

**LICENCE APPEAL
TRIBUNAL**

**TRIBUNAL D'APPEL EN MATIÈRE
DE PERMIS**



**Safety, Licensing Appeals and
Standards Tribunals Ontario**

**Tribunaux de la sécurité, des appels en
matière de permis et des normes Ontario**

Citation: Y.S.L. vs. Security National Insurance Company, 2019 ONLAT 18-003354/AABS

File Number: 18-003354/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:

Y.S.L.

Appellant

and

Security National Insurance Company

Respondent

DECISION

PANEL:

Derek Grant, Adjudicator

For the Applicant:

Sareena Samra, Counsel

For the Respondent:

Kamil Podleszanski, Counsel

HEARD:

In Writing on: February 4, 2019

OVERVIEW

- [1] The applicant (“Y.S.L.”) was involved in an automobile accident on February 11, 2017, and sought benefits pursuant to the Statutory Accident Benefits Schedule - Effective September 1, 2010 (the "Schedule"). Y.S.L. was denied certain benefits by the respondent (“Security National”) and submitted an application to the Licence Application Tribunal - Automobile Accident Benefits Service (“the Tribunal”).
- [2] Security National denied Y.S.L.’s claims because it determined that all of her injuries fit the definition of “minor injury” prescribed by section 3(1) of the *Schedule*, and therefore, fall within the Minor Injury Guideline¹ (“the MIG”). Y.S.L.’s position is the opposite.
- [3] If Y.S.L.’s position is correct, then I must address if the medical treatment plans claimed are reasonable and necessary.
- [4] If Security National’s position is correct, then Y.S.L. is subject to a \$3,500.00 limit on medical and rehabilitation benefits prescribed by section 18(1) of the *Schedule*, and in turn, a determination of whether claimed benefits are reasonable and necessary will be unnecessary.

ISSUES IN DISPUTE

- [5] Did Y.S.L. sustain predominantly minor injuries as defined by the *Schedule*? Is her entitlement to medical benefits limited by the MIG?
- [6] If Y.S.L.’s injuries are not within the MIG, then I must determine the following issues:
 - a. Is the medical benefit in the amount of \$1,313.52 for physiotherapy services, recommended by C.E.L. Physiotherapy & Rehabilitation Ltd. in a treatment plan dated June 2, 2017 and denied on June 13, 2017, reasonable and necessary;
 - b. Is the medical benefit in the amount of \$1,497.32 for chiropractic services, recommended by C.E.L. Physiotherapy & Rehabilitation Ltd. in a treatment plan dated July 14, 2017 and denied on July 18, 2017, reasonable and necessary;
 - c. Is the cost of examination expense in the amount of \$2,200.00 for a psychological assessment, recommended by Complex Care Medical & Health Services in a treatment plan dated June 20, 2017 and denied on June 26, 2017, reasonable and necessary;

¹ Minor Injury Guideline, Superintendent’s Guideline 01/14, issued pursuant to s. 268.3 (1.1) of the *Insurance Act*.

- d. Is Y.S.L. entitled to an award under Ontario Regulation 664 because the respondent unreasonably withheld or delayed the payment of benefits; and
- e. Is Y.S.L. entitled to interest on any overdue payment of benefits?

RESULT

- [7] Based on a review of all the evidence put before me, I find that Y.S.L.'s physical and psychological injuries meet the definition of 'minor' under the *Schedule*, it is therefore unnecessary for me to consider whether the treatment plans are reasonable and necessary or determine whether interest is payable.
- [8] As such, Y.S.L. is not entitled to an award.

Minor Injury Guideline

- [9] The *Guideline* establishes a framework for the treatment of minor injuries. The term "minor injury" is defined in subsection 3(1) of the *Schedule* 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." The terms "sprain", "strain", "subluxation", and "whiplash associated disorder" are also defined in subsection 3(1). Subsection 18(1) of the *Schedule* limits recovery for medical and rehabilitation benefits for such injuries at a cap of \$3,500.00, if the insured person sustains an impairment that is predominantly a minor injury in accordance with the *Guideline*.
- [10] The onus is on the applicant to show that her injuries fall outside of the MIG.²
- [11] Y.S.L. argues that her injuries go beyond the definition of "minor" because she has sustained physical and psychological impairments and chronic pain, all of which remove her from the MIG.

