



Citation: Haj Ahmad v. Allstate Canada, 2023 ONLAT 22-002102/AABS

Licence Appeal Tribunal File Number: 22-002102/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:

Mustafa Haj Ahmad

Applicant

and

Allstate Canada

Respondent

DECISION

VICE-CHAIR: Monica Ciriello

APPEARANCES:

For the Applicant: Julia Logoutova, Paralegal

For the Respondent: Kamil Podleszanski, Counsel

HEARD: By way of written submissions

OVERVIEW

- [1] Mustafa Haj Ahmad, the applicant, was involved in an automobile accident on August 31, 2021, 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, Insurer, and applied to the Licence Appeal Tribunal - Automobile Accident Benefits Service (the “*Tribunal*”) for resolution of the dispute.

ISSUES

- [2] The following issues are to be decided:
- i. Are the applicant’s injuries predominately minor as defined by the *Schedule* and subject to the treatment limit under the Minor Injury Guideline (“MIG”)?
 - ii. Is the applicant entitled to the assessments proposed by 2430303 ON Ltd., as follows:
 - a) \$1,050.88 for an attendant care assessment, in a treatment plan, dated September 14, 2021?
 - b) \$2,100.00 for a psychological assessment, in a treatment plan, dated September 14, 2021?
 - c) \$1,293.80 for the cost of an FAE assessment, in a treatment plan, dated October 8, 2021?
 - d) \$1,050.56 for medical services, in a treatment plan, dated November 19, 2021?
 - e) \$3,185.19 for physiotherapy, in a treatment plan, March 3, 2022?
 - f) \$1,994.97 for physiotherapy, in a treatment plan, denied on August 17, 2022?
 - g) \$2,641.62 for aqua therapy, in a treatment plan, dated March 21, 2022, denied on October 31, 2022?
 - iii. Is the applicant entitled to the assessments proposed by Quantum Health Mens Clinic, as follows:

- a) \$2,200.00 for erectile dysfunction assessment, in a treatment plan dated January 14, 2022?
- b) \$4,977.25 for erectile dysfunction assessment, in a treatment plan, dated March 8, 2022?
- iv. Is the respondent liable to pay an award under s. 10 of O. Reg. 664 because it unreasonably withheld or delayed payments to the applicant?
- v. Is the applicant entitled to interest on any overdue payment of benefits?

RESULT

- [3] I find that the applicant has not demonstrated that his accident-related impairments warrant treatment beyond the MIG. None of the treatment plans, nor interest nor award is payable.

ANALYSIS

- [4] The applicant was injured in a motor vehicle accident on August 31, 2021. The applicant was sitting in a parked vehicle when another vehicle reversed into the applicant's vehicle while parking. There is no evidence submitted to this Tribunal that paramedic services attended the scene of the accident.

APPLICABILITY OF THE MINOR INJURY GUIDELINE ("MIG")

- [5] The MIG establishes a framework available to injured persons who sustain a minor injury as a result of an accident. A "minor injury" is defined in s. 3(1) of the *Schedule* as, "one or more of a strain, sprain, whiplash associated disorder, contusion, abrasion, laceration or subluxation and includes any clinically associated sequelae to such an injury."
- [6] Section 18(1) of the *Schedule* provides that medical and rehabilitation benefits are limited to \$3,500.00 if the applicant sustains an impairment that is predominantly a minor injury in accordance with the MIG.
- [7] An applicant may receive payment for treatment beyond the \$3,500.00 limit if they can demonstrate that a pre-existing condition, documented by a medical practitioner, prevents maximal medical recovery of the minor injury sustained in the accident if they were kept in the MIG, or if they provide evidence of an injury sustained in the accident that is not included in the minor injury definition in s.3(1). The Tribunal has also determined that chronic pain with functional impairment or a psychological condition may warrant removal from the MIG.

- [8] It is the applicant's burden to establish entitlement to coverage beyond the \$3,500.00 cap on a balance of probabilities. The applicant has incurred \$3,470.27 of medical benefits available under the MIG.
- [9] The applicant does not make persuasive MIG submissions; rather, he intertwines vague MIG submissions with arguments on disputed treatment plans. This approach did not clarify the applicant's theory of the case. I have inferred that the applicant's position is that he should be removed from the MIG based on physical and psychological injuries. There is no indication in the applicant's evidence or submissions that he has a pre-existing condition that would preclude maximal recovery of any accident-related minor injury if he were kept within the MIG. However, I find that the applicant has not met his burden of proving that he should be removed from the MIG.

