



Citation: Lacnit vs. Economical Insurance Company, 2025 ONLAT 23-001648/AABS

Licence Appeal Tribunal File Number: 23-001648/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:

Jay Lacnit

Applicant

and

Economical Insurance Company

Respondent

DECISION

ADJUDICATOR: Roderick Walker

APPEARANCES:

For the Applicant: Donata Di Iorio, Counsel

For the Respondent: Kayly Machado, Counsel

HEARD: By Way of Written Submissions

OVERVIEW

- [1] Jay Lacnit, the applicant, was involved in an automobile accident on April 23, 2022, 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 issue(s) in dispute are:
- 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 limit? Note: The parties agree the MIG limits have been exhausted.
 - ii. Is the applicant entitled to the treatment plans proposed by Mackenzie Medical Rehabilitation Centre as follows:
 - (a) \$3,622.73 for Chiropractic Services in a treatment plan dated July 7, 2022?
 - (b) \$1,300.00 for Chiropractic Services, (\$2,400.00 less \$1,100.00 approved), in a treatment plan dated December 21, 2022?
 - (c) \$2,023.03 for Chiropractic Services in a treatment plan dated March 6, 2023?
 - iii. Is the applicant entitled to the assessments proposed by Prime Health Care Inc, as follows:
 - (a) \$2,200.00 for a Psychological Assessment, in a treatment plan dated November 30, 2022?
 - (b) \$2,200.00 for a Chronic Pain Assessment, in a treatment plan dated December 14, 2022?
 - (c) \$402.72 for Translation Services in a treatment Plan OCF18 dated November 30, 2022?
 - iv. Is the respondent liable to pay an award under s. 10 of 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] Based on the totality of the evidence before me, I find:
- 1 The applicant sustained predominantly minor injuries as defined in the *Schedule* and thus he is subject to treatment within the monetary limits of the MIG.
 - 2 As there are no overdue benefits payable, the applicant is not entitled to interest.
 - 3 The applicant is not entitled to an award.
 - 4 Therefore, the application is dismissed.

Background

- [4] The applicant submits that all treatment and assessment plans submitted on his behalf are reasonable and necessary to treat his accident-related injuries and that his injuries are not predominantly minor as defined under the Schedule and cannot be treated within the confines of the Minor Injury Guidelines (hereinafter, “the MIG”). The applicant claims that his physical and psychological injuries, stemming from the collision, require ongoing treatment and that the treatment plans are reasonable and necessary.
- [5] The respondent submits that the applicant’s injuries are predominately minor. He has not met his onus of establishing that has as a pre-existing condition, a psychological impairment or chronic pain with a functional impairment that would warrant removal from the MIG.

Applicability of the Minor Injury Guideline

- [6] The MIG establishes a framework for the treatment of minor injuries. The term “minor injury” is defined in section 3 (1) of the *Schedule* 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 terms, “strain”, “sprain”, “subluxation” and “whiplash associated disorder” are also defined in section 3 (1). Section 18 limits recovery for medical and rehabilitation benefits for such injuries to \$3,500.00.
- [7] The applicant bears the onus of establishing on the balance of probabilities his entitlement to coverage beyond the \$3,500.00 cap for minor injuries.
- [8] In *Scarlett v. Belair Insurance*, 2015ONSC 3635, the Divisional Court found at paragraph 24 that the onus of establishing entitlement beyond the MIG limits rests with the applicant.

The applicant's physical injuries can be treated within the MIG.

- [9] To receive payment for a treatment and assessment plan under s. 15 and 16 of the "Schedule", the applicant bears the burden of demonstrating on a balance of probabilities that the benefit is reasonable and necessary because of the accident. To do so, the applicant should identify the goals of treatment, how the goals would be met to a reasonable degree and that the overall costs of achieving them are reasonable.
- [10] I find that all the physical treatment plans for chiropractic services, chronic pain and translation services are not reasonable and necessary because of the reasons set out below.

