



Citation: Wang v. Aviva Insurance Company, 2022 ONLAT 20-012536/AABS

Licence Appeal Tribunal File Number: 20-012536/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:

Chuan Zhen Wang

Applicant

and

Aviva Insurance Company

Respondent

DECISION

ADJUDICATOR: **Ulana Pahuta**

APPEARANCES:

For the Applicant: Yu Jiang, Paralegal

For the Respondent: Yann Grand-Clement, Counsel

HEARD BY WAY OF WRITTEN SUBMISSIONS

BACKGROUND

- [1] Chuan Zhen Wang (“the applicant”), was injured in an automobile accident on November 5, 2018 and sought benefits pursuant to the *Statutory Accident Benefits Schedule – Effective September 1, 2010* (“the *Schedule*”)¹ from Aviva Insurance Company (“the respondent”). The applicant was denied certain benefits by the respondent and submitted an application to the Licence Appeal Tribunal – Automobile Accident Benefits Service (“Tribunal”).
- [2] The respondent determined that 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 (“MIG”)². The respondent submits that even if these injuries are found not to be a minor injury, the disputed benefits are not reasonable or necessary.
- [3] The applicant’s position is that his injuries sustained in the accident are not included in the minor injury definition and he submits that his chronic pain and psychological injuries remove him from the MIG.

ISSUES IN DISPUTE

- [4] The following issues are to be decided:
 - (i) 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 and in the MIG?
 - (ii) Is the applicant entitled to a medical benefit in the amount of \$225.64 (\$1,300.00 submitted less \$1074.36 approved) for chiropractic treatment, proposed by Point Grey Physio in a treatment plan (“OCF-18”) dated March 12, 2019?
 - (iii) Is the applicant entitled to a cost of examination in the amount of \$2,200.00 for a Psychological Assessment, proposed by Somatic Assessments and Treatment Clinic in a treatment plan dated February 12, 2019?
 - (iv) Is the applicant entitled to interest on any overdue payment of benefits?

¹ O. Reg. 34/10.

² Minor Injury Guideline, Superintendent’s Guideline 01/14, issued under s.268.3(1.1) of the Insurance Act.

RESULT

- [5] I find that the applicant has not met his onus of proving that his accident-related impairments warrant removal from the MIG.
- [6] The applicant is subject to the MIG and the \$3,500.00 funding limit on medical benefits. An analysis of whether the disputed treatment and assessment plans are reasonable and necessary is unwarranted as the applicant has exhausted the funding available to him for medical benefits. No benefits are payable, and no interest is owing.

ANALYSIS

The Minor Injury Guideline (MIG)

- [7] The MIG establishes a framework available to injured persons who sustain a minor injury as a result of an accident. A “minor injury” is defined in s. 3(1) of the *Schedule* 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.” The terms, “strain,” “sprain,” “subluxation,” and “whiplash associated disorder” are defined in the *Schedule*.
- [8] Section 18(1) limits recovery for medical and rehabilitation benefits for predominantly minor injuries to \$3,500.00. An applicant may receive payment for treatment beyond the \$3,500.00 cap if they can demonstrate that a pre-existing condition, documented by a medical practitioner, prevents maximal medical recovery under the MIG or if they provide evidence demonstrating that their injuries are not included in the minor injury definition.
- [9] The onus is on the applicant to show, on a balance of probabilities, that his or her injuries fall outside of the MIG.³
- [10] Sections 14, 15 and 16 of the *Schedule* provide that an insurer is only liable to pay for medical and rehabilitation expenses that are reasonable and necessary as a result of the accident. The applicant has the onus of proving on a balance of probabilities that the benefits he or she seeks are reasonable and necessary.

³ *Scarlett v. Belair Insurance*, 2015 ONSC 3635, para. 24 (Div. Ct.).

Are the Applicant's Physical Injuries in the MIG?

- [11] Based on the medical evidence provided, I find that the applicant's physical injuries resulting from the accident are predominantly minor injuries and fall within the MIG.
- [12] To establish his physical impairments, the applicant relies on records from his family physician Dr. A. Wan. He further points to a Disability Certificate ("OCF-3") dated November 9, 2018 submitted by Dr. G. Palantzas, a chiropractor with Point Grey Physio and an OCF-18 dated March 12, 2019 also submitted by Dr. Palantzas. These documents identify a number of injuries, including: strain and sprain of the ribs, sternum and sacroiliac joint; dislocation, sprain and strain of joints and ligaments of neck, thorax, lumbar spine, pelvis and shoulder girdle, headache; dizziness;⁴ and radiculopathy; rotator cuff syndrome and positive findings of disc integrity, nerve root tension⁵.
- [13] The respondent submits that this was a very minor accident and that there is no proof of any physical impairment. The respondent argues that the notes of the applicant's family doctor establish only an initial sprain to the neck two days after the accident. Further, although the OCF-3 and the OCF-18 cited by the applicant claim injuries, the respondent notes that the applicant is simply citing from the OCF forms themselves, but does not provide any actual clinical notes from the treatment provider. Finally, the respondent points to the physiatry assessment conducted by Dr. M. Ko, physiatrist, on September 8, 2020, as part of the insurer's combined multi-disciplinary report. Dr. Ko found no evidence of an ongoing organic pathology. He was of the opinion that the applicant had sustained soft tissue injuries and diagnosed the applicant with only a sprain/strain injury to the thoracic and lumbar spine. Dr. Ko further held that there was no proof of physical impairment⁶.
- [14] The applicant has provided limited medical evidence to establish any physical injury or accident-related impairments. Unfortunately, the clinical notes and records ("CNR's") from the family doctor submitted are of limited assistance. They indicate that two days after the accident the applicant suffered a sprain to the neck and that an x-ray may have been ordered. However, no diagnostic imaging has been included in the applicant's submissions. The subsequent entries from Dr. Wan are similarly unpersuasive – they include a blank entry for an Annual Health Review a few weeks later, a missed visit and only one or two

