

**LICENCE APPEAL
TRIBUNAL**

**Safety, Licensing Appeals and
Standards Tribunals Ontario**

**TRIBUNAL D'APPEL EN MATIÈRE
DE PERMIS**

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



Citation: Ali vs. Aviva General Insurance, 2021 ONLAT 19-013697/AABS

**Released Date: 01/06/2021
File Number: 19-013697/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:

Sadia Ali

Applicant

and

Aviva General Insurance

Respondent

DECISION

ADJUDICATOR: Monica Chakravarti

APPEARANCES:

For the Applicant: Lisa Bishop, Counsel

For the Respondent: Brendan Sheehan, Counsel

Heard by way of written submissions

OVERVIEW

- [1] The applicant was involved in a motor vehicle accident on **January 12, 2018** (the “Accident”) and sustained injuries. She sought medical and rehabilitation benefits pursuant to the *Statutory Accident Benefits Schedule – Effective September 1, 2010*¹ (the “Schedule”) from the respondent. The respondent denied the benefits because it concluded that applicant’s injuries were predominately minor and therefore subject to the Minor Injury Guideline (“MIG”). The applicant disagreed with the respondent and applied to the Tribunal for resolution of the dispute.
- [2] The applicant submits that the respondent was non-compliant with the *Schedule* with respect to the denial of the above noted benefits and, therefore, the benefits may be wholly or partially payable.
- [3] Both parties in their submissions acknowledge that the MIG limits of \$3,500.00 have been exhausted.

ISSUES IN DISPUTE

- [4] The issues in dispute are as follows:
 - 1. Are the applicant’s injuries predominantly minor as defined in section 3 of the *Schedule* and therefore subject to the \$3,500.00 limit, already consumed, and in the **Minor Injury Guideline**?
 - 2. If applicant’s injuries are not predominantly minor as defined in section 3 of the *Schedule*, then:
 - (a) Is the applicant entitled to \$216.13 (the unapproved balance from an invoice for \$1,299.43) for physiotherapy, recommended by Active Life Wellness in a treatment plan dated April 24, 2018 and denied on April 25, 2018 (the “Physiotherapy Treatment Plan”)?
 - (b) Is the applicant entitled to \$2,000.00 for a psychological assessment, recommended by Physio Care in a treatment plan submitted on June 13, 2018 and denied on July 15, 2018 (the “Psychological Treatment Plan”)?

¹ O.Reg. 34/10, as amended.

3. Is the respondent liable to pay an award under Ontario Regulation 664 because it unreasonably withheld or delayed payments to the applicant?
4. Is the applicant entitled to interest on any overdue payment of benefits?
5. Is the applicant entitled to payment of the above noted treatment plans because the respondent was non-compliant with the *Schedule* when providing notice of its partial approval and/or denial of the benefits?

RESULT

- [5] The applicant's injuries are predominantly minor as defined by *Schedule*. The applicant has not established that her injuries warrant treatment outside of the MIG and therefore the balance of the Physiotherapy Treatment Plan is not payable nor is there any interest payable.
- [6] The applicant has established that the respondent did not provide a denial notice compliant with section 38(8) of the *Schedule* and therefore the \$200.00 incurred on the Psychological Treatment Plan is payable with interest. The Psychological Treatment Plan is not reasonable and necessary and, therefore, the balance of this treatment plan is not payable.
- [7] The applicant is not entitled to an award pursuant to Ontario Regulation 664.

ANALYSIS

Applicability of the MIG:

- [8] The MIG establishes a framework for the treatment of minor physical injuries, as defined in s. 3(1) of the *Schedule*.
- [9] Section 18(1) limits recovery for medical and rehabilitation benefits for predominantly minor injuries to \$3,500. Under Section 18(2) of the *Schedule* an applicant may receive payment for treatment beyond the limits, but she must provide compelling medical evidence from a medical practitioner of a pre-existing medical condition documented before the accident, and evidence that remaining within the confines of the MIG will prevent maximal medical recovery. The applicant must establish entitlement to coverage beyond the limits on a balance of probabilities.
- [10] The applicant takes no issue that her physical injuries fit the definition of "minor" as defined in the *Schedule*. Therefore, I take no issue that the physical injuries are minor injuries. The applicant submits that she should not remain within the

confines of the MIG because she has pre-existing medical conditions and by remaining within the MIG she will be prevented from achieving maximal medical recovery.

