Citation: Keshawan v. Definity Insurance Company, 2026 ONLAT 25-002393/AABS

Licence Appeal Tribunal File Number: 25-002393/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:

Rajendran Keshawan

Applicant

and

Definity Insurance Company

Respondent

DECISION

ADJUDICATOR: **Aric Bhargava**

APPEARANCES:

For the Applicant: Renata Szady, Paralegal

For the Respondent: Purva Vaidya, Counsel

HEARD: **By way of written submissions**

OVERVIEW

[1] Rajendran Keshawan, the applicant, was involved in an automobile accident on November 9, 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, Definity 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 section 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 the treatments proposed by GTA Chiropractic Centre, in a treatment plan/OCF-18 ("plan") as follows:

a) $1,309.08 ($2,340.38 less $1,031.30 approved) for chiropractic services, in a plan submitted February 1, 2023?

b) $4,249.00 for chiropractic services, in a plan submitted March 31, 2023?

c) $2,200.00 for chiropractic services, in a plan submitted April 13, 2023?

d) $4,049.00 for chiropractic services, in a plan submitted June 17, 2023?

e) $3,732.62 for chiropractic services, in a plan submitted November 13, 2023?

f) $4,049.00 for chiropractic services in a plan submitted December 20, 2023?

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

iv. Is the respondent liable to pay an award under section 10 of Regulation 664 because it unreasonably withheld or delayed payments to the applicant?

RESULT

[3] The applicant's injuries are predominantly minor, as defined by the *Schedule*, therefore the applicant is subject to the MIG, and the MIG limit applies.

[4] As the applicant is bound by the MIG, it is not necessary to consider whether the treatment plans in dispute are reasonable and necessary.

[5] As there are no overdue benefits, the applicant is not entitled to interest.

[6] The respondent is not liable to pay an award.

PROCEDURAL ISSUES

[7] The respondent's motion to exclude the applicant's reply submissions, or in the alternative, file a sur-reply is denied.

[8] The respondent filed a motion dated January 7, 2026 that included two requests: i) that the Tribunal exclude the applicant's reply submission because it introduces new evidence, and ii) in the alternative, it requests leave to file a sur-reply grounded in Rule 3.1 of the *Licence Appeal Tribunal Rules*, 2023 (the "Rules").

Respondent's motion to exclude the applicant's reply submissions

[9] The respondent's request to exclude the applicant's reply submissions is denied.

[10] The respondent submits that the applicant adduced new evidence in his reply submissions and has therefore contravened the Tribunal's rules in relation to the inclusion of new evidence at a hearing. The respondent argues that this is highly prejudicial to the respondent because it did not have the opportunity to respond to new evidence that has been tendered as part of a reply. The respondent's submissions identify the new evidence on reply as being the clinical notes and records ("CNRs") from Morningside Walk-in Clinic "among other documents," however, the respondent has not identified what other documents it is referring to. The respondent acknowledges in its Notice of Motion that the CNRs were received September 22, 2025 and this is beyond the 45-day document exchange deadline outlined in the CCRO.

[11] I find the CNRs were late served by the applicant. The applicant submits his evidence is within production deadlines and the deadline for productions was September 22, 2025, that is 90 days from the date of the Case Conference Report and Order ("CCRO"), June 24, 2025 and relies on paragraph [13] of the CCRO. Here, the applicant appears to be referring to the deadline for responsive

documents, and the deadline for productions is 45 days from June 24, 2025. The applicant submits the CNRs from Morningside Walk-in Clinic were received on September 22, 2025 and served on the respondent the same day. The applicant did not direct me to evidence to support the assertion that the CNRs were received and served on the same day, however, I accept the assertion because both parties relied on the CNRs in their submissions. The applicant also argues that the CNRs of Morningside Walk-in Clinic were also relied upon in his original submissions, not just the reply submissions.

