does not meet the CAT threshold under Criterion 7

[53] To qualify for CAT status under Criterion 7, the applicant must prove that she has a combination of physical and mental or behavioural impairment ratings from medical professionals, excluding traumatic brain injury, that meet the combined 55% WPI threshold. The mental or behavioural impairment rating is determined in accordance with the methodology in Chapter 14, Section 14.6 of the *American Medical Association's Guides to the Evaluation of Permanent Impairment*, 6th Edition, 2008 (the "AMA Guides 6th Edition"), and is combined with the physical impairment WPI rating from Criterion 6 using the Combined Values Table in the AMA Guides.

[54] To obtain the WPI% rating under Chapter 14, three scales are administered by assessors to determine a person's score which include: i. the Brief Psychiatric Rating Scale ("BPRS"), ii. the Global Assessment of Function ("GAF"), and iii. the Psychiatric Impairment Rating Scale ("PIRS"). The median score is then taken from the three scales and represents a person's total WPI% from a psychological perspective.

[55] The applicant submits that she meets the CAT threshold under Criterion 7 because she sustained a combined 75% WPI [59+40]. Dr. Herschorn attributed a 40% WPI with respect to the applicant's "level of impairment from a psychological basis" relying on the OT report of Ms. MacFayden.

[56] Conversely, the respondent CAT assessors found the applicant to have sustained a combined 15% WPI [10% for mental and behavioural disorder, and 3% WPI for medication use under criterion 6].

[57] It is unclear how Dr. Herschorn came to the conclusion that the applicant's mental or behavioural impairment rating was scored at 40%. CAT psychological assessor, Dr. Fink did not administer the BPRS, GAF, or PIRS tests. I note that OT Ms. MacFayden comments on the PIRS in her report dated September 19, 2022. Even then, Dr. Herschorn does not provide a detailed analysis of how she

derived the 40% WPI impairment, nor does her report indicate that the three scales were administered in accordance with the AMA Guides 6th Edition.

[58] By contrast, the respondent psychological CAT assessor, Dr. Eisen utilized the BPRS, GAF, and PIRS scales in order to determine the applicant's score. Dr. Eisen reported the following values:

i. BPRS – 30% WPI

ii. GAF – 10% WPI

iii. PIRS – 10% WPI

[59] The median score was determined to be 10% WPI. I prefer the results derived by Dr. Eisen because they were obtained using the psychometric testing required pursuant to chapter 14 of the AMA Guides 6th Edition.

[60] Having found that the applicant has sustained a 36% WPI rating under Criterion 6 for his physical impairments, I will add 10% WPI, attributable to the applicant's mental or behavioral impairment in accordance with the combined values chart.

[61] This results in 36% + 10% = 42% WPI under Criterion 7 in accordance with the combined values chart provided by the AMA Guides 6th Edition.

[62] Accordingly, I find that the applicant has not met her onus to prove that she is catastrophically impaired in accordance with the AMA Guides 6th Edition and AMA Guides under Criterion 7.

The applicant does not meet the CAT threshold under Criterion 8

[63] To qualify for CAT status under Criterion 8, the applicant must prove on a balance of probabilities that, as a result of the accident and due to a mental or behavioural disorder, she suffers from a marked ("Class 4") impairment in at least three of the four domains of functioning, or at least one extreme ("Class 5") impairment, in accordance with the AMA Guides. The AMA Guides set out the four domains and the levels of impairment as illustrated in the chart below.

Domain or Aspect of Functioning	**Class 1: No Impairment**	**Class 2: Mild Impairment**	**Class 3: Moderate Impairment**	**Class 4: Marked Impairment**	**Class 5: Extreme Impairment**
Activities of Daily Living	No impairment is noted	Impairment levels are compatible with most useful functioning	Impairment levels are compatible with some, but not all useful functioning	Impairment levels significantly impede useful functioning	Impairment levels preclude useful functioning
Social Functioning					
Concentration, Persistence and Pace					
Adaptation (Deterioration in a work-like setting)					