Did Y.S.L. sustain physical injuries that remove her from the MIG?

- [12] Although Y.S.L. has provided medical evidence which confirms she sustained accident-related injuries, none of the evidence shows that her injuries fall outside the MIG.
- [13] For instance:
- (i) The disability certificate completed by of Ms. Ellie Luy, Physiotherapist, confirms Y.S.L. has soft tissue injuries;
 - (ii) Y.S.L. also underwent diagnostic imaging in 2017 which revealed no abnormalities;

² *Scarlett v. Belair*, 2015 ONSC 3635 (CanLII) para. 24.

- (iii) On April 26, 2017, Family Physician, Dr. James Leung diagnosed Y.S.L. with physical injuries – “ongoing neck, low back, right knee, left hip pain and little toe numbness”;
- (iv) On May 18, 2017, Physical Medicine and Rehabilitation Specialist, Dr. S.W. Joseph Wong diagnosed Y.S.L. with “myofascial injury of the neck, upper back and lower back”;
- (v) On May 30, 2017, Ms. Luy prepared a Treatment Plan (“OCF-18”) and diagnosed Y.S.L. with physical injuries, not limited to, “cervical disc disorder with radiculopathy, dislocation, sprain and strain of shoulder girdle and the level of the ankle and foot, contusion of hip and low back pain”;
- (vi) On October 10, 2017, Family Physician Dr. Leung, completed a second OCF-3, and diagnosed Y.S.L. with “low back pain, radiculopathy, neck and shoulder pain”; and
- (vii) On December 2, 2017, Y.S.L. was assessed by Dr. Levy. Dr. Levy diagnosed Y.S.L. with WAD I, lumbar spine sprain and strain, left thigh contusion and cervicogenic headaches”. This diagnosis is similar to those provided by Family Physician Dr. Leung, Physiotherapist Emily Luy and Psychiatrist Dr. Wong.

[14] The medical evidence Y.S.L. submitted from her treatment providers and the diagnostic reporting of Y.S.L.’s physical injuries are consistent with injuries that would be defined as ‘minor’. I find that Y.S.L. suffered soft tissue injuries as a result of the accident. Y.S.L. has therefore failed to persuade me that the physical injuries she sustained in the accident require treatment beyond that provided in the MIG.

Did Y.S.L. sustain psychological injuries that remove her from the MIG?

- [15] For the reasons that follow, I find that Y.S.L. did not suffer psychological impairments that would take her out of the MIG.
- [16] I put more weight on the insurer’s examination (IE) report of Psychologist Dr. Arnold Rubenstein, than on the report completed by Psychologist Dr. Ming Che Yeh, on behalf of Y.S.L.
- [17] In June 2017, Dr. Yeh diagnosed Y.S.L. with mixed anxiety and depressive disorder and specific (isolated) phobias. In contrast, Dr. Rubenstein, in his report dated December 14, 2017, concludes Y.S.L.’s anxiety and depression were “below average”. He also found that Y.S.L.’s had an “average score in the area of somatization” which “remains below clinical magnitude when compared to an average pain patient population”.

- [18] I was persuaded by Dr. Rubenstein's opinion because his conclusion is in line with the fact that Y.S.L. did not seek psychological treatment following the accident.
- [19] Moreover, I find that Y.S.L.'s own evidence does not support that her psychological impairments would remove her from the MIG. My finding is based on the following:
- (i) The evidence shows that on April 26, 2017, Dr. Leung referred Y.S.L. to Dr. David Lowe, Psychologist. There is however, no evidence that Y.S.L. in fact attended the May 26, 2017 appointment with Dr. Lowe;
 - (ii) Prescription records and CNRs submitted into evidence confirm that no psychotherapeutic medications have been prescribed or taken by Y.S.L. since the accident; and
 - (iii) Y.S.L. relied on the report of Ms. Luy, to support that she has psychological injuries that would remove her from the MIG. However, I put little weight on the report of Ms. Luy because psychological diagnoses are beyond a physiotherapist's area of expertise. In the OCF-3 Ms. Luy lists psychological complaints as part of the barriers to Y.S.L.'s recovery. I was not persuaded by this evidence.

