Tribunals Ontario
Licence Appeal Tribunal

Tribunaux décisionnels Ontario
Tribunal d'appel en matière de permis

Citation: Matherson v. Coachman Insurance Company, 2026 ONLAT 24-007738/AABS

Licence Appeal Tribunal File Number: 24-007738/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:

Andrew Matherson

Applicant

and

Coachman Insurance Company

Respondent

DECISION

ADJUDICATOR: **Melanie Malach**

APPEARANCES:

For the Applicant: Serena Rhyman, Paralegal

For the Respondent: Surina Sud, Counsel

HEARD: **By way of written submissions**

OVERVIEW

[1] Andrew Matherson, the applicant, was involved in an automobile accident on January 24, 2023, 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, Coachman 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:

1. 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 limit?

2. Is the applicant entitled to the treatments and assessments proposed by Midland Wellness Centre, as follows:

    i. $1,300.00 for physiotherapy services, in a treatment plan dated November 24, 2023.

    ii. $3,122.30 for physiotherapy services, in a treatment plan dated December 13, 2023;

    iii. $2,144.93 for a psychological assessment, in a treatment plan dated January 24, 2024;

    iv. $2,797.60 for physiotherapy services, in a treatment plan dated February 15, 2024; and

    v. $2,164.00 for a chronic pain assessment, in a treatment plan dated February 15, 2024?

3. Is the respondent liable to pay an award under s. 10 of Reg. 664 because it unreasonably withheld or delayed payments to the applicant?

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

RESULT

[3] I find that the applicant's accident-related injuries are predominantly minor and he is therefore subject to treatment within the $3,500.00 limit of the MIG.

[4] I find that the applicant is not entitled to the treatment plans in dispute.

[5] I find that the respondent is not liable to pay an award.

[6] I find that the applicant is not entitled to interest.

PROCEDURAL ISSUES

Respondent's motion to exclude the applicant's reply submissions

[7] The respondent's motion to exclude the applicant's reply submissions is denied.

[8] The parties provided their written hearing submissions in accordance with the timelines set out in the Case Conference Report and Order. After the applicant filed his reply submissions, the respondent brought a Notice of Motion, requesting that the applicant's reply submissions be struck, arguing that the applicant's reply submissions, new evidence and new arguments should not be admitted into evidence for this written hearing. The motion was set to be heard as part of this written hearing.

[9] The Supreme Court of Canada in *R. v. Krause,* [1986] 2 SCR 446, set out what may be included in reply submissions. The applicant may be allowed to call evidence in reply where the respondent has raised some new matter or defence which the applicant has had no opportunity to deal with and which he could not reasonably have anticipated. Rebuttal is not permitted regarding matters which merely confirm or reinforce earlier evidence adduced in the applicant's case which could have been brought before the respondent's submissions were made. It will be permitted only when necessary to ensure that at the end of the day each party will have had an equal opportunity to hear and respond to the full submissions of the other.

[10] When analysing whether a document should be excluded from a hearing, a Tribunal should consider any relevant factor, including the reasons for non-compliance, whether a party will be prejudiced by the admission or exclusion of the evidence and the extent to which that prejudice can be mitigated by another order, the extent to which the substance of the information lies within the knowledge of the other party, whether the other party opposes the admission of evidence, and the relevance of the document to an issue in the proceeding.

[11] The respondent submits that the treatment plans dated January 24, 2024 and February 15, 2024 and the submissions based on the decision in *Waldron-Edwards v. Aviva Insurance Canada,* 2023 CanLII 96361 (ON LAT), submitted in the applicant's reply submissions, should be excluded, as the treatment plans were not provided in the applicant's initial submissions. The applicant submits that these treatment plans were innocuously omitted from his initial submissions. This error was only brought up in the respondent's submissions and in order to rectify the omission, the applicant provided the omitted treatment plans in his reply submissions. In addition, the respondent relied upon the contents of the treatment plans and included all of the treatment plan denials in its own submissions.

