



**Citation: Hussein v. Aviva Insurance Company of Canada, 2026 ONLAT 25-001836/AABS**

**Licence Appeal Tribunal File Number: 25-001836/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:

**Yasmin Nur Hussein**

**Applicant**

and

**Aviva Insurance Company of Canada**

**Respondent**

**DECISION**

**ADJUDICATOR: Jeff Chatterton**

**APPEARANCES:**

For the Applicant: Marie Kwok, Counsel

For the Respondent: Selina Ferenac, Counsel

**HEARD: In Writing**

## OVERVIEW

[1] Yasmin Nur Hussein, the applicant, was involved in an automobile accident on March 22, 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, Aviva Insurance Company of Canada, 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 \$2,200.00 (\$5,685.10 less \$3,485.10 approved) for physiotherapy services, proposed by All Health Medical Centre in an OCF-18/treatment plan (“treatment plan”) dated May 6, 2024?
  - iii. Is the applicant entitled to \$4,640.48 for physiotherapy services, proposed by HealthMax Etobicoke in a treatment plan dated August 6, 2024?
  - iv. Is the applicant entitled to \$2,670.00 for neurological assessment, proposed by All Health Medical Centre in a treatment plan dated October 11, 2024?
  - v. Is the applicant entitled to \$2,486.00 for an orthopaedic assessment, proposed by Mississauga Rehab in a treatment plan dated March 3, 2025?
  - vi. Is the applicant entitled to \$21,428.44 for multidisciplinary treatment, proposed by Mississauga Rehab in a treatment plan dated May 23, 2025?
  - vii. Is the applicant entitled to \$15,169.50 for multidisciplinary treatment, proposed by All Health Medical Centre in a treatment plan dated March 4, 2025?

## RESULT

- [3] The applicant has not met her onus to demonstrate she should be removed from the MIG, and is therefore subject to the MIG and its \$3,500.00 treatment limit.
- [4] As I have ruled that the applicant is held to the MIG, it is not necessary for me to review the treatment plans in dispute to determine if they are reasonable and necessary.

## PROCEDURAL ISSUES

- [5] The respondent has raised an objection to tabs 10, 11 and 12 in the applicant's documentary evidence provided to the Tribunal. This is over 300 pages of medical evidence. The respondent argues that the:
- Clinical Notes and Records ("CNRs") from Cortellucci Vaughan Hospital, from December 6 2024 to the date of the case conference.
  - CNRs from Dr. Sasan Iraj from January 8, 2025 to the date of the case conference, and;
  - CNRs from Healthmax Physio from December 17, 2024 to the date of the case conference.

were all filed well after the deadline set out in the Case Conference Report and Order dated June 12 2025. Specifically, all three tabs were included in the applicant's submissions but not shared with the respondent beforehand.

- [6] The respondent argues that because the documents in question were not provided to the respondent, it has not had an opportunity to review them, and the documents should be excluded from evidence. The respondent has asked me to rule the documents as inadmissible.
- [7] The applicant argues that the respondent has sufficient evidence to proceed, and they did not provide an explanation as to why they paid Income Replacement Benefits if they were missing critically important CNRs.
- [8] I do not find the applicant's response persuasive, as IRB's are not an issue in dispute in front of this Tribunal. The applicant has provided no other reasonable explanation as to why the documents were not exchanged in keeping with the CCRO.

- [9] With regard to the factors set out in 9.3 of the *Licence Appeal Tribunal Rules, 2023*, I find that the prejudice to the applicant from their exclusion outweighs any prejudice to the respondent from their late production. This is because the applicant makes multiple references to the documents throughout her submissions. So therefore, while I am alive to the claim from the respondent that it has been unfairly prejudiced by the late exchange of documents because it did not have an opportunity to review, I find the prejudice to the applicant would outweigh the prejudice to the respondent if I were to exclude this evidence.
- [10] For this reason, I am denying the respondent's request to exclude these documents.

