

Dear Parties,

**RE: Tribunal File No: 22-013391/AABS  
Jetush Arifi vs. Economical Mutual Insurance Company**

Please see the attached AABS Decision related to your Automobile Accident Benefits Service dispute.

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[LATregistrar@ontario.ca](mailto:LATregistrar@ontario.ca).

Sincerely,

**Bianca Hintz**

**Case Management Officer**

Licence Appeal Tribunal

General Inquiries: 416-326-1356 | Toll Free: 1-888-444-0240

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**Licence Appeal Tribunal**

Tribunaux décisionnels Ontario  
**Tribunal d'appel en matière de permis**



**Citation: Arifi v. Economical Mutual Insurance Company, 2024 ONLAT 22-013391/AABS**

**Licence Appeal Tribunal File Number: 22-013391/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:

**Jetush Arifi**

**Applicant**

and

**Economical Mutual Insurance Company**

**Respondent**

**DECISION**

**ADJUDICATOR: Michael Beauchesne**

**APPEARANCES:**

For the Applicant: Maziar Mortezaei, Counsel

For the Respondent: Colin MacDonald, Counsel

**HEARD: By way of written submissions**

## OVERVIEW

- [1] Jetush Arifi (the “applicant”), was involved in an automobile accident on October 4, 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 Economical Mutual Insurance Company (the “respondent”) and applied to the Licence Appeal Tribunal—Automobile Accident Benefits Service (the “Tribunal”) for resolution of the dispute.

## ISSUES

- [2] The issues in dispute are:
- i. Are the applicant’s injuries predominantly minor as defined in section 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 an income replacement benefit (“IRB”) in the amount of \$400.00 per week from October 14, 2021, to December 31, 2021?
  - iii. Is the applicant entitled to the physiotherapy services proposed by Mississauga Active Physiotherapy Services as follows:
    1. \$249.58 (\$1,389.00 less \$1,139.42 approved) in a treatment plan (“OCF-18”) dated January 7, 2021;
    2. \$2,774.60 in an OCF-18 dated February 8, 2022; and
    3. \$2,774.60 in an OCF-18 dated March 29, 2022?
  - iv. 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 the disputed OCF-18s or an IRB. No interest is payable.

## ANALYSIS

### Applicability of the MIG

- [4] I find the applicant has failed to demonstrate he should be removed from the MIG.
- [5] Section 18(1) of the *Schedule* provides that medical and rehabilitation benefits are limited to \$3,500.00 if the insured 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.” The applicant may be removed from the MIG if he can establish his accident-related injuries fall outside the MIG or, under section 18(2), that he has a documented pre-existing condition combined with compelling medical evidence stating that the condition precludes maximal recovery of his accident-related minor injuries if he is 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. In all cases, the burden of proof lies with the applicant.
- [6] In this matter, the applicant says his removal from the MIG is warranted by pre-existing conditions and chronic pain.

*Should the applicant be removed from the MIG because of a pre-existing condition?*

- [7] No. The applicant has not shown me his pre-existing condition precludes maximal recovery of his accident-related injuries if he remains in the MIG.
- [8] To demonstrate he should be removed from the MIG, the applicant must first show he has a pre-existing condition that was documented by a health practitioner before the accident. The applicant must also produce a medical opinion and compelling medical evidence that indicates the pre-existing condition precludes maximal recovery of his accident-related injuries if he remains in the MIG.
- [9] The applicant submits he suffered from pre-existing chronic back pain, sciatic pain, and radicular symptoms down to his left leg—all of which were “significantly” aggravated by the accident. The applicant relies on the clinical notes and records of Dr. Ramesh Asirwatham (family physician) to support his position.