[12] I accept the applicant's submission that these two treatment plans were mistakenly omitted from his initial submissions. I find that the three other treatment plans in dispute were included in his initial submissions. I find that the respondent has failed to prove that the two treatment plans are new evidence, and as such would be prejudiced if these documents were submitted to the Tribunal. The respondent denied the treatment plans which form the basis of this dispute, and as such it was aware of the case against it. I find that the Tribunal also has an obligation to allow the applicant an opportunity to submit the treatment plans as they form the basis of the parties' dispute, and he clearly intended to rely on them.

[13] The respondent further requests that the applicant's submissions with respect to his failure to comply with s. 33 of the *Schedule* and his failure to attend an Examination Under Oath ("EUO") be struck. The respondent argues that the applicant made an obvious decision not to include such evidence in his initial submissions and if these submissions are allowed into evidence, it would be prejudiced because it would not be allowed to reply to these submissions. The applicant submits that his reply submissions with respect to the EUO were directly replying to the raised issues made in the respondent's submissions. He argues that he was unaware that these issues would be raised in the hearing.

[14] I find that the issues of the applicant's non-compliance with s. 33 and his non-attendance at the EUO were not raised as preliminary issues by the respondent at the Case Conference and were first raised in the respondent's submissions. Therefore, I accept the applicant's submission that he could not reasonably have anticipated that these issues would be raised by the respondent and therefore provided submissions in his reply to rebut the arguments made in the respondent's submissions. I further find that the evidence relied upon by the applicant in his reply included correspondence that was all in the respondent's

possession. With respect to the prejudice that the respondent claims to suffer if these submissions are admitted, I find that the respondent had an option of providing a sur-reply which it did not request.

[15] For the reasons outlined above, the respondent's motion is denied and the applicant's reply submissions are not excluded from this hearing.

Failure to comply with s. 33(1) and (2) requests

[16] The applicant is non-compliant with s. 33(1) of the *Schedule.*

[17] Pursuant to s. 33(1) of the *Schedule,* an insured is required to provide any information reasonably required to assist the insurer in determining an insured's entitlement to a benefit.

[18] Pursuant to s. 33(2) of the *Schedule*, if requested by the insurer, an applicant shall submit to an Examination Under Oath.

[19] Section 33(6) of the *Schedule* states that an insurer is not liable to pay any benefit in respect of any period during which the insured person fails to comply with s. 33(1) or s. 33(2) of the *Schedule.*

[20] The respondent sent the applicant and his representative an Explanation of Benefits ("EOB"), dated August 23, 2023, requesting records pursuant to s. 33 of the *Schedule.* The applicant was advised that if the records were not provided by September 7, 2023, he would be in non-compliance with s. 33 of the *Schedule* and no medical and rehabilitation benefits would be payable during the period of non-compliance. A subsequent EOB was sent to the applicant on October 23, 2023, advising the applicant that he had failed to produce the requested productions and, as a result of his non-compliance with s. 33 of the *Schedule,* no medical or rehabilitation benefits would be payable. The respondent argues that to date the applicant has failed to comply with the August 23, 2023 s. 33 requests and he remains in non-compliance.

[21] An EUO was scheduled to take place on October 30, 2023. The respondent submits that during the EUO, the applicant refused to answer questions posed by counsel, requested to stop the EUO to speak to his legal representative about the questions being asked, and unilaterally decided to log off the Zoom EUO. Following the EUO on October 30, 2023, counsel for the respondent wrote to the applicant's representative requesting records pursuant to s. 33. The letter further states that as the applicant unilaterally chose to disconnect from the EUO before it was completed, thereby refusing to answer further relevant questions, he was

non-compliant with s. 33(2) of the *Schedule.* The respondent submits that to date the applicant has failed to respond to the October 30, 2023 s. 33 requests and he remains in non-compliance.

[22] Despite the suspension of the applicant's benefits, he submitted treatment plans dated November 24, 2023, December 13, 2024, January 24, 2024 and February 15, 2024. The respondent denied these treatment plans based on the applicant's non-compliance with s. 33 and failing to attend the EUO. The EOBs note that the applicant's benefits were suspended.

