



Citation: Flerova v. Economical Insurance, 2025 ONLAT 22-014155/AABS

Licence Appeal Tribunal File Number: 22-014155/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:

Sofia Flerova

Applicant

and

Economical Insurance

Respondent

DECISION

VICE-CHAIR:

Kevin Kovalchuk

APPEARANCES:

For the Applicant:

Julia Logoutova, Paralegal

For the Respondent:

Kayly Machado, Counsel

HEARD:

By Way of Written Submissions

OVERVIEW

- [1] Sofia Flerova, the applicant, was involved in an automobile accident on August 30, 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 the respondent, Economical Insurance, 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 s. 3 of the *Schedule* and therefore subject to treatment within the \$3,500.00 Minor Injury Guideline (“MIG”) limit? Note: The parties agree that the MIG limits have been exhausted.
 - ii. Is the applicant entitled to \$2,100.00 for the cost of a psychological assessment, proposed by 2430307 Ontario Ltd. in a treatment plan/OCF-18 (“plan”) submitted on September 13, 2021?
 - iii. Is the applicant entitled to \$1,270.27 for physiotherapy services and physical treatment proposed by 2430303 Ontario Inc. in a plan submitted on December 10, 2021?
 - iv. Is the applicant entitled to \$1,050.56 for physiotherapy services/an exercise program, proposed by 2430307 Ontario Ltd. in a plan submitted on January 5, 2022?
 - v. Is the applicant entitled to \$2,227.73 for physiotherapy services, proposed by 2430303 Ontario Inc. in a plan submitted on April 13, 2022?
 - vi. Is the applicant entitled to \$2,000.00 for the cost of a chronic pain assessment, proposed by 24303037 Ontario Ltd. in a plan submitted on May 17, 2022?
 - vii. Is the applicant entitled to \$1,690.81 for physiotherapy services, proposed by 2430303 Ontario Inc. in a plan submitted on August 9, 2022?
 - viii. Is the applicant entitled to interest on any overdue payment of benefits.

RESULT

- [3] Based on the totality of evidence before me, I find:
1. The applicant sustained predominantly minor injuries as defined in the *Schedule* and is therefore subject to the funding limit of the MIG.
 2. The applicant is not entitled to the treatment plans.
 3. As there are no overdue benefits payable the applicant is not entitled to interest.

ANALYSIS

Applicability of the Minor Injury Guideline

- [4] 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 injury. The terms “strain, sprain subluxation and whiplash associated disorder” are also defined in section 3(1). Section 18(1) limits recovery for medical and rehabilitation benefits for such injuries to \$3,500.00.
- [5] An insured 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 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, in all cases, the burden of proof lies with the applicant.

The applicant is not removed from the MIG.

- [6] I find that the applicant has not persuaded me on a balance of probabilities that she sustained injuries that warrant her removal from the MIG.
- [7] The applicant makes no submissions on removal from the MIG.
- [8] The respondent submits that the applicant has not met her onus to prove that her injuries fall outside the MIG.

- [9] Because the applicant has not provided any submissions or evidence that as a result of the accident, she sustained a non-minor physical impairment, a psychological impairment, or a pre-existing condition that would satisfy s.18(2) of the *Schedule* I find that the applicant has not satisfied her onus to prove, on a balance of probabilities, that her injuries warrant removal from the MIG.
- [10] Finally, with respect to the MIG, the applicant submits that because the respondent failed to comply with s. 38(8) of the *Schedule* when it denied a treatment plan submitted on September 13, 2021, in a letter dated September 23, 2021 (item #2 in dispute) and failed to cure the deficiency of the denial in a Notice of Examination dated October 4, 2021, the respondent should be precluded from taking the position that the applicant's injuries fall within the MIG.
- [11] The respondent submits that the decision of *Zheng, Cai v. Aviva Insurance Company of Canada*, 2018 ONSC 5707 (Can LII), decided that where an Insurer has not complied with s. 38(8), s.38(11) of the *Schedule* applies only to the treatment plan in question and that there is no permanent prohibition on the insurer from taking the position that the applicant is in the MIG.
- [12] I find that the decision of *Zheng, Cai* is binding authority on me that the language used in s. 38(11) refers to the specific treatment plan in question and does not impose a permanent prohibition on the insurer from taking the position that the applicant is in the MIG.
- [13] I find that the respondent provided a denial that is compliant with s. 38(8) of the *Schedule* to the treatment plan submitted on September 13, 2021, in a letter dated September 23, 2021. I rely on the decision of *Zheng, Cai* that there is no prohibition on the respondent taking the position that the applicant is in the MIG.