- [10] The respondent argues there is no evidence from the applicant's medical treatment providers to suggest the accident exacerbated his pre-existing chronic pain, or that indicates his longstanding issues with chronic pain syndrome would prevent him from reaching maximal recovery if treated within the MIG. The respondent relies on the section 44 Insurer's Examination ("IE") by Dr. Pankaj Eric Bansal (physician) on March 15, 2023.
- [11] The applicant has met his onus to prove the first part of the test articulated at section 18(2) of the *Schedule*. The applicant points to a letter dated July 5, 2019, by Dr. Abdil Qayyum Rana (neurologist) that documents an impression of chronic low back pain radiating to the applicant's left lower extremity with clinical features of lumbar radiculopathy. I accept this evidence establishes a pre-existing condition documented by a health practitioner before the accident.
- [12] The applicant failed to meet the second part of the test that pertains to MIG removal owing to a pre-existing condition. I accept that some of the applicant's accident-related injuries involve parts of his body that correlate with his pre-existing condition, and notably the applicant's back pain and radiculopathy. However, I do not agree this correlation, on its own, satisfies the applicant's onus to provide a medical opinion with compelling evidence that establishes his pre-existing condition precludes maximal recovery of his accident-related injuries if kept within the MIG.
- [13] While the applicant's submissions rely heavily on the exacerbation or aggravation of his pre-existing condition to meet his onus, I find that the worsening of a pre-existing condition owing to accident-related injuries does not inescapably lead to a conclusion that treatment outside the MIG is warranted to achieve maximal recovery from accident-related injuries. For example, the applicant references aggravation of his pre-existing condition in Mississauga Hospital records of "various dates." He points to an October 2021 letter from Dr. Praby Singh (otolaryngologist) that mentions a history of back pain and sciatica. The applicant also directs me to the February and March 2022 clinical notes and records of Dr. Asirwatham to show accident-related aggravations of pre-existing conditions. In April 2022, the applicant self-reported to Dr. Ubendranauth Kalicharran (anesthesiologist) that his pre-existing lower back pain had been increasing in severity and intensity since the accident. However, the applicant did not point me to a medical opinion voiced by any of these or other health practitioners that confirms the applicant's pre-existing condition was aggravated to such a degree it would preclude maximal recovery of his accident-related injuries under the MIG. As such, I decline to remove the applicant from the MIG

on the basis of a pre-existing condition as outlined in section 18(2) of the *Schedule*.

*Should the applicant be removed from the MIG because of chronic pain with functional impairment or chronic pain syndrome?*

- [14] No. The applicant has not shown he sustained accident-related chronic pain with functional impairment, or chronic pain syndrome.
- [15] To demonstrate the applicant should be removed from the MIG, the applicant must show he sustained chronic pain with functional impairment that is more than sequelae from his accident-related injuries. The Tribunal has held that chronic pain syndrome, or pain that is a severe, debilitating condition distinct from ongoing or recurring pain, qualifies as chronic pain.
- [16] The applicant submits Dr. Asirwatham, various hospital doctors, and Dr. Kalicharran consistently diagnosed him with chronic pain syndrome caused by the accident. The applicant maintains he has been “forced” to take prescribed pain medications for an extended period of time and had consistently complained of pain for more than six months after the accident. The applicant relies on *T.S. vs Aviva General Insurance Canada*, 2018 CanLII 83520 ON LAT (“*T.S.*”) to show the Tribunal defines chronic pain as ongoing or recurrent pain lasting beyond the usual course of illness or injury, or more than three to six months after the triggering event (i.e., accident). The applicant also relies on the chronic pain criteria set out in the 6<sup>th</sup> edition of the *American Medical Association’s Guides to the Evaluation of Permanent Impairment* (“*Guides*”) to establish his chronic pain.
- [17] The respondent argues that “a number of” healthcare professionals referred to the applicant’s ongoing pre-accident pain symptoms as chronic pain, and that the applicant’s sciatica is a longstanding condition that predates the accident as well as a previous accident in 2015.
- [18] While the applicant does not require a formal diagnosis of chronic pain to be removed from the MIG, he basis his claim on being consistently diagnosed with chronic pain syndrome as a result of the accident. I find the applicant has failed to substantiate this argument. The applicant does not point to references of chronic pain in the Mississauga Hospital records. His submissions on the October 2021 disability certificate (“OCF-3”) completed by Mr. Krishan Sood (physiotherapist) do not point to a mention of chronic pain syndrome or attribute post-accident limitations in daily living, housekeeping, and employment activities to chronic pain. Similarly, the applicant does not direct me to evidence that

shows Dr. Asirwatham agreed with the applicant's own report of being unable to do any kind of work, or offered a chronic pain diagnosis in October 2021. The applicant's submissions on the October 2021 assessment by Dr. Singh make no reference to chronic pain or functional limitations, and Dr. Asirwatham's clinical note entries of June 2022 and April 2023 do not diagnose chronic pain syndrome as submitted by the applicant. The applicant's submissions on Dr. Kalicharran's report fail to point me to evidence of a chronic pain syndrome diagnosis, or even a mention of chronic pain.

