Tribunals Ontario | **Tribunaux décisionnels Ontario**

Licence Appeal Tribunal | Tribunal d'appel en matière de permis

Citation: Lin v. TD General Insurance Company, 2026 ONLAT 25-007849/AABS

File Number: 25-007849/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:

Lin Lin

Applicant

and

TD General Insurance Company

Respondent

DECISION AND ORDER

ADJUDICATOR: **Barry O'Brien, Member**

APPEARANCES:

For the Applicant: Rakesh Sharma, Counsel

For the Respondent: Adel Pippo, Counsel

HEARD: **By way of written submissions**

OVERVIEW

[1] On July 1, 2024, Lin Lin (the "applicant"), was involved in an accident in Markham, Ontario. Following the accident, the applicant claimed ongoing physical and psychological issues and sought treatment for these conditions.

[2] The applicant sought benefits pursuant to the *Statutory Accident Benefits Schedule - Effective September 1, 2010 (including amendments effective June 1, 2016)* (the "Schedule"). The respondent, TD General Insurance Company, determined the applicant's injuries fell within the definition of a minor injury and refused to pay for treatment plans outside the $3,500.00 Minor Injury Guideline (MIG) funding limit. The applicant applied to the Licence Appeal Tribunal - Automobile Accident Benefits Service (the "Tribunal") for resolution of the dispute.

[3] The Tribunal must determine whether the applicant has sustained a predominantly minor injury, as defined in s. 3 of the Schedule, and whether she is entitled to the denied treatment plans.

ISSUES IN DISPUTE

[4] The issues in dispute are:

1. 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 limit? Note: The parties agree the MIG limits have been exhausted.

2. Is the applicant entitled to $3,749.56 for physiotherapy services, proposed by Uheal Rehab Centre in a treatment plan/OCF-18 ("plan") dated September 25, 2024

3. Is the applicant entitled to $2,144.93 for a psychological assessment, proposed by Somatic Assessments and Treatment Clinic in a plan submitted August 27, 2024?

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

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

RESULT

[5] The applicant has not established that her accident-related impairments warrant removal from the MIG.

[6] As the applicant is subject to the MIG, I do not need to consider if the treatment plans in dispute are reasonable and necessary.

[7] The applicant is not entitled to an award under s. 10 of Reg. 664, nor any interest.

ANALYSIS

Application of the Minor Injury Guideline

[8] I find the applicant's injuries are predominantly minor injuries subject to treatment within the MIG limit.

[9] 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."

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

[11] In her submission, the applicant relies on the complaints and injuries documented in the September 25, 2024, OCF-18 for $3,749.56 in physiotherapy services as evidence that her injuries fall outside of the MIG. These claimed injuries included headache, low back pain, dislocation, sprain and strain of joints and ligaments of lumbar spine and pelvis, whiplash associated disorder (WAD2) with neck pain and musculoskeletal signs, thoracic pain and sprain, sleep disturbances, fatigue, nervousness and anxiousness.

[12] The applicant's submissions focus primarily on the respondent's alleged failure to comply with s. 38(8) of the *Schedule*. She argues that this noncompliance would result in her removal from the MIG in relation to the disputed treatment plan and engages the consequences under s. 38(11). The applicant submits that her initial burden was satisfied by submitting compliant OCF-18s. Relying on *Zheng, Cai v. Avivan Insurance Company of Canada*, 2018 ONSC 5707 (Divisional Court) (*Zheng),* she argues that an applicant seeking treatment outside of the MIG need only submit a properly completed treatment plan containing the proposed health practitioner's opinion that the treatment is reasonable and necessary. On this basis, she submits that she was not required to provide clinical notes and records (CNRs) or other objective medical evidence to support the OCF-18s.

[13] While the applicant argues that non-compliance with s. 38 of the Schedule means she is removed from the MIG, the respondent submits that the applicant is attempting to invert the applicant's burden of proof by suggesting that the respondent must justify its denial before the applicant is required to prove the existence of an accident-related impairment.