[64] I have relied on the applicant's reports to various medical practitioners, and their observations, to determine her class of impairment in each of the Criterion 8 domains. For the following reasons, I find that applicant has the following ratings:

i. Activities of daily living: Moderate (Class 3) Impairment

ii. Social Functioning: Moderate (Class 3) Impairment

iii. Concentration, Persistence, and Pace: Moderate (Class 3) Impairment

iv. Work Adaptation: Moderate (Class 3) Impairment

[65] The applicant's position is that she meets the criteria for a CAT determination under Criterion 8 because she has a marked (class 4) impairment in activities of daily living, social functioning, and concentration, persistence and pace, and an extreme (class 5) impairment in work adaptation. The applicant relies on the psychological assessment of Dr. Dragica Visnjevac Fink, dated June 17, 2022, and the Occupational Therapy (OT) Mental and Behavioural report of Lori MacFadyen, dated September 29, 2022.

[66] The respondent's position is that the applicant's impairments do not meet the test under Criterion 8 because she does not have a marked impairment in three

domains, nor an extreme impairment. The respondent relies on the s. 44 psychiatry report of Dr. Joel Eisen, dated January 9, 2024, wherein Dr. Eisen opined the applicant displayed a moderate (class 3) impairment in all domains. The respondent also submits that it is inappropriate and contrary to the AMA Guides for an OT to provide ratings under criterion 8.

[67] As I have indicated above, s. 3.1(8) of the *Schedule* requires the ratings under Criterion 8 to be *due to a mental or behavioural disorder.* It is well established that an occupational therapist cannot diagnose mental or behavioural disorders. Considering this, I assign less weight to the occupational therapy report of Ms. MacFadyen with respect to her assignment of the applicant's impairment class under the criterion 8 domains.

[68] I also assign little weight to the psychological assessment of Dr. Fink with respect to the assignment of ratings because this assessor neither analyzed the report of Ms. MacFayden nor ascribed ratings under criterion 8.

[69] In turn, I give significant weight to the report of Dr. Eisen who, in addition to reviewing the OT report of Ms. Anghela Sivananthan, dated January 9, 2024, and the OT report of Ms. MacFayden, ascribed ratings under all domains of criterion 8.

[70] The applicant's position that she meets the criteria for a CAT determination under criterion 8 is founded in the physician review of Dr. Andrea Herschorn, dated October 3, 2022, wherein Dr. Herschorn reviewed the opinions of both Dr. Fink and Ms. MacFayden, and affirmed the assigned class impairments proffered by Ms. MacFayden.

Activities of Daily Living

[71] I find that the applicant has a moderate (class 3) impairment in the domain of activities of daily living.

[72] The AMA Guides identify activities of daily living to include such activities as self-care, personal hygiene, communication, ambulation, travel, sleep, and social and recreational activities. The AMA Guides indicate that these activities are to be assessed in relation to "the context of the individual's overall situation, the quality of these activities is judged by their independence, appropriateness, effectiveness and sustainability".

[73] Dr. Eisen reports that while the applicant reports impairment in many of the areas of activities of daily living, the applicant remains independent in her functioning.

Dr. Eisen reports the applicant has lived alone for about two years since the accident, does not appear to be dependent on anybody for functioning, and is independent in her self-care, activities of daily living, and household maintenance. Dr. Fink also reports that the applicant is independent with matters of self-care, although lacks motivation to partake in tasks. Dr. Fink does not specify what specific tasks the applicant lacks motivation.

[74] Dr. Eisen also reports that the applicant has been capable of working on a part-time basis in her job and has been capable of travelling extensively around the world. Dr. Eisen ultimately opines that it is possible that the applicant has experienced a decline in functioning in this domain as a result of injuries sustained in the accident, but she retains "much useful functioning in this domain."

