Citation: Gill v. Aviva General Insurance Company, 2024 ONLAT 21-003906/AABS

Licence Appeal Tribunal File Number: 21-003906/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:

Rajwinder Gill

Applicant

and

Aviva General Insurance Company

Respondent

AMENDED DECISION

ADJUDICATOR: **Lisa Yong**

APPEARANCES:

For the Applicant: Marc Golding, Paralegal

For the Respondent: ~~Rozlien Brikha~~ **Ibrahim Farag**, Counsel

HEARD: **In Writing**

OVERVIEW

[1] Rajwinder Gill, the applicant, was involved in an automobile accident on January 7, 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 Minor Injury Guideline ("MIG") limit? Note: The parties agree the MIG limits have been exhausted.

ii. Is the applicant entitled to the amount of $1,920.53 for psychological services, proposed by Inline Rehabilitation Centre Inc. in a treatment plan/OCF-18 ("plan") submitted on May 1, 2019?

iii. Is the applicant entitled to the amount of $3,191.25 for chiropractic services, proposed by Inline Rehabilitation Centre Inc. in a treatment plan submitted on November 21, 2019?

iv. Is the applicant entitled to the amount of $3,948.91 for chiropractic services, proposed by Inline Rehabilitation Centre Inc. in a treatment plan submitted on May 29, 2019?

v. Is the applicant entitled to the amount of $3,416.68 for psychological services, proposed by Inline Rehabilitation Centre Inc. in a treatment plan submitted on June 6, 2019?

vi. Is the applicant entitled to interest on any overdue payment of benefits?

RESULT

[3] The applicant has not demonstrated that her accident-related injuries warrant removal from the MIG.

[4] As the applicant is found to be within the MIG, and the treating limit of the MIG has been exhausted, the applicant is not entitled to the disputed plans and interest is not payable.

PROCEDURAL ISSUE

Has the applicant submitted late evidence that was not properly disclosed?

[5] I admit the s. 25 psychological assessment report dated May 8, 2019 (the "report"), by Dr. Anna Prudovski, psychologist, and Ms. Sabrina Simmons, psychometrist, into evidence.

[6] The respondent argues that the report should not be admitted into evidence because it was served in breach of the Case Conference Report and Order ("CCRO") dated November 16, 2022. The applicant did not respond to the respondent's claim, but I take her inclusion of the report in her submission to amount to request to have it admitted.

[7] I find that the report was disclosed on May 17, 2023. The CCRO required the applicant to serve on the respondent all documents she intended to rely on at the hearing by April 17, 2023. I find that the report was served late.

[8] The respondent did not explain or elaborate how the report would cause prejudice if it was admitted into evidence. While the respondent submits that it does not have sufficient time for its counsel and its assessors to review the report in order to better prepare its case for this hearing, and the applicant did not explain why the report was not disclosed to the respondent pursuant to the CCRO, I find the report to be relevant to the issues in dispute. Rule 9.4 mandates that any party failing to comply with disclosure rules or Tribunal orders such as those set forth in a CCRO "may not rely on the document or thing as evidence...without the consent of the Tribunal." As I find the report to be relevant to the issues in dispute and the respondent's failure to explain what prejudice it may have, I will allow the report to be admitted into evidence and assign the whatever weight I deem appropriate.

ANALYSIS

Minor Injury Guideline (MIG)

[9] I find that the applicant has failed to demonstrate that she suffers from injuries which entitle her to removal from the MIG.

[10] 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."

[11] 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 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.

[12] The applicant submits that she should be removed from the MIG because:

i. Her accident-related injuries fall outside the MIG;

ii. She suffers from chronic pain with functional impairment; and

iii. She suffers a psychological condition as a result of the accident.

She relies on the application for accident benefits form ("OCF-1"), hospital records from Etobicoke General Hospital, diagnostic imaging results, the clinical notes and records("CNRs") from her family doctor, Dr. Narinder Sehravat, and the disability certificate ("OCF-3") dated January 23, 2019 and a s. 25 psychological assessment report dated May 8, 2019, by Dr. Anna Prudovski, psychologist, and Ms. Sabrina Simmons, psychometrist.