[12] The respondent argues the late productions should not be admissible due to the prejudice caused to it by not being afforded the opportunity to respond to the productions. The respondent relies on *16-000879 v. Unifund Assurance Company*, 2017 CanLII 9811 (ON LAT), at paras [4], [8], and [9], *Chopra v. Economical Mutual Insurance Company*, 2025 CanLII 72406 (ON LAT), at para [7]; and *Ahmed v. Economical Mutual Insurance Company*, 2023 CanLII 50618 (ON LAT) at paras [2] – [6]. While I am not bound by prior Tribunal decisions, I find the cases referred to by the respondent are distinguishable because these matters refer to productions that are entirely new and here the productions are in continuity of the previously expressed opinions and not brand new evidence that the respondent needs to contend with, here the productions were requested September 22, 2025 after the deadlines noted in the CCRO, or where the applicant failed to make timely submissions. I also find that the respondent suffers very little prejudice because it was in possession of the productions for three months before submitting its submissions, and in my view, that is sufficient time to consider the productions.

[13] I find that the applicant's reply submissions did not include new evidence and should not be struck because it would cause significant prejudice to the applicant by impacting his ability to address his claim that he should be removed from the MIG due to his alleged chronic pain. Conversely, I find the prejudice to the respondent to be minimal because the productions were served on the respondent three months ahead of its submissions due date and the respondent also relies on the same records in its submissions at various tabs including tab 29, tab 38, tab 39, and tabs 15 to 17.

Respondent's motion to file a sur-reply

[14] Rule 3.1 of the *Rules* requires a liberal interpretation of the *Rules* to facilitate a fair, open and accessible process and to allow for effective participation by all parties.

[15] The respondent's basis for filing a sur-reply is on the applicant's adducing new evidence in his reply submissions. As I have found that there is no new evidence or arguments on reply, there is no basis for a sur-reply.

ANALYSIS

Application of the Minor Injury Guideline

[16] I find the applicant has not established that his injuries fall outside of the MIG.

[17] 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."

[18] The applicant may be removed from the MIG if he can establish his accident-related injuries fall outside of the MIG or, under section 18(2), that he has a documented pre-existing condition combined with compelling medical evidence stating that the condition precludes maximal recovery if he is kept within 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.

[19] The applicant submits he should be removed from the MIG on the grounds of chronic pain with a functional impairment, pre-existing injuries that prevent maximal recovery, and psychological impairments. The applicant submits that his accident-related injuries include both physical and psychological injuries that impact his quality of life and functioning and include neck, back, upper and lower body pain, depression, nervousness, sleep disturbance, and anxiety.

The applicant does not have chronic pain with a functional impairment

[20] I find the applicant has not demonstrated that he suffers from chronic pain with a functional impairment that would warrant removal from the MIG.

[21] The applicant submits he should be removed from the MIG because he suffers from chronic pain with a functional impairment. The applicant relies on the OCF-1 (Application for Accident Benefits) dated December 16, 2022; the OCF-3 (Disability Certificate) dated November 23, 2022, prepared by Dr. James Fung, chiropractor; the Psychological Assessment dated July 6, 2023, prepared by Sarvin Sabet, psychologist; CNRs of Dr. Paul O'Brien, family physician; the

CNRs of Morningside Finch Walk-in Clinic; his prescription history; the rehabilitation notes from GTA Chiropractic Centre; and the ultrasound and x-ray reports dated March 1, 2023 and January 3, 2024, respectively.

[22] The respondent submits the applicant has not established that he suffers from chronic pain with a functional impairment and relies on the family doctor CNRs, and the section 44 medical paper review report dated April 20, 2023, prepared by Dr. Ahamd Belfon, general practitioner. The respondent also submits the applicant was involved in two subsequent accidents and the applicant's rotator cuff injury and full thickness tear was caused due to the subsequent accidents.

[23] I find the CNRs of the primary care physician and the Morningside Finch Walk-in Clinic support the applicant's claim that he suffers from chronic pain; however, the CNRs state the cause of the pain is a subsequent accident which occurred on May 20, 2025 and not the subject accident.

[24] While I accept that the applicant suffers from chronic pain from a subsequent accident, this does not establish that the applicant should be removed from the MIG the applicant must also demonstrate the presence of associated functional impairment.