- [11] The applicant also submits that she sustained psychological injuries in the Accident and these injuries cannot be considered minor as the definition of “minor injury” does not include a psychological injury.
- [12] The respondent submits that the applicant does not have a pre-existing medical condition that was documented by a medical practitioner. Further, the respondent submits that the evidence shows that the applicant’s injuries are minor as defined in the *Schedule*, and that she does not have any psychological injuries as a result of the Accident.
- [13] I find that the applicant has not met her onus to show that the injuries sustained in the Accident fall outside of the MIG. I find the medical evidence shows that the applicant suffered predominately minor physical injuries as a result of the accident for the reasons noted below.
- [14] The evidence does not show a pre-existing medical condition that is documented by a health practitioner prior to the Accident. The applicant relies upon the diagnosis of an adjustment disorder with mixed anxiety noted in a July 4, 2016 report by Dr. Shaul, psychologist.²
- [15] I am not persuaded that the evidence shows any ongoing psychological issues. The applicant submits that the Accident worsened her psychological condition and specifically worsened her diagnosed adjustment disorder with mixed anxiety and depressed mood, and she should be removed from the MIG.
- [16] I disagree. The July 4, 2016 report of Dr. Shaul states that he recommends counselling sessions and expects her condition to improve with treatment.³ Based on the clinical notes and records submitted by the applicant and respondent from June of 2016 (prior to Dr. Shaul’s report) to the date of the Accident there are no notations indicating existing, continuing or ongoing psychological issues.
- [17] Further, in the report of Dr. Reis, psychologist, who conducted an assessment pursuant to section 44 of the *Schedule* (an Insurer’s Examination) on August 29, 2018, it notes that the applicant reports that she has never been diagnosed with

² Applicant's Brief, page 24.

³ Applicant's Brief, page 29.

a psychological disorder and never experienced significant psychological difficulties prior to the Accident.⁴

- [18] Therefore, on a balance of probabilities I find that the applicant does not have a documented pre-existing psychological condition that would remove her from the MIG.
- [19] Further, the applicant submits that she has pre-existing issues with her wrist and her knees; however, there is no evidence to indicate that her wrist and knee were a cause of ongoing concern in at least two years prior to this Accident or following this Accident. The applicant has not provided her treating doctor's clinical notes and records from mid-2016 to present. She has provided her records from 2015 that note issues with her wrists however she has not provided information to show that the issues were ongoing or even present following 2015. Without any evidence, I cannot, on a balance of probabilities, find a pre-existing medical condition that warrants treatment outside of the MIG.
- [20] With respect to psychological injuries sustained in the Accident, the applicant relies on the June 13, 2018 pre-screen report of Dr. Shaul. In this report, Dr. Shaul notes that the applicant reports that she feels sad, depressed, stressed, nervous and anxious since the Accident.⁵ The applicant submits that the disability certificate notes that the applicant was "diagnosed" with a state of emotional shock and stress as well as issues with sleep and insomnia.
- [21] The respondent relies on the Insurer Examination of Dr. Reis who concluded, based on his assessment and testing, that the applicant sustained no psychological impairment as a result of the accident.
- [22] There is no evidence to corroborate the applicant's self-reporting as there are no clinical notes and records from her treating doctor submitted as evidence. As well, her OHIP summary for April 16, 2013 to June 12, 2018 shows no visits to any OHIP funded health care providers since November of 2016.
- [23] The applicant has not discharged her burden to prove on a balance of probabilities that she sustained a psychological injury or impairment as a result of the Accident, which may remove her from the MIG. Further, the applicant has not proven that she had pre-existing conditions that warrant treatment outside of the MIG. Therefore, based on the totality of the evidence, I find the applicant's injuries are minor in nature and her treatment is properly within the MIG. As the

⁴ Respondent's Brief, Tab 11 page 4.

