Tribunals Ontario | **Tribunaux décisionnels Ontario**

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

Citation: Darmina v Aviva General Insurance Company, 2026 ONLAT 25-014391/AABS

File Number: 25-014391/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:

Victoria Darmina

Applicant

and

Aviva General Insurance Company

Respondent

DECISION AND ORDER

ADJUDICATOR: **Tami Cogan, Member**

APPEARANCES:

For the Applicant: Mariana Slomyanski, Counsel

For the Respondent: Sonya Katrycz, Counsel

Court Reporter: Maureen Hopman

HEARD: **September 15, 16, and 17, 2026 by video conference**

OVERVIEW

[1] Victoria Darmina, the applicant, was involved in an automobile accident on May 31, 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, Aviva General Insurance Company, and applied to the Licence Appeal Tribunal - Automobile Accident Benefits Service (the "Tribunal") for resolution of the dispute.

[2] The applicant is seeking a catastrophic impairment determination under criterion 8 as defined by s. 3.1(1) of the *Schedule*. In order to meet the threshold under criterion 8, the applicant must prove that she has sustained at least three class 4: marked functional impairments, or one class 5: extreme functional impairment in the four domains of function: activities of daily living; social functioning; concentration, persistence, and pace; and adaptation, due to a mental/behavioural disorder. The applicant asserts that she has sustained four class 4: marked impairments as a result of her injuries sustained in the accident. The respondent asserts that the applicant is not credible because she has inconsistently reported her symptoms and has not provided primary source evidence to corroborate her claim.

ISSUES IN DISPUTE

[3] The issues in dispute are:

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

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

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

[4] The applicant withdrew the issue of entitlement to the treatment plan for catastrophic impairment assessments, as listed in the case conference report and order ("CCRO").

RESULT

[5] For the reasons that follow, I find:

1. The applicant has not sustained a catastrophic impairment under criterion 8 as defined by s. 3.1(1) the *Schedule*.

2. The respondent is not liable to pay an award under s. 10 of Reg. 664.

3. No interest is owing.

ANALYSIS

Catastrophic Impairment Determination

[6] The applicant submitted an application for a catastrophic ("CAT") impairment determination ("OCF-19"), which was denied by the respondent on November 13, 2024. Neither party directed me to the OCF-19. The applicant submits she is seeking CAT under criterion 8. The test to determine whether the applicant has sustained a catastrophic impairment is a legal test and not a medical one. See: *Liu v. 1226071 Ontario Inc. (Canadian Zhorong Trading Ltd.)*, 2009 ONCA 571 at paras 29-30.

Criterion 8

[7] I find the applicant has not suffered a CAT impairment as defined under paragraph 8 of section 3.1(1) of the *Schedule*.

[8] In order to meet the threshold for a CAT impairment under Criterion 8, an individual must have sustained three marked (class 4) impairments out of the four spheres of functioning or one extreme (class 5) impairment as a result of the accident due to a mental and behavioural disorder. These impairments are assessed under Chapter 14 of the 4th edition of the *American Medical Association's Guides to the Evaluation of Permanent Impairment* (the "Guides"). Mental and behavioural impairments are rated according to how seriously they affect a person's useful daily functioning.

[9] The Guides sets out the four spheres of functioning and the levels of impairment as outlined in the chart below.

Domain 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)					

[10] The applicant relies on the psychiatric assessment report dated September 19, 2024, prepared by Dr. Shahzad Shahmalak, psychiatrist, and the occupational therapy CAT assessment report dated September 16, 2024, prepared by Julian Amchislavsky, occupational therapist. Dr. Shahmalak rated the applicant as having a class 4: marked impairment in all four domains of function.