[23] The respondent submits that the applicant's failure to comply with s. 33(1) and (2) of the *Schedule* renders no liability on an insurer to pay any medical and rehabilitation benefits, and specifically the treatment plans in dispute, for the period of non-compliance, pursuant to s. 33(6) of the *Schedule.*

[24] I find that the applicant did not provide submissions to address the issue of his s. 33(1) non-compliance. The correspondence submitted by the respondent establishes multiple s. 33 requests for medical and financial information and subsequent letters to the applicant confirm that these requested documents had not been provided. The information requested would be reasonably required to assess the applicant's entitlement to benefits. Without any submissions or evidence from the applicant as to whether these requests had been fulfilled, I find that the respondent has established that the applicant is non-compliant with s. 33(1) of the *Schedule* and therefore, pursuant to s. 33(6) it was not liable to pay medical and rehabilitation benefits to the applicant.

[25] I further find that while the respondent has noted that the applicant subsequently provided copies of the CNRs from Pickering Family Physicians on April 8, 2025, the remainder of the s. 33(1) requests have not been complied with. I further find that the applicant did not provide any explanation for the delay in providing the CNRs to the respondent when the records were dated February 2024, more than a year prior to production.

[26] For the reasons outlined above, I find that the applicant is non-compliant with s. 33(1) and therefore the respondent, in accordance with s. 33(6), is not liable to pay any benefit for the period of non-compliance.

ANALYSIS

The applicant sustained predominantly minor injuries as defined under the *Schedule*

[27] I find that the applicant's accident-related injuries are predominantly minor and he is therefore subject to treatment within the $3,500.00 limit of the MIG.

[28] 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) of the *Schedule* defines a "minor injury" as "one or more of a strain, sprain, whiplash associated disorder, contusion, abrasion, laceration or subluxation and includes any clinically associated sequelae to such an injury."

[29] 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) of the *Schedule*, that they have a documented pre-existing condition combined with compelling medical evidence stating that the condition precludes maximal medical 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.

[30] In this matter, the applicant submits he has a pre-existing impairment that was exacerbated by the subject accident. He further submits that he should be removed from the MIG based on his physical injuries which have become chronic.

a. The applicant is not removed from the MIG on the basis of a pre-existing condition

[31] I do not find that the applicant has a pre-existing medical condition that prevents maximal medical recovery if he is kept within the MIG.

[32] The applicant submits that he has a pre-existing impairment that was exacerbated by the subject accident. He submits that he was involved in a previous motor vehicle accident on June 30, 2021 resulting in a severe lower back injury. He relies upon the MRI of the Lumbar Spine report, dated December 9, 2021, which found a disc protrusion at L5/S1 with some mild contact of both descending S1 nerve roots in the lateral recess.

[33] While I accept the applicant's evidence that he suffered a back injury in 2021, I find that the applicant has not met his onus of providing evidence from a health practitioner that a pre-existing medical condition will prevent him from achieving maximal medical recovery if he is subject to the MIG limits. The applicant has not directed the Tribunal to any medical evidence or opinion to support that his pre-existing back impairment would affect his recovery from the subject accident, as required by s. 18(2).

[34] For the reasons set out above, I find that the applicant has not proven on a balance of probabilities that he suffers from a pre-existing medical condition that would prevent maximal medical recovery if he is subject to the MIG and therefore he is not removed from the MIG on this basis.

b. The applicant is not removed from the MIG based on a chronic pain condition

[35] I find that the applicant has not proven on a balance of probabilities that he suffers from a chronic pain condition as a result of the accident that would warrant removal from the MIG.

[36] Chronic pain conditions are not included in the minor injury definition. In order to establish that the applicant has a chronic pain condition, he must demonstrate that his pain causes a functional impairment which adversely affects his well-being. The Tribunal has found the criteria for a chronic pain condition outlined by the *American Medical Association's Guides to the Evaluation of Permanent Impairment* ("*AMA Guides*") to be a useful interpretive tool.

[37] The applicant submits that the medical evidence supports that he suffers from chronic pain as a result of the accident and therefore he is not subject to the MIG. The applicant relies upon the report of Dr. Richard Chang, general practitioner, at GSH Medical, dated October 30, 2023, where he complained of persistent pain in both legs and feet. The report concluded that there was evidence that there may be an existence of complex regional pain syndrome. He further relies on the treatment plans submitted on his behalf recommending physiotherapy and a chronic pain assessment. He argues that the treatment plans support that the primary goal for receiving treatment was because he continued to experience pain, the extent of which caused him to withdraw from activities he normally would have undertaken prior to the accident.