## **ANALYSIS**

### ***Should the applicant be removed from the MIG?***

- [11] The applicant has not met her onus to demonstrate she should be removed from the MIG.
- [12] 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."
- [13] 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.
- [14] The applicant claims she should be removed from the MIG because she suffers from chronic pain and because she has suffered a traumatic brain injury causing chronic headaches.

### ***Chronic Pain***

- [15] The applicant argues she suffers from accident-related chronic pain syndrome. To support her claim, she relies on the CNRs of her family physician, Dr. Sasan Iraj, and Orthopedic Surgeon, Dr. Trevor Ogilvie-Harris.

- [16] Dr. Ogilvie Harris offered a diagnosis of chronic pain syndrome as a result of the accident in his s.25 Orthopedic Report, conducted on March 31, 2025. Dr. Ogilvie-Harris describes pain in the applicant's cervical spine, knees and lower back.
- [17] He reports that the applicant has met five of the six criteria established by the *American Medical Association's Guides to the Evaluation of Permanent Impairment (6<sup>th</sup> Edition)*.
- [18] Specifically, Dr. Ogilvie-Harris reports she meets the following criteria:
- i. Excessive dependence on her family – for chores and average daily living.
  - ii. Secondary physical deconditioning – she no longer goes for long walks.
  - iii. Withdrawal from social milieu – she doesn't attend parks, barbeques or outings and only goes to the mosque on rare occasion.
  - iv. Failure to restore pre-injury function, only working reduced hours.
  - v. Psycho-social sequelae, displaying depression and illness behaviours.
- [19] Although not referenced in the *Schedule*, the Tribunal has established that the AMA Guides are a helpful analytical tool in determining chronic pain complaints.
- [20] The respondent disagrees that the applicant is suffering from chronic pain, and relies on a s.44 Physician Assessment Report (and subsequent paper reviews) from GP Dr. Ahmad Belfon, dated July 3, 2024, July 22, 2024, and June 3, 2025. Dr. Belfon reports that the applicant was suffering from routine sprain and strain type injuries, and that while the applicant was eligible for Income Replacement Benefits due to the physical nature of the applicant's job, she was still suffering from a minor injury.
- [21] The respondent further depends on a psychological report by Psychologist Dr. Marc Mandel, dated June 12 2025, who reported that the applicant did not meet any of the psycho-social symptoms necessary to diagnose chronic pain syndrome.
- [22] The respondent has also conducted its own analysis of the applicant's medical symptoms based on the AMA Guides, and argues she does not meet any of the six criteria. Specifically, they submit:

- i. She does not use prescription pharmaceuticals.
- ii. She does not display excessive dependence on healthcare providers, spouse or family – arguing she in fact is currently working two jobs.
- iii. In terms of physical deconditioning, she reported to her family GP on August 24, 2024 that her knee was asymptomatic, she continues to engage in daily activities like cooking and cleaning, was returning to work, and no fear-avoidance because she continues to drive.
- iv. Withdrawal from social milieu is only very slight – as she does continue to be social with friends and family, but not as often.
- v. Psychosocial sequelae are non-existent. She has not reported any psychological issues to her family physician, and Psychologist Dr. Mandel reports that no psychological treatments are needed.

[23] I put reduced weight on Dr. Ogilvie-Harris' diagnosis because I do not find it is corroborated by the medical evidence I have been presented with.

[24] I refer to Dr. Iraj's records because Dr. Iraj has a long term objective relationship with the applicant and will be the most familiar with the applicant's medical history. While the onus is on the applicant to establish entitlement to be removed from the MIG, I have not been led to any objective evidence from Dr. Iraj which would corroborate the applicant's claims or support Ogilvie-Harris's diagnosis.

[25] The sole reference to pain complaints made to Dr. Iraj is dated May 28, 2024, when the applicant reported pain in the knee and upper body. As noted above, in her visit in August, she reports her knee was asymptomatic.

[26] I do note that there are over 150 pages of Dr. Iraj's notes and records which were provided in the applicant's submissions. The sole specific reference in the applicant's submissions refers specifically to page 156, but that is the cover and does not contain any specific reference to pain. While I have attempted to review every page, I have not been led to any further pain-related complaints to the applicant's family physician.

