



Citation: Egal v. Economical Insurance Company, 2025 ONLAT 23-007676/AABS

Licence Appeal Tribunal File Number: 23-007676/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:

Khalil Egal

Applicant

and

Economical Insurance Company

Respondent

DECISION

ADJUDICATOR:

Greg Witt

APPEARANCES:

For the Applicant:

Alexander Voudouris, Counsel

For the Respondent:

Karly Lyons, Counsel

HEARD:

In Writing

OVERVIEW

- [1] Khalil Egal, the applicant, was involved in an automobile accident on August 10, 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 Company, 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 predominately minor as defined by the *Schedule* and subject to the treatment limit under the Minor Injury Guideline (“MIG”)?
 - ii. Is the applicant entitled to chiropractic treatment proposed by Mackenzie Rehabilitation Centre in a treatment plan as follows:
 1. \$3,795.50 submitted November 21, 2021;
 2. \$2,026.65 submitted March 25, 2022;
 3. \$1,525.84 submitted June 16, 2022; and
 4. \$2,851.68 submitted July 12, 2022?
 - iii. Is the applicant entitled to \$4,239.55 for psychological services proposed by Excel Medical Diagnostics in a treatment plan submitted May 19, 2022?
 - iv. Is the applicant entitled to \$2,200.00 for a psychological assessment proposed by Excel Medical Diagnostics in a treatment plan submitted March 25, 2022?
 - v. Is the respondent liable to pay an award under section 10 of 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?
- [3] The applicant withdrew issues [2] ii 1, 3 and 4.

RESULT

[4] I find that:

- i. The applicant's injuries are predominantly minor and therefore subject to treatment within the \$3,500.00 limit of the MIG;
- ii. The applicant is not entitled to any treatment plans;
- iii. The applicant is not entitled to an award; and
- iv. The applicant is not entitled to interest on any overdue payments.

PROCEDURAL ISSUES

Non-compliance with the Case Conference Report and Order

[5] The respondent submits that the applicant failed to comply with the page limit and timelines set out in the Tribunal's Case Conference Report and Order ("CCRO") dated February 9, 2024.

[6] The CCRO limited party submissions to eight pages. The applicant submitted nine pages and the respondent submitted eight pages. The respondent argues that any content submitted over the eight-page limit should be disregarded without submissions as to the prejudice it suffered; the applicant provided no acknowledgement of non-compliance with the CCRO. In reviewing the evidence, I find that the applicant failed to comply with the CCRO. The applicant offered no explanation as to why they exceeded the length, nor was a motion filed to extend the page limit in advance of the hearing. However, I am not persuaded by the lack of submissions of the respondent, and do not find that the actions of the applicant resulted in prejudice. I will be reviewing all evidence filed by the applicant to render my decision.

[7] The CCRO outlined that the parties were to disclose any documents upon which the applicant intended to rely by March 25, 2024. The respondent submits that the applicant provided the following documents for the first time with his submissions, dated August 29, 2024:

- i. Toronto Paramedic Services Ambulance Call Report, August 10, 2021;
- ii. St. Michael's Hospital Emergency Department Records;
- iii. Mr. Egal's Rule 10.4 Notice;

- iv. Mackenzie Health Rehabilitation Centre \$1,999.00, incurred to date; and
- v. Excel Medical Diagnostic \$648.00, incurred to date.

