LICENCE APPEAL TRIBUNAL

TRIBUNAL D'APPEL EN MATIÈRE DE PERMIS

Safety, Licensing Appeals and Standards Tribunals Ontario

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

Ontario

Date: 2018-10-03
Tribunal File Number: 17-006373/AABS
Case Name: 17-006373 v Aviva Insurance Canada

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:

A.H.

Applicant

and

Aviva Insurance Canada

Respondent

DECISION

ADJUDICATOR: **Sandra Driesel**

APPEARANCES:

For the Applicant: Maria Mikhailitchenko, Counsel

For the Respondent: Adam Theofanidis, Counsel

HEARD: Written Hearing **August 30, 2018**

OVERVIEW

[1] The applicant was injured in an automobile accident ("the accident") on November 24, 2015 and sought insurance benefits pursuant to the *Statutory Accident Benefits Schedule – Effective September 1, 2010*[1] (the "*Schedule*"). She applied to the Licence Appeal Tribunal – Automobile Accident Benefits Service (the "Tribunal") when her claims for benefits were denied by the respondent.

[2] The respondent denied the applicant's claims because it determined that all of the applicant's injuries fit the definition of "minor injury" prescribed by s. 3(1) of the *Schedule* and, therefore, fall within the Minor Injury Guideline[2] ("the MIG") and are subject to a $3,500.00 cap on medical benefits. The treatment plan(s) in dispute exceed this limit. The applicant's position is the opposite.

[3] If the applicant's position is correct, then I must determine whether the medical treatment in dispute is reasonable and necessary.

[4] If the respondent's position is correct, then the applicant is subject to a $3,500.00 limit on medical and rehabilitation benefits prescribed by s. 18(1) of the *Schedule*, and, in turn, a determination of whether claimed benefits are reasonable and necessary will be unnecessary as the $3,500.00 maximum benefit for minor injuries has been exhausted.

ISSUES

[5] Did the applicant sustain predominantly minor injuries as defined by the *Schedule*, which means entitlement to medical benefits is limited by the MIG?

[6] If the applicant's injuries are not within the MIG, then I must determine the following issues:

i. Is the applicant entitled to receive a medical benefit in the amount of $3,454.30 for chiropractic services recommended by Brampton Civic Care Centre, in a treatment plan submitted April 21, 2016, denied by the respondent on April 29, 2016?

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

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[1] O. Reg. 34/10.
[2] Minor Injury Guideline, Superintendent's Guideline 01/14, issued pursuant to s. 268.3 (1.1) of the *Insurance Act*.

RESULT

[7] I find that the applicant's injuries fall within the MIG. It is therefore unnecessary to consider the reasonableness or necessity of the treatment plan, or the issue of interest.

ANALYSIS

The Minor Injury Guideline

[8] Subsection 3(1) of the *Schedule* 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 and includes any clinically associated sequelae to such an injury." The MIG defines in detail what these terms for injuries mean.

[9] The onus is on the applicant to show that her injuries fall outside of the MIG[3]

Did the applicant sustain predominantly minor physical injuries?

[10] The applicant argues that she developed chronic pain as a result of her accident related impairments and is therefore excluded from the MIG and exempt from the $3,500.00 cap on benefits.

[11] The respondent submits that the applicant has failed to provide any evidence to support her allegations of chronic pain and even when ordered through a Case Conference Order of the Tribunal (March 16, 2018), the applicant failed to produce medical documents, including clinical notes and records of her family doctor or any other treatment provider. Given this, there is no proof of a chronic pain condition that would take the applicant out of the MIG.

[12] The respondent also concludes that without proof of her medical condition, the request for additional medical treatment cannot be determined as being reasonable or necessary.

[13] It is uncontested that the applicant's physical injuries were predominantly minor. Therefore, I must make a determination regarding the applicant's argument that she should be removed from the MIG because of chronic pain arising from these injuries.

[3] *Scarlett v. Belair,* 2015 ONSC 3635 at para. 24

Does the applicant suffer from chronic pain?

[14] The applicant submits that she suffers from chronic pain, which removes her from the MIG, because the definition of "minor injury" does not include chronic pain conditions.

[15] The applicant submits that the lack of financial resources has prevented her from seeking any treatment for her condition. She also adds that she had no opportunity to be assessed for her chronic pain condition because the respondent denied her any medical benefit in excess of the MIG limit of $3,500.00.

[16] In assessing the applicant's claim of chronic pain, I have looked for evidence of the following:

i. The applicant suffers severe and constant pain -- more than simple ongoing or recurrent, intermittent pain.

ii. The applicant's pain has persisted well beyond the normal healing times for the injuries sustained.

iii. The applicant's pain causes functional impairment and disability. It significantly disrupts or disables pre-accident activities of daily living.

[17] One of the difficulties I find in this case is the lack of any medical documents, assessments or suggested treatment plans that address chronic pain and support the applicant's self-diagnosed condition:

i. The applicant failed to produce pre or post-accident clinical notes or records from her family doctor to show she ever reported symptoms of chronic pain.

ii. The applicant failed to produce updated OHIP records to prove that she sought any medical opinion or treatment after June 30, 2016 (and her treatment for minor injuries concluded on August 16, 2016).

iii. The applicant failed to produce any other medical document or suggested treatment plans to support she was suffering from chronic pain and or that the treatment she was provided up to August 16, 2016 (and paid by the respondent) was not successful in addressing the injuries sustained as a result of the accident, which may have included the indicia of chronic pain.

[18] The applicant sites in her submissions that she could not afford out of pocket treatment. The problem I find with this is that there is no evidence of a treatment plan to specifically address chronic pain because there is no chronic pain assessment. While the applicant says she could not get an assessment because she was denied funding through medical benefits from the respondent, I found no evidence that she went to her family doctor (where payment would be covered by OHIP) about chronic pain and therefore he could/did not recommend an assessment.

[19] Based on the above, I find the applicant has failed to prove a condition that would take her out of the MIG. It is therefore unnecessary for me to assess whether the treatment plan in dispute is reasonable or necessary. Further, the applicant is not entitled to interest as there are no overdue payments owing.

CONCLUSION

[20] For the reasons outlined above, I find that the applicant sustained predominantly minor injuries that fall within the MIG and has not met the burden of proof to show that any associated sequelae exists that will take her out of the MIG. Accordingly, she is not entitled to the treatment plan claimed in this application. Her application is dismissed.

Released: October 3, 2018

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Sandra Driesel, Adjudicator