[11] The respondent relies on the psychiatric CAT assessment completed on July 29, 2025, by Dr. Velan Sivasubramanian, psychiatrist; the neuropsychological assessment completed on February 27, 2025, by Dr. Ricki Lodowsky-Brooks, neuropsychologist; and the in-home and situational occupational therapy CAT assessments completed on February 26, 2025, by Ms. Leslie Hisey, occupational therapist, as well as her addendum CAT report. All assessment reports are dated October 10, 2025. The respondent also relies on twelve days of surveillance conducted in September 2024, March and April 2025, and March 2026, as well as a social media investigation conducted on April 2, 2026. Dr. Sivasubramanian rated the applicant as having class 3: moderate impairments in activities of daily living; social functioning; and concentration, persistence, and pace; and a class 4: marked impairment in adaptation.

[12] The parties' ratings are summarized in the chart below.

Domain 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			Respondent	Applicant	
Social Functioning			Respondent	Applicant	
Concentration, Persistence, and Pace			Respondent	Applicant	
Adaptation (Deterioration in a work-like setting)				Applicant Respondent	

[13] Dr. Shahmalak and Dr. Sivasubramanian agree on the following diagnoses: Major Depressive Disorder; Somatic Symptom Disorder; Post-Traumatic Stress Disorder; and Specific Phobia. The applicant submits that the experts agree on the applicant's impairments and it is only the issue of the degree of the impairment that must be decided. The respondent submits that catastrophic impairment ratings are based on functional abilities and not diagnoses and that the experts generally agreeing on diagnosis under the DSM-V is not an agreement on functional impairment.

[14] Dr. Sivasubramanian also testified that, after completing his report, he had been provided the surveillance videos and reports for review. Based on this surveillance, he opined that the applicant had underreported her functional abilities during his assessment. Further, he testified that when he takes into consideration the applicant's activity levels demonstrated in the videos he would reduce each of his ratings from moderate impairments to mild impairments in the domains of activities of daily living, and social functioning to mild impairments, and the marked impairment in the domain of adaptation, he would reduce to a moderate impairment. Dr. Sivasubramanian concluded that the videos do not provide information suitable for reassessing the domain of concentration, persistence, and pace.

[15] I find that the discrepancies between the applicant's reporting to different assessors and the surveillance evidence which contradicts her testimony brings into question the veracity of her self-reporting.

[16] The Guides direct that ratings are to be based on objective clinical finding that are consistent with and can be corroborated by contemporaneous records. The applicant's self-reporting of her lived experience is also important, but it too must be consistent and corroborated.

[17] I find the applicant's testimony was highly inconsistent as to when her mental health symptoms began. At times she stated she had issues right after the accident, and other times she stated that the development was gradual, and other times she stated that it was long ago and she does not recall. The applicant was unable to give a persuasive explanation as to why the medical records are silent on her mental health until 2024, two years post accident. She was also unable to provide any explanation as to why there are no records indicating that she was having difficulty with her daily activities. She testified that her major concern was her pain and that she was prescribed pain killers; however, she did not point me to any evidence to corroborate this claim, which I find calls into question the applicant's reporting.

[18] I find that there is a significant evidentiary gap and an absence of records to corroborate the applicant's reporting to CAT assessors. The only records that are not medical-legal assessments that I have been provided is from a single record from a virtual psychiatric consultation with the Centre for Addiction and Mental Health ("CAMH") on July 29, 2024, two years post accident. The applicant was seen by Dr. Alisson Trevizol, psychiatrist. The record indicates that the referral was made by a Dr. Arshad Muhammad, family physician, seeking recommendations for treatment. As a result of the consult, Dr. Trevizol made several recommendations including Duloxetine for depression, and Zopiclone, or alternatively Trazodone, for sleep disturbance. Although the applicant reported to CAMH, Dr. Shahmalak, and Dr. Sivasubramanian, and testified that she has received psychotherapy since the accident, there are no treatment records in evidence. There are also no OHIP records, or prescription summaries entered into evidence before this Tribunal.

[19] I note that the only family physician's records before me are summaries contained within Dr. Shahmalak's and Dr. Sivasubramanian's reports, as part of their document reviews.

