



**Citation: Ahmed vs. Aviva General Insurance Company, 2021 ONLAT  
20-000044/AABS**

**Released Date: 07/07/2021  
File Number: 20-000044/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:

**Nasro Ahmed**

**Applicant**

and

**Aviva General Insurance Company**

**Respondent**

**DECISION**

**ADJUDICATOR: Derek Grant**

**APPEARANCES:**

For the Applicant: Nasro Ahmed, Applicant  
Olubunmi Akinsanmi, Counsel

For the Respondent: Aviva General Insurance Company, Representative  
Alexander Dos Reis, Counsel

**HEARD: Via written submissions**

## OVERVIEW

- [1] The applicant was injured in an accident on September 17, 2017, and sought benefits from the respondent, Aviva, pursuant to the Statutory Accident Benefits Schedule - Effective September 1, 2010<sup>1</sup> (the "Schedule"). Aviva denied the benefits in dispute on the basis that it determined that the applicant's accident-related injuries and impairments were predominantly minor injuries and therefore subject to treatment within the Minor Injury Guideline (the "MIG"). The applicant disagreed and submitted an application to the Tribunal for resolution of the dispute.

## ISSUES IN DISPUTE

- [2] Pursuant to the Tribunal Order dated June 10, 2020, the issues to be decided are as follows:
- a. 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 of the MIG?
  - b. Is the applicant entitled to \$2,334.33 for psychological treatment, recommended by Ontario Independent Assessment Centre in a treatment plan ("OCF-18") dated January 16, 2018?
  - c. Is the applicant entitled to \$2,430.00 for chiropractic treatment, recommended by Urgent Care Rehab in an OCF-18 dated April 25, 2019?
  - d. Is the applicant entitled to \$1,995.50 for physiotherapy, recommended by Urgent Care Rehab in an OCF-18 dated May 6, 2019?
  - e. Is the applicant entitled to interest on any overdue payment of benefits?

## FINDING

- [3] The applicant has not demonstrated that she sustained accident-related injuries or impairments that warrants removal from the MIG. The disputed treatment plans are not reasonable and necessary, and interest is not payable.

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<sup>1</sup> O. Reg. 34/10.

## ANALYSIS

### Applicability of the Minor Injury Guideline

#### *Pre-existing condition and Physical Injuries*

- [4] Pursuant to s. 18(1) of the *Schedule*, medical and rehabilitation benefits are limited to \$3,500.00 if an insured person sustains impairments that are predominantly a minor injury in accordance with the MIG. 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.” An insured may be removed from the limitations of the MIG if they can establish that their accident-related injuries fall outside the MIG or, under s. 18(2), that they have a documented pre-existing injury or condition supported by compelling medical evidence stating that the condition prevents recovery if they are kept within the confines of the MIG. The Tribunal has also determined that chronic pain that results in functional impairment may substantiate removal from the MIG. I find that the applicant has failed to meet her burden of proof to establish that her accident-related impairments justify removal from the MIG on a balance of probabilities.
- [5] The applicant’s position is that she should be removed from the MIG due to her pre-existing conditions. In addition, she submits that the disputed OCF-18s are reasonable and necessary making them payable.
- [6] The respondent’s position is that the applicant has not established that she had a pre-existing injury which would prevent her from achieving maximum medical recovery if she were kept within the MIG, pursuant to s. 18(2). Further, that the evidence supports that she suffered predominantly minor injuries, and that she has failed to identify what accident-related injuries are not considered minor under the *Schedule*.
- [7] With respect to her pre-existing knee pain, the applicant relies on December 2016 and October 2017 entries from her family physician which note knee pain related to weight issues. I agree with the respondent that this is not a sufficient ground to support that a pre-existing condition exists. A subjective undiagnosed, generalized pain complaint is not sufficient to be considered a pre-existing issue, and especially so where no treatment was recommended to address the knee pain. In addition, I do not consider the pre-accident knee pain complaint to be the type of compelling medical evidence that would justify removal from the MIG under s. 18(2). Further, none of the applicant’s treating practitioners indicated that her knee pain would prevent her from reaching maximum medical recovery if

she remains in the MIG. In addition, pre-accident diagnostic imaging reports of her knees were unremarkable.

