Tribunals Ontario | **Tribunaux décisionnels de l'Ontario**

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

Citation: Zhou v Aviva Insurance Company of Canada, 2026 ONLAT 25-007973/AABS

File Number: 25-007973/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:

Jiaheng Zhou

Applicant

and

Aviva Insurance Company of Canada

Respondent

DECISION

ADJUDICATOR: **Harouna Saley Sidibé, Member**

APPEARANCES:

For the Applicant: Rakesh Sharma, Counsel

For the Respondent: Purva Vaidya, Counsel

HEARD: **By way of written submissions**

OVERVIEW

[1] The applicant, Jiaheng Zhou, was involved in a motor vehicle accident on July 13, 2024, and sought benefits from the respondent, Aviva Insurance Company of Canada, 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 and applied to the Licence Appeal Tribunal - Automobile Accident Benefits Service (the "Tribunal") for resolution of the dispute.

[2] The applicant seeks a determination that he is not subject to the Minor Injury Guideline ("MIG"), payment of a disputed treatment plan, interest on any overdue benefits, and an award.

ISSUES IN DISPUTE

[3] 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 MIG limit?

2. Is the applicant entitled to $2,200.00 for a Psychological Assessment, proposed by Somatic Assessments and Treatment Clinic in a treatment plan dated August 27, 2024?

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

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

RESULT

[4] For the reasons below, I find that:

1. The applicant remains within the MIG.

2. Having found that the applicant remains within the MIG, it is unnecessary to consider whether the disputed psychological assessment is reasonable and necessary. Additionally, I found that the September 11, 2024, denial complied with s. 38(8) of the *Schedule*.

3. The applicant is not entitled to interest or an award.

ANALYSIS

Are the applicant's injuries predominantly minor?

[5] I find that the applicant has not established that his accident-related impairments fall outside the MIG.

[6] 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."

[7] 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.

[8] The applicant submits that the applicability of the MIG should not be decided as a standalone issue. Rather, he argues that the MIG must be assessed in the context of the specific treatment plan at issue. Relying on ss. 38(8) and (9) of the *Schedule* and *Zheng Cai v. Aviva Insurance Company of Canada*, 2018 ONSC 5707, the applicant submits that the respondent's denial was deficient and that the MIG issue must therefore be considered in relation to the disputed treatment plan.

[9] The respondent submits that the applicant's argument improperly focuses on alleged procedural deficiencies in the denial rather than on the evidence required to establish entitlement. Relying on *Stranges v. Allstate Insurance Company of Canada*, 2012 ONCA 457, the respondent argues that even if a procedural deficiency exists, the applicant must still prove entitlement to the disputed benefit.

[10] I agree with the respondent. The applicant did not advance any substantive evidence or argument showing that his impairments fall outside the MIG. Specifically, the applicant did not rely on chronic pain, a psychological impairment, a pre-existing condition, or any other basis recognized as supporting removal from the MIG. Instead, the applicant's submissions focused almost exclusively on the alleged inadequacy of the respondent's denial under s. 38 of the *Schedule*.

[11] However, the adequacy of a denial notice is separate from the question of whether an applicant's impairments fall within the MIG. The applicant bears the burden of establishing that removal from the MIG is warranted. In the absence of evidence demonstrating a non-minor impairment, a psychological condition, chronic pain with functional impairment, or a qualifying pre-existing condition, I am not persuaded that the applicant has met that burden. Accordingly, I find that the applicant remains within the MIG.

Is the applicant entitled to the disputed treatment plan?

[12] Having found that the applicant remains within the MIG, it is unnecessary to consider whether the disputed psychological assessment is reasonable and necessary. However, because the applicant's submissions focus on the respondent's alleged non-compliance with s. 38 of the *Schedule*, I will address that issue.

[13] Sections 38(8) and 38(11) of the *Schedule* establish the consequences of an insurer's failure to properly deny a treatment plan. An insurer that does not provide adequate medical and other reasons as required by s. 38(8) is obligated under s. 38(11) to pay for the goods and services proposed in the treatment plan from the 11th business day after receipt of the plan until a compliant denial is issued. Where the insurer has not remedied the deficiency before the Tribunal adjudicates the dispute, it is precluded from doing so thereafter.

[14] A significant portion of the applicant's submissions challenges the adequacy of the respondent's September 11, 2024, denial. The applicant submits that the reasons provided were insufficient and arbitrary, and that the respondent failed to comply with s. 38(8) of the *Schedule*.