[13] The respondent submits that the applicant suffered only soft-tissue injuries as a result of the accident which is within the definition of "minor injuries" of the *Schedule* and relies on two s.44 insurer examination ("IE") reports by Dr. Shahriar Moshiri, psychologist, and by Dr. Ijaz Chaudhry, physician.

The applicant's injuries are primarily a minor injury

[14] The applicant has not demonstrated removal from the MIG is warranted.

[15] The applicant submits that she sustained non-minor injuries as a result of the accident including injuries to her head, neck, ribs, chest and entire back. As mentioned, she relies on the OCF-1, hospital records, OCF-3 and CNRs from Dr. Sehravat, her family doctor.

[16] The respondent submits that the applicant has not present any evidence that she sustained non-minor injuries and had been diagnosed with only sprain and strain type injuries which fall squarely within the definition of minor injury pursuant to the *Schedule*. It relies on the IE report by Dr. Ijaz Chaudhry, physician.

[17] I am not persuaded by the applicant's submissions and evidence. I find that the hospital records from the day of the accident do not support the applicant's position that her injuries fall outside of the definition of minor injury pursuant to the *Schedule*. The records do not provide a diagnosis and the X-rays taken revealed no fractures. The fact that none of the hospital records indicate a physical injury that is not a minor injury and that the X-rays were normal, are evidence that no serious injury was sustained by the applicant from the accident.

[18] I find that all the injuries described by the applicant in the OCF-1 dated January 31, 2019, appear to be within the minor injury definition. The applicant stated that she sustained injuries to her head, neck, ribs, chest and upper, middle and lower back; and suffered stress and anxiety after the accident; however, these injuries fall squarely within the definition of minor injury in the *Schedule*. Further, I give the OCF-1 limited weight as the contents of the form were subjectively completed by the applicant and with limited support from objective medical evidence.

[19] I accept Dr. Ijaz Chaudhry's opinion, in his s. 44 IE report dated July 29, 2019, as it appears to be in line with the rest of the evidence. Dr. Chaudhry diagnosed the applicant with lumbar strain and sprain, and cervical strain and sprain (WAD I) after the applicant demonstrated normal range of motion and strength across all joints even though some movements were painful. Dr. Chaudhry noted that there were no neurological or radicular findings. He opined that the applicant's accident-related complaints "appear to be related to uncomplicated soft tissue injuries." Further, he also noted that the applicant has no pre-existing medical condition that would prevent achieving maximal medical recovery if limited to the MIG. Finally, Dr. Chaudhry opined that "I failed to see any requirement for facility-based rehabilitation outside of the MIG for the soft tissue injuries… [t]he plan is not reasonable or necessary." I find that Dr. Chaudhry's findings appear to be consistent with the rest of the evidence.

[20] The applicant has failed to demonstrate that she sustained anything more than a minor injury as a result of the accident.

The applicant has not established that she suffers from chronic pain with a functional impairment

[21] The applicant has not established that she suffers chronic pain with a functional impairment.

[22] As mentioned above, the Tribunal has found that chronic pain with a functional impairment may be reason that warrant removal from the MIG. The applicant bears the onus to proof.

[23] The applicant submits that she suffers chronic knee pain with a functional impairment as a result of the accident and relies on the CNRs of Dr. Sehravat as evidence that she has suffered pain for approximately 22 months post-accident that would constitute chronic pain. The respondent submits that the applicant was not diagnosed with chronic pain and has not put forward any evidence to prove that she suffers from chronic pain.

[24] I find little evidence from the applicant's treating physicians to support the applicant's argument that she suffers from accident-related chronic pain. The bulk of the CNRs from Dr. Sehravat concerned other medical conditions that were unrelated to the accident and numerous appointments to obtain regular vaccines. The applicant did not mention the accident or report any accident-related injuries to Dr. Sehravat. Further, Dr. Sehravat did not attribute the applicant's right knee pain as an accident-related injury but as a degenerative disease. Based on the injuries listed in OCF-1 and OCF-3, the applicant did not raise any complaints about any knee injury immediately after the accident. A post-accident x-ray of the applicant's right knee revealed that it was normal. Although the applicant submits that she reported to Dr. Sehravat that she has been suffering knee pain for an extended period of time post-accident, I am not persuaded that her knee pain is related to the accident due to Dr. Sehravat's diagnosis of a degenerative disease. There is also limited reporting in Dr. Sehravat's CNRs of any impact or physical limitations of the applicant. I find that the applicant has not present compelling and contemporaneous evidence that she suffers from chronic pain with a functional impairment.