[25] If I am wrong and the applicant's chronic pain is a result of the subject accident, I find the applicant's medical evidence does not support his claim of a functional impairment as a result of his chronic pain. The CNRs of Dr. O'Brien including the March 2023 and January 2024 ultrasounds and x-rays, and the rehabilitation notes from GTA Chiropractic do not establish the applicant suffered a functional impairment as a result of the chronic pain.

[26] The applicant returned to work after the accident and on September 25, 2025, nearly three years after the accident, Dr. O'Brien notes the applicant reported that he has difficulty performing his job duties and that he has chronic lower back pain that is aggravated with sitting, standing and bending. Dr. O'Brien also notes the applicant was in a third accident on May 20, 2025. I find the applicant has not demonstrated that his right shoulder impairment resulted from the subject accident because the earlier ultrasound and x-ray reveal that the applicant had no misalignment of the shoulder and no rotator cuff tendinopathy after the subject accident.

[27] I place little weight on Ms. Sabet's report because she is not qualified to diagnose physical impairments or chronic pain and her report states "There was no pertinent information available at the time of this assessment" and the report does not indicate that she undertook a review of the applicant's medical record.

While the psychological assessment report notes that the applicant reported limited ability to perform physically strenuous activity such as "prolonged driving and sitting, and driving at night", it also notes that he continued his work as an Uber driver after the accident working daily and up to 11pm at night, continued to perform his daily self-care routine without any assistance, and he continued to drop his children off for school each morning.

[28] I find on a balance of probabilities that the applicant does not have accident-related chronic pain; and the applicant has not established that he has a functional impairment that warrants removal from the MIG.

The applicant's pre-existing conditions do not prevent maximal recovery such that he is excluded from the MIG

[29] I find the applicant has not met his onus in demonstrating that his pre-existing conditions prevent maximal recovery such that he should be removed from the MIG.

[30] The applicant submits that he has a pre-existing diagnosis of right shoulder pain, headaches, and mechanical lower back pain such that he should be removed from the MIG. The applicant relies on the CNRs of Dr. O'Brien and *16-004272 v. Continental Casualty Insurance Company*, 2017 CanLII 63661 (ON LAT) ("*16-004272*") in which the Tribunal held that the applicant cannot be treated under the MIG due to pre-existing injuries and a chronic pain diagnosis. Furthermore, the applicant argues the section 44 insurer's examination failed to properly assess the applicant in light of his pre-existing impairments. I find *16-004272* is not supportive of the applicant's claim because it does not overcome the absence of submissions and evidence which are required to demonstrate that the applicant's pre-existing injuries prevent him from achieving maximal recovery.

[31] In my view, the CNRs do not support the applicant's claim and the diagnostic imaging, including the shoulder x-ray of Feebruary 2023 and ultrasound of February 2024 were not as a result of the subject accident.

[32] The respondent submits that the applicant has not met his onus to demonstrate that his pre-existing injuries prevent him from achieving maximal recovery. The respondent argues that the applicant has achieved maximal recovery from his accident-related injuries and also relies on the CNRs of Dr. O'Brien. The respondent also relies on the section 44 medical paper review report dated April 20, 2023, prepared by Dr. Ahamd Belfon, general practitioner.

[33] I find the CNRs of Dr. O'Brien from May 2021 and August 2022 establish that the applicant has a pre-existing injury including mechanical low back pain and right shoulder pain. However, to warrant removal from the MIG, the applicant bears the burden of demonstrating that these pre-existing conditions would prevent him from achieving maximal recovery if he is held within the MIG. I find there is no reference in Dr. O'Brien's CNRs that the applicant's pre-existing condition precludes maximal recovery.

[34] I give weight to the section 44 report because it includes a review of the primary care physician's CNRs for the period of November 2019 to February 2023, just before the occurrence of his second accident. In my view, a self-reported complaint of low back pain in May 2021 and a self-reported complaint of right shoulder pain August 2022 prior to the accident does not prevent him from achieving maximal medical recovery. In my view, the section 44 medical paper review report that notes the applicant sustained sprain/strain type of injuries to the cervical and lumbar spine, and right shoulder and that there were no pre-existing conditions disclosed that will prevent him from achieving maximal medical recovery.