[14] I find that the binding decision in (*Zheng*) determined that the language used in s. 38(11) refers to the specific treatment plan in question and does not impose a permanent prohibition on the insurer taking the position that the impairment is covered

by the MIG. This means that whether the applicant has established that her accident-related impairments fall outside of the MIG is a separate question. The applicant bears the burden of establishing on the balance of probabilities that her injuries warrant removal from the MIG. Therefore, I will first address the applicant's status in the MIG. I will address entitlement to the treatment plans based on the respondent's alleged non-compliance with s. 38(8) later in this decision.

The applicant has not established a psychological impairment that removes her from the MIG.

[15] The applicant submits that she should be removed from the MIG because she developed a psychological impairment because of the accident. She relies primarily on the psychological pre-screening report and the psychological symptoms identified in the OCF-18s.

[16] The applicant specifically relies on Part 6 of an OCF-18 form for $2,144.93 for a psychological assessment submitted to the respondent on August 27, 2024, which identifies insomnia, fatigue, anxiety and nervousness. This OCF-18 includes a pre-screening report completed by Dr. Svetlana Gabidulina, a psychologist, dated August 14, 2024, which the applicant relies on as evidence of a psychological impairment arising from the accident.

[17] The August 14, 2024, psychological pre-screening report records self-reported psychological symptoms following the accident and recommends a comprehensive psychological assessment. The report identified complaints including nightmares, irritability, anger, sleep disturbance and specific phobias.

[18] The respondent submits that this evidence does not establish an accident-related psychological impairment. The respondent also relies on the March 24, 2025, report of Dr. Thomas Han, a specialist in physical medicine and rehabilitation, who assessed the applicant for an evaluation of post accident pain. Dr. Han was an OHIP-funded referral and was not retained by the respondent to conduct an insurer's examination under s. 44

of the *Schedule*. Dr. Han does not record any psychological complaints reported by the applicant or identify any psychological impairment arising from the accident.

[19] I place limited weight on the August 14, 2024, pre-screening report for the purpose of determining whether the applicant has established a psychological impairment that removes her from the MIG. The report records the applicant's self-reported psychological symptoms shortly after the accident and offers the opinion that she has an accident-related psychological impairment. However, it was a provisional pre-screening assessment. No psychometric testing was performed, and the report recommends a full psychological assessment, including psychometric testing and an in-depth clinical interview, to determine the applicant's diagnosis and psychological treatment needs.

[20] I acknowledge that the OCF-18s and pre-screening report provide evidence of psychological complaints following the accident and that the pre-screening report attributes those complaints to the accident. However, I am not persuaded that this evidence, on its own is persuasive medical evidence establishing an accident-related psychological impairment that warrants removal from the MIG. On the evidence before me, I am not satisfied that she has met her burden on this issue.

[21] Accordingly, I find that the applicant has not established, on a balance of probabilities, an accident-related psychological impairment that warrants removal from the MIG.

The applicant has not established chronic pain with a functional impairment that removes her from the MIG.

[22] The applicant submits that her ongoing physical complaints constitute chronic pain with functional impairment that warrants removal from the MIG. She relies primarily on the OCF-18 proposed by UHeal Rehab Center.

[23] The UHeal OCF-18 identifies headache, low-back pain, lumbar sprain and strain WAD2 with neck pain, thoracic pain and thoracic sprain and strain. It also records

limitations involving sleep, sitting, standing, walking, lifting, housekeeping, driving and participation in physical and social activities. The treating physiotherapist states that the applicant continues to experience limitations due to pain, weakness and stiffness.

[24] The respondent submits that the medical evidence does not establish chronic pain with functional impairment sufficient to remove the applicant from the MIG. It relies on Dr. Han's March 24, 2025, post-accident pain evaluation report. Dr. Han recorded the applicant's complaints of neck and lower back pain, including pain aggravated by certain activities. However, his examination revealed only minimal tenderness in the cervical, shoulder and lower back regions. He documented full cervical and lumbar range of motion, normal gait, no obvious muscle weakness and an otherwise unremarkable neurological and orthopedic examination. Dr. Han considered that the applicant symptoms might be attributable to mechanical or myofascial strain, although he raised the possibility of facet joint trauma given the duration of her complaints.