[38] The respondent submits that the applicant does not suffer from chronic pain and there is no evidence from a medical practitioner opining that he sustained anything more than a minor injury in the subject accident. It submits that the report of Dr. Chang makes it clear that the applicant reported a "1 month history of pain", "was recently discharged from hospital for what sounds like acute renal failure" and "had pain and difficulty sleeping." The respondent submits that this report was prepared three months post-date of loss and there is no relation to the accident. In addition, Dr. Chang's reference to complex regional pain syndrome was not a diagnosis, but a query, confirmed by the "?" in his findings.

[39] I find that the applicant has not met his evidentiary onus to prove, on a balance of probabilities, that he suffers from chronic pain.

[40] I find that the report of Dr. Chang does not indicate on a balance of probabilities that the applicant suffers from a chronic pain condition as a result of the accident that warrants treatment outside of the MIG. I find that the referral to Dr. Chang was made due to complaints of pain in his right leg, right foot, left leg and left foot that he had experienced for a few months. Dr. Chang refers to the applicant's recent discharge from hospital for acute renal failure for which he presented with bilateral leg edema. I find that nowhere in the report is there any mention of the subject accident. I further find that Dr. Chang did not make an actual diagnosis, but rather concluded that the applicant is possibly suffering from complex regional pain syndrome. I find that the applicant has not provided any further evidence of a follow-up with Dr. Chang or any other physicians to confirm the diagnosis.

[41] I further find that while the treatment plans submitted by Midland Wellness Centre recommend further physiotherapy and a chronic pain assessment, the applicant has not provided contemporaneous corroborating medical evidence to support the recommendations made in the treatment plans. The Tribunal has consistently found that a treatment plan itself is not sufficient medical evidence to prove entitlement, as contemporaneous corroborating medical evidence is required to support entitlement. I find that other than the treatment plans submitted by the applicant, no further medical evidence has been submitted or relied upon by the applicant.

[42] I further find that the applicant has not demonstrated that he is functionally impaired by pain. I find that while the applicant submits that he suffers ongoing pain as a result of the accident, ongoing pain alone is insufficient to remove the applicant from the MIG, as the pain must be of a severity that it causes suffering and distress accompanied by functional impairment or disability. I find that the

applicant has not proved on a balance of probabilities that his ongoing pain was of a significant level or was accompanied by some functional impairment or disability. I find that the applicant has not pointed the Tribunal to any evidence to demonstrate that his pain prevented him from pursing his work, recreational needs, activities of daily living, or that he developed psychosocial sequelae.

[43] For the reasons outlined above, I find that the applicant has not proven on a balance of probabilities that he suffers chronic pain which would warrant his removal from the MIG.

Entitlement to the Treatment Plans in Dispute

[44] Having found that the applicant has failed to prove that his accident-related impairments warrant treatment beyond the MIG, it is unnecessary for me to consider the reasonableness and necessity of the disputed treatment plans.

Interest

[45] Interest applies on the payment of any overdue benefits pursuant to s. 51 of the *Schedule.* As there are no benefits owing, the applicant is not entitled to interest.

Award

[46] The applicant sought an award under s. 10 of Reg. 664. Under s. 10, the Tribunal may grant an award of up to 50 percent of the total benefits payable if it finds that an insurer unreasonably withheld or delayed the payment of benefits. As I have found that the respondent did not unreasonably withhold or delay payment of any benefit, no award is warranted.

ORDER

[47] For the reasons outlined above, I find:

1. The applicant’s accident-related injuries are predominantly minor and he is therefore subject to treatment within the $3,500.00 limit of the MIG;

2. The applicant is not entitled to the treatment plans in dispute;

3. The applicant is not entitled to interest;

4. The respondent is not required to pay an award; and

5. The application is dismissed.

Released: January 21, 2026

Melanie Malach

Melanie Malach
Adjudicator