[35] In this case, the medical evidence does not support a connection to the subject accident. Based on the applicant's self-reporting, the CNRs reflect that his pre-existing condition worsened after his second and third accident, not as a result of the subject accident. In the absence of a clear and consistent medical opinion establishing that, but for the subject accident, I find that the applicant has not discharged his burden of proof.

[36] For the above-noted reasons, I find that the applicant has not met his burden to prove that his pre-existing conditions will prevent him from achieving maximal recovery under the MIG.

The applicant did not suffer a psychological injury as a result of the accident

[37] The applicant submits that as a result of his accident, he suffers from adjustment disorder with mixed anxiety, depressed mood, and sleep disturbance. The applicant relies on the aforementioned Psychological Assessment report prepared by Ms. Sabet.

[38] The respondent submits that the applicant has not met his onus and relies on the CNRs of Dr. O'Brien which, it claims, contain no reported psychological issues.

[39] While Ms. Sabet diagnosed the applicant with adjustment disorder with mixed anxiety and depressed mood and features of somatic symptom disorder, I place

little weight on her report because Ms. Sabet met with the applicant via a secure virtual platform, it was based on several self-administered tests, and her opinion is based almost entirely on the applicant's self-reporting I find Ms. Sabet's diagnosis is not corroborated by the CNR's of the applicant's primary care provider; the other evidence I have been pointed to does not support the applicant's claim; and Ms. Sabet's report makes no reference to the second accident that occurred less than four months prior to the assessment.

[40] Furthermore, the applicant's submissions do not address why the primary care physician's CNRs did not include any note or diagnosis regarding the applicant's psychological concerns after the subject accident. Ms. Sabet's report relies on the applicant's self reporting and limited to only one objective test, she also notes the applicant struck his head against the headrest and that he visited with his family physician a few weeks later. However, the family physician's CNRs note that the applicant first visited with his doctor regarding his accident-related injuries over three months after the accident, and the CNRs do not note the applicant struck his head, and that there are no neurological symptoms resulting from the accident.

[41] I find on a balance of probabilities that the applicant has not met his burden to establish that he has a psychological impairment that would warrant removal from the MIG.

Treatment plans

The treatment plans are not reasonable and necessary

[42] Having found that the applicant is subject to the MIG, it is not necessary to consider whether the treatment plans in dispute are reasonable and necessary.

Interest

[43] Interest applies on the payment of any overdue benefits pursuant to section 51 of the *Schedule*. As no benefits are owed, no interest is payable.

Award

[44] The applicant sought an award under section 10 of Regulation 664. Under section 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. The Tribunal has determined that an award is justified where the delay or withholding of benefits by the insurer is unreasonable conduct, meaning "behaviour which is excessive, imprudent, stubborn, inflexible,

unyielding or immoderate." The onus is on the applicant to prove, on a balance of probabilities, that the respondent's conduct meets this threshold.

[45] The applicant submits the respondent unreasonably withheld payment of medical and rehabilitation benefits, did not adjust the claim in good faith, and did not give weight to his primary care physician's CNRs and specialist consultation reports and disregarded the chronic pain diagnosis.

[46] The respondent submits the applicant has not met his onus and did not submit award particulars pursuant to the CCRO deadline for the award claim. The applicant did not include further arguments regarding the award in his reply submissions.

[47] I find the applicant has not established that the respondent unreasonably withheld or delayed payment of the benefits.

[48] I find an award is not appropriate. As no benefits have been unreasonably withheld or delayed, no award is payable.

ORDER

[49] The applicant's injuries are predominantly minor, as defined by the *Schedule*, therefore the applicant is subject to the MIG, and the MIG limit applies.

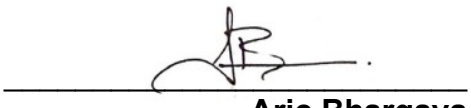
[50] As the applicant remains subject to the MIG, it is not necessary to consider whether the treatment plans in dispute are reasonable and necessary.

[51] As there are no overdue benefits, the applicant is not entitled to interest.

[52] The respondent is not liable to pay an award.

[53] The application is dismissed.

Released: August 17, 2026



Aric Bhargava
Adjudicator