Is Y.S.L. suffering from chronic pain syndrome that would remove her from the MIG?

- [20] I find that Y.S.L. does not have a chronic pain condition arising from the accident that places her outside of the MIG. Chronic pain, if established, removes a claimant from the MIG, because the prescribed definition of "minor injury" does not include chronic pain conditions.
- [21] Y.S.L. submits: "as a result of the accident, the applicant suffered soft tissue injuries...[which] resulted in pain and impairment. Neither has resolved". It's as a result of the extended time of continued pain³, past the 9-12 weeks, that Y.S.L. argues she suffers from chronic pain syndrome. Y.S.L. submits she has not reached her pre-accident state, she still has functional impairments and has not recovered in the usual time with these types of injuries. Despite this, Y.S.L. has not provided me with any medical opinion that supports a chronic pain diagnosis.
- [22] Y.S.L. further asserts that she suffers from chronic pain syndrome based on her complaints of pain to Family Physician, Dr. Leung and Psychiatrist, Dr. Wong (mentioned in paragraph 13). In addition, Y.S.L. argues that the lack of acknowledgment by the IE assessor, Dr. Levy of how much time has passed and that her pain complaints still prevalent, also support that she suffers from chronic pain syndrome. I disagree.

³ Y.S.L. argues that at the time of the IE assessments, her pain complaints have lasted over 10 months since the accident.

- [23] I find that Y.S.L.'s symptoms do not meet the criteria for chronic pain because:
- (i) The report of Dr. Wong does not diagnosis Y.S.L. with chronic pain based on any objective testing;
 - (ii) Neither Dr. Leung nor Dr. Wong discuss Y.S.L.'s level of pain or it's affects on her function;
 - (iii) I find for chronic pain to take someone out of the MIG, there must be an affect on their functionality. A treating physician's mention of a chronic pain condition be it 'syndrome' or specific use of the term 'chronic pain' is not enough in establishing the impact on functionality. This opinion must be supported by medical evidence that establishes an applicant's functionality is impaired and that the chronic pain is the cause of the disability; and
 - (iv) The insurer examination of Dr. Levy mentioned above, as well as two additional addendum reports of Dr. Levy,⁴ in which he opines that Y.S.L.'s physical injuries are soft tissue in nature and therefore 'minor'.
- [24] I find that the Y.S.L.'s functionality is inconsistent with chronic pain based on the following:
- (i) Y.S.L. resumed full-time work approximately three to four months⁵ after the accident and continues to work 40-hour weeks; and
 - (ii) Y.S.L. has had no treatment since July 2017 and her last prescription was filled on November 23, 2017.
- [25] My conclusion that Y.S.L. does not have a chronic pain condition arising from the accident that places her outside of the MIG is further based on the following:
- (i) Y.S.L. saw Dr. Wong in May of 2017, well within the period for her soft tissue injuries to resolve. This does not allow for a proper diagnosis of a chronic pain condition, because an insufficient amount of time has passed for recognized healing of soft tissue injures; and
 - (ii) Ms. Luy notes that Y.S.L. does not suffer a substantial inability to complete the tasks of her employment, does not suffer from a complete inability to carry on a normal life, and that the duration of her injury recovery is 9-12 weeks.

⁴ Medical examination report dated March 8, 2018 in response to the CNR's of CES for the period of February 28, 2017 to July 19, 2017 and the Medical examination report dated May 9, 2018 in response to the CNR's of Dr. Leung for the period November 23, 2017 to January 18, 2018.

⁵ Applicant submissions - pg. 67 of 79

[26] Based on the evidence before me, I am unable to find, on a balance of probabilities, that Y.S.L. should be removed from the MIG because she has chronic pain.

Award under Regulation 664

[27] Since I found that no benefits are payable, Security National cannot have been found to have unreasonably withheld payment. As a result, an award is not warranted in the circumstances of this case.

CONCLUSION

[28] Y.S.L. sustained predominantly minor injuries that fall within the MIG. Accordingly, Y.S.L. is not entitled to payment for the treatment plans claimed in this application. Y.S.L. is not entitled to an award. Her application is dismissed.

Released: July 22, 2019

**Derek Grant
Adjudicator**