[20] In Dr. Sasha Svystonyuk's family physician's records that are reproduced in Dr. Shahmalak's report, the applicant's first visit to her doctor was two weeks after the accident on June 13, 2022. There was no mention of the accident. Then three days later, on June 16, 2022, the applicant reported neck and back issues; however, her main complaint was related to a condition that predated the accident by fourteen months. This condition was further discussed with her doctor on June 29, and October 3, 2022, with no mention of the accident. On December 15, 2022, the applicant was awaiting an MRI of her neck, but again the main complaint was unrelated to the accident. The last record in Dr. Shahmalak's report is from May 9, 2023, and is consistent with the previous entries. I note that there is no mention in these records of any mental health symptom or concern. It appears Dr. Shahmalak's record summary is incomplete.

[21] I note that in Dr. Sivasubramanian's report, he identified family physician records up to December 6, 2024, which is nineteen months after the last record in Dr. Shahmalak's report. Also, in Dr. Sivasubramanian's summary of the family physician records, he identifies additional details that do not appear in Dr. Shahmalak's report for the December 15, 2022 visit. Dr. Sivasubramanian includes the following additional information:

> She was taking naproxen for pain. She reported intermittent migraines and "stress due to work and back pain". It was noted that she might travel to Buffalo to have (perhaps some tests) "done privately".

[22] I give Dr. Shahmalak's findings less weight than Dr. Sivasubramanian because I find that Dr. Shahmalak has either not been provided the complete records, or he reviewed the documentation provided to him yet selectively considered the applicant's report of stress and its cause, which I find undermines the value of his conclusions because the records do not corroborate Dr. Shahmalak's findings.

[23] Dr. Shahmalak relied on the applicant's reporting of taking medication such as Duloxetine 30mg, and Mirtazapine 15mg for depression, and Zopiclone 15mg for insomnia, and Vitamin D 50,000 units. He reasoned that medication can cause adverse effects that can negatively impact one's mental state such as by causing or worsening sexual dysfunction, fatigue and/or poor cognition. I accept Dr. Shahmalak's reasoning for why medications should be considered when assessing a person's mental status; however, I am not persuaded that the applicant experienced adverse effects from medication because I have not been directed to physician's records or prescription summaries that corroborate that she was prescribed these medications, or was taking them, or that she was reporting adverse effects.

[24] Dr. Shahmalak testified that because his assessment is only one hour long, occupational therapy assessments are helpful and provide more observational information. Dr. Shahmalak performed clinician-rated questionnaires for diagnostic purposes and confirmed in his testimony that he did not use formal cognitive function

testing. Dr. Shahmalak's testified that he relied on Mr. Amchislavsky's occupational therapy assessment report, which Dr. Shahmalak's report describes as providing "recent objective functional information". I find that the occupational therapy assessment report weakens the value of Dr. Shahmalak's conclusions because Mr. Amchivlasky did not provide objective functional information, for Dr. Shahmalak to rely on, rather he provided his opinions without supporting information as to how he reached his conclusions.

[25] I place little weight on Mr. Amchislavsky's report, because it is based primarily on subjective reporting from the applicant. Mr. Amchislavsky's report does not provide any indication of any functional tasks being performed and observed in the home or in the community. Further, I find that without objective testing of the applicant's cognitive functional abilities, such as following instructions, organizational skills, memory, concentration, and multi-tasking, the report is of little value to determine the applicant's mental and behavioural functional limitations because his current conclusions are speculative and based on the applicant's self-reports. Further, Mr. Amchislavsky did not testify, and in his report, he provides opinions on the ratings or degree of impairment suffered by the applicant but does not provide any information as to the basis of his opinions.

[26] I find that Mr. Amchislavsky has not provided details of observed function to the physician who is qualified to assign causation and impairment ratings. Therefore, I give Mr. Amchislavsky's report, little weight, and because Dr. Shahmalak relied heavily on Mr. Amchislavsky's opinions when assigning functional impairment ratings, it too will be given little weight.

