



Citation: Isse v. Unifund Assurance Company, 2023 ONLAT 20-005746/AABS

Licence Appeal Tribunal File Number: 20-005746/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:

Mohamed Isse

Applicant

and

Unifund Assurance Company

Respondent

DECISION

ADJUDICATOR: Jessica Cavdar

APPEARANCES:

For the Applicant: Andrew P Suboch, Counsel

For the Respondent: Oliver Gorman-Asal, Counsel

Interpreter: Zeinab Abby, Somali Interpreter
Layla Sheikhnur, Somali Interpreter

Court Reporter: Ramin Daneshvar

HEARD: by Videoconference and In Writing: September 12, 2022

REASONS FOR DECISION

BACKGROUND

- [1] The applicant was involved in an automobile accident on **October 22, 2019**, and sought benefits pursuant to the Statutory Accident Benefits Schedule *Effective September 1, 2010 (including amendments effective June 1, 2016)*. The applicant was denied certain benefits by the respondent and submitted an application to the Licence Appeal Tribunal - Automobile Accident Benefits Service ("Tribunal").

ISSUES IN DISPUTE

- [2] The following issues are in dispute:
- a. Is the applicant entitled to a non-earner benefit in the weekly amount of \$185.00 from March 24, 2020 to date and ongoing, submitted October 25, 2019?
 - b. Is the applicant entitled to a medical benefit for \$3696.20 for physiotherapy recommended by Allied Physiotherapy and Wellness Centre submitted March 3, 2020?
 - c. Is the applicant entitled to the cost of an examination for \$2179.22 for a mental health assessment recommended by Community Health and Counselling Services Inc. submitted March 27, 2020?
 - d. Is the applicant entitled to the cost of an examination for \$2200 for a chronic pain assessment recommended by Community Health and Counselling Services Inc. submitted March 28, 2020?
 - e. Is the applicant entitled to interest on any overdue payment of benefits?

RESULT

- [3] The applicant has failed to establish that he is entitled non-earner benefits because he did not adduce sufficient evidence to establish that he suffers from a complete inability to carry on a normal life as a result of the accident.
- [4] The applicant has also failed to establish entitlement to the benefits enumerated in the three disputed treatment plans dated February 27, 2020, March 27, 2020, and March 28, 2020, respectively. The applicant has failed to adduce sufficient objective medical evidence to establish these treatment plans are reasonable and necessary for the recovery from accident-related injuries.

Failure to Provide Closing Submissions

- [5] The applicant elected not to submit written closing submissions, contravening the Tribunal's direction and at the request of the parties during the oral portion of this hearing. The applicant failed to submit these despite multiple written communications from the Tribunal exhorting him to file them. No reason for the applicant's non-compliance was provided.

NON-EARNER BENEFIT

- [6] To prove entitlement to a non-earner benefit, an applicant must lead sufficient evidence to demonstrate his complete inability to carry on a normal life as a result of the subject accident. The applicant bears the burden of proof on a balance of probabilities. In *Heath v. Economical Mutual Insurance Company*¹, the Ontario Court of Appeal held that "it is not sufficient for a claimant to demonstrate that there were changes in his or her post-accident life. Rather, it is incumbent on a claimant to establish that those changes amounted to being continuously prevented from engaging in substantially all of the person's pre-accident activities. The phrase 'continuously prevents' means that a claimant must prove 'disability or incapacity of the requisite nature, extent or degree which is and remains uninterrupted.'"²
- [7] To support his claim for the benefits in dispute, the applicant provided a Mental Health Assessment Report by Mr. Sebastian Joseph and Dr. Rick Lindal, and a Chronic Pain Assessment Report by Dr. Lenus Louis and Dr. Adib Ashraf. Neither of these section 25 reports rely on any diagnostic imaging or clinical notes and records to support their conclusions. Rather, both reports rely exclusively on the applicant's self-reporting and the results of the assessors' physical examination and psychometric testing.
- [8] I give little weight to both s. 25 reports, not only because of their over-reliance on the applicant's self-reporting but also because neither s. 25 assessment included a Somali translator in their assessment.
- [9] The applicant's native language is Somali, and the oral portion of the subject hearing was conducted with a Somali-language interpreter. The interpreter was necessary for the applicant to understand and be understood during the videoconference hearing.
- [10] I agree with the respondent's submission that the s. 25 assessors could not have properly assessed this applicant without being able to converse in Somali,

¹ 2009 ONCA 391.