[25] Further, in a progress report dated May 17, 2019, Dr. Roberta Minna, a physician of Etobicoke General Hospital who the applicant consulted for a non-accident-related medical condition, noted that the applicant is "…extremely healthy. She has no allergies and no major health issues." The applicant did not make any chronic pain complaints of her knee or of any accident-related injuries to Dr. Minna during this appointment. I find that this is evidence that the applicant was not suffering from chronic pain that would be notable by Dr. Minna in her CNR.

[26] Given the lack of compelling and contemporaneous medical evidence, I find the applicant has failed to establish that she suffers chronic pain with a functional impairment that would warrant removal from the MIG.

Does the applicant suffer any psychological impairment that warrant removal from the MIG?

[27] The applicant has not established that she suffers from a psychological impairment as a result of the accident.

[28] The applicant submits that she suffers from a psychological impairment as a result of the accident and she relies on the s. 25 psychological assessment report dated May 8, 2019 by Dr. Anna Prudovski, psychologist, and Ms. Sabrina Simmons, psychometrist, where they diagnosed her with “specific phobia related to vehicle travel”.

[29] The respondent submits that the applicant has not provided any material evidence of a psychological impairment as a result of the accident. It relies on the s. 44 psychological report dated June 17, 2019, by Dr. Shahriar Moshiri, psychologist.

[30] I give limited weight on the applicant’s s. 25 psychological assessment report, as the findings do not appear to be consistent with the rest of the medical evidence. As mentioned earlier, the bulk of the CNRs from the applicant’s family doctor, Dr. Narinder Sehravat, concerned other non-accident-related medical conditions and numerous appointments to obtain regular vaccines. I find that there is very limited reporting of any post-accident psychological complaints by the applicant to Dr. Sehravat. Further, with respect to the s. 25 psychological report, it is unclear of each Dr. Prudovski and Ms. Simmons’s involvement in the applicant’s psychological assessment which consisted of psychometric testing, analysing and diagnosing the applicant. Ms. Simmons, psychometrist, is not qualified to provide any medical diagnoses. There was very limited explanation of each of their involvement in this regard and due to the lack of compelling and consistent medical evidence, I have given the s. 25 psychological report limited weight.

[31] I agree with the respondent and prefer the s. 44 psychological report by Dr. Moshiri, psychologist, as it is more in line with the rest of the medical evidence. After conducting psychometric testing, Dr. Moshiri opined that the results revealed insignificant level of depression and anxiety; that there is no compelling evidence of any pre-existing medical condition that would prevent the applicant from achieving maximal medical recovery; and the applicant did not sustain a psychological impairment as a result of the accident that would warrant removal

from the MIG. I place weight on this report, as its conclusions align with a majority of the objective medical evidence before me.

[32] The applicant did not submit any reply submissions to rebut Dr. Moshiri's report and has not pointed to any further post-accident medical evidence of any psychological complaints as a result of the accident.

[33] For the above reasons, I find that the applicant remains within the MIG and is subject to its $3,500.00 funding limit on treatment.

Treatment Plans

[34] As the applicant has been found to remain within the MIG, and given the $3,500.00 funding limit was previously exhausted, no additional analysis is required to determine if the plans in dispute are reasonable and necessary pursuant to the *Schedule*. As no benefits are overdue, no interest is payable.

ORDER

[35] I find that:

i. the applicant sustained predominantly minor injury as a result of the accident. She remains within the MIG and is subject to its $3,500.00 funding limit on treatment;

ii. the plans in dispute are not payable;

iii. as no benefits are overdue, no interest is payable; and

iv. the application is dismissed.

Released: February 14, 2024

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Lisa Yong
Adjudicator