[19] In fact, the only substantiated diagnosis of a "chronic pain disorder" is offered by Dr. Asirwatham on March 18, 2022. I did not place full weight on this evidence because it stands apart from the other medical opinions in this case, and particularly the contemporaneous findings of Dr. Kalicharran, who the applicant relies on as a "chronic pain specialist." I am persuaded that Dr. Kalicharran, who conducted a consultation for chronic pain assessment and management in April 2022 at the request of the Dr. Asirwatham, did not determine the applicant was experiencing a chronic pain disorder as diagnosed a month earlier by Dr. Asirwatham. The diagnoses specified in Dr. Kalicharran's report include spinal and foraminal stenosis, mechanical low back pain, cervicogenic myofascial pain, occipital neuralgia, and SI dysfunction. Further, the applicant's submissions do not pinpoint Dr. Kalicharran's recommendation for a "multi-disciplinary chronic pain treatment program."

[20] I now turn to the applicant's submissions on the chronic pain criteria in the *Guides*. While not binding on the Tribunal, the *Guides* are a useful interpretive tool to help determine if the applicant has chronic pain. I disagree with the applicant's position that he meets of least three of the six chronic pain criteria listed in the *Guides*, which he must do to rely on the *Guides* as a persuasive factor. Those criteria include:

- i. Use of prescription drugs beyond the recommended duration and/or abuse of or dependence on prescription drugs and other substances;
- ii. Excessive dependence on health care providers, spouse, or family;
- iii. Secondary physical deconditioning due to disuse and/or fear-avoidance of physical activity due to pain;
- iv. Withdrawal from social milieu, including work, recreation, or other social contracts;

- v. Failure to restore pre-injury function after a period of disability, such that the physical capacity is insufficient to pursue work, family, or recreational needs; and
- vi. Development of psychological sequelae after the initial incident, including anxiety, fear-avoidance, depression, or nonorganic illness behaviours.

- [21] While the applicant references *T.S.* in his submissions, I prefer the more comprehensive approach outlined in the *Guides* to determine chronic pain. However, I find the applicant's MIG submissions on the applicability of the *Guides* criteria to his case are hampered by the lack of complementary references to evidence. The applicant says he was heavily dependant on prescription drugs. In my view, heavy dependence is not synonymous with abusing or using prescription medications beyond the recommended duration. Further, the applicant failed to point me to a medical opinion that substantiated abuse of his prescribed medications or use beyond the recommended duration. While the applicant contends he was heavily dependant on health care providers and family members, the test set out by the *Guides* is excessive dependence. In any event, submissions are not evidence, and the applicant did not direct me to evidence of excessive dependence in this context.
- [22] The applicant goes on to say that all medical records confirm he avoids rigorous physical activities and is severely limited in standing, sitting, and walking tolerances due to pain. I disagree. The applicant's submissions do not point to evidence in all the medical reports he relies on to substantiate his claim. I diminished the weight of Dr. Asirwathan's June 2022 and April 2023 entries because the applicant did not show me that Dr. Asirwatham corroborated the applicant's complaints of being unable to bend, bear weight, turn around, walk or sit for long, or do any kind of work due to pain. Further, I find the applicant's self-reports of deconditioning due to pain in 2022 and 2023—inclusive of complaints he made to Dr. Kalicharran about walking and sitting difficulties—are inconsistent with his return to physically demanding, labour-based work in January of 2022, which I address in more detail in my analysis of the applicant's IRB claim later in this decision.
- [23] The applicant's submissions do not direct me to the evidence he relies on in all medical records to confirm he has withdrawn from social milieu, including work, recreation, or other social contracts. He did not pinpoint evidence in his MIG submissions that persuades me his physical capacity is insufficient to pursue work, family, or recreational needs. I do not accept the OCF-3 as sufficient for this purpose because the applicant does not direct me to contemporaneous



medical evidence which corroborates Mr. Sood's opinion that the applicant suffered a complete inability to engage in daily living activities, housekeeping chores, and pre-accident employment duties as a result of the accident. In fact, the bulk of the evidence put forward in the applicant's submissions pertains to injury diagnoses and recommended treatment, which offers little insight into limitations and restrictions arising from his pain.

[24] Given the applicant has failed to show he meets at least four of the six chronic pain criteria in the *Guides*, and that he must meet at least three of these criteria for his pain to be qualified as chronic per the *Guides*, I find it unnecessary to assess the remaining two criteria.