The applicant did not suffer accident-related physical injuries that warrant removal from the MIG

- [10] The applicant did not persuade me that he suffered accident-related physical injuries that justify removal from the MIG.
- [11] The applicant relies on the clinical notes and records ("CNRs") of Dr. Ayman Awad, family physician. It is the applicant's position that the CNRs reveal that the applicant reported neck pain, back pain, right leg pain and left shoulder pain. Furthermore, the applicant alleges that he sustained erectile difficulty relying on the Erectile Dysfunction Report of Dr. Jae Hoon Cho, physician, dated February 17, 2022. Dr. Cho concluded that the applicant suffered from a moderate degree of erectile dysfunction.
- [12] In response, the respondent relies on the CNRs of Dr. Awad, and the assessments of Dr. Christopher Gallimore, orthopaedic surgeon, Dr. Barbara Connolly, neurologist, and Dr. Kenneth Jansz, urologist.
- [13] The CNRs of Dr. Awad reveal that in his appointments between September 28, 2021, and October 19, 2021, the applicant raised physical pain concerns but did not mention the accident or any accident-related injuries. Dr. Awad referred the applicant for an x-ray of his lumbar spine, the result of which dated January 13, 2022 revealed degenerative changes and minimal findings of early degenerative disc disease.
- [14] Dr. Gallimore assessed the applicant, on April 13, 2022. The applicant reported pain to his neck, right shoulder, and lower back. Dr. Gallimore diagnosed the applicant with whiplash associated disorder (WAD-II), lumbar strain, and

functional overlay, and concluded that the applicant sustained soft tissue related injuries due to the accident. It was Dr. Gallimore's opinion that the applicant's injuries were predominately minor in nature.

- [15] Dr. Connolly assessed the applicant on May 3, 2022. The applicant reported neck and back pain, along with cognitive complaints. Dr. Connolly undertook a neurological examination, finding that the applicant presented no gross abnormalities; while speech production, pupillary response, muscle testing, muscle reflexes, sensory examination, coordination, and gait were all normal. Dr. Connolly concluded that from a neurological perspective, the examination was unremarkable, there was no neurological diagnosis related to the accident and opined that the applicant's injuries were predominately minor.
- [16] Dr. Jansz assessed the applicant on October 5, 2022. The applicant reported pre-accident urologic injury. Dr. Jansz undertook a clinical interview and physical examination, concluding that the applicant's erectile dysfunction had no relation to the accident, and there was no genitourinary impairment from the accident.
- [17] After considering the submissions and evidence of the parties, I am not persuaded that the applicant has accident-related impairments that warrant removal from the MIG. The applicant has not produced any medical evidence, prescription medication or medical referrals to demonstrate that his physical injuries warrant removal from the MIG. By contrast, the respondent provides corroborating and credible medical evidence by a variety of medical physicians that the applicant's injuries are predominately soft tissue and minor.
- [18] For these reasons, I find that the applicant has not met his onus in proving on a balance of probabilities that his physical injuries are outside the minor injury definition and therefore he does not warrant removal from the MIG due to accident-related physical injuries.

The applicant did not suffer psychological impairments as a result of the accident that justify removal from the MIG

- [19] The applicant did not persuade me that he sustained accident-related psychological impairments.
- [20] An applicant may be removed from the MIG if they sustain a psychological impairment as a result of the accident, as psychological impairments are not captured within the definition of minor injuries under section 3(1) of the *Schedule*. In order to be removed from the MIG due to psychological impairments, the applicant must show that she has an actual psychological impairment and not

just post-accident sequelae. A psychological diagnosis requires the progression of ongoing, post-accident symptomatology, or clinically significant psychological impairments.

- [21] The applicant does not produce any evidence to justify his alleged psychological impairment. The applicant only references Dr. Cho's Erectile Dysfunction Report that mentioned that there was a moderate degree of erectile dysfunction with possible psychological overlay. The applicant also raised concern that the Erectile Dysfunction Report was not reviewed by the respondent's section 44 examination by Dr. Douglas Saunders, psychologist.
- [22] In support of its position, the respondent relied on the July 25, 2022, psychological assessment of Dr. Saunders. Following his clinical review and psychometric testing, Dr. Saunders noted that the applicant had a full-time job, determined that the applicant is experiencing a mild level of symptoms that does not meet clinical criteria for impairment, and concluded that from a psychological perspective, there is no accident-related impairment, and his psychological condition does not meet a diagnostic threshold in accordance with the DSM.
- [23] After reviewing the evidence, I agree with the respondent. The applicant did not provide any compelling evidence to show that he suffers from any accident-related psychological impairment that would remove him from the MIG. There is no evidence of complaints of accident-related psychological injuries in the CNRs of his family physician. There is no evidence of any of any ongoing psychotherapy or pharmacotherapy as a result of a psychological condition, and there are no referrals to any psychiatrists, psychologists, therapists, or counsellors by his family physician. I find that Dr. Saunders is the only psychological expert to address the applicant's accident-related psychological impairments and I am persuaded by his opinion that there is no evidence of a psychological impairment sustained as a result of the accident.
- [24] For these reasons, I find that the applicant has not met his onus in proving on a balance of probabilities that he sustained any accident-related psychological impairment and therefore he remains within the MIG.

The applicant is not entitled to any of the treatment plans

- [25] Given that the applicant remains in the MIG and the parties agree that he has exhausted \$3,470.27, it is unnecessary for me to determine whether any of the treatment plans are reasonable and necessary.

Interest and Award

[26] Given that there is no unreasonable delay in payments to the applicant or overdue payments of benefits, the applicant is not entitled to an award or interest, respectively.

ORDER

[27] The application is dismissed, and I find that:

- i. The applicant's injuries are predominately minor and therefore subject to the treatment within the \$3,500.00 limit of the MIG;
- ii. The treatment plans in dispute are not payable; and
- iii. The applicant is not entitled to interest or an award.

Released: December 19, 2023

Monica Ciriello
Vice-Chair