Analysis

- [11] The applicant was seen by his family physician, Dr. Luke Profitt on April 27, 2022. A diagnosis made on that visit was cervical neck strain. The applicant has pre-existing conditions including diabetes, headaches, chest pain, dyspnea, hypertension, high cholesterol, and orthopnea. He suffered a silent stroke while he was in the Philippines in 2019. He has undergone numerous cardiovascular exams and stress echo tests. Also, he had a motorcycle accident on or about 2012. His pre-accident medications include metformin, glyxambi, and insulin.
- [12] On this visit, Dr. Profitt did not include an actual diagnosis pertaining to any of the applicant's physical complaints. He observed the applicant is having neck pain that started a few hours after the collision. Dr Profitt prescribed Voltaren, Tylenol 500 mg and to continue psychotherapy.
- [13] I also find upon reading the Toronto Paramedics report dated April 23, 2022, it indicates that the applicant didn't lose consciousness at the scene of the accident, and he did not complain about any neck pain or back pain. After examination at Scarborough Hospital, he was released to go home and follow-up with his family doctor.
- [14] The applicant was also in a work-related injury on or about March 2022, just a month before the accident, where he reported the work accident to his employer, Mega, and Dr. Roy filled out the paperwork for a WSIB claim. The injury was to his left elbow and an ultrasound was ordered by Dr. Roy. It confirmed a mild lateral epicondylitis in his left elbow.
- [15] The applicant attended at least 7 sessions of physiotherapy at Mackenzie Medical. Throughout his sessions, he reported pain in the neck bilaterally, mid back, low back, and upper back. On physical examination, the cervical spine C3-C6, T3-T10, and C6, traps, erector, rhomboids, and levator scapulae were identified as problem areas. Additionally, range of motion was observed to be limited in the cervical and lumbar spine, and tenderness was observed on palpation of the C4-T1 and T12-L4. To address the applicant's symptoms, he was prescribed an exercise plan to complete at home.

- [16] The applicant was seen by s.44 assessor Dr. Ahmad Belfon on March 8, 2023. Dr. Belfon diagnosed the applicant with uncomplicated sprain/strain to the cervical and lumbar spine as well as post-accident headaches. On March 22, 2023, at the request of the respondent, the applicant attended a physician i.e., assessment, conducted by Dr. Ahmad Belfon. The applicant continued to complain of neck pain, rated at 7-8/10, back pain, rated at 6-7/10, and headaches. On physical examination, limited range of motion of the neck and back, pain across the low back at the end range of extension, and tenderness of the lumbar paraspinal musculature bilaterally with palpation was observed. Despite these observations, Dr. Belfon opined that he sustained uncomplicated sprain and strain to the cervical spine and lumbar spine. Dr. Belfon's opinion remained unchanged when presented with additional medical records. By way of background, in 2012 the applicant fell off his motorcycle and fractured his right humerus. This was repaired surgically. In 2003 he had another fall off his motorcycle and fractured his left femur which was repaired surgically. In 2008 there was another motorcycle injury during which he fractured his left ankle and received surgery. Dr. Belfon as he indicated that there were no outside factors, including the pre-existing medical conditions disclosed that would prevent the applicant from achieving maximum recovery within the confines of the MIG.
- [17] The applicant made full recoveries from all these injuries. Dr. Belfon concluded there are no outside factors disclosed, that would prevent the applicant from achieving maximal medical recovery from the subject accident. While it is fully acknowledged that some myofascial pain persists in these areas, based on these injuries are classified as minor injuries as defined in the statutory accident benefit schedule and as such would be subject to the parameters of the MIG.
- [18] The applicant was referred to Dr. Joshua Goldstein, Physiatrist. The applicant self-reported that his neck pain had nearly resolved, and that the applicant had last felt pain approximately two weeks prior to the assessment. No tenderness to the cervical spine or paravertebral musculature was observed. Dr. Goldstein noted resisted left D3 extension, elicited left lateral elbow pain and tenderness within the left lateral epicondylar region. Dr. Goldstein stated that the applicant's clinical presentation is most in keeping with an underlying diagnosis of lateral carpal tunnel syndrome and left lateral epicondylitis.
- [19] I find in the CNRs of Dr. Goldstein dated May 18, 2022, that the ongoing numbness and tingling affecting all five fingers of both hands are related to his work, not the accident. Also, in that examination the notes state that his cervical range was full and pain free in all directions. The notes indicate that a normal range noted for his lower and upper extremities.

