



Citation: Retezepai v. Economical Insurance Company, 2023 ONLAT 21-007004/AABS

Licence Appeal Tribunal File Number: 21-007004/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:

Brounilnta Retezepai

Applicant

and

Economical Insurance Company

Respondent

DECISION

ADJUDICATOR: Bonnie Oakes Charron

APPEARANCES:

For the Applicant: Marissa Bannister, Paralegal

For the Respondent: Colin MacDonald, Counsel

HEARD: In Writing

OVERVIEW

- [1] Brounilnta Retezepai, the applicant, was involved in an automobile accident on May 23, 2019, 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, Economical Insurance Company, and applied to the Licence Appeal Tribunal - Automobile Accident Benefits Service (the “Tribunal”) for resolution of the dispute.

ISSUES

- [2] As per the case conference order, the issues in dispute are the following:
- i. Are the applicant’s injuries predominantly minor as defined in s. 3 of the *Schedule* and therefore already consumed the \$3,500.00 limit and in the Minor Injury Guideline (“MIG”)? Note: The parties agree the MIG limits have been exhausted.
 - ii. Is the applicant entitled to \$2,789 for physiotherapy, proposed by Dr. Nevin Wadhwa, Chiropractor in a treatment plan/OCF-18 (“plan”) denied on March 11, 2020?
 - iii. Is the applicant entitled to \$2,147 for attendant care assessment, proposed by Medex assessment, in a treatment plan/OCF-18 denied on September 25, 2019?
 - iv. Is the applicant entitled to \$2,010.65 for functional capacity evaluation (FCE) in a treatment plan/OCF-18 denied on September 24, 2019?
 - v. Is the applicant entitled to \$2,260 for psychological assessment, proposed by Medex assessment in a treatment plan/OCF-18 denied on September 10, 2019?
 - vi. Is the applicant entitled to interest on any overdue payment of benefits?

RESULT

- [3] The applicant remains in the MIG and is not entitled to any of the treatment plans as the \$3,500.00 funding limit has been reached.
- [4] No payments are overdue therefore no interest is payable.

ANALYSIS

Applicability of the Minor Injury Guideline

- [5] The parties agree that the applicant has used all the funding available within the limits of the MIG.
- [6] The applicant submits that the \$3,500.00 in benefits she has already received is insufficient, and she requires further treatment to address her injuries from the accident. The respondent submits that the applicant sustained only minor injuries as defined in s. 3 of the *Schedule*, and therefore she is not entitled to any further treatment.
- [7] My task is to determine if the applicant's injuries fall within the MIG. If so, none of the treatment plans are payable. If not, I must determine if the treatment plans are reasonable and necessary.

Are the applicant's injuries minor as defined in the Minor Injury Guideline (MIG)?

- [8] I find that the applicant's injuries from the accident are minor as defined in s. 3 of the *Schedule*.
- [9] Section 18(1) of the *Schedule* provides that medical and rehabilitation benefits are limited to \$3,500.00 if the insured person 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."
- [10] An insured person 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.
- [11] In all cases, the burden of proof lies with the applicant.
- [12] The applicant submits that her injuries following the accident included neck, back, and shoulder pain, headaches, insomnia, and anxiety. At the initial visit to her family doctor more than a week after the accident, Dr. Gorja documents whiplash injury, shoulder pain, rotator cuff strain, and anxiety. The doctor uses a question mark to qualify her notation of a possible concussion. No serious

injuries are revealed by the initial imaging at the hospital nor in similar tests ordered by her family doctor shortly after the accident.

- [13] As recommended by Dr. Gorja, the applicant begins a program of physical therapies to address her symptoms. A setback occurs in late 2019. However, Dr. Gorja's notes attribute the applicant's increased shoulder pain to lifting weights at the gym. After approximately one year of treatment, the applicant reported to s. 44 examiner Dr. Marino that she discontinued the treatments as she had experienced "substantial improvements".
- [14] The respondent submits that the applicant has not provided any compelling medical evidence to support a belief that her injuries are beyond the MIG. I agree with the respondent. The following three separate s. 44 examiners found the applicant's injuries to be minor as defined by the *Schedule*:
- i. Dr. Soric, physiatrist on March 12, 2021 and October 22, 2021.
 - ii. Dr. Dost, neurologist on October 22, 2021.
 - iii. Dr. Marino, psychologist on October 22, 2021.

I am persuaded by the unanimity of these assessors who all find that the applicant sustained only minor injuries as a result of the accident.

- [15] The applicant also submits that she suffered a concussion. However, I see no definitive diagnosis of a concussion in the evidence. Dr. Gorja places a question mark beside the word "concussion" in her notes, and there is no confirmed diagnosis by Dr. Gorja or anyone else.
- [16] The applicant has failed to demonstrate that her injuries are not minor because there is no evidence of serious injury in the imaging results, no conclusive diagnosis of a concussion, and several s. 44 assessors provide compelling reports that she sustained only minor injuries as a result of the accident.

Does the applicant suffer from chronic pain with a functional impairment that prevents her from achieving maximum recovery within the MIG?

- [17] The applicant submits that she suffers from ongoing pain in her neck, shoulder and back, and experiences debilitating headaches. She also asserts that she is unable to perform all of her former housekeeping tasks due to shoulder pain, and sometimes requires assistance. However, a fourth s. 44 examiner, Dr. Getsos, assessed the applicant with regard to her functional abilities on March 12, 2021. Dr. Getsos concluded that the applicant could perform her job as a waitress, was

independent for her self-care routine, and was capable of performing housekeeping tasks.

- [18] Further evidence is provided in the s. 44 report of Dr. Soric on March 12, 2021. Dr. Soric reviewed several earlier assessment reports as part of her documentary review, and reports that the applicant had an occupational therapy assessment on December 21, 2020. In that report, OT assessor Dan Gauthier wrote that the applicant had resumed driving, returned to work, and was able to engage in social activities.
- [19] The applicant has failed to demonstrate that she suffers from pain that rises to a level where it impairs her functionality and warrants removal from the MIG. She continues to engage in personal, home, and employment activities and there is no referral to a pain specialist nor a diagnosis of chronic pain syndrome.

Does the applicant suffer from a psychological condition that prevents her from achieving maximum recovery within the MIG?

- [20] The applicant states that she suffers from insomnia and anxiety and will have “psychotherapy needs for some time to come” as per her submission. However, she also reports during a s. 44 psychological assessment with Dr. Marino on October 22, 2021, that “she is not interested in any psychological counselling as she does not feel she needs it”. I am persuaded by her self-report coupled with the conclusion of Dr. Marino that “she does not present with any psychological diagnosis at this time”.
- [21] By her own admission, and confirmed by a psychologist, the applicant does not suffer from a psychological condition that prevents her from achieving maximum recovery within the MIG.

Is the applicant entitled to the four treatment plans in dispute?

- [22] The applicant remains in the MIG. There is no further funding available within the \$3,500.00 MIG limits.
- [23] Therefore, the applicant is not entitled to the four treatment plans in dispute, and I am not required to determine if they are reasonable and necessary.

Interest

- [24] Interest applies on the payment of any overdue benefits pursuant to s. 51 of the *Schedule*.
- [25] No interest applies as no benefit payments are overdue.

ORDER

- [26] The applicant has not met her burden to demonstrate that treatment beyond the MIG is warranted.
- [27] As a result, the applicant is not entitled to the disputed treatment plans nor interest.
- [28] The application is dismissed.

Released: September 13, 2023



Bonnie Oakes Charron
Adjudicator