² *Ibid.* at para. 50.

especially where so much of their assessments were dependent on the applicant's own self-reporting. I further note that neither of the s. 25 reports include a signed Expert's Acknowledgment of Duty statement, in contravention of Rule 10.2(b) of the Tribunal's Rules requiring a party that intends to rely on the evidence of an expert witness to provide a signed statement, from the expert, acknowledging their duty to the Tribunal.

- [11] The applicant attended two s. 44 assessments. For the reasons enumerated above, I place greater weight on the s. 44 assessments than on the s. 25 assessments.
- [12] The first was a s. 44 psychiatry assessment with Dr. Zabieliauskas in March 2020, who conducted an interview and physical examination via Somali interpreter. Dr. Zabieliauskas concluded that the applicant sustained cervical strain WAD II injuries with thoracolumbar strain and prepared two reports based on that assessment. Dr. Zabieliauskas further opined that the applicant's voiced complaints were not correlated with any objective clinical findings attributable to the subject accident, and that any soft tissue injuries or strains that would have occurred at the time of the accident would have healed in the ensuing 2-3 months. Dr. Zabieliauskas opined that the applicant's injuries met the definition of "minor injuries," and that there was no evidence that the applicant had developed a "complete inability to carry on a normal life".
- [13] The applicant also attended a s. 44 psychological assessment with Dr. Marc Mandel, which encompassed a clinical interview and psychometric tests utilizing a Somali interpreter. The psychometric tests used, Personality Assessment Inventory (PAI) and Structure Inventory of Malingered Symptoms (SIMS), all employ validity testing measures.
- [14] Dr. Mandel's assessment of the PAI Test and the SIMS Test revealed a strong possibility of symptom magnification, and recommended that care must be taken in interpreting the applicant's psychological complaints. Dr. Mandel concluded that there was a lack of consistent objective information that would support a DSM 5 diagnosis and/or suggest that the applicant had any substantial psychological condition that has been affected or caused by the subject accident. Dr. Mandel further opined that the applicant's injuries belonged in the MIG and that he did not have a "complete inability to carry on a normal life".
- [15] The applicant also provided oral testimony in support of his claim for the benefits in dispute. I found that the applicant's testimony was inconsistent with that of a person with a complete inability to carry on a normal life compared to his pre-accident life.

- [16] The applicant testified that he never sought medical attention from a doctor for his accident-related injuries, saying that he had trouble getting an appointment. While he testified that he had difficulty sitting for long periods of time, the applicant testified that he chose to seek treatment at a clinic, Allied Physiotherapy, which was a 40-minute drive from his home. The applicant did not provide an explanation regarding why he failed to seek treatment closer to home upon cross-examination, saying only that his friend had told him about Allied Physiotherapy.
- [17] While the applicant testified that his stress and emotional problems were severe, he stated that he had not sought any professional treatment for them, preferring instead to rely upon his faith. His testimony was contradictory on whether this was sufficiently helpful, but he confirmed that he never approached his family doctor or any other healthcare provider about these issues.
- [18] The applicant further testified that he has been a full-time student for several years post-accident, having graduated from his program earlier this year. The applicant did not disclose the fact that he was a student to any of the respondent's assessors during their examinations. The applicant's ability to successfully pursue a full-time course of academic study entirely post-accident does not align with a complete inability to carry out a normal life.
- [19] I further find that the evidence led by the applicant fails to prove that he has a complete inability to carry on a normal life for the reasons described above. Therefore, he is not entitled to non-earner benefits.

TREATMENT PLANS

- [20] In order for the applicant to receive payment for a medical or rehabilitation benefit under the Schedule, the benefit in dispute must be reasonable and necessary, pursuant to ss. 14-17. The applicant did not lead sufficient evidence to demonstrate on a balance of probabilities that any of the disputed treatment plans were reasonable or necessary. His oral testimony was inconsistent and unreliable, and I afford little weight to his s. 25 reports for the reasons set out above. I find that the applicant's evidence did not rise to the standard of proving that these treatment plans are necessary and reasonable to address his impairments resulting from the subject accident.

CONCLUSION

[21] The applicant is not entitled to any benefits in dispute. Since no benefits are payable, no interest applies.

Released: January 31, 2023

Jessica Cavdar
Adjudicator