



**Citation: Abd El Hadi v. Economical Insurance Company, 2024 ONLAT 21-009686/AABS**

**Licence Appeal Tribunal File Number: 21-009686/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:

**Al Shaymaa Abd El Hadi**

**Applicant**

and

**Economical Insurance Company**

**Respondent**

**DECISION**

**VICE-CHAIR:**

**Monica Ciriello**

**APPEARANCES:**

For the Applicant:

Jeton Memeti, Paralegal

For the Respondent:

Pamela Vlastic, Counsel

**HEARD: In Writing**

**November 19, 2023**

## OVERVIEW

[1] Al Shaymaa Abd El Hadi, the applicant, was involved in an automobile accident on August 25, 2020, 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] The following issues are to be decided:

- i. Are the applicant’s injuries predominantly minor as defined in s. 3 of the *Schedule* and therefore subject to treatment within the \$3,500.00 Minor Injury Guideline (“MIG”) limit?
- ii. Is the applicant entitled to the amount of \$1,995.32 for psychological services, proposed by Pilowsky Psychology Professional Corporation in a treatment plan (“OCF-18”) submitted March 2, 2021?
- iii. Is the applicant entitled to the amount of \$3,259.48 for psychological services, proposed by Pilowsky Psychology Professional Corporation in an OCF-18 submitted March 17, 2021?
- iv. Is the applicant entitled to the amount of \$2,460.00 for an orthopaedic assessment, proposed by All Health Medical Centre in an OCF-18 submitted on May 19, 2022?
- v. 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?
- vi. Is the applicant entitled to interest on any overdue payment of benefits?

## RESULT

[3] I find that the applicant has not demonstrated that her accident-related impairments warrant treatment beyond the MIG. None of the treatment plans, award or interest, are payable.

## ANALYSIS

### APPLICABILITY OF THE MIG

- [4] 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.”
- [5] 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.
- [6] 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.
- [7] It is the applicant’s burden to establish entitlement to coverage beyond the \$3,500.00 cap on a balance of probabilities.
- [8] The applicant submits that she sustained non-minor physical injuries and a psychological impairment because of the accident and that her injuries have resulted in chronic pain, warranting removal from the MIG. I find that the applicant has not met her evidentiary burden of proving that she should be removed from the MIG.

### ***Did the applicant suffer physical injuries that warrant removal from the MIG?***

- [9] The applicant asserts that she persistently complained of physical injuries since the accident, including neck pain radiating to her left hand, upper back pain, lower back pain, bilateral shoulder pain, chest and clavicle pain, numbness and tingling in her left hand and arm, frequent headaches as well as dizziness and sleep disruption. The applicant relies on the clinical notes and records (CNRs) of Maged Seif, family physician, where she expressed pain from standing, bending, lifting, pushing and twisting. The applicant was prescribed Arthrotec 50.
- [10] In response, the respondent relies on the September 28, 2020 OCF-3 of Mr. Tony Jian, chiropractor, which provides that the applicant sustained soft tissue

injuries. The respondent also relies on the CNRs of Dr. Seif that reveal the applicant's complaints of soft tissue pain. It asserts that the last entry in the CNRs to make any reference to pain related to the motor vehicle accident was on January 8, 2021. Further, it argues that between the accident and January 8, 2021, the CNRs make no referrals to any specialists or for further testing.

