

**LICENCE APPEAL  
TRIBUNAL**

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

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

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



**Tribunal File Number: 18-004659/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:

**Lu Yao Li**

**Applicant**

and

**Aviva Insurance Canada**

**Respondent**

**DECISION AND ORDER**

**PANEL:**

**Sandeep Johal, Adjudicator**

**APPEARANCES:**

For the Applicant:

Yu Jiang, Paralegal

For the Respondent:

Geoffrey Keating, Counsel

**HEARD:**

**In Writing on: December 10, 2018**

## OVERVIEW

- [1] The applicant was injured in an automobile accident on September 22, 2015 and sought benefits pursuant to the *Statutory Accident Benefits Schedule – Effective September 1, 2010*<sup>1</sup> (the "Schedule").
- [2] As a result of the accident, the applicant had pain in her neck, shoulders, back and left knee as well as limited range of motion at the cervical and lumbar spine.
- [3] The applicant applied for medical benefits that were denied by the respondent because she was placed into the Minor Injury Guideline (the "MIG"). The applicant disagreed with this decision and submitted an Application to the Licence Appeal Tribunal – Automobile Accident Benefits Service (the "Tribunal").

## ISSUES TO BE DECIDED

- [4] The following are the issues to be decided:
  - i. Did the applicant sustain predominantly minor injuries as defined under the *Schedule*?
  - ii. If the answer to issue one is no, then:
  - iii. Is the applicant entitled to receive a medical benefit in the amount of \$1,553.76 for physiotherapy services, recommended by Point Grey Physiotherapy in a treatment plan submitted on, dated March 22, 2016 and denied on May 26, 2016?
  - iv. Is the applicant entitled to interest on any overdue payment of benefits?

## RESULT

- [5] Based on the totality of the evidence before me, I find:
  - i. the applicant sustained predominately minor injuries as defined in the *Schedule* and she is entitled to payments up to the MIG limit of \$3,500; and
  - ii. as the applicant's injuries are within the MIG, it is therefore unnecessary to consider the reasonableness and necessity of the treatment plan or the issue of interest.

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<sup>1</sup> O. Reg. 34/10.

## ANALYSIS

### 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 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. Section 18(1) limits recovery for medical and rehabilitation benefits for such injuries to \$3,500.
- [7] Section 18(2) of the *Schedule* makes provision for injured persons who have a pre-existing medical condition to receive treatment in excess of the \$3,500 cap. To access the increased benefits, the injured person’s healthcare provider must provide compelling evidence that the person has a pre-existing medical condition, documented prior to the accident that will prevent the injured person from achieving maximal recovery if benefits are limited to the MIG cap.
- [8] In the decision of *Scarlett v. Belair Insurance*,<sup>2</sup> the Divisional Court found that the onus of establishing entitlement beyond the MIG limits rests with the claimant. Applying *Scarlett*, the applicant must establish his entitlement to coverage beyond the \$3,500 cap for minor injuries on a balance of probabilities.

### Did the applicant sustain a predominately minor injury?

- [9] I find that the applicant sustained impairments that are predominantly minor injuries for the following reasons.
- [10] The applicant’s physiotherapist in October 2015 noted the applicant to have pain in her neck, shoulders, back and left knee as well as limited range of motion at the cervical and lumbar spine.<sup>3</sup> The applicant’s psychologist, Dr. Shaul, at his initial consultation summary documented the applicant’s physical symptoms of headaches, pain at the neck, shoulder blades, left leg and left knee.<sup>4</sup>
- [11] The applicant’s chiropractor, Peter Counti, noted the applicant to have physical impairments in her neck, low back, right shoulder and left knee. Mr. Counti also notes that the applicant has “...lower extremity numbness/paraesthesiae (sic) and pain during tests of lumbar disc integrity and nerve root tension, suggesting significant radiculopathy. Further specialized neurological examination appears warranted...”<sup>5</sup> There are also no notations in the clinical notes and records of any of the applicant’s medical practitioners of lower extremity

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<sup>2</sup> 2015 ONSC 3635.

<sup>3</sup> Dr. Palantzas, Clinical Notes and Records of Point Grey Physio

<sup>4</sup> Dr. Shaul, Clinical Notes and Records of Perfect Choice Psychological Services at page 8.

<sup>5</sup> Applicant Submissions, TAB F, Explanation of Benefits dated April 4, 2016, at page 5.

numbness/paresthesia or radiculopathy. The treatment plan itself is not sufficient evidence to prove on a balance of probabilities that the applicant's injuries are outside of the MIG and I am not directed to any other medical practitioner who opines that the applicant's injuries are anything but those as defined under the MIG.

- [12] The applicant may have pain and seeking treatment to relieve pain is a legitimate goal in determining whether a treatment plan is reasonable and necessary; however, before that can happen the applicant must prove on a balance of probabilities that her injuries are outside of the MIG. I am not provided with evidence that her injuries are outside the MIG. Furthermore, I give little weight, without any other corroborating evidence, of the opinion of the applicant's chiropractor, Mr. Counti to comment on whether the applicant requires a neurological examination, which would be outside his scope of expertise.
- [13] The applicant also saw Dr. Dessouki an Orthopaedic Surgeon at the request of the respondent for an insurer examination ("IE"). The IE took place on May 2, 2016 and the report was dated May 16, 2016. In that report, Dr. Dessouki notes that the applicant's complaints were of pain in her neck, shoulders, lower back and forearms.<sup>6</sup> After a physical examination Dr. Dessouki diagnosed the applicant with a cervical strain, lumbosacral strain and bilateral shoulder strain. He goes on to conclude that the applicant's injuries are predominantly "minor" injuries that would fall under the definition of the MIG. Dr. Dessouki makes no reference that is similar to what the applicant's chiropractor Mr. Counti noted. There is no mention of lower extremity numbness/paraesthesiae (sic) and pain during tests of lumbar disc integrity and nerve root tension, or any mention of radiculopathy.
- [14] As a result of the above, I find that the applicant has suffered injuries that fall under the definition of section 3(1) of the *Schedule*.

### **Requirements to be removed from the MIG**

- [15] If the applicant's injuries fall within the definition of the MIG, the applicant can still be considered to be out of the MIG in accordance with section 18(2) of the *Schedule*. In order to do so, the applicant must meet all three of the following requirements in order to escape the MIG under this section:
- a) There was a pre-existing medical condition;
  - b) The pre-existing medical condition was documented by a health practitioner before the accident; and

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<sup>6</sup> Respondent written submissions Tab H at page 6.

c) The pre-existing condition will prevent maximal recovery from the minor injury if the person is subject to the \$3,500 limit under the MIG.

[16] I find that the applicant has not satisfied her onus and has not provided any submissions or evidence of pre-existing conditions that satisfy the criteria in section 18(2) of the *Schedule* in order to be considered outside of the MIG.

[17] As I have found that the applicant has not met her onus to show her injuries to be outside of the MIG there is no need for me to conduct an analysis of whether the treatment plan is reasonable and necessary and accordingly, no interest is payable.

### **CONCLUSION**

[18] For the reasons outlined above, I find that:

- a. the applicant sustained predominately minor injuries as defined in the *Schedule* and she is entitled to payments up to the MIG limit of \$3,500; and
- b. the applicant has not established that she has a pre-existing medical condition that prevents recovery under the MIG and therefore the applicant is not entitled to the treatment plan in dispute or interest as there are no overdue payments of benefits.

**Released: July 10, 2019**



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**Sandeep Johal, Adjudicator**