

**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: 18-004302/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:

B.A.

Appellant

and

Unifund Assurance Company

Respondent

DECISION

PANEL:

Derek Grant, Adjudicator

APPEARANCES:

For the Appellant:

Anna Korolkova, Paralegal

For the Respondent:

Gina Nardella, Counsel

HEARD:

In Writing Hearing: January 7, 2019

OVERVIEW

- [1] The applicant (“B.A.”) was involved in a motor vehicle accident (“the accident”) on May 14, 2016 and sought benefits pursuant to the *Statutory Accident Benefits Schedule – Effective September 1, 2010*¹ (“the *Schedule*”).
- [2] B.A. applied for benefits from the respondent (“Unifund”) and applied to the Licence Appeal Tribunal (the “Tribunal”) when her claims were denied.
- [3] Unifund argues that all of B.A.’s injuries fit the definition of “minor injury” prescribed by s. 3(1) of the *Schedule*, and therefore, fall within the Minor Injury Guideline (“the MIG”)². B.A.’s position is exactly the opposite.
- [4] If Unifund is correct, B.A. is then subject to the \$3,500.00 limit on benefits prescribed by s.18(1) of the *Schedule*, and in turn, a determination of whether claimed benefits are reasonable and necessary will be unnecessary as the \$3,500.00 maximum benefit for minor injuries has been exhausted.
- [5] I must decide whether B.A.’s injuries are predominantly minor as defined by the *Schedule* and thus subject to a \$3,500 treatment limit, and if they are not, I must determine her entitlement to the medical benefits in dispute.

ISSUES

- [6] The issues in dispute are as follows:
 - a. Did B.A. sustain predominantly minor injuries as defined under the *Schedule*?
 - b. Is the treatment plan in the amount of \$2,452.40 for chiropractic, physiotherapy and massage treatments recommended by Downsvieview Healthcare Inc. in a treatment plan (OCF-18) submitted on June 27, 2016 and denied on July 11, 2016 and November 22, 2016, reasonable and necessary?
 - c. Is the treatment plan in the amount of \$1,280.80 for chiropractic, physiotherapy and massage treatments recommended by Downsvieview Healthcare Inc. in an OCF-18 submitted on July 27, 2016 and denied on August 9, 2016 and November 22, 2016, reasonable and necessary?

¹ O. Reg. 34/10.

²Minor Injury Guideline, Superintendent’s Guideline 01/14, issued pursuant to s. 268.3 (1.1) of the *Insurance Act*.

- d. Is the treatment plan in the amount of \$1,901.60 for chiropractic, physiotherapy and massage treatments recommended by Downsvieview Healthcare Inc. in an OCF-18 submitted on August 31, 2016 and denied on September 13, 2016 and November 22, 2016, reasonable and necessary?
- e. Is the treatment plan in the amount of \$2,438.30 for psychological treatments recommended by Downsvieview Healthcare Inc. in an OCF-18 submitted on February 14, 2017 and denied on February 27, 2017, reasonable and necessary?
- f. Is the treatment plan for the cost of a psychological assessment in the amount of \$2,000.00 recommended by Downsvieview Healthcare in a OCF-18 submitted on August 10, 2016 denied on August 23, 2016 and November 22, 2016, reasonable and necessary?
- g. Is the treatment plan for the cost of a functional impairment assessment in the amount of \$1,499.35 recommended by Downsvieview Healthcare in a OCF-18 submitted on December 9, 2016 denied on December 13, 2016, reasonable and necessary?
- h. Is B.A. entitled to interest on any overdue payment of benefits?

RESULT

- [7] Based on a review of all the evidence put before me, I find that B.A.'s physical and psychological injuries meet the definition of 'minor' under the *Schedule*, it is therefore unnecessary for me to consider whether the treatment plans are reasonable and necessary or determine whether interest is payable.

LAW

Minor Injury Guideline

- [8] The *Guideline* establishes a framework for the treatment of minor injuries. The term "minor injury" is defined in subsection 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 "sprain", "strain", "subluxation", and "whiplash associated disorder" are also defined in subsection 3(1).

- [9] The onus is on the applicant to show that her injuries fall outside of the MIG.³
- [10] B.A. argues that her injuries go beyond the definition of “minor” because she has sustained physical and psychological impairments and chronic pain, all of which remove her from the MIG.