[75] I accept that the evidence supports that the applicant is not engaged in self-care and housekeeping tasks at the level she used to, however, the OT report of Ms. MacFayden indicates that the applicant is able to independently bathe, albeit less frequently, does laundry and dishwashing, can take small bags to the garbage, and goes on walks around her condo building. The OT report of Anghela Sivananthan, dated January 9, 2024, indicates the applicant is able to dress independently, engages in light meal preparation, is able to manage herself in emergency situations, continues to use the toilet independently, and independently renews and picks up her medication and ingests same on a daily basis. I find that the majority of tasks the applicant has reported to her various medical assessors as not being able to complete are with respect to her physical injuries, rather than a mental or behavioural limitation. For example, she reported to Dr. Fink that she is unable to clean her home due to pain and mobility limitations, she reported to Ms. MacFayden that she only sponge bathes because she doesn't have balance, and she reported to Ms. Sivananthan that she is limited with grooming, meal preparation, mobility, and hygiene (bathroom/bedroom cleaning, and clothing care) due to pain in her sternum, shoulders, left leg, back, and neck.

[76] Given the foregoing, I find that the applicant has not established, on a balance of probabilities, a marked (class 4) impairment in activates of daily living.

Social Function

[77] I find that the applicant has a moderate (class 3) impairment in the domain of social function.

[78] The AMA Guides identifies social functioning as “an individual’s capacity to interact appropriately and communicate effectively with other individuals. Social functioning includes the ability to get along with others, such as family members, friends, neighbors, grocery clerks, landlords, or bus drivers. Impaired social functioning may be demonstrated by a history of altercations, evictions, firings, fear of strangers, avoidance of interpersonal relationships, social isolation, or similar events or characteristics.” However, the AMA Guides also indicate that “strength in social functioning may be documented by an individual’s ability to initiate social contact with others, communicate clearly with others, and interact and actively participate in group activities. Cooperative behavior, consideration for others, awareness of others’ sensitivities, and social maturity also need to be considered.”

[79] I accept that the evidence supports the applicant has had separated from her partner following the accident, that she has tension in her relationships with her grandchildren due to religious reasons, and that she has lost one friend who lives in St. Petersburg because of the accident. However, Dr. Eisen indicates that the applicant stated she feels close to her grandchildren and loves her three great-grandchildren. The applicant also reported that she interacts appropriately with employes of her travel agency, and with previous clients including her realty clients. Dr. Eisen also reports the applicant interacts appropriately and congenially with service providers. Dr. Eisen reports that the applicant has also resumed living with her ex-partner, albeit in separate bedrooms.

[80] I am unpersuaded by the report of Dr. Fink wherein it is reported that the applicant “has not resumed engaging in any of leisure and social activities.” This is not supported by the evidence tendered by the applicant. The clinical notes and records (CNRs) of treating psychologist, Dr. Linda M. Gruson indicate that post-accident, the applicant went on a business trip to New Zealand, Australia, and South America, has friends in Russia, and enjoys arts, ballet, and paintings. Dr. Eisen reports that the applicant has travelled extensively since the accident. The applicant reported to Dr. Eisen that she had travelled to St. Petersburg in 2018/2019 for about a week and stayed with friends, she travelled to Switzerland on a tour that she organized with friends, to New Zealand and Australia on a business trip for two weeks with other friends, and to South America on a trip organized by a friend. In the same way, I am unpersuaded by the OT report of Ms. MacFayden with respect to the applicant’s social functioning, because Ms. MacFayden’s findings are largely based on the applicant’s self-reported social interactions. While Ms. MacFayden does not comment on her observation of the applicant’s interactions with store clerks during the functional testing “grocery shopping”, it appears from the activity summary that the applicant was able to

effectively ask/communicate with the store clerks for the location of a grocery item. OT assessor, Ms. Sivananthan reported more specifically that the applicant interacted appropriately and followed the rules of speaking to store associates during her community activity.

[81] Given the AMA Guides description of impaired versus strength, and in consideration of the evidence before me, I prefer the opinion of Dr. Eisen, in that the applicant has a moderate (class 3) impairment in the domain of social functioning.

[82] I therefore find that the applicant has not established, on a balance of probabilities, a marked (class 4) impairment in activates of daily living.

Concentration, Persistence, and Pace

[83] I find that the applicant has a moderate (class 3) impairment in the domain of concentration, persistence, and pace.