[27] I find the psychiatric assessment and testimony of Dr. Sivasubramanian to be more persuasive than Dr. Shahmalak's evidence. He testified that he does not agree with Dr. Shahmalak's ratings because he believed Dr. Shahmalak's ratings are conflated with physical impairments. Dr. Sivasubramanian testified that when assigning his ratings, he has taken into consideration that the applicant has been diagnosed with moderate to severe spinal stenosis throughout multiple levels of her cervical and lumbar spine and that her primary complaints are of pain and she ascribes her physical

limitations to her functionality; which Dr. Shahmalak did not apportion when assigning his ratings. Dr. Shahmalak states in his report that he considers the effects of psychologically driven pain, or somatic symptom disorder in his analysis; however, his report details and highlights the applicant's physical limitations that result from physical injuries and degenerative changes. As such, this is another basis upon which I assign Dr. Shahmalak's report little weight because criterion 8 is specific to functional limitations as a result of mental or behavioural disorders, which are distinct from restriction in physical function.

Activities of Daily Living ("ADLs")

[28] The Guides direct that the activities of daily living include such activities as self-care, personal hygiene, communication, ambulation, travel, sexual function, sleep, social and recreational activities in the context of the individual's overall situation, the quality of these activities is judged by their independence, appropriateness, effectiveness and sustainability. It is necessary to define the extent to which the individual is capable of initiating and participating in these activities independent of supervision or direction. What is assessed is not simply the number of activities that are restricted, but the overall degree of restriction or combination of restrictions.

[29] Dr. Shahmalak's report indicates that the applicant required assistance with personal grooming such as showering and hair care. I give this evidence little weight because I am not persuaded that her limitations are due to a mental or behavioural disorder. In his report Dr. Shahmalak does not inquire or identify the cause of the limitation, beyond her need of physical assistance entering the shower, using a shower stool and grab bars, and assistance washing and drying her hair. Further, he identified that the applicant has employed strategies for her independence and is therefore capable of dressing herself. Dr. Shahmalak does not identify the applicant as having any limitations with her communication, ambulation, or feeding. I find that these factors do not support the rating of a marked impairment because there is no evidence that the quality of these functions is limited due to a mental or behavioural disorder.

[30] According to Dr. Shahmalak's report, the applicant cited pain as the primary cause of her reduced libido. In a collateral interview with Mr. Amchislavsky, the applicant's husband confirmed that their intimacy has decreased since the accident, partially due to his own accident-related symptoms. I find that the reduction in intimacy is due to physical symptoms because I was not pointed to any evidence attributing her reduced libido to a mental or behavioural disorder and her self-reporting indicates physical pain as the cause.

[31] Dr. Shahmalak's report further indicates that the applicant reported that their finances have always been managed by her spouse, which I find indicates there has not been a change. She also helps the children with their homework. She is unable to use a phone or computer as it triggers migraines, which I find is a physical limitation, and not caused by a mental or behavioural disorder.

[32] In addition, Dr. Shamalak's report indicates that the applicant is able to adhere to her medication schedule through the use of various strategies such as reminders on her phone and prompts from her spouse to take her medication, but she remains in control of her own medication and does not require supervision. I find this does not support a rating that her useful function is significantly impeded.

[33] Dr. Shahmalak testified that the applicant reported that she rarely drives and abstains from driving on highways. She spends the majority of her time at home. She also reported that she orders groceries online and her husband picks up the groceries from the store. Dr. Shahmalak's report also cites the applicant's reporting to Mr. Amchislavsky that she is discouraged from leaving her residence as she knows any weight bearing activity, or physical mobility in general, inevitably increase her pain symptoms. These reported functional limitations were taken into consideration by Dr. Shahmalak when he assigned a marked impairment rating for the applicant's ADLs. I acknowledge that an assessment is limited by the accuracy of the information provided by the applicant.