- [8] The respondent argues that to allow these documents into evidence would be highly prejudicial, as the applicant was in possession of the documents and failed to provide them to the respondent until the applicant's submissions were served.
- [9] The applicant did not acknowledge non-compliance with the production order in their submissions, and did not provide reply to submissions. Rule 9 of the *Common Rules* ("*Rules*") states that if a party fails to comply with any direction with respect to disclosure, the party may not rely on the document as evidence without permission of the Tribunal. Rule 3.1 of the *Licence Appeal Tribunal Rules* also applies, as it came into effect for all files immediately on August 23, 2023 and also requires me to facilitate a fair, open, and accessible process to allow effective participation by all parties. Failure to make disclosures as required by the Tribunal may frustrate the Tribunal's ability to determine issues and the parties' ability to make full and fair submissions.
- [10] In reviewing the evidence, I find that the applicant did not comply with the disclosure timelines. I also find that the respondent complied with all deadlines in the CCRO. Despite these findings, I am not persuaded by the respondent's submission that admitting the undisclosed documents would be prejudicial, as I am not persuaded that the applicant impeded the respondent's ability to know the issues or the case to be met, and to adequately respond to the issues in dispute. I also find that the documents are relevant to the issues in dispute. The respondent received the applicant's submissions on August 29, 2024, and had 14 days to review and respond.

Rule 10.4

- [11] By way of email, within the applicant's submissions at paragraph 17, the applicant attached a Rule 10.4 Notice. The Rule 10.4 Notice was an attached email dated August 28, 2024, the date the applicant's submissions were due, from applicant's counsel to the respondent's counsel.
- [12] Rule 10.4 provides that a party intending to challenge an expert's qualifications, report or witness statement shall give notice, with reasons, for the challenge to the other parties as soon as possible.

- [13] The applicant submits that the respondent had no legal right to conduct any insurer examinations (“IE”) on the applicant as there were no reasons provided in the notices of denial provided by the respondent. Furthermore, the applicant challenged the qualifications of the IE assessors and is seeking to exclude all the reports of the IE reports. The applicant makes unsubstantiated claims that the IE assessors are not free from bias and are earning significant sums from the respondent.
- [14] In reviewing the evidence, I find that the applicant has not set out the basis of any challenge to the qualifications of the respondent’s assessors. As such, I have not been presented with persuasive evidence that would allow me to assess or call into question the medical qualifications of the professionals administering the IE. Therefore, I will be relying on the IE evidence as presented by the respondent.

ANALYSIS

The Minor Injury Guideline (“MIG”)

- [15] 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.”
- [16] 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. In all of these cases, the burden of proof lies with the applicant.
- [17] The applicant submitted that he should be removed from the MIG on the basis of psychological impairments. The respondent submitted that the applicant has failed to establish that his injuries are not predominately minor and that they can be treated within the confines of the MIG.

The applicant did not suffer psychological injuries that warrant removal from the MIG

- [18] I find that the applicant has not provided sufficient evidence to demonstrate that he has sustained psychological impairments as a result of the accident.
- [19] An applicant may be removed from the MIG if they sustain a psychological impairment as a result of the accident, as psychological impairments are not captured within the definition of minor injuries under section 3(1) of the *Schedule*.
- [20] To be removed from the MIG due to psychological impairments, the applicant must show that he has a psychological impairment and not just post-accident psychological sequelae. A psychological diagnosis requires the progression of ongoing, post-accident symptomatology, or clinically significant psychological impairments.
- [21] The applicant submitted that he sustained a psychological impairment as a result of the accident. The applicant relies on the virtual assessment by Dr. Sharleen McDowall, with a report dated May 25, 2022. The applicant reported feelings of sadness, irritability, anhedonia, social withdrawal, and feelings of worthlessness in addition to anxiety while travelling in a vehicle. Dr. McDowall opined that as a result of his assessment measures and his self-reported symptoms of sadness, worry and fear, the applicant warrants a diagnosis of adjustment disorder and specific phobia (situational driving) and thus fall outside of the MIG. The applicant takes issue with the respondent's denial of the treatment plan, arguing that the reasons provided by the respondent do not constitute medical reasons as required by sections 38 and 44 of the *Schedule*.
- [22] The respondent submits that the applicant did not sustain a psychological impairment as a result of the accident. The respondent relies on the absence of any reference to any accident-related psychological impairments in the clinical notes and records ("CNRs") from the walk-in clinic, MCI Doctors Office, when the applicant was assessed by Dr. Mohamed Asmal following the accident on September 21, 2021. Furthermore, the respondent relies on the in-person section 44 assessment of Dr. Kelly McCutcheon, and psychological report dated June 27, 2022 where Dr. McCutcheon held that the applicant's psychological symptoms were subclinical. The respondent argues that the applicant should remain in the MIG if the subclinical psychological symptoms are more consistent with the objective medical record, particularly as there was no mention of a psychological symptoms in the applicant's family physician CNRs.