[25] The applicant relies primarily on the OCF-18 as evidence of ongoing pain and functional impairment. I accept the OCF-18 provides some evidence of ongoing pain and reported functional limitations and that the complaints identified in the plan are predominantly sprain, strain, WAD2, and associated pain. The OCF-18, however, was written in the context of a request for treatment funding and not to provide a medical diagnosis. The plan, it should be noted, also records that the applicant was continuing to make good improvements. While a formal diagnosis of chronic pain is not required, I must consider whether the evidence, as a whole, establishes ongoing pain with functional impairment sufficient to take the applicant outside of the MIG. In my view, the OCF-18 does not support such a finding.

[26] The other medical evidence also does not persuade me that the applicant developed accident-related chronic pain with functional impairment. In his March 24, 2025, report, Dr. Han considered the applicant's complaint of ongoing neck and low back pain including her report that the pain was aggravated by certain functional tasks such as bending down to wash dishes. On examination, he documented minimal tenderness, full cervical and lumbar range of motion without significant complaints of

discomfort, normal gait, no weakness, normal tone, symmetrical reflexes and no nerve root tension signs. His neuro-orthopedic examination was otherwise unremarkable. Dr. Han's impression was that her symptoms may be due to mechanical myofascial strain with the possibility of facet joint trauma.

[27] In sum, although the OCF-18 records limitations in activities, including housekeeping, driving, sitting, standing and walking, the applicant has provided little evidence addressing the nature, frequency or extent of these limitations, or demonstrating how her ongoing pain materially interferes with her functioning. She has provided no corroborating evidence in support of the OCF-18. Rather, Dr. Han’s examination documented largely unremarkable clinical findings, as set out above. There is no other medical evidence of significance supporting a finding of chronic pain with functional impairment.

[28] On the evidence before me, I am not satisfied that the applicant's ongoing pain complaints amount to chronic pain with a functional impairment. While the UHeal OCF-18 documents pain and reported functional limitations, those complaints must be weighed against the evidence of continued improvement and Dr. Han’s largely unremarkable findings. Considering the evidence as outlined above, I find that the applicant has not established, on a balance of probabilities, chronic pain with functional impairment that warrants removal from the MIG.

Entitlement to the treatment plans in dispute

[29] Having found that the applicant is subject to the MIG, I do not need to determine whether the treatment plans in dispute are reasonable and necessary.

[30] As noted above, the applicant also raises a separate argument that the treatment plans are payable because the respondent failed to comply with s. 38(8) of the Schedule. I therefore turn to whether the respondent’s denial notices complied with s. 38(8) and whether the consequences in s. 38(11) are engaged.

The respondent's denial notices complied with s. 38 (8) of the *Schedule*

[31] I find that the respondent's notices are compliant with s. 38(8) of the Schedule.

[32] Section 38(8) of the Schedule requires an insurer, within 10 business days after receiving a treatment and assessment plan, to provide notice identifying the goods, services, assessments and examinations described in the plan that it agrees and does not agree to pay for. The insurer must also provide the medical reasons and all other reasons why it considers any of the goods, services, assessments and examinations, or their proposed costs, not to be reasonable and necessary.

[33] If an insurer fails to comply with s. 38(8), the Schedule sets out two consequences under s. 38(11). First an insurer who fails to provide the insured with an adequate notice of the reasons for its denial is prohibited by s. 38(11)(1) from taking the position that the insured person has an impairment to which the MIG applies. Second, s. 38(11)(2) provides that if an insurer fails to provide proper notice of the reasons for its denial it must pay for all incurred goods, services, assessments and examinations described in the treatment and assessment plan that related to the period starting on the 11th business day after the day the insurer received the treatment and assessment plan and ending on the day the insurer gives notice as described in s. 38(8).