- [11] The respondent also raised the issue of causation, highlighting that on June 25, 2021, the applicant was involved in a workplace accident when a steel shelf and boxes fell on the applicant's head. The respondent noted a change in Dr. Seif's CNRs after the accident, notably between June 28, 2021 and December 17, 2021, as the applicant was diagnosed with concussions, headaches, neck pain, back pain and referred to a specialist during this period. During the Workplace Safety Insurance Board (WSIB) investigations, the applicant disclosed that she was involved in a previous motor vehicle accident, and sustained soft tissue injuries, which resolved with physiotherapy.
- [12] Lastly, the respondent relies on the in-person December 7, 2021 section 44 insurance examination by Dr. Todd Walters, general physician. Dr. Walters diagnosed the applicant with WAD-II strain, thoracic strain, and lumbosacral strain with a right shoulder contusion; all injuries treatable within the MIG. Dr. Walters prepared an addendum dated June 29, 2022, where he reviewed additional records from Dr. Seif, however, Dr. Walters maintained his original opinion.
- [13] After considering the submissions and evidence of the parties, I am persuaded that the applicant has soft tissue injuries as a result of the motor vehicle accident, which were resolved prior to her workplace accident. I agree with the respondent that any injuries or impairments that the applicant may be experiencing have no casual relationship to the motor vehicle accident. This is supported by the corroborating evidence in the CNRs of Dr. Seif, Dr. Walters and Mr. Jian. The Divisional Court's decision in *Sabadash v. State Farm et al.*, 2019 ONSC 1121 specifies that the 'but-for' test is the correct test for causation in statutory accident benefit disputes. *Sabadash* has not been overturned and binds me. I note that the applicant does not make submissions to show causation, is silent on *Sabadash* and only references the workplace accident in the reply submissions. The applicant has not demonstrated that 'but for' the motor vehicle accident she would not have sustained her injuries where she self reported that her motor vehicle accident injuries were resolved prior to the WSIB investigations. Accordingly, the applicant has not met her burden.

***Did the applicant suffer psychological impairments as a result of the accident that justify removal from the MIG?***

- [14] An applicant may be removed from the MIG if they sustain a psychological impairment as a result of the accident, on the basis that psychological impairments are not captured within the definition of minor injuries under s. 3(1) of the *Schedule*.
- [15] The applicant submits that as a result of the accident, she suffers from a psychological impairment, that requires removal from the MIG. The respondent disagrees.
- [16] In support of the applicant's position, the applicant relied on the March 17, 2021, psychological assessment report of Dr. Sandra Sagrati, psychologist. Dr. Sagrati diagnosed the applicant with severe levels of depression and anxiety including major depressive disorder, single episode, moderate, and post-traumatic stress disorder with vehicular anxiety and panic attacks.
- [17] The respondent relied on the psychological assessment report of Dr. James Murray dated December 29, 2021, the WSIB psychiatry assessment of Dr. Jodi Leigh Grenier, psychiatrist, dated October 12, 2021, and the WSIB neuropsychological assessment of Dr. Giselle Braganza, psychologist.
- [18] Dr. Murray administered the Structured Inventory of Malingered Symptoms (SIMS), Pain Patient Profile (P3) and Trauma Symptom Inventory (TSI-A). Dr. Murray found there was no significant psychological impairments or DSM-5 diagnosis attributable to the motor vehicle accident.
- [19] Throughout the WSIB investigation, the applicant reported that she did not have any psychological concerns or impairments leading up to the workplace accident. Specifically, the applicant self reported to Dr. Grenier that prior to the workplace accident she had no mental health issues, her mood was good, and she slept well. Furthermore, the applicant was independent in all her activities of daily living, including cooking, cleaning and laundry, she also enjoyed socializing with friends. Dr. Giselle Braganza diagnosed the applicant with adjustment disorder with mixed anxiety and depressed mood and somatic symptom disorder, however, it was as a result of the applicant's workplace accident and not the motor vehicle accident at issue here.
- [20] Lastly, in preparation to undergo bariatric surgery to assist with the applicant's weight, unrelated to the motor vehicle or workplace accident, the applicant underwent a psychiatric assessment, dated September 16, 2021, by Dr. Richard

Yanofsky, psychiatrist. During the assessment the applicant did not mention the motor vehicle accident, nor did she raise any psychological concerns.

- [21] After reviewing the evidence, I agree with the respondent. I do not find that there is compelling evidence to show that the applicant suffers from a psychological impairment as a result of the motor vehicle accident that would remove her from the MIG. I prefer the corroborating evidence of Dr. Murray, Dr. Grenier, Dr. Braganza and Dr. Yanofsky, because it shows that prior to the workplace accident, the applicant suffered no psychological impairments. I put little weight on the report of Dr. Sagrati as it is inconsistent with the bulk of the medical evidence. Accordingly, the applicant has not met her burden.