Treatment Plans

- [14] As I have found that the applicant has not proven that her accident-related impairments warrant treatment beyond the MIG limits, it is not necessary for me to consider the reasonableness and necessity of the disputed treatment plans. Further, the applicant does not make any arguments that the treatment plans are reasonable and necessary.
- [15] The applicant argues that the treatment plans in dispute are payable pursuant to s. 38(11) of the *Schedule* since the respondent did not comply with the notice requirements in s. 38(8) of the *Schedule*.

Treatment Plans submitted September 13, 2021, December 10, 2021, January 5, 2022, April 13, 2022, May 17, 2022, and August 9, 2022, are not payable.

- [16] I find that the applicant is not entitled to the above noted treatment plans because the respondent has provided denials that are compliant with s.38(8) of the *Schedule*.
- [17] Section 38(8) requires an insurer to inform an insured person within 10 business days after it receives the treatment plan, of the medical and other reasons why it considered the goods and services not to be reasonable and necessary if it denies a plan. Pursuant to s.38(11), if an insurer fails to comply with its obligations under s.38(8), it must pay for the incurred goods and services that relate to the period starting on the 11th business day after the insurer received the application and ending on the day the insurer gives the notice described in s.38(8) and is prohibited from taking the position that the insured person has an impairment to which the MIG applies. Section 38(10) provides that where an insurer has not agreed to pay for all goods, services, assessments, and examinations described in a treatment and assessment plan or believes that the Minor Injury Guideline applies to the insured's impairment, a notice under s.38(8) may notify the insured that the insurer requires the insured to undergo an examination under s. 44.
- [18] The applicant submits that none of the denial letters for these treatment plans provided any information regarding services proposed by the plans, injuries described in the plans and what services the respondent refused to pay for. The applicant also submits that none of the denial letters refer the applicant to the section of the *Schedule* the respondent relied upon in its denial, as required by s. 38(8) of the *Schedule*.
- [19] The respondent submits that the Tribunal has confirmed that there is no statutory or common law requirements to describe the applicant's injuries and that s.38(8) of the *Schedule* only requires the respondent to provide medical reasons for the denial. The respondent relies upon *Golden v Economical Mutual Insurance Company*, 2024 CanLII 2672 (ON LAT). Although this decision is not binding on the Tribunal, I find it helpful to my analysis and accept its reasoning.

September 13, 2021, Treatment Plan

- [20] I find that the denial letter sent on September 23, 2021 for the treatment plan submitted September 13, 2021 indicates that the determination was based on the OCF-18 as well as the Disability Certificate (OCF-3) completed by Dr. Paul Bruni dated September 1, 2021 and the initial report completed by Dr. Bruni dated

September 1, 2021. The letter noted that the respondent had insufficient medical documentation to support that the injuries the applicant sustained fell outside of the minor injury definition and that the respondent was of the opinion that the MIG applied. The letter also advised the applicant that they would be required to undergo a section 44 examination.

- [21] I find that the respondent provided medical reasons for the denial. The reasons were that the respondent had insufficient medical documentation to demonstrate that the MIG did not apply and required further medical documentation by way of a s. 44 examination.
- [22] I find that the respondent has provided a denial that is compliant with s. 38(8) of the *Schedule*.