⁵ Applicant's Brief, page 108

applicant has exhausted the monetary amounts available for treatment under the MIG, I find the applicant is not entitled to the amounts for the treatment plans in dispute except as noted below.

Notice:

[24] Section 38 (8) of the *Schedule* states:

Within 10 business days after it receives the treatment and assessment plan, the insurer shall give the insured person a notice that identifies the goods, services, assessments and examinations described in the treatment and assessment plan that the insurer agrees to pay for, any the insurer does not agree to pay for and the medical reasons and all of the other reasons why the insurer considers any goods, services, assessments and examinations, or the proposed costs of them, not to be reasonable and necessary.

[25] Section 38(11) of the *Schedule* states:

If the insurer fails to give a notice in accordance with subsection (8) in connection with a treatment and assessment plan, the following rules apply:

- i. The insurer is prohibited from taking the position that the insured person has an impairment to which the Minor Injury Guideline applies.
- ii. The insurer shall pay for all goods, services, assessments and examinations described in the treatment and assessment plan that relate to the period starting on the 11th business day after the day the insurer received the application and ending on the day the insurer gives a notice described in subsection (8).

[26] Section 38(8) of the *Schedule* provides in part, when the notice is to be provided and Section 38(11) lays out the consequences if the respondent does not adhere to timelines in providing the notice.

[27] The applicant submits that the respondent did not abide by the timing requirements of section 38(8) of the *Schedule*: the Psychological Treatment Plan was submitted on June 13, 2018 and denied on July 26, 2018, which was more than 10 business days. The applicant therefore requests that the respondent pay \$200.00, which is the amount that was incurred between the 11th business day after the respondent received the notice and July 26, 2018.

- [28] The respondent submits that the applicant may have backdated the Psychological Treatment Plan, that this treatment plan was received on July 16, 2018, and that it was denied on July 18, 2018 with notice given that the applicant must attend for an insurer's examination.
- [29] Based on the evidence filed, I find on a balance of probabilities that the respondent did not respond to the Psychological Treatment Plan within the timelines under the s. 38(8) of the *Schedule*.
- [30] The applicant provided the correspondence from the respondent dated July 26, 2018.⁶ In this letter, the respondent states that the Psychological Treatment Plan was received on June 13, 2018 and the date of the treatment plan is June 13, 2018. The respondent also states that the "Goods and services" is a mental health assessment, the "Amount Claimed" is \$2,000.00 and the "Amount Payable" is \$0.00. The provider is listed as "Physiocare and Wellness Clinic – Shaul."
- [31] There is no dispute that the Psychological Treatment Plan was dated June 13, 2018.
- [32] The respondent's brief includes a letter dated July 18, 2018. This letter differs from the letter that the applicant submitted. This letter indicates that the Psychological Treatment Plan was received on July 16, 2018. The provider is listed as "Physiocare and Wellness Clinic." It does not contain [Dr.] "Shaul," the "Amount Claimed" or the details of the section 44 Assessments that are listed in the applicant's letter. It also contains functional hyperlinks.
- [33] I find on a balance of probabilities that the letter of July 26, 2018 presented by the applicant was the letter received by her with respect to the notice from the respondent about the decision to not pay for the assessment recommended in the Psychological Treatment Plan.
- [34] In its letter of July 26, 2018, the respondent advised the applicant that it received the treatment plan on June 13, 2018. There is no reason why the respondent would misrepresent the date of receipt. The log notes filed by the respondent do not indicate or even mention the receipt of the treatment plan or provide any information as to whether the treatment plan was received on June 13 or July 16, 2018. I am left to rely on the letters filed. I find that, given that the letter of July 26, 2018 contains detailed information such as the name of the doctor Shaul, the amount claimed of \$2000.00 and the amount payable of \$0.00, on a balance of

⁶ Page 98 of the Applicant's Book of Documents

probabilities this is the letter that was sent to the applicant denying the Psychological Treatment Plan. Therefore, the respondent is subject to the consequences of Section 38(11). Further, there is no evidence that the treatment plan in dispute was “backdated” or any such “mischief” occurred as submitted by the respondent.