[34] During her testimony, the applicant was shown the surveillance footage. She acknowledged that it was her in the videos and photographs. She testified that she had reported to the assessors that she does drive and the surveillance did not contradict her statements. The twelve days of surveillance showed the applicant driving to multiple locations in a single day, all for apparently non-urgent tasks. The applicant engaged in shopping trips to the Dollarama, a drug store, and Costco, by herself and engaging in various activities including pushing a cart and lifting a case of drinks, which does not align with what she reported to Dr. Shahmalak. In her testimony the applicant stated that each location was within 15 minutes, and she is not alone in her care, which gives her confidence. She also attended a community recreation complex for several hours. She testified that she attends the community centre for swimming. I note that this activity was not reported to Dr. Shahmalak. On several occasions the applicant was surveilled transporting her children to school and taking them to recreational activities. The applicant testified that she had told the occupational therapist that she sometimes takes her children to school. However, she was also seen driving on a highway, which directly contradicts what she reported to Dr. Shahmalak. The applicant was also surveilled driving in the dark. She drove her family to a park and participated in fishing. She also travelled to Ottawa with her husband and children for a multi-day stay at a hotel. The applicant testified that the purpose of the trip to Ottawa was a work trip for her husband and they stopped two times for breaks while enroute. I did not hear an explanation as to why she and her children accompanied her husband on a work trip.

[35] Prior to the hearing, the applicant did not provide Dr. Shahmalak with the surveillance reports which detail her daily activities over a period of twelve days. He was shown the surveillance during his testimony.

[36] Dr. Shahmalak opined that photographs and videos do not speak to a person’s emotional response to an activity and therefore the surveillance does not alter his opinion. I agree with Dr. Shahmalak that surveillance does not necessarily evidence how someone is feeling; however, I find that the level of activity demonstrated over the twelve days of surveillance is far beyond what the applicant reported being within her functional capabilities.

[37] Furthermore, the applicant had reported to Dr. Sivasubramanian that post accident, her husband now does all of the grocery shopping; she will not go with him because it is too difficult for her to walk. Contrary to this report she was surveilled grocery shopping alone at Costco. She also reported that her husband now takes the children to their appointments, which was also contradicted by the surveillance. Dr. Sivasubramanian testified that the applicant “definitively” reported that she has not driven for more than 20-30 minutes since the accident and has not driven on the highway. She reported not having been a passenger for longer than 40-60 minutes since the accident and stated she had not travelled outside of the greater Toronto area after the accident. Again, this is contrary to the surveillance evidence.

[38] I find that the surveillance videos undermine the applicant’s credibility of her reporting to the assessors because the surveillance was conducted within a few days of her meeting with Mr. Amchislavsky and Dr. Shahmalak, and approximately one month after her meeting with Ms. Hisey, and two months prior to meeting with Dr. Sivasubramanian, all of which contradicts her reported functional limitations.

[39] Each of the assessors relied heavily on the applicant’s reporting of her functional limitations. I find that the accuracy of the assessors’ conclusions, opinions, and ratings of her functional impairments are dependent on accurate information. I have considered that surveillance is a “snapshot” in time and may not accurately reflect the applicant’s consistent level of function; however, the ratings under the Guides are based on the presumption that the applicant’s condition is stable and that assessments will bear out consistent findings based on the available information. In consideration of the underreporting of the applicant’s functional abilities, I find that the assessor’s ratings are of minimal value in establishing the applicant’s true level of functional ability.

[40] Based on the totality of the evidence, I find that the applicant has not established that she has sustained a marked impairment in the domain of activities of daily living.

Social Function

[41] The Guides direct that social function is an individual's capacity to interact appropriately and communicate effectively with other individuals. It includes the ability to get along with others such as family members, friends, neighbours, grocery clerks, lenders, etc. Impaired social functioning may be demonstrated by history of altercations, evictions, firings, fear of strangers, avoidance of interpersonal relationships, social isolation, or similar events or characteristics. Strengths 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 behaviour, consideration for others, awareness of others' sensitivities and social maturity also need to be considered.

