



**Citation: Singh v. Aviva General Insurance Company, 2023 ONLAT 21-006248/AABS**

**Licence Appeal Tribunal File Number: 21-006248/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:

**Sukhwinder Singh**

**Applicant**

and

**Aviva General Insurance Company**

**Respondent**

**DECISION**

**VICE-CHAIR:**

**Julian DiBattista**

**APPEARANCES:**

For the Applicant:

Alexei Antonov, Counsel

For the Respondent:

Geoffrey Keating, Counsel

**HEARD:**

**By way of written submissions**

## OVERVIEW

- [1] Sukhwinder Singh, the applicant, was involved in an automobile accident on April 17, 2019, 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, Aviva General 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 predominantly minor as defined in s. 3 of the *Schedule* and therefore subject to treatment within the \$3,500.00 limit and in the Minor Injury Guideline (“MIG”)?
  - ii. Is the applicant entitled to \$2,000.00 for assessment of attendant care needs, proposed by Prime Health Care Inc. in a treatment plan/OCF-18 (“plan”) submitted June 12, 2019, and denied July 23, 2019?
  - iii. Is the applicant entitled to \$2,078.33 for physiotherapy services, proposed by Prime Health Care Inc. in a plan submitted July 11, 2019, and denied July 23, 2019?
  - iv. Is the applicant entitled to \$2,000.00 for a psychological assessment, proposed by Prime Health Care Inc. in a plan submitted July 26, 2019, and denied August 7, 2019?
  - v. Is the applicant entitled to \$1,809.80 for physiotherapy services, proposed by Prime Health Care Inc. in a plan submitted October 9, 2019, and denied October 23, 2019?
  - vi. Is the applicant entitled to \$1,499.35 for a functional impairment evaluation proposed by Prime Health Care Inc. in a plan submitted December 10, 2019, and denied December 18, 2019?
  - vii. Is the applicant entitled to \$1,811.61 for Physiotherapy services, proposed by Prime Health Care Inc. in a plan submitted November 30, 2019, and denied December 12, 2019?

- viii. Is the applicant entitled to \$200 for a chronic pain assessment, proposed by Prime Health Care Inc. in a plan submitted December 10, 2019, and denied December 12, 2019?
- ix. Is the applicant entitled to \$4,055.69 for psychological counselling, proposed by Prime Health Care Inc. in a plan submitted June 25, 2020, and denied July 9, 2020?
- x. Is the respondent liable to pay an award under s. 10 of O. Reg. 664 because it unreasonably withheld or delayed payments to the applicant?
- xi. Is the applicant entitled to interest on any overdue payment of benefits?

## RESULT

- [3] The applicant has not proven that his injuries require treatment outside the MIG, The MIG limits are exhausted and there is no further entitlement to benefits. The application is dismissed.

## ANALYSIS

### ***The applicant has not proven an entitlement to treatment outside the MIG***

- [4] 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.”
- [5] An insured 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 from their accident-related minor injury 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 cases, the burden of proof lies with the applicant.
- [6] The applicant argues that his injuries require treatment outside the MIG framework as he suffers from both chronic pain syndrome and a psychological impairment.

*The applicant has not proven a diagnosis of chronic pain syndrome*

- [7] It is the applicant's burden to prove on a balance of probabilities that he suffers from a condition that warrants treatment beyond the MIG. I find there was insufficient medical evidence presented to support that position.
- [8] The applicant has provided a single note from Dr. B. Nanar, the applicant's family physician. This note references a single visit on November 16, 2019. Dr. Nanar notes as follows, "Low back pain for a few days, not severe, no radiation, able to carry on with regular activities, no treatment so far, no GI complaints, no GU complaints." Dr. Nanar diagnosed the applicant with a lumbar strain, and prescribed physiotherapy and naproxen.
- [9] This visit occurred more than 6 months following the accident, the accident is not referenced in the note, and the pain is specified as only occurring for a few days. This note shows that the applicant was seen for acute pain but does not support a diagnosis of chronic pain syndrome.
- [10] The applicant also relies on clinical notes and records from Prime Health Centre where the applicant received rehabilitation care. The applicant was seen 40 times between April 30, 2019 and January 27, 2020. In the subjective section of the notes, the applicant reports pain for the first 38 of 40 sessions. However, in session 39 and 40, in January of 2020, the applicant no longer complains of any pain. While it is unclear if the applicant saw a physician qualified to make a diagnosis of chronic pain syndrome at Prime Health Centre, I conclude, from the records presented, that the applicant received rehabilitative care and recovered from his injuries.
- [11] I find that the applicant has not established that he suffers from chronic pain with functional impairment which warrants removal from the MIG.

