

**LICENCE APPEAL
TRIBUNAL**

**TRIBUNAL D'APPEL EN MATIÈRE
DE PERMIS**



**Safety, Licensing Appeals and
Standards Tribunals Ontario**

**Tribunaux de la sécurité, des appels en
matière de permis et des normes Ontario**

Tribunal File Number: 17-006799/AAB

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:

S. S.

Applicant

and

Unifund Assurance Company

Respondent

DECISION

ADJUDICATOR: Brian Norris

APPEARANCES:

For the Applicant: Meleni David, Counsel

For the Respondent: Alexander Hartwig, Counsel

HEARD: In Writing on July 30, 2018

OVERVIEW

- [1] The applicant was injured in an automobile accident on January 13, 2015 and sought benefits from the respondent pursuant to the *Statutory Accident Benefits Schedule - Effective September 1, 2010*, O. Reg. 34/10 (the “*Schedule*”).
- [2] The respondent determined the applicant’s injuries fell within the *Minor Injury Guideline* (MIG), denied entitlement to a non-earner benefit (NEB), and refused to pay for certain medical benefits. The applicant has applied to the Licence Appeal Tribunal - Automobile Accident Benefits Service (the “Tribunal”) for resolution of this dispute.

ISSUES

- [3] The disputed claims in this hearing are:
 - 1) Has the applicant sustained a “minor injury” as defined under the *Schedule* as a result of the accident?
 - 2) Is the applicant entitled to receive a non-earner benefit (NEB) in the amount of \$185.00 per week for the time period from July 16, 2015 to January 13, 2017?
 - 3) Is the applicant entitled to a medical benefit in the amount of \$1,632.50 for chiropractic services recommended by Scarborough Physiotherapy and Rehab Centre in a treatment plan (OCF-18) submitted to the respondent on August 2, 2017?
 - 4) Is the applicant entitled to the cost of a psychological assessment in the amount of \$2,000.00, recommended by Scarborough Physiotherapy and Rehab Centre in a treatment plan (OCF-18) submitted to the respondent on January 19, 2016?
 - 5) Is the applicant entitled to the cost of an orthopaedic assessment in the amount of \$2,000.00, recommended by Scarborough Physiotherapy and Rehab Centre in a treatment plan (OCF-18) submitted to the respondent on January 18, 2016?

RESULT

- [4] The applicant sustained a minor injury as defined under the *Schedule* and is subject to the \$3,500.00 funding limit.

- [5] The applicant is not entitled to a non-earner benefit.
- [6] The applicant has already been approved for treatment up to the \$3,500.00 funding limit and is not entitled to the disputed treatment plans as a result.

BACKGROUND

- [7] The applicant was a driver in a vehicle which struck a stopped car on a busy street in Toronto. The applicant did not seek medical attention at the scene and was able to proceed to the collision reporting centre in another vehicle following the accident. The applicant's vehicle was towed away from the scene as a result of the damage from the collision. The applicant visited Dr. D. Mather, family physician, following the accident with complaints of neck and back pain, body aches, and a slight headache. The applicant was prescribed Tylenol for pain and told to apply heat and commence physiotherapy.
- [8] This hearing formally lists a dispute about whether the applicant's injuries fall within the MIG, entitlement to a non-earner benefit, entitlement to a chiropractic treatment plan, and the costs of examinations. However, the root of this hearing is about whether the applicant's submissions are sufficient to form the evidentiary basis for entitlement to the disputed benefits. The applicant made submissions in support of entitlement to the disputed benefits and the respondent retorts that the submissions are not evidence and that the applicant has failed to provide evidence to support entitlement to the benefits.

NON-EARNER BENEFIT

- [9] The applicant claims entitlement to a NEB for the period from July 16, 2015 to January 13, 2017, attributing drastic life changes to the subject accident. The applicant provides examples of the life changes by way of written submission. Examples provided include the inability to: work, complete the majority of personal tasks, perform housekeeping, cook and bake, and practice yoga. The applicant submits these disabilities are as a result of bilateral elbow pain, back pain, and bilateral knee pain. The applicant has provided an Ontario Works file and Election of Non-Earner Benefits Form (OCF-10) in support of the claim for non-earner benefits.
- [10] The respondent submits the applicant has not provided evidence to support the claim that the life changes are as a result of the accident. The respondent points out, for example, that the applicant stated the accident shattered the applicant's

family, and infers the applicant's marriage ended in divorce as a result, but there is no evidence to support this inference.