[42] The applicant was not asked, and did not participate in, a community outing with Mr. Amchislavsky. Therefore, Dr. Shahmalak's rating regarding social function is strictly based on the applicant's reporting. The applicant was asked to participate in a community outing with Ms. Hisey. The applicant declined to participate, citing pain and fatigue. There are multiple purposes for the community outing, which allows the observer to see firsthand the functional abilities of the applicant, including social interactions and cognitive function. I find that the applicant having not participated does not determine that she is not capable, rather it simply does not provide any value to the assessment.

[43] The assessors have documented that the applicant lives with her two children, her husband, and her parents. She testified that her parents arrived in Canada before the accident. There have been no changes to her living arrangements post-accident. She reported to assessors that she has a good relationship with her children, but her relationship with her husband is strained due to the increased demand on him because of her accident-related injuries. I have not heard evidence regarding her relationship with

her parents. She reported to assessors and testified that there have been no significant conflicts within the home. She has reported that she has withdrawn from socializing with friends. Before the accident she would entertain at home, but she no longer invites people over. I find that I have not been directed to evidence that causes doubt as to the accuracy of these reports; however, I find that this information does not support a finding that the applicant has sustained a marked impairment in her social functioning because she has not endorsed that there has been conflict in her relationships, or inappropriate behaviour, and I have not heard persuasive evidence the degree to which she has withdrawn from socializing.

[44] The evidence before this Tribunal regarding the applicant's social function is her reporting, and the surveillance, which undermines the applicant's credibility. The surveillance captured the applicant transporting her children to school and activities, shopping at Costco, attending the community centre for recreational activities, attending the busy park for the fishing activity, attending two busy Onroute locations for food, and interacting with hotel staff, all without evidence of conflict or inappropriate behaviour in public settings.

[45] I find that Dr. Sivasubramanian's rating of a moderate impairment, coupled with his testimony that he would change his rating to a mild impairment based on the surveillance, is more persuasive than Dr. Shahmalak's rating of a marked impairment because Dr. Shahmalak has relied heavily on the applicant's self reporting. I find the evidence to which I have been directed does not support that the applicant has sustained a marked impairment in social function.

Concentration, Persistence, and Pace ("CPP")

[46] The Guides direct that concentration, persistence and pace are needed to perform many activities of daily living, including task completion. Task completion refers to the ability to sustain focused attention long enough to permit the timely completion of tasks commonly found in activities of daily living or work settings…Strengths and weaknesses in mental concentration may be described in terms of frequency of errors,

the time it takes to complete the task and the extent to which assistance is required to complete the task.

[47] Dr. Shahmalak's report provides his observations of the applicant during his clinical interview with the applicant. He specifically recorded that he did not have any concerns with the applicant's short-term or long-term memory, concentration, attention, or ability to respond appropriately to questions. He noted that her speech contained no signs of circumlocution, paraphasia, tangential speech or derailment, and was able to articulate her thoughts. Dr. Shahmalak testified that he did not conduct any psychometric testing of the applicant's cognitive function and that would be the task of a neuropsychologist. Again, I note that Mr. Amchislavsky also did not conduct any evaluative tasks to objectively test the applicant's cognitive function, however based on the applicant's self-reporting and diagnoses, he concludes she has limitations. He further identified numerous physical limitations such as headaches, blurry vision, and physical injuries that affect her CPP functionality. I find Dr. Shahmalak's rating of a marked impairment is not persuasive because he ignores his own clinical observations and relies instead on the report and unsupported conclusions of Mr. Amchislavsky.