Did B.A. sustain physical injuries that remove her from the MIG?

- [11] Although B.A. has provided medical evidence which confirms she sustained accident-related injuries, none of the evidence shows that her injuries fall outside the MIG. In addition, the evidence submitted by Unifund confirms that B.A.’s physical injuries fall within the MIG.
- [12] My finding that B.A.’s physical injuries fall within the MIG is supported by the following evidence.
- (i) The disability certificate (“OCF-3”) completed by Dr. Oleksandr Pivtoran, a chiropractor, dated May 19, 2016, confirms B.A. has soft tissue injuries. The OCF-3 was submitted before B.A. had even seen her family doctor and is not consistent with the complaints seen in B.A.’s treatment records;
 - (ii) It appears that B.A. first saw her doctor about her injuries on July 14, 2016, two months after the accident. On July 14, 2016, Family Physician, Dr. Carolyn Donsky diagnosed B.A. with physical injuries – “neck pain and low back pain”;
 - (iii) Although B.A. made occasional complaints about low back and neck pain to Dr. Donsky, there are no accident-related complaints whatsoever between October 2016 and October 2018. In her notes dated February 8, 2018, Dr. Donsky wrote that B.A. “had no pain in muscles or joints, no back or neck problems” and she also stated that B.A. had no “numbness, weakness or neurological problems.”
 - (iv) On August 23, 2016, Dr. Pivtoran, completed a second OCF-3, and diagnosed B.A. with “Cervical - strain/ sprain - chronic; Lumbar spine - strain/sprain - chronic; Head - Chronic Post-traumatic headache; shoulder - strain/sprain of joints & ligaments (bilateral); Thoracic - sprain/ strain - chronic; Behaviour - symptoms and signs involving emotional state”; and
 - (v) On behalf of Unifund, Dr. David Mula, a physician, assessed B.A. on September 28, 2016. Dr. Mula diagnosed B.A. with “myofascial strain of

³ *Scarlett v. Belair*, 2015 ONSC 3635 (CanLII) para. 24.

the neck, bilateral trapezii, bilateral suprascapular areas, right rhomboids and lumbosacral myofascial strain". Dr. Mula found that B.A.'s injuries were minor in nature. I agree.

- [1] The medical evidence submitted by B.A. and Unifund confirm that B.A.'s physical injuries are consistent with those that would be defined as 'minor'. The evidence supports and I find that B.A. suffered soft tissue injuries as a result of the accident. B.A. has therefore failed to persuade me that the physical injuries she sustained in the accident require treatment beyond that provided in the MIG.

Did B.A. sustain psychological injuries that remove her from the MIG?

- [13] For the reasons that follow, I find that B.A. did not suffer psychological impairments that would take her out of the MIG.
- [14] I put more weight on the insurer's examination (IE) report of Psychologist Dr. Shahriar Moshiri, than on the report completed by Psychologist Dr. Andrew Shaul, on behalf of B.A.
- [15] On October 31, 2016, Dr. Shaul interviewed B.A. and, based on clinical interview and self-reported questionnaires, indicated that B.A. is suffering from an "Adjustment Disorder with Mixed Anxiety and Depressed Mood and Specific Phobia (travelling in a vehicle)". In contrast, Dr. Moshiri 's comprehensive testing, in his report dated November 4, 2016, found that B.A.'s current psychological presentation did not meet DSM-5 criteria for a psychological diagnosis, meaning she does not suffer from a formal psychological condition that would remove her from the MIG.
- [16] Moreover, I find that B.A.'s own evidence does not support that her psychological impairments would remove her from the MIG. My finding is based on the following:
- (i) The evidence shows that B.A. did report experiencing some residual apprehension with driving by being overly cautious, but denied any depression or psychological problems. B.A. also reported to Dr. Moshiri that psychologically and emotionally the accident did not have any adverse effect on her activities of daily living; and
 - (ii) B.A. relied on the OCF-3's of Dr. Pivtoran, to support that she has psychological injuries that would remove her from the MIG. However, I put little weight on the OCF-3's of Dr. Pivtoran because psychological

diagnoses are beyond a chiropractor's area of expertise. In the OCF-3's Dr. Pivtoran lists psychological complaints as part of the barriers to B.A.'s recovery. I was not persuaded by this evidence.