[34] The applicant submits that the respondent's denial notices do not comply with section 38(8) of the *Schedule*. Relying on *Headley v. Aviva Insurance Company of Canada,* 2019 ONSC 5316 (CanLII) (*"Hedley*"), she argues that the notices were "boiler plate," failed to adequately address the injuries specific in the OCF-18s, and did not provide sufficient medical reasons for the denials.

[35] The applicant further submits that the burden is therefore with the insurer to identify why the proposed treatment and services are not reasonable and necessary and that its reasons for denial were insufficient because they were not grounded in medical evidence. She argues that, but for the respondent's allegedly deficient denial notices, the plans would have been considered payable outside of the MIG.

[36] I agree that s. 38 requires an insurer that does not pay for a treatment plan to identify the medical and all other reasons for its determination and that *Hedley* requires those reasons to be meaningful in order to permit the insured to decide whether or not to challenge the insurer's determination. However, the adequacy of the respondent's reasons is not determined by whether the respondent ultimately succeeds on the merits. The reasons must sufficiently explain the basis for the respondent's decision not to pay, such that the insured can decide whether to challenge it. The requirement to provide reasons under s. 38(8) does not shift the burden of proving entitlement from the applicant to the respondent.

[37] The respondent submits the treatment plans were denied on the basis that the applicant was within the MIG and there is no medical evidence establishing that the applicant's injuries require treatment beyond the MIG limit.

[38] The respondent submits that the applicant bears the burden of proving entitlement and that a compliant OCF-18 does not, on its own, establish entitlement. The respondent submits that its denial notices complied with s. 38(8) because they advised the applicant that the MIG funding limit had been exhausted, explained that the medical information available did not establish an impairment outside of the MIG, and invited the applicant to provide further medical information supporting removal from the MIG.

[39] I find that the respondent's denial notices complied with s. 38(8) of the *Schedule*. Both notices identified the treatment plans and the injuries being considered, advised the applicant that the MIG funding limit had been exhausted, explained that the available medical information did not establish an impairment outside the MIG, and invited her to provide further medical information supporting removal from the MIG. I did not find any evidence that any further medical evidence was submitted. The October 1, 2024, notice also specifically identified the injuries and complaints documented in the physiotherapy OCF-18. In my view, these reasons sufficiently explained the medical basis for the respondent's denial and permitted the applicant to understand why the treatment plans were not approved. Accordingly, I find no breach of s. 38(8) and the consequences in s. 38(11) are not engaged.

[40] I am also not persuaded by the applicant's submission that the respondent's decision not to obtain an insurer's examination renders its denial of the psychological assessment deficient. The applicant has not identified a requirement under s. 38 that an insurer obtain an examination under s. 44 before denying a treatment plan. I therefore do not find that the respondent's decision not to obtain an insurer's examination establishes noncompliance with s. 38(8).

Interest

[41] Interest is payable on overdue benefits pursuant to s. 51 of the *Schedule*. As no benefits are payable, no interest is payable

Award

[42] 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.

[43] The applicant submits that the respondent unreasonably withheld or delayed payment of the treatment plans and that, on this basis, she is entitled to an award.

[44] I am not satisfied that the respondent unreasonably withheld or delayed payment of benefits. As set out above, the respondent's denial notices complied with s. 38(8), and no benefits are payable to the applicant. Accordingly, no award is payable.

ORDER

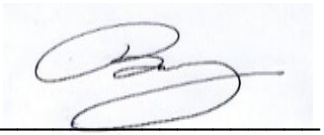
1. The applicant's injuries are predominantly minor and subject to the MIG.

2. The applicant is not entitled to the treatment plans in dispute.

3. The applicant is not entitled to interest.

4. The applicant is not entitled to an award under s. 10 of Reg. 664.

Released: October 27, 2026



Barry O'Brien
Member