***Does the applicant have chronic pain that warrants removal from the MIG?***

- [22] For chronic pain to take someone out of the MIG, there must be an effect on their functionality. The applicant must provide evidence that her accident-related injuries and/or pain have had a detrimental impact on her functionality.
- [23] The applicant submits that she suffers from accident-related chronic pain with functional impairment sufficient to remove her from the MIG. The applicant relies on the Section 25 Orthopaedic Assessment Report, dated June 8, 2022 completed over the phone by Dr. Darrell Justice Ogilvie-Harris, orthopedic surgeon. Dr. Ogilvie-Harris found that the applicant is a patient with severe pain-related functional limitations and it was his opinion that the applicant sustained soft tissue injuries directly as a result of the motor vehicle accident, and that she has gone on to develop the features of chronic pain syndrome.
- [24] The respondent submits that the applicant failed to provide any evidence to demonstrate that she has chronic pain, taking issue with the report and diagnosis of Dr. Ogilvie-Harris. The respondent asserts that the report minimizes the impairments of the workplace accident, by bolstering the impact of the motor vehicle accident, which is not corroborated by any other medical evidence. Specifically, Dr. Ogilvie-Harris failed to reference that the applicant confirmed to various medical professionals that she did not have any ongoing motor vehicle accident-related impairments or pain at the time of the workplace accident.
- [25] The respondent further submits that the applicant failed to establish that she meets the requirements under the *American Medical Association Guides* ("*AMA Guides*"). The *AMA Guides* are not binding on the Tribunal and are not incorporated into the *Schedule*. However, the Tribunal has found the *AMA Guides* to be a useful interpretative tool for evaluating chronic pain claims. The *AMA Guides* provides that you can be diagnosed with chronic

pain when you have three or more of the six factors. I agree with the respondent that the applicant did not provide evidence to demonstrate that she meets three of the six factors, as there is no evidence of abuse of or dependence on prescription drugs or other substances; of excessive dependence on health care providers, her spouse, or family, as confirmed by the applicant during the WSIB investigation; of any physical deconditioning, as the applicant continued to work full-time; of withdrawal from social milieu, as she maintained swimming with friends and spending time with her children; or of a failure to restore pre-injury function as a result of soft tissue injuries.

- [26] I am not persuaded that the applicant demonstrated that her accident-related soft tissue injuries, confirmed by the medical evidence, had a detrimental impact on her functionality. Although in June 2022 Dr. Ogilvie-Harris diagnosed the applicant with chronic pain syndrome, I find this diagnosis is unsupported by the medical evidence. Even if I did accept Dr. Ogilvie-Harris' chronic pain diagnosis, I am persuaded that for chronic pain to be more than just sequelae from soft tissue injuries it must be of such a severity that it causes suffering and distress accompanied by functional impairment or disability. There is a lack of evidence advanced by the applicant to suggest that her injuries were severe enough to cause distress accompanied by functional impairment or disability.
- [27] I note that between October 2020 and January 2021, the last date the motor vehicle accident was referenced in Dr. Seif's CNRs, Dr. Seif did not refer the applicant to a specialist, did not advance further medical intervention, and the applicant returned to full-time work. I also note that the applicant was assessed by Dr. Ogilvie-Harris on June 6, 2022, which is one year after the June 2021 workplace injury, further raising the question of causation. The applicant's submissions do not address causation.
- [28] I find that the applicant has not met her onus to prove she has chronic pain with functional impairment that would remove her from the MIG.

### ***Treatment Plans***

- [29] I find that the applicant's injuries do not warrant removal from the MIG. Therefore, the applicant is not entitled to any of the treatment plans in dispute.

***Interest and Award***

[30] Given that there is no unreasonable delay in payments to the applicant or overdue payments of benefits, the applicant is not entitled to interest pursuant to s. 51 or to an award pursuant to s. 10 of O. Reg. 664.

**ORDER**

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

- i. The applicant's injuries are predominately minor and therefore subject to 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: January 10, 2024**



---

**Monica Ciriello  
Vice-Chair**