Dr. Shaul Pre-Screen Report

- [17] B.A. submitted a report⁴ completed by Dr. Shaul, Supervising Psychologist and Ms. Iliois, Therapist. I place very little weight on this report as it does not provide me with evidence to show that B.A.'s reported psychological impairment(s) are anything other than symptoms or sequelae arising from the soft tissue injuries sustained in the accident. The report is based entirely on a series of questions asked of B.A. during the screening process. In essence, it is a self-report of B.A.'s symptoms and difficulties.
- [18] No psychometric tests were administered by Dr. Shaul or by Ms. Iliois. during the pre-screen assessment. The report recommends an assessment but contains no diagnosis based on an objective conclusion.
- [19] Without the presence of an objective medical opinion providing a basis to indicate the existence of a psychological impairment that is not sequelae of minor injuries, I am unable to conclude that B.A. suffers from a psychological impairment that is not subject to the MIG.
- [20] B.A. has not provided medical evidence to demonstrate that she is unable to recover under the MIG as a result of her psychological symptoms. Therefore, she has not met the onus of establishing her entitlement to psychological treatment beyond the MIG limits.

Is B.A. suffering from chronic pain syndrome that would remove her from the MIG?

- [21] I find that B.A. does not have a chronic pain condition arising from the accident that places her outside of the MIG. Chronic pain, if established, removes a claimant from the MIG, because the prescribed definition of "minor injury" does not include chronic pain conditions.
- [22] B.A. submits that due to her psychological injuries and "chronic pain" she suffers from chronic pain syndrome. B.A. submits she has not reached her pre-accident state, she still has functional impairments and has not recovered in the

⁴ Psychological Pre-Screen Interview Report dated October 31, 2016

usual time with these types of injuries. Despite this, B.A. has not provided me with any medical opinion that supports a chronic pain diagnosis.

- [23] B.A. asserts that she suffers from chronic pain syndrome based on her complaints of pain to Chiropractor, Dr. Pivtoran (mentioned in 5 i and iv). I disagree.
- [24] I find that B.A.'s symptoms do not meet the criteria for chronic pain because:
- (i) The reports of Dr. Pivtoran do not diagnosis B.A. with chronic pain based on any objective testing;
 - (ii) Neither Dr. Pivtoran nor Dr. Donsky discuss B.A.'s level of pain or it's affects on her function;
 - (iii) I find for chronic pain to take someone out of the MIG, there must be an affect on their functionality. A treating physician's mention of a chronic pain condition be it 'syndrome' or specific use of the term 'chronic pain' is not enough in establishing the impact on functionality. This opinion must be supported by medical evidence that establishes an applicant's functionality is impaired and that the chronic pain is the cause of the disability; and
- [25] I find that the B.A.'s functionality is inconsistent with chronic pain based on the following:
- (i) B.A. did not miss any time off from work after the accident and continues to work on a full-time basis;
 - (ii) B.A. had one accident-related visit to Dr. Donsky on July 14, 2016;
 - (iii) B.A. reported independence with pre-accident self-care activities, and pre-accident housekeeping and home maintenance activities with some help from her mother and daughter.
- [26] Based on the evidence before me, I am unable to find, on a balance of probabilities, that B.A. should be removed from the MIG because she has chronic pain.

COSTS

- [27] In its submissions, Unifund made a request for costs. Under Rule 19.1 of the Licence Appeal Tribunal *Rules of Practice and Procedure*, an award of costs is an exceptional remedy.
- [28] In order for a party to be successful in receiving a cost award, there must be evidence before the Tribunal that the opposing party has acted unreasonably, frivolously, vexatiously, or in bad faith in the Tribunal's proceeding. This is a high threshold.
- [29] There is no evidence before me that Unifund has established the threshold behavior required to justify costs under Rule 19.1.
- [30] I find that Unifund is not entitled to costs in this matter.

CONCLUSION

- [31] B.A. sustained predominantly minor injuries that fall within the MIG. Accordingly, B.A. is not entitled to payment for the treatment plans claimed in this application. Her application is dismissed.

Released: September 18, 2019



**Derek Grant
Adjudicator**