- [35] I find that respondent received the Psychological Treatment Plan on June 13, 2018 and the applicant received notice that the insurer is not paying the Psychological Treatment Plan on July 26, 2018. Therefore, a portion of the treatment plan is payable.
- [36] The applicant submits, and I accept based on the evidence filed, that the \$200.00 for the initial assessment was incurred for the submitting of the OCF-18. Therefore, per section 38(11), the applicant is entitled to the \$200.00 incurred.
- [37] Further, per section 38 (11), the respondent is precluded from taking the position that the applicant’s injuries fall within the MIG for the basis for denying the Psychological Treatment Plan. However, I find based on the above analysis that the applicant did not sustain psychological injuries as a result of the Accident and therefore the psychological treatment plan is not reasonable and necessary.
- [38] The applicant submits that the notice of denial of both disputed treatment plans do not contain the necessary information and, therefore, are in breach of section 38(8) of the *Schedule*. As I have already found that a portion of the psychological treatment plan is payable and the balance of the treatment plan is not reasonable and necessary, any further discussions or findings on the notice of denial of the Psychological Treatment Plan is moot. Therefore, I will turn my attention to the Physiotherapy Treatment Plan.
- [39] I disagree with the applicant that the notice of denial of the Physiotherapy Treatment Plan was non-compliant with the *Schedule*. The respondent advised the applicant in its letter of April 25, 2018 that it was relying upon the Physiotherapy Treatment Plan itself for forming its opinion that the impairments of the applicant are predominantly a minor injury. The notice of denial indicates that the respondent is partially approving the treatment plan to a certain amount.
- [40] I find that this notice is in keeping with section 38(8) and the *Schedule* as a whole. The applicant’s evidence shows that she understood and accepted the partial approval of benefits as she then acted and received the therapy approved. The applicant provided no evidence that she did not know the reason for the denial of the full amount of the Physiotherapy Treatment Plan, nor had the applicant showed where a potential point of confusion could be when reading the

notice. I find that the notice and the information therein was clear enough for the applicant to make an informed decision to either accept or dispute the decision.

- [41] Based on the above I find that the applicant is not entitled to the balance of the Physiotherapy Treatment Plan.

Award and Interest

- [42] The applicant seeks an award on the basis that the respondent failed to consider the applicant's pre-accident history in adjusting the benefits claimed. The applicant has provided no evidence that the respondent acted in a manner that was not in good faith when it adjusted the claim. Further, the applicant did not provide the pre-accident records until May 11, 2020, almost two years after the submission of the treatment plans in dispute.
- [43] The respondent adjusted the file based on the information it had and relied on the medical opinion of Dr. Reis. I find this to be a reasonable adjusting of the benefits. For these reasons, I find that the respondent is not liable to pay an award.
- [44] The applicant is entitled to the interest on the \$200.00 payable for the completion of the OCF-18 for the Psychological Treatment Plan.

CONCLUSION

- [45] The applicant's injuries are predominantly minor as defined by *Schedule*. The applicant has not established that she sustained psychological injuries as a result of the Accident and has not established that her injuries warrant treatment outside of the MIG.
- [46] The respondent was non-compliant with Section 38(8) of the *Schedule* and therefore \$200.00 plus interest is payable to the applicant for the amounts incurred prior to the notice of denial from the respondent.
- [47] The applicant is not entitled to any further amounts for benefits and the respondent is not liable to pay an award.

Released: January 6, 2021



Monica Chakravarti
Adjudicator