[25] Taken together on a balance of probabilities, this evidence does not support the applicant's claim of accident-related chronic pain with functional impairment or chronic pain syndrome. I therefore disagree the applicant should be removed from the MIG on this basis.

#### **The applicant's entitlement to the disputed OCF-18s**

[26] The applicant is not entitled to any of the disputed OCF-18s. It is unnecessary to assess the reasonableness and necessity of these OCF-18s because the applicant remains in the MIG, and the parties agree the MIG limits have been exhausted.

#### **The applicant's entitlement to an IRB**

[27] I find the applicant has not demonstrated entitlement to an IRB.

[28] To receive payment for an IRB under section 5(1) of the *Schedule*, the applicant must be employed at the time of the accident and, as a result of and within 104 weeks after the accident, suffer a substantial inability to perform the essential tasks of that employment. The applicant must identify the essential tasks of his employment, which tasks he is unable to perform and to what extent he is unable to perform them. The applicant bears the burden of proving, on a balance of probabilities, that he meets the test.

[29] For context, the parties agreed at the case conference that the period of IRB entitlement claimed by the applicant was from October 14, 2021, to present and ongoing. The applicant maintained this position in its written submissions. However, the respondent's submissions pointed to evidence that was consistent with the applicant returning to work within two to three months of the October 2021 accident. In his subsequent reply, the applicant changed the period of

entitlement to end on December 31, 2021, which is reflected in the issues section of this decision.

- [30] The applicant submits the findings of Drs. Asirwatham and Kalicharran support his entitlement to an IRB. He says the essential tasks of his self-employment as the owner and operator of a construction company include physical labour associated with landscaping, renovations, and construction that require heavy lifting, repetitive movements, and prolonged walking, standing, and climbing. The applicant conveys that his continuous chronic and neurological pain, functional limitations, and psychological impairments (i.e., low mood, post-traumatic stress disorder, and sleeping disturbances) prevented him from returning to his pre-accident employment duties.
- [31] The respondent argues that section 31 of the *Schedule* applies because the applicant materially misrepresented the use of his vehicle for work purposes at the time he entered into his insurance contract. The respondent also says that section 53 of the *Schedule* applies because the applicant willfully misrepresented his return to work in his application for an IRB. The respondent relies on an Examination Under Oath (“EUO”) conducted in March 2022, the 2022 Notice of Assessment (“NOA”) pertaining to the applicant’s construction business, and Dr. Bansal’s report to support its position. The respondent adds that the only evidence that suggests the applicant meets the IRB test is the OCF-3 completed by Mr. Sood, which is not sufficient to meet the applicant’s onus.
- [32] The applicant failed to persuade me that he is entitled to an IRB. While Mr. Sood indicated the applicant met the test for an IRB as of October 14, 2021, I was not pointed to corroborating evidence of disability up to end-December 2021. I do not agree that Dr. Asirwatham diagnosed the applicant as unable to do any kind of work in October 2021. His entry of October 8, 2021, documents the applicant’s own complaints of being unable to do any work, but offer no medical opinion in this regard. Dr. Asirwatham diagnosis low back pain with lumbar radiculopathy, whiplash, and bilateral shoulder pain, but stops short of corroborating any functional impairments or restrictions that support Mr. Sood’s opinion. Dr. Asirwatham’s entry of October 27, 2021, indicates the applicant continued to complain of neck and low back pain, but does not share a medical opinion on the applicant’s ability to perform his essential work tasks, or note any functional limitations or restrictions consistent with meeting the IRB test. Similarly, the applicant did not point me to evidence from Dr. Singh’s October 2021 examination that addresses the applicant’s ability to perform his essential work tasks, or that identifies limitations or restrictions consistent with a substantial inability to perform the essential tasks of his employment. The

remaining evidence referenced in the applicant's submissions falls outside the revised IRB eligibility period up to December 31, 2021, and I therefore did not place weight on these medical records.

- [33] Taken together on a balance of probabilities, I find this evidence falls short of establishing the applicant's eligibility for an IRB.

### **Interest**

- [34] Interest applies on the payment of any overdue benefits pursuant to section 51 of the *Schedule*. There are no overdue benefits in this case, so no interest is payable.

### **ORDER**

- [35] The applicant remains in the MIG and is not entitled to the disputed OCF-18s or an IRB. No interest is payable. The application is dismissed.

**Released: November 27, 2024**



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**Michael Beauchesne**  
**Adjudicator**