[15] The September 11, 2024, denial identified the denied treatment plan, namely the OCF-18 proposing a psychological assessment for $2,200.00. The letter advised that none of the proposed amounts would be approved. It further advised the applicant of the right to dispute the determination before the Tribunal.

[16] The denial letter also set out the reasons for the refusal. Specifically, the respondent advised that it considered the applicant's injuries to fall within the MIG, that no compelling clinical evidence had been submitted to support treatment outside the MIG, and that the pre-screen report information was inconsistent with the information in the respondent's file.

[17] In addition, the respondent identified the alleged inconsistency: the pre-screen report referred to the applicant as female, despite information on file indicating otherwise. The respondent also specified the additional records it wished to review, including family physician clinical notes and records, as well as records from Toronto Western Hospital.

[18] Section 38(8) requires an insurer refusing a treatment plan to provide medical and any other reasons for concluding that the proposed goods, services, assessments, examinations, or their costs are not reasonable and necessary. As confirmed by the Divisional Court in *Hedley v. Aviva Insurance Company of Canada*, 2019 ONSC 5318, the reasons provided must be sufficient to permit an insured person to understand the basis of the insurer's determination.

[19] In my view, the respondent's denial satisfies that requirement. The respondent did more than simply assert that the proposed assessment was not reasonable and necessary. It identified the treatment plan under consideration, stated that the MIG was the basis for the denial, explained that it considered the injuries minor, noted that compelling evidence supporting treatment outside the MIG had not been submitted, and identified concerns about the information relied on to support the request. The respondent further identified which medical records it still required.

[20] Although the reasons were brief, they were sufficiently clear to enable the applicant to understand the basis of the denial and to make an informed decision about whether to challenge it. I therefore find that the September 11, 2024, denial complied with the requirements of s. 38(8) of the *Schedule*.

Interest

[21] Under s. 51 of the *Schedule*, interest is payable on overdue benefits. As I have found that the applicant is not entitled to the psychological assessment, there is no overdue benefit upon which interest may accrue.

Award

[22] The applicant seeks an award under s. 10 of Ontario Regulation 664. Under that provision, the Tribunal may award up to 50 percent of the total benefits payable where an insurer has unreasonably withheld or delayed payment of benefits. The Tribunal has found that an award is warranted only where the insurer's conduct is excessive, imprudent, stubborn, inflexible, unyielding, or otherwise immoderate. The onus rests with the applicant to establish, on a balance of probabilities, that the insurer's conduct meets this threshold.

[23] The respondent submits that an award is not warranted because the applicant is not entitled to the disputed assessment. The respondent further submits that its denial was based on the information available at the time and that it clearly communicated the reasons for its decision, including its position that the applicant remained subject to the MIG, the lack of compelling clinical evidence supporting treatment outside the MIG, and concerns about inconsistencies in the supporting documentation.

[24] I agree with the respondent. As discussed above, I have found that the applicant is not entitled to the disputed psychological assessment. In these circumstances, the respondent did not improperly withhold or delay any benefit.

[25] In any event, I am not persuaded that the respondent acted unreasonably in handling the applicant's claim. The evidence shows that the respondent reviewed the treatment plan, issued a written denial, explained the basis for its determination, identified concerns about the supporting documentation, and requested additional records it considered relevant to its assessment.

[26] While the applicant disputes the respondent's assessment of the evidence and challenges the adequacy of the denial, that disagreement alone does not establish unreasonable conduct. The record does not disclose conduct that could fairly be characterized as excessive, imprudent, stubborn, inflexible, unyielding, or immoderate.

Rather, the respondent's actions reflect a good-faith assessment of the claim based on the information available at the time.

[27] Accordingly, the applicant is not entitled to an award.

ORDER

[28] For the above reasons, it is ordered:

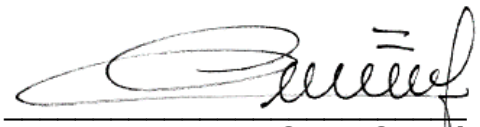
1. The applicant remains within the MIG.

2. Having found that the applicant remains within the MIG, it is unnecessary to consider whether the disputed psychological assessment is reasonable and necessary. Additionally, I found that the September 11, 2024, denial complied with s. 38(8) of the *Schedule*.

3. The applicant is not entitled to interest or an award.

4. The application is dismissed.

Released: October 23, 2026



Harouna Saley Sidibé
Member