[27] Furthermore, the test to establish chronic pain is a two-part test, as pain in and of itself would not remove an applicant from the MIG. The requirement to be removed from the MIG is chronic pain with a functional impairment. The applicant has not provided submissions as to the nature of the applicant's functional impairment related to accident-related chronic pain.

- [28] In summary, while I acknowledge that Dr. Ogilvie-Harris has made a diagnosis of chronic pain, I put reduced weight on that diagnosis because I find it is not corroborated by the medical evidence put before me.
- [29] I find the applicant has not, on the balance of probabilities, met her onus to establish she should be removed from the MIG on the basis of chronic pain.

### ***Traumatic Brain Injury***

- [30] The applicant has not met her onus to demonstrate she should be removed from the MIG due to a traumatic brain injury.
- [31] The applicant argues she has sustained a traumatic brain injury, causing her to experience headaches up to three times per week. To support her claim, she relies on the s.25 Neurological Report authored by Neurosurgeon Dr. Neilank Jha, on February 16, 2025. Dr. Jha writes “as a direct result of the subject accident, Ms. Yasmin Nur Hussein sustained a mild Traumatic Brain Injury (mTBI)”.
- [32] The respondent disagrees with this diagnosis, and relies upon a s.44 Neurological Assessment Report, conducted January 13, 2025 by Neurologist Dr. Galit Kleiner. Dr. Kleiner wrote “she sustained no neurological impairment, has no neurological complaint, and her neurological exam is entirely normal.”
- [33] I put less weight on the applicant’s evidence because Dr. Jha admitted that there was a language barrier during his examination, where he asked multiple questions of the applicant. It is unclear to me what challenges the barrier posed to Dr. Jha in the administration of his exam, however his diagnosis of a mTBI was reported to be based on “the mechanism of injury, a review of the medical records provided, and my own assessment and examination.” Dr. Kleiner employed the services of a Somali language interpreter and therefore did not experience language barrier issues.
- [34] I also put reduced weight on Dr. Jha’s report because I find it is not supported by corroborating objective evidence. As noted earlier, I also find there is a lack of specific complaints to the applicant’s family physician regarding mild brain injury symptoms. Although the applicant claims to be suffering from headaches 3 times a week, I have not been led to a specific reference in Dr. Ijari’s CNR’s to corroborate this. Again, as per the applicant’s submission, she has led me to page 156, which is the cover page.

- [35] Despite not being led to any specific evidence, I have reviewed all of Dr. Ijari's CNR's. I note that the applicant did not make complaints of headaches on her first visit to Dr. Irajji after the accident. The only reference to brain injury symptoms at her visit on May 28, 2024 was "She is no longer dizzy and feels good enough to resume working."
- [36] The applicant visited Dr. Irajji again July 8 2024, July 13 2024, August 24 2024, and September 16 2024. There is no reference to any headaches or brain injury symptoms in those visits.
- [37] I put reduced weight on Dr. Jha's report because, again, it is not corroborated by the medical evidence put before me. Although the applicant submits that she is suffering from three headaches per week, I have carefully reviewed the medical records presented to me and do not find that to be supported by the preponderance of evidence.
- [38] I find the applicant has not on the balance of probabilities met her onus to demonstrate she should be removed from the MIG due to a traumatic brain injury.

### ***Treatment Plans***


- [39] As I have ruled that the applicant is being held to the MIG, it is not necessary for me to review the treatment plans to determine if they are reasonable and necessary.

### **ORDER**

- [40] The application is dismissed:
- i. The applicant has not met her onus to demonstrate she should be removed from the MIG, and is therefore subject to the \$3,500.00 treatment limit.

- ii. As I have ruled that the applicant is held to the MIG, it is not necessary for me to review the treatment plans to determine if they are reasonable and necessary.

**Released: June 17, 2026**



---

**Jeff Chatterton  
Adjudicator**