- [11] Upon review of the entirety of evidence before me, I find the applicant is not entitled to a non-earner benefit. The OCF-10 and Ontario Works File do not provide any evidence the applicant suffers a disability which would cause a complete inability to carry on a normal life. Similarly, other documents provided by the applicant, including the family doctor's clinical notes and records, do not demonstrate such a disability for the period which the applicant claims one.
- [12] In addition to a review of the applicant's evidence, I have examined the respondent's documents for evidence to confirm the applicant's claims of disability. Four section 44 medical reports dated October 15, 2015 analysed the applicant from an orthopaedic, psychological, neurological, and functional perspective, and all came to the conclusion that the applicant did not suffer a complete inability to carry on a normal life. The reports contain some of the applicant's self-reported issues. However, taken at face value and without corroborating evidence or testimony, the self-reported issues do not establish that the applicant has a complete inability to carry on a normal life.
- [13] Lastly, the applicant's submissions hold little weight because the information is untested and has not been subject to cross-examination. Also, several of the applicant's submissions lack the evidence to support them or are contradicted by other evidence. An example of this is the applicant's submission with respect to overseas travel in July of 2015, where the applicant indicated the travel was to visit ill relatives or attend funerals; however, during a section 44 orthopaedic assessment on September 24, 2015, the applicant reported to Dr. R. Saplys, orthopaedic surgeon, the travel was to engage in treatment.

THE MINOR INJURY GUIDELINE & MEDICAL BENEFITS

- [14] The MIG establishes a treatment framework available to injured persons who sustain a minor injury as a result of an accident. A "minor injury" is defined in the *Schedule* and includes sprains, strains, whiplash associated disorder, contusion, abrasion, laceration or subluxation and any clinically associated sequelae. The MIG provides that a strain is an injury to one or more muscles and includes a partial tear. Under section 18 of the *Schedule*, injuries that are defined as minor are subject to a \$3,500.00 funding limit on treatment.

- [15] The applicant's medical benefits claim started when Scarborough Physiotherapy and Rehab Centre recommended the applicant engage in treatment under the MIG, and the respondent approved and funded the treatment. If the applicant's injuries are deemed to be minor in nature and falling within the MIG, there are two avenues for the applicant to obtain medical treatment outside the MIG:
1. Establish the accident-related injuries fall outside the MIG – showing proof of a fracture, for example; or
 2. Establish the applicant has a documented pre-existing injury which would preclude recovery within the confines of the MIG.
- [16] The applicant's submissions regarding the MIG or entitlement to the medical benefits claims highlight a list of injuries itemized by Scarborough Physiotherapy and Rehab Center, references on-going complaints of back pain prior to the accident, and an exacerbation of the pre-existing injuries. I infer from these submissions that the applicant's arguments are 1) the applicant's injuries fall outside the MIG and 2) the pre-existing back, neck, and knee pain precludes recovery within the MIG.
- [17] The respondent submits the injuries fall within the MIG and relies on the findings in the section 44 orthopaedic, psychological, and neurological reports as evidence. The respondent also argues the applicant's ongoing problems appear to be degenerative and not accident-related.
- [18] I have reviewed the applicant's entire medical record and find the applicant's accident-related injuries fall within the MIG. The injuries listed in the applicant's submissions may be the totality of the applicant's complaints but they are not all as a result of the accident. The applicant has degenerative medical issues which were apparent prior to and after the accident. These degenerative medical issues form the bulk of the applicant's complaints.
- [19] I find the applicant's pre-existing back, neck, and knee pain have not precluded the applicant's recovery within the MIG. The medical record indicates the injuries as a result of the accident, had a minimal impact on the applicant's health and likewise, the applicant's pre-existing injuries had little impact on the applicant's recovery. The applicant's medical record shows the applicant's accident related injuries resolved within a few months, as anticipated in the MIG.

CONCLUSION

- [20] Based on the medical evidence before me, I find that the applicant's injuries as a result of the accident fall within the MIG and the applicant is subject to the funding limit prescribed in the MIG.
- [21] The applicant's appeal on all issues in dispute is dismissed.

Released: November 26, 2018



Brian Norris, Adjudicator