*The applicant has not proven a psychological impairment*

- [12] I find that the applicant has not demonstrated that he suffers from a psychological condition that warrants removal from the MIG.
- [13] Psychological impairments, if established, fall outside the MIG, because such impairments are not included in the prescribed definition of "minor injury."
- [14] The applicant relies on a section 25 psychological evaluation conducted by Dr. A. Shaul, a registered psychologist, and Ms. S. Ramnaraine, a registered psychotherapist, both of whom co-signed the report. The authors of the report reviewed the disability certificate and a single treatment plan.

- [15] The diagnosis contained in the report was that the applicant suffers from adjustment disorder with mixed anxiety and depressed mood, and a specific phobia of travelling in and around a vehicle. This assessment was conducted on January 27, 2020.
- [16] For the following reasons, I do not find this report persuasive. The interview was conducted by Ms. Ramnaraine who is practicing under the supervision of Dr. Shaul. There is no evidence that Dr. Shaul saw or evaluated the applicant. Also there was no review of the applicant's clinical history. Only the disability certificate and a single treatment plan were reviewed. The diagnosis is solely based on the contents of the interview and associated psychological assessments. As there is no evidence that Dr. Shaul evaluated the patient, I cannot give weight to his diagnosis.
- [17] In contrast, a section 44 psychological assessment was conducted by Dr. S. Mor, a clinical psychologist on August 6, 2019. In addition to the interview with the applicant, Dr. Mor notes that various documents have been reviewed as part of this assessment. These documents included the disability certificate, treatment plans, a psychological pre-screen report conducted by Dr. Shaul, assessment reports completed by Dr. P Komnek, the applicant's chiropractor, among other things.
- [18] In this assessment Dr. Mor found that there "was no clinically significant psychological impairment related to the subject accident."
- [19] There has been no other objective evidence submitted detailing the applicant's psychological issues and I have been provided with no history of these issues being discussed with the applicant's family doctor or any other medical professional.
- [20] I agree with the respondent that Dr. Shaul and Ms. Ramnaraine's report should be given less weight since only a limited document review was conducted. For instance, it appears that neither Dr. Shaul nor Ms. Ramnaraine were provided with a copy of Dr. Mor's assessment. In addition to this, there is no evidence that Dr. Shaul saw the applicant.
- [21] I preferred the report of Dr. Mor because there is evidence that he personally evaluated the applicant, in addition to completing a much thorough review of medical documentation relating to the file. Dr. Shaul and Ms. Ramnaraine only reviewed the OCF-3 and a single OCF-18, where as Dr. Mor reviewed no less than 16 documents. These documents included multidisciplinary assessments and notes from treating clinics.

[22] Therefore, I find that the applicant has failed to prove on a balance of probabilities that he should be removed from the MIG as a result of a psychological impairment.

***The applicant has not proven an entitlement to treatment outside the MIG***

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

***The applicant is not entitled to interest or an award under S.10***

[24] As I have found that there are no payment of benefits owing or unreasonably delayed or withheld by the respondent, there is no basis upon which to consider interest or an award in this matter.

**ORDER**

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

- i. The applicant sustained predominantly minor injuries as defined under the *Schedule*. Accordingly, it is not necessary for me to determine whether or not the treatment plans are reasonable and necessary because the maximum amount of \$3,500.00 for medical and rehabilitation benefits under the MIG has been exhausted;
- ii. The applicant is not entitled to an award under Regulation 664;
- iii. No interest is payable; and
- iv. This application is dismissed.

**Released: December 13, 2023**

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**Julian DiBattista  
Vice-Chair**