



**Citation: Gobithan v. Allstate Insurance Company of Canada, 2021 ONLAT 19-010279/AABS**

**Release date: 08/16/2021**

**File Number: 19-010279/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:

**Vijeytharan Gobithan**

**Applicant**

and

**Allstate Insurance Company of Canada**

**Respondent**

## **DECISION**

**ADJUDICATOR: Jesse A. Boyce, Vice-Chair**

### **APPEARANCES:**

For the Applicant: Tania Lanteigne

For the Respondent: Evan A. Argentino

**HEARD: By way of written submissions**

## OVERVIEW

- [1] The applicant was injured in an accident on August 24, 2016, and sought benefits from the respondent, Allstate, pursuant to the *Statutory Accident Benefits Schedule - Effective September 1, 2010*<sup>1</sup> ("*Schedule*"). Allstate denied the benefit in dispute on the basis of its determination that the applicant's accident-related impairments were predominantly minor injuries and therefore subject to treatment within the Minor Injury Guideline ("MIG"). The applicant disagreed and submitted an application to the Tribunal for resolution of the dispute.

## ISSUES IN DISPUTE

- [2] The following issues are in dispute:
- a. Are the applicant's injuries predominantly minor as defined in s. 3 of the *Schedule*, subject to treatment within the \$3,500.00 limit in the MIG?
  - b. Is the applicant entitled to \$3,105.00 for physiotherapy treatment, recommended by Alexmuir Wellness Centre in a treatment plan (OCF-18) dated January 16, 2018?
  - c. Is the applicant entitled to interest on any overdue payment of benefits?

## RESULT

- [3] The applicant has not demonstrated that her accident-related impairments warrant removal from the MIG. The treatment plan in dispute is not reasonable and necessary and no interest is payable.

## ANALYSIS

### *Applicability of the MIG*

- [4] 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 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 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

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<sup>1</sup> O. Reg. 34/10, as amended.

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.

- [5] The applicant submits that her accident-related injuries—identified in an August 24, 2016, Disability Certificate as neck pain, back pain, headaches, shoulder pain, anxiety and sleep disorder—as well as her pre-existing back pain warrant removal from and treatment beyond the MIG. She was purportedly involved in a second accident on July 16, 2017, that she submits did not cause her current impairments. To this end, she relies on various clinical notes and treatment records from Alexmuir Wellness and Toronto Medical Centre, her recurring complaints of pain, and a psychological report from Dr. Steiner diagnosing adjustment disorder with mixed anxiety and depressed mood and specific phobia (driving related).
- [6] In response, Allstate submits that the applicant reported to both of its s. 44 assessors that she has an unremarkable pre-accident medical history and that the limited pre-accident entries related to back pain do not reflect an ongoing pre-accident back issue that would prevent maximal recovery under the MIG. Allstate further points to the dearth of accident-related complaints in the nine months post-accident, the lack of any diagnostic imaging reports or any prescription medication. Allstate asserts that the applicant has also not produced the complete file from her second accident for which it is not the insurer. In any event, it submits that there is limited evidence to suggest that she sustained anything but a lower back sprain/strain from that accident or that the second accident exacerbated her injuries from the subject accident. Finally, Allstate based its denial on the s. 44 reports of Dr. Czok, who found no objective musculoskeletal impairment, predominantly minor injuries and no evidence of a pre-existing condition that would prevent recovery under the MIG and Dr. Marino, who found that the applicant did not present with any significant psychological impairment.
- [7] I agree with Allstate and find that the applicant has not demonstrated that her accident-related impairments warrant removal from the MIG. The actual physical injuries identified in the OCF-3 and clinical records all fall squarely within the definition of a minor injury. I find there is limited indication in the file that her physical accident-related impairments should be considered outside of the definition of minor injury under s. 3(1) because she has consistently been diagnosed with sprain and strain injuries and has not provided any diagnostic

imaging reports to suggest that she sustained a tear or fracture that would remove her from the MIG, as alleged. On the medical evidence, I find no reason to depart from the opinion of Dr. Czok that her injuries are minor.

- [8] With regard to s. 18(2), an applicant may be removed from the MIG if they have evidence of a pre-existing condition, documented by a medical practitioner prior to the accident, that will preclude maximal medical recovery if they are kept within the confines of the MIG. While the applicant points to her pre-accident complaints of back pain, there is no indication or opinion from a medical professional that these impairments would prevent maximal medical recovery if she is kept within the MIG, which is the requirement for removal from the MIG under s. 18(2). Further, on review of the s. 44 reports, the applicant self-reported that she had no pre-existing physical or psychological impairments. Accordingly, the applicant has fallen well short of meeting her burden of proof on this ground.
- [9] An applicant may also escape the MIG if they sustained a psychological impairment as a result of the accident, as psychological impairments are not contained within the definition of minor injury under s. 3(1). While the applicant directed the Tribunal to Dr. Steiner's report and diagnosis, she did not offer specific submissions for removal from the MIG on this ground. I note that there are no psychological or emotional complaints in the family physician records or in the treatment notes. Where the applicant did not offer specific submissions and where there are no objective complaints to support Dr. Steiner's diagnosis, I prefer the s. 44 report of Dr. Marino, who found that the applicant did not present with any significant psychological impairment warranting a DSM diagnosis, as this opinion is much more in line with the bulk of the evidence.
- [10] For completeness, I agree with Allstate that the applicant has not met her burden to demonstrate that it was the 2016 accident and not the subsequent 2017 accident that caused her impairments. Even so, there is limited evidence that the 2017 would have exacerbated her seemingly minor 2016 impairments that have been consistently identified as soft-tissue injuries. I find the medical evidence clearly suggests that the applicant sustained predominantly minor injuries as a result of the subject accident that do not warrant removal from the MIG.

*Is the treatment plan reasonable and necessary?*

- [11] Having determined that the applicant has not demonstrated that removal from and treatment beyond the MIG is required, an analysis of whether the treatment plan in dispute is reasonable and necessary under s. 16 is not required. As no benefits are overdue, it follows that no interest is payable under s. 51.

## **CONCLUSION**

- [12] The applicant has not demonstrated that her accident-related impairments warrant removal from the MIG. The treatment plan in dispute is not reasonable and necessary and no interest is payable.

**Date of Issue: August 16, 2021**



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**Jesse A. Boyce, Vice Chair**