[84] The AMA Guides indicate that concentration, persistence, and pace, refer to the ability to sustain focused attention long enough to permit the timely completion of tasks commonly found in work settings. In activities of daily living, concentration, may be reflected in terms of ability to complete everyday household tasks.

[85] Both OT assessors report that the applicant made several mistakes when completing testing. Ms. MacFayden reported that cognitive tasks typically took the applicant twice as long to complete. She could not plan ahead, including planning a meal without support and prompting, or planning a direct and efficient shopping route through the store to be more efficient. Ms. MacFayden further reported that the applicant did not demonstrate the ability to sustain focused attention long enough to permit the timely completion of tasks. OT assessor, Ms. Sivananthan reported that the applicant completed only 3 of the 10 tasks accurately and made errors on some tasks. Ms. Sivananthan reported the applicant scored a 18/30 on the Montreal Cognitive Assessment Version 7.1, which is below the normative average of 26/30 or greater.

[86] I give little weight to the report of Dr. Fink with respect to the applicant's cognitive affect, because the cognitive challenges identified were self-reported by the applicant as this assessor did not review or opine on the findings of the OT assessors. What is more, Dr. Fink notes in her report that the applicant's "ability to attend and respond to questions appeared intact, her speech content was coherent, relatively goal directed, and throughout the psychological interview she

was able to stay on or return to the topic discussed with occasional need for redirection."

[87] Having considered the findings of the OT assessors, Dr. Eisen found the applicant to have a moderate (class 3) impairment. Dr. Eisen reports that the applicant remembers to attend appointments generally; remembers to take her medications; has done research on the Internet to find alternative health remedies for various medical conditions; has organized various trips for business and social purposes around the world; has travelled extensively; continues to work albeit on a limited basis; has been capable of purchasing and selling her own property; manages a rental property and attends to problems at the rental property including leaks and air conditioning issues; and has lived alone for more than two years. Dr. Eisen untimely opined that the applicant retains much useful functioning in this domain.

[88] Given the AMA Guides description of this domain, and in consideration of the evidence before me, I prefer the opinion of Dr. Eisen and find that the applicant has a moderate (class 3) impairment in the domain of concentration, pace, and persistence.

[89] Therefore, given the evidence before me, I find that the applicant has not established, on a balance of probabilities, a marked (class 4) impairment under the domain of concentration, persistence, and pace.

Adaptation

[90] I find that the applicant has a moderate (class 3) impairment in the domain of adaptation.

[91] The AMA Guides indicate that this domain refers the ability to adapt to stressful circumstances. "In the face of such circumstances the individual may withdraw from the situation or experience exacerbation of signs and symptoms of a mental disorder; that is, decompensate and have difficulty maintaining activities of daily living, continuing social relationships, and completing tasks. Stresses common to the work environment include attendance, making decisions, scheduling, completing tasks, and interacting with supervisors and peers."

[92] I am unpersuaded by the impairment class attributed by Dr. Herschorn, in that the applicant has sustained an extreme (class 5) impairment in the domain of adaptation, because the applicant's own reporting suggest otherwise.

[93] OT assessor Ms. MacFayden reports that the applicant continues to own a travel agency, has employees working on a commission basis, will do occasional paperwork – mostly from home, and will complete 1 hour of work per week such as calculating sales. The applicant has reported to Dr. Eisen that she was able to act as a realtor in the purchase and sale of her property, operates a rental property and deals with various complaints brought to her attention by the renters, and continues to manage staff of the travel agency. On the face of it, and in my view, this does not align with the severe (class 5) impairment, in that the applicant is precluded from useful functioning in adaptation as defined by the AMA Guides.

[94] I find the applicant has not established, on a balance of probabilities, that she has an extreme (class 5) impairment in the domain of adaptation.

Conclusion

[95] Given the above, I find that the applicant has not met her onus to prove that she is catastrophically impaired in accordance with the AMA Guides under Criterion 8.

ORDER

[96] I find that:

i. The applicant is not catastrophically impaired under criterion 6, 7 and 8; and

ii. The application is dismissed.

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Nadia Mauro
Adjudicator