



**Citation: Dela Rosa v Unifund, 2023 ONLAT 20-015237/AABS**

**Licence Appeal Tribunal File Number: 20-015237/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:

**Shirley Dela Rosa**

**Applicant**

and

**Unifund**

**Respondent**

**DECISION**

**ADJUDICATOR: Brian Norris**

**APPEARANCES:**

For the Applicant: Alexei Antonov, Counsel  
Raj Bhangal, Student-at-Law

For the Respondent: Geoffrey Keating, Counsel

**HEARD: By way of written submissions**

## OVERVIEW

- [1] Shirley Dela Rosa (“the Applicant”) was involved in an automobile accident on December 30, 2018, and sought benefits from Unifund (“the Respondent”) pursuant to the *Statutory Accident Benefits Schedule - Effective September 1, 2010 (including amendments effective June 1, 2016)* (the “Schedule”).
- [2] The Respondent characterized the Applicant’s injuries as a predominantly minor injury and subjected her to the Minor Injury Guideline (“the MIG”) and the \$3,500.00 funding limit on medical and rehabilitation benefits. The Respondent denied the Applicant entitlement to certain benefits due to the fact that the goods and services sought by the Applicant fell outside the MIG. The Applicant submitted an application to the Licence Appeal Tribunal - Automobile Accident Benefits Service (“Tribunal”) for resolution of the dispute.

## ISSUES

- [3] The issues in dispute are:
  - i. Are the Applicant’s injuries predominantly a minor injury as defined in section 3 of the *Schedule* and subject to the MIG and the \$3,500.00 funding limit on medical and rehabilitation benefits?
  - ii. Is the Applicant entitled to medical benefits proposed by HydroHealth Evaluations Inc. as follows;
    - i. \$2,450.00 for a psychological assessment plan, dated February 18, 2021; and
    - ii. \$2,460.00 for a chronic pain assessment plan, dated February 25, 2021?
  - iii. Is the Applicant entitled to medical benefits proposed by Hydroactive Aquathrapy & Rehabilitation Inc. as follows;
    - i. \$3,693.00, less \$1,548.50 approved by the Respondent, for a chiropractic treatment plan dated February 13, 2021; and
    - ii. \$4,827.54 for an aqua therapy treatment plan dated July 24, 2021?
  - iv. Is the Respondent liable to pay an award under section 10 of Reg. 664 because it unreasonably withheld or delayed the payment of benefits?
  - v. Is the Applicant entitled to interest on any overdue payment of benefits?

## RESULT

- [4] The Applicant is not entitled to the benefits claimed, nor interest or an award.

## BACKGROUND

- [5] The Applicant was the front seat passenger of a vehicle that was struck on the driver's side by an oncoming vehicle. Emergency medical services arrived at the scene of the accident and attended to the Applicant's daughter, who was the driver of the vehicle. The Applicant sought no medical attention on the day of the accident. She met with her family physician, Dr. V. Tan-Jarvis, a few days later and complained of back, neck, and shoulder pain, as well as headaches. The Applicant was examined and demonstrated full range of motion in her neck and shoulders. Dr. Tan-Jarvis' clinical notes and records from that day include no treatment or follow-up recommendations following the examination.
- [6] The Applicant commenced treatment pursuant to the MIG. She claims at this hearing that she suffers from a chronic pain condition and psychological injuries, which are not included in the minor injury definition.

## ANALYSIS

### Minor Injury Guideline ("MIG")

- [7] 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.
- [8] The onus is on the Applicant to demonstrate that she sustained an injury that is not included in the minor injury definition and that the treatment and assessment plans in dispute are reasonable and necessary as a result of the accident.

### **Chronic Pain**

- [9] I find that the Applicant does not suffer from an accident-related chronic pain condition.
- [10] The clinical notes and records ("CNRs") from Dr. Tan-Jarvis fail to support the Applicant's claims. Those records show that the Applicant made only one

accident-related pain complaint to Dr. Tan-Jarvis a few days following the accident. She then made no accident-related pain complaints during various visits throughout 2019 and 2020. For example, she complained of hip pain in August 2019, but it was determined to be an issue related to osteoarthritis and not the subject accident. Similarly, she complained of headaches and a tender trapezius muscle during a visit on January 27, 2020, but the CNRs noted that it was only for the past three weeks. The timing of her hip and trapezius pain complaints indicates that the issues are unrelated to the accident and there is no mention in Dr. Tan-Jarvis' CNRs that the issues are at all related to the subject accident.