December 10, 2021, Treatment Plan

- [23] I find that the denial letter sent on December 24, 2021, for the treatment plan submitted December 10, 2021, indicates that the determination was based on section 44 assessments done by Dr. Ahmed Belfon, general practitioner and Dr. Douglas Saunders, psychologist.
- [24] The denial letter notes that Dr. Belfon found that the applicant's accident-related injuries were consistent with uncomplicated musculoligamentous strain/sprain of the soft tissue injuries around the cervical spine, thoracic spine, and lumbar spine. He found no evidence of serious injuries such as soft tissue tear, fracture, or neurological injury. It further noted that Dr. Belfon was of the opinion that the applicant had made a near full functional recovery and that there were no limitations or restrictions from a musculoskeletal perspective that should be delaying the applicant's recovery or preventing her from reaching full recovery. The denial letter notes that Dr. Belfon concludes that the applicant's injuries are classified as minor injuries as defined in the *Schedule*.
- [25] The denial letter notes that Dr. Saunders states in his report "the findings of my evaluation indicate a subclinical level of symptoms from a psychological perspective that does not meet the clinical criteria for impairment". The letter further notes that Dr. Saunders could find no evidence from a psychological perspective compelling or otherwise, that would prevent the applicant's condition from coming within the Minor Injury Guideline.
- [26] I find that the denial letter was based on the IE reports of Dr. Belfon and Dr. Saunders. The denial letter of December 24, 2021, provided medical reasons for denying the treatment plan. I find that the medical reasons were clear and

sufficient enough to allow the applicant to understand the reasons for the denials. Consequently, I find that this plan is not payable.

- [27] I find that the applicant has provided a denial that is compliant with s. 38(8) of the *Schedule*.

April 13, 2022, Treatment Plan

- [28] The denial letter sent on April 26, 2022, for the treatment plan submitted on April 13, 2022, indicates that the determination was based on the s. 44 assessments of Dr. Belfon and Dr. Saunders. It notes that the applicant's injuries are within the Minor Injury Guidelines. The letter notes that these reports were provided to the applicant on November 23, 2021.
- [29] The letter also notes that the respondent has not received any objective medical documentation to date, to support a change in its determination that the applicant's injuries remain within the minor injury guideline.
- [30] The applicant has not pointed me to any medical evidence that was provided to the respondent to support a change in the respondent's determination that the applicant's injuries remained within the minor injury guideline.
- [31] I find that the denial letter was based on the IE reports of Dr. Belfon and Dr. Saunders. The denial letter provided medical reasons for denying the treatment plan. I find that the medical reasons were clear and sufficient enough to allow the applicant to understand the reasons for the denials. Consequently, I find that this plan is not payable.
- [32] I find that the applicant is not entitled to this treatment plan because the respondent provided a denial that complies with section 38(8) of the *Schedule*.

May 17, 2022, Treatment Plan

- [33] The denial letter sent on May 31, 2022, for a treatment plan submitted on May 17, 2022, indicates that the determination to deny was based on the s. 44 assessments of Dr. Belfon and Dr. Saunders. It notes that the applicant's injuries are within the MIG. The letter notes that these reports were provided to the applicant on November 23, 2021.
- [34] The letter also notes that the respondent has not received any objective medical documentation to date, to support a change in its determination that the applicant's injuries remain within the MIG.

- [35] The applicant has not pointed me to any medical evidence that was provided to the respondent to support a change in the respondent's determination that the applicant's injuries remained within the MIG.
- [36] I find that the denial letter was based on the IE reports of Dr. Belfon and Dr. Saunders. The denial letter provided medical reasons for denying the treatment plan. I find that the medical reasons were clear and sufficient enough to allow the applicant to understand the reasons for the denials. Consequently, I find that this plan is not payable.
- [37] I find that the applicant is not entitled to this treatment plan because the respondent provided a denial that complies with section 38(8) of the *Schedule*.

August 9, 2022, Treatment Plan

- [38] The denial letter sent August 22, 2022, for the treatment plan submitted August 9, 2022, indicates that the denial was based on the s. 44 assessments of Dr. Belfon and Dr. Saunders. The letter notes that these reports were provided to the applicant on November 23, 2021. It notes that the applicant's injuries are within the MIG.
- [39] The letter also notes that the respondent has not received any objective medical documentation to date, to support a change in its determination that the applicant's injuries remain within the MIG.
- [40] The applicant has not pointed me to any medical evidence that was provided to the respondent to support a change in the respondent's determination that the applicant's injuries remain within the minor injury guideline.
- [41] I find that the denial letter was based on the IE reports of Dr. Belfon and Dr. Saunders. The denial letter provided medical reasons for denying the treatment plan. I find that the medical reasons were clear and sufficient enough to allow the applicant to understand the reasons for the denials. Consequently, I find that this plan is not payable.
- [42] I find that the applicant is not entitled to this treatment plan because the respondent provided a denial that complies with section 38(8) of the *Schedule*.