- [8] Regarding her post-accident impairments, the applicant alleges that she suffered significant, ongoing pain as a result of the accident. To this end, she relies on the September 26, 2017 OCF-3 of Alan Deokiesingh, who indicates that the applicant suffered from whiplash associated disorder (WADII), neck pain with musculoskeletal signs, low back pain, pain joints, muscle strain, sprain and strain of thoracic spine and sprain and strain of shoulder joint. I note that the OCF-3 does not indicate knee pain, either pre-existing or accident-related.
- [9] I agree with the respondent that there is no medical evidence that supports that the accident “extremely enhanced”, “significantly aggravated”, or “deteriorated” any pre-existing conditions, as the applicant alleges. In addition, when she participated in a s. 44 assessment with Dr. Kruger, the applicant did not mention her pre-existing knee pain.

### ***Psychological Impairments***

- [10] The applicant also claims that she suffered psychological impairments that support her removal from the MIG. She submits that at a psychological assessment on her behalf, Dr. Langis diagnosed her with Adjustment Disorder with Mixed Anxiety and Depressed Mood, persistent due to chronic pain. In order to be removed from the MIG due to psychological impairments, the applicant must show that she has an actual psychological impairment and not just post-accident sequelae. A psychological diagnosis requires the progression of ongoing, post-accident symptomatology or clinically significant psychological impairment. I find that the applicant has not provided or directed me to any submissions or evidence to demonstrate that her alleged psychological impairments justify removal from the MIG.
- [11] Although the applicant relies on the aforementioned report from Dr. Langis, I find that there is no evidence that she suffered a significant psychological impairment as a result of the accident. The records of her family physicians contain no accident-related psychological complaints. The applicant has failed to point me to any evidence that she suffered more than just psychological sequelae as a result of the accident. The evidence supports that the applicant does not have a significant pre- or post-accident psychological treatment history, further justifying that she remains properly in the MIG from a psychological standpoint.
- [12] The respondent relied on the s. 44 report of its psychological assessor, Dr. Biswas, who opined that the applicant did not suffer any psychological

impairments as a direct result of the accident, concluding that the treatment plan was not reasonable and necessary. The OHIP records contain no entries for complaints related to psychological impairment before or after the accident.

- [13] There is no corroborative evidence, other than the report that the applicant relies on, which supports that she has endured any post-accident psychological impairments. Aside from the treatment plan, there is no other supportive medical evidence from any of her treating physicians for treatment or prescription for any psychological impairments. In her submissions, the applicant only makes a brief mention of Dr. Langis' report and does not elaborate on its findings and fails to provide any other evidence to support a psychological diagnosis or the severity of any post-accident psychological impairment. Consequently, I am not persuaded that the applicant's accident-related psychological impairments will prevent her from achieving maximal medical recovery if she remains within the MIG.
- [14] On this basis, I find that the applicant has failed to satisfy her burden to prove, on a balance of probabilities, that her accident-related psychological impairment warrants removal from the MIG.

***Are the treatment plans reasonable and necessary?***

- [15] On the evidence, the respondent has paid \$3,414.67 of the available \$3,500.00 under the MIG limit. Should the applicant wish to seek further treatment under the remaining available balance, she is entitled to do so. However, I find the treatment plans are not reasonable and necessary as her injuries are predominantly minor in nature.

**CONCLUSION**

- [16] The applicant's accident-related impairments are treatable within the MIG. As the MIG limit has not yet been exhausted, she is entitled to any treatment under the remaining balance of the MIG.

**Released: July 7, 2021**



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**Derek Grant  
Adjudicator**