[48] Further, I did hear testimony from Dr. Shahmalak, who opined that the act of driving does not require concentration if the person is in a familiar area, and therefore the surveillance of the applicant driving does not change his opinion. I find his opinion under rates the complexity of task of driving a vehicle, which is not only about familiarity with the street names and location of a destination, but rather involves constant awareness and reaction to all of the other vehicles and changing conditions in the surroundings.

[49] Dr. Ladowsky-Brooks did conduct neuropsychological testing of the applicant's cognitive function. She testified that due to the applicant's low effort on the testing, the validity of the scores was questionable and the scores were not reliable. She opined that the applicant's scores were an underestimation of the applicant's abilities. Regardless, the test scores fell within the average to low average range and did not demonstrate impairment. Her performance on a general cognitive screening test suggests slow

processing and there was no evidence of a memory impairment. Dr. Ladowsky-Brooks did not advance a rating under criterion 8. I find that these testing results do not support a rating of a marked impairment in CPP because there is no clinical finding of a functional impairment.

[50] Dr. Sivasubramanian also did not observe the applicant having any difficulty with CPP during his assessment. He did rely on Ms. Hisey's report, which indicates the applicant was observed during the assessment, and her attention waned as the assessment progressed, she was tangential and difficult to interrupt and redirect. He advanced a rating of a class 3, moderate impairment. I find the opinion of Dr. Sivasubramanian more persuasive because he testified that the rating in the assessment report was given to the benefit of the applicant, however, based on the evidence of the applicant driving, which is a complex task that requires sustained concentration and multitasking, he would not rate the applicant's impairment above a class 2, mild impairment.

[51] I find that the applicant has not established that she has sustained a marked impairment in the domain of concentration, persistence and pace.

Adaptation

[52] The Guides direct that deterioration or decompensation in work or work-like settings refers to repeated failure to adapt to stressful circumstances. In the face of such circumstances the individual may withdraw from the situation or experience exacerbation signs and symptoms…He or she may decompensate and have difficulty maintaining activities of daily living, continuing social relationships and completing tasks. Stressors common to the environment include attendance, making decisions, scheduling, completing tasks and interacting with others.

[53] In the assessment reports of Dr. Shahmalak and Dr. Sivasubramanian, the experts agree that the applicant has sustained a class 4, marked impairment.

[54] I note that in testimony Dr. Sivasubramanian opined that based on surveillance he would lower his impairment ratings in all domains. However, in his report he opined, based on his assessment with her, and the report of Ms. Hisey that he believed that the applicant's stress tolerance has been significantly compromised.

[55] I find that the ratings advanced in the reports should be adopted and find that the applicant has sustained a marked impairment in the domain of adaptation.

Determination ratings

[56] Having found the applicant has not sustained a marked impairment in three domains nor a severe impairment in any one domain of function, I find the applicant has not proven on a balance of probabilities that she has sustained a catastrophic impairment pursuant to criterion 8 of the *Schedule*, as a result of the accident.

Award

[57] I find no award is owing.

[58] Under s. 10 of O. Reg. 664, the Tribunal may award up to 50% of the total benefits payable if it determines that the insurer unreasonably withheld or delayed the payment of benefits.

[59] The applicant did not lead evidence on this issue and made no submissions.

[60] The only issue in dispute is the determination of a catastrophic impairment. As there are no benefits in dispute before me, and there is no evidence of any other benefits being unreasonably denied or delayed, there is no basis for an award under s. 10 of Reg. Therefore, I find that the respondent has not unreasonably withheld or delayed payment of benefits.

[61] I find the applicant has not proven on a balance of probabilities that she is entitled to a s. 10 award.

Interest

[62] As there is no overdue payment of benefits, and no award owing, the applicant is not entitled to interest.

ORDER

[63] For the reasons above, I find:

1. The applicant has not sustained a catastrophic impairment under criterion 8 as defined by s. 3.1(1) the *Schedule*.

2. The respondent is not liable to pay an award under s. 10 of Reg. 664.

3. No interest is owing.

Released: October 26, 2026



Tami Cogan
Member