January 5, 2022, Treatment Plan

- [43] The treatment plan submitted on January 5, 2022, for \$1,050.56 was initially identified incorrectly in Issue iv. above.

- [44] The applicant in her materials at Tab 11 has submitted a denial letter dated March 28, 2022, referencing a treatment plan prepared by Paul Bruni dated March 8, 2022, in the amount of \$1,050.56. However, the treatment plan attached to the denial letter is dated March 8, 2022, from Paul Bruni in the amount of \$2,641.62.
- [45] The denial letter sent March 28, 2022, for the treatment plan dated March 8, 2022, indicates that the denial was based on the s. 44 assessments of Dr. Belfon and Dr. Saunders. It notes that the applicant's injuries are within the minor injury guidelines. The letter notes that these reports were provided to the applicant on November 23, 2021.
- [46] The letter also notes that the respondent has not received any objective medical documentation to date, to support a change in its determination that the applicant's injuries remain within the minor injury guideline.
- [47] The applicant has not pointed me to any medical evidence that was provided to the respondent to support a change in the respondent's determination that the applicant's injuries remain within the minor injury guideline.
- [48] I find that the denial letters were based on the IE reports of Dr. Belfon and Dr. Saunders. I find that the medical reasons were clear and sufficient enough to allow the applicant to understand the reasons for the denials. Consequently, I find that this plan is not payable.
- [49] I find that the applicant is not entitled to this treatment plan because the respondent provided a denial that complies with section 38(8) of the *Schedule*.

Notice of Examination dated October 4, 2021.

- [50] I find on the balance of probabilities that the Notice of Examination (NOE) dated October 4, 2021, is not deficient.
- [51] The NOE dated October 4, 2021, indicated that the respondent had arranged for insurer examinations with Dr. Belfon, general practitioner, and Dr. Saunders, psychologist. The applicant submits that the NOE was deficient and did not indicate the medical reasons why the examination was requested and required by s.44(5)(a) of the *Schedule*.
- [52] I have reviewed the NOE dated October 4, 2021. It notes that the examinations relate to the treatment plan submitted September 13, 2021, prepared by Eugene Hewchuk for a psychological assessment. The NOE indicates that the respondent was arranging the examinations after reviewing the OCF-18 along with a Disability Certificate (OCF-3) dated September 1, 2021, completed by Dr.

Paul Bruni and the initial report dated September 1, 2021, completed by Dr. Paul Bruni. The NOE goes on to note that the predominant injuries reported are headache, neck pain and pain in the right eye following scratches to the eye, which are soft tissue type injuries. The NOE also states that the respondent has not been provided with compelling evidence that the applicant had a pre-existing medical condition documented by a health care practitioner, before the accident, that would prevent the applicant from achieving maximal medical recovery if her claim were restricted to the MIG. The letter notes that there is insufficient medical documentation to support that the applicant's injuries fall outside of the MIG. It notes the respondent's opinion that the MIG applies to the applicant's claim.

[53] I find that the NOE dated October 4, 2021, complies with s.44(5)(a) of the *Schedule* as it includes specific details about the applicant's condition forming the basis of the respondent's decision. I find that the respondent's reasons are clear that it requires further information with respect to the physical and psychological component of the applicant's injuries, as the respondent views the applicant's injuries as soft tissue in nature, that fall within the minor injury guideline.

Interest

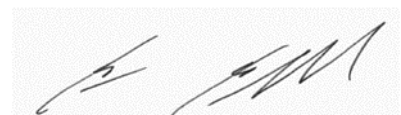
[54] As there are no overdue benefits payments the applicant is not entitled to interest.

ORDER

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

- i. The applicant sustained predominantly minor injuries as defined in the *Schedule* and is therefor subject to treatment within the monetary limits of the MIG.
- ii. The applicant is not entitled to the treatment plans.
- iii. As there are no overdue benefits payments the applicant is not entitled to interest.

Released: March 13, 2025



**Kevin Kovalchuk
Vice-Chair**