- [23] After reviewing the submissions, I am not satisfied that the applicant presented persuasive medical evidence that he suffers from a psychological impairment that would remove him from the MIG. This is supported by the absence of any reference to symptoms or psychological impairment as a result of the accident in the CNRs of Dr. Asmal, the Toronto Paramedic Services Call Report, and the St. Michael's Hospital Emergency Department Records, dated August 10, 2021. As indicated above at paragraph 15, I am satisfied that the respondent provided the applicant a meaningful response in the Notice of Denial that allowed the applicant to decide whether or not to attend the IE. As such, when reviewing the medical evidence, I prefer the medical opinion of Dr. McCutcheon over that of Dr. McDowall as not only is it consistent with the remainder of the medical records, but Dr. McCutcheon's psychological assessment took place in person. I highlight that Dr. McDowall arrived at medical opinion 'virtually' and it was supported by the applicant's self-reporting symptoms, and therefore attribute more weight to the in-person assessment. For these reasons, I am persuaded that the applicant can be treated within the MIG.
- [24] I find that the applicant has not satisfied his onus to prove on a balance of probabilities that he has a psychological impairment resulting from the accident that would warrant his removal from the MIG.

Treatment Plans

- [25] As I have found that the applicant has failed to prove that his accident-related impairments warrant treatment beyond the MIG limits, it is unnecessary for me to consider the reasonableness and necessity of the disputed treatment plans.

Section 38(8) of the Schedule

- [26] The applicant further argues that all of the treatment plans in dispute are payable pursuant to s. 38(11) of the *Schedule*, as the respondent did not comply with s. 38(8).
- [27] Section 38(8) of the *Schedule* provides that an insurer shall respond to a treatment and assessment plan within 10 business days of receiving it by identifying the goods, services, assessments and examinations described in the plan that the insurer does and does not agree to pay for. The insurer must also provide medical and all other reasons why it has determined that the treatment and assessment plan is not reasonable and necessary.

- [28] The Tribunal has recognized medical reasons for denial as specific details about the insured's condition forming the basis for the insurer's decision or identifying information about the insured's condition that the insurer still requires.
- [29] In reviewing the Notice of Denial dated April 7, 2022 and April 8, 2022 I find that it indicates clearly that the respondent had not received medical evidence from the applicant and as a result an insurer examination was required. This is further supported by the preliminary issue raised by the respondent, in that the respondent had not received the medical records referred to in the applicant's submissions until August 29, 2024. I am satisfied that the respondent provided the applicant a meaningful response in the Notice of Denial that allowed the applicant to decide whether or not to attend the IE.
- [30] I find that the respondent complied with section 38(8) of the *Schedule* and the applicant is unable to rely on the shall-pay provision in section 38(11).

Award

- [31] The applicant seeks an award under section 10 of Regulation 664. I find that no benefits have been unreasonably withheld or delayed, and therefore no award is payable.

Interest

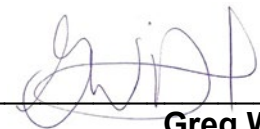
- [32] Given that there are no overdue payments of benefits, the applicant is not entitled to interest.

ORDER

- [33] I find that:
- i. The applicant's injuries are predominately minor and therefore subject to the treatment within the \$3,500.00 limit of the MIG;
 - ii. The treatment plans in dispute are not payable;
 - iii. The applicant is not entitled to an award; and
 - iv. The applicant is not entitled to interest.

v. The application is dismissed.

Released: April 10, 2025

A handwritten signature in blue ink, appearing to read 'Greg Witt', is written over a horizontal line.

**Greg Witt
Adjudicator**