- [20] The applicant had a telephone consultation with Dr. Goldstein on or about July 6, 2022. He confirmed that his neck pain resolved two weeks prior to his first appointment on May 18, 2022. The applicant did not report any other ongoing motor vehicle accident-related physical symptoms. Also, the applicant complained that the pain occurs intermittently in the applicant's fingers and advised Dr. Goldstein that he did not purchase the carpal tunnel wrist splints that were prescribed to him to help with his treatment.
- [21] The sign-in records of Mackenzie Medical confirm that the applicant attended on May 22 and June 22, 2022, but did not return until November 2022 (7 months post-accident). The initial examination notes on May 22, 2022, confirm only complaints of headache and neck pain.
- [22] To the extent that the applicant claims any shoulder pain or back pain, these complaints were not documented by Mackenzie Medical until November 22, 2022, and not reported to Dr. Profitt until December 16, 2022. The respondent submits that these conditions are not connected to the accident of April 23, 2022.
- [23] I find that the applicant's shoulder pain or back pain was not related to the accident because the applicant failed to report the injuries in June 2022, which is seven months after the last time the applicant attended Mackenzie Medical.
- [24] While I find that the applicant has not demonstrated that the physical injuries is reasonable and necessary, I agree with the applicant's submission that his physical injuries is a legitimate goal for treatment. However, I find there are no contemporaneous medical evidence of the physical injuries in the clinical notes and records of Dr. Belfon, Dr. Profitt and Dr. Goldstein that would conclude that the applicant suffers a physical impairment.
- [25] I find that the applicant on the balance of probabilities is not entitled to the physical treatment plans and assessments and are not reasonable or necessary.

The applicant does not suffer a psychological impairment that warrants removal from the MIG.

- [26] To be removed from the MIG based on a psychological impairment, the applicant must show that he has an actual psychological impairment and not just post-accident sequelae. A psychological diagnosis requires the progression of ongoing, post-accident symptomology, or clinically significant psychological impairments.
- [27] I find that the applicant does not suffer a psychological impairment that would remove him from the MIG.

- [28] On November 16, 2022, the applicant attended a Psychological Pre-Screen Interview at Prime Health Care Inc. with Dr. Jacqueline Brunshaw and Dr. Chad Hefford. He complained of cervical, thoracic, and lumbar spine pain and headaches. Additionally, the applicant also complained of nervousness, anxiety, stress, depression, sleep disturbances, fatigue, nightmares, fear of driving, and fear of being a passenger in a vehicle. The doctors' noted the applicant diagnoses: cervical, thoracic, and lumbar spine chronic sprain and strain injury, post-traumatic headache, post-traumatic stress, anxiety, depressive syndrome, sleep difficulties, nightmares, driving anxiety, and fear as a pedestrian.
- [29] The respondent submits that the complaints of anxiety, stress, and sleep disturbances documented in the Psychological Pre-Screen Interview of Dr. Jacqueline Brunshaw psychologist, are sequelae of his minor injuries. The report of Dr. Brunshaw consists solely of the applicant's own self-reporting and is not supported by any psychological testing or by the records of the applicant's family doctor.
- [30] On February 28, 2023, at the request of the respondent, the applicant attended a psychological IE assessment, conducted by Dr. Neil Weinberg, psychologist. In addition to his physical pain, the applicant reported weight loss since the subject accident, sometimes being forgetful, experiencing dizziness and experiencing headaches. He recalled consulting a psychologist on one occasion since 2012 following his motocross accident. Despite these complaints, Dr. Weinburg stated that the applicant is not experiencing a diagnosable psychological condition at present from the accident.
- [31] While I find that the applicant has not demonstrated that the physiological injuries are reasonable and necessary, I agree with the applicant's submission that his physiological injuries is a legitimate goal for treatment. However, I find there are no contemporaneous medical evidence of the physiological injuries in the clinical notes and records of Dr. Brunshaw that solely consists of the applicant's own self-reporting and is not supported by any psychological testing. Also, in the assessment performed by Dr. Weinburg, he stated that the applicant is not experiencing a diagnosable psychological condition at present related to the accident.
- [32] I find that the applicant on the balance of probabilities is not entitled to the psychological treatment plans and assessments and are not reasonable or necessary.
- [33] As I have determined that the applicant is not entitled to any of the treatment plans, this also includes the translation services on the OCF -18 dated November 30, 2022, as there is no need for me to assess the reasonable and necessary nature of the treatment plan, as no funding for it would be available.

No interest is payable.

[34] As no benefits are overdue, no interest is payable.

Award


[35] Since no payments have been unreasonably withheld or delayed, there is no award.

ORDER

[36] As a result of the above and on a balance of probabilities, I find that:

- 1 The applicant can be treated within the monetary limits of the MIG.
- 2 The applicant is not entitled to the disputed treatment plans.
- 3 As there are no overdue benefit payments, the applicant is not entitled to interest.
- 4 There is no award.
- 5 The application is dismissed.

Released: January 21, 2025



Roderick Walker
Adjudicator