- [11] The Applicant was referred to a pain clinic due to her new hip, back, and shoulder pain and it was determined that the pain is not related to the accident. On June 22, 2020, the Applicant consulted with Dr. A. Mailis, physiatrist, and was diagnosed with polymyalgia rheumatica, a condition that leads to synovitis and reduced range of motion ("ROM"). This explains why the Applicant experienced no functional impairment immediately following the accident, but later experienced reduced ROM. Further, the CNRs from Dr. Mailis include no mention of the subject accident and do not connect the Applicant's condition to the accident in any way.
- [12] I find the opinion of Dr. I. Wilderman, physician, to be unpersuasive in light of the other evidence to which I have been directed to. Dr. Wilderman assessed the Applicant and issued a report dated March 29, 2021. In that report, Dr. Wilderman concluded that the Applicant suffered from chronic pain syndrome, depression, anxiety, and other issues as a result of the accident. Yet, there is no indication that Dr. Wilderman reviewed any CNRs from the Applicant's treating physicians such as Dr. Tan-Jarvis and Dr. Mailis. Also, Dr. Wilderman attributed the Applicant's current presentation entirely to the subject accident without any consideration to the Applicant's other conditions. As noted, Dr. Tan-Jarvis' CNRs clearly explain that the Applicant's current presentation is related to polymyalgia rheumatica.
- [13] I prefer the opinion of Dr. N. Harmantas, physician, who conducted an insurer's examination and concluded that the Applicant sustained a minor injury as a result of the accident. Dr. Harmantas examined the Applicant and issued a report dated November 3, 2021 which found that the Applicant sustained soft tissue injuries which fall squarely in the minor injury definition. Dr. Harmantas reported that the Applicant demonstrated functional range of motion throughout her body during examination, was independent with all her personal care tasks, and was able to provide some caregiving to her five grandchildren.

- [14] Overall, the Applicant's medical record demonstrates that she sustained soft-tissue injuries as a result of the accident, and they appear to have resolved in the appropriate hearing time. There is evidence that the Applicant experienced some hip, back, and shoulder pain following the accident however, the evidence indicates that the pain is unrelated to the accident. As a result, I find that the Applicant's physical injuries are rightfully characterized as a minor injury.

### ***Psychological Injuries***

- [15] I find that the Applicant has not demonstrated that she sustained an accident-related psychological injury. Her medical record shows virtually no evidence of any accident-related psychological impairment.
- [16] I give no weight to the psychological impairments diagnosed by Dr. Wilderman, in the report dated March 29, 2021 because they are anomalous to the balance of the Applicant's medical record. In the report, Dr. Wilderman diagnosed the Applicant with psychological conditions such as depression, anxiety, and post-traumatic stress disorder. Yet, none of the Applicant's various treating physicians, whether it be her physiatrist, rheumatologist, cardiologist, or family physician, documented any psychological complaints from the Applicant since the accident. Additionally, Dr. Wilderman purports to be a chronic pain consultant, not a psychologist or a physician with special training in psychology.
- [17] I prefer the opinion of Dr. D. Saunders, psychologist, over Dr. Wilderman. Dr. Saunders practices in the field of psychology and assessed the Applicant via clinical interview and psychometric testing. In a report dated November 3, 2021, Dr. Saunders found no evidence that the Applicant suffers from an accident-related psychological impairment. The Applicant's psychometric testing scores correlate with Dr. Saunders' findings; they indicate mild depressive symptoms and a low risk for experiencing clinical problems. Dr. Saunders' report and conclusion are consistent with the balance of the Applicant's medical record, such as Dr. Tan-Jarvis' CNRs, which include no complaints of a psychological nature.
- [18] In preferring Dr. Saunders' opinion, it follows that I conclude that the Applicant has not demonstrated that she sustained an accident-related psychological impairment. I conclude that her psychological injuries are rightfully characterized as sequelae of her minor injury.

### ***Treatment and Assessment Plans in Dispute***

- [19] The treatment and assessment plans in dispute propose goods and services which fall outside the MIG. Having concluded that the Applicant sustained a minor injury, it follows that she is not entitled to goods and services outside the MIG and the \$3,500.00 funding limit for a minor injury.

***Interest***

[20] Interest applies on the payment of any overdue benefits pursuant to section 51 of the *Schedule*. No interest is payable as no benefits are payable or went overdue.

***Award***

[21] The Applicant sought an award under section 10 of Reg. 664. Under section 10, the Tribunal may grant an award of up to 50 per cent of the total benefits payable if it finds that an insurer unreasonably withheld or delayed the payment of benefits.

[22] Here, the Applicant submits that it was unreasonable for the Respondent to only consider the conclusions of its IE assessors when determining her entitlement to benefits. However, as noted above, I preferred the IE assessors' opinions because they are consistent with the balance of the Applicant's medical record, when Dr. Wilderman's opinion was not. This is not a matter of unreasonably withholding benefits and I see no basis to render an award payable.

**CONCLUSION AND ORDER**

[23] The Applicant sustained a minor injury as a result of the accident. She is subject to the MIG and the \$3,500.00 funding limit for a minor injury.

[24] The treatment and assessment plans in dispute are not payable because they propose goods and services outside the MIG and the \$3,500.00 funding limit.

[25] No interest or award is payable.

**Released:** January 18, 2024

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**Brian Norris**  
Adjudicator