⁴ Applicant's Submissions, Tab 2, Disability Certificate (OCF-3) dated November 9, 2018

⁵ Applicant's Submissions, Tab 3, Treatment and Assessment Plan (OCF-18) dated March 12, 2019

⁶ Respondent's Submissions, Tab 2, Combined Assessment Report dated October 13, 2020

additional entries which could be interpreted to reference neck and shoulder pain or Tylenol⁷. This is insufficient objective medical evidence to establish an impairment.

- [15] Similarly, the applicant stated in his submissions that his injuries caused him to begin physical therapy. However, no corroborating treatment records from Point Grey Physio were submitted to indicate the applicant ever attended the facility for treatment. Although the respondent raised the issue of corroborating treatment records in its submissions, the applicant did not subsequently provide such documentation, despite having the benefit of reply.
- [16] Finally, Dr. Ko diagnosed the applicant with a sprain/strain injury to the thoracic and lumbar spine, which are included in the minor injury definition. In fact, Dr. Ko found no proof of physical impairment during the September 8, 2020 assessment. Dr. Ko's finding is consistent with the lack of any objective medical evidence supporting an impairment. I prefer the physiatry assessment of Dr. Ko to the unsupported diagnoses of Dr. Palantzas listed in the claims forms. Consequently, I find that the applicant has not met his burden of proof on this ground.

Does the Applicant have Chronic Pain that would remove him from the MIG?

- [17] I find that the applicant has not met his onus to establish that he suffers from chronic pain as a result of his accident-related injuries that would warrant his removal from the MIG.
- [18] The applicant submits that he suffers from chronic pain, relying on the OCF-3 dated November 9, 2018; the psychological assessment report of Dr. M. Pojhan, dated March 18, 2021; and the clinical notes of his family physician Dr. Wan. The applicant also submits that due to his ongoing pain, he was unable to continue working as a kitchen helper and was forced to find a new career as an office worker.
- [19] I am not persuaded by the applicant's evidence that he suffers from ongoing recurrent pain. Firstly, although the Disability Certificate submitted on November 9, 2018 does list a number of injuries, including strain and sprain type injuries, it would be premature at the point the OCF-3 was prepared (only four days after the accident) to conclude that the pain stemming from such injuries was chronic in nature. Secondly, the psychological assessment submitted by the applicant does not establish chronic pain. In the assessment, the psychologist, Dr. Pojhan,

⁷ Applicant's Submissions, Tab 1, Clinical Notes and Records of Dr Wan

does make passing reference to the applicant's reports of neck and lower back pain⁸. However, a physical diagnosis would be outside of Dr. Pojhan's area of expertise, as a psychologist. Thus, I place little weight on this finding.

- [20] Most importantly, the clinical notes of the medical providers submitted by the applicant do not establish ongoing complaints of chronic pain. It appears the applicant attended at his family physician on November 7, 2018 (two days post-accident) complaining of a sprain and pain. However, when examining the subsequent two years of CNRs, it appears that only one or two entries make any reference to pain. One entry in July 2019 references neck and shoulder pain and one in January 2021 refers to use of Tylenol. The remaining entries appear to simply involve annual health exams, missed visits or are indecipherable⁹. One or two visits to a family physician over a two-year period where pain may have been referenced, is insufficient to establish the type of debilitating chronic pain that might otherwise remove the applicant from the MIG.
- [21] Additionally, the applicant did not provide any corroborating clinical notes from Point Grey Physio (or any treatment provider), despite the fact that he reported to various assessors (and in his submissions) that he had been or was attending at treatment. The applicant reported to Dr. McDowell, who prepared his OCF-18 recommending a psychological assessment, that he attended at physiotherapy sessions once to twice a week since the accident¹⁰. Subsequently, he reported to Dr. Pojhan during his psychological assessment, that he had attended at massage and chiropractic treatments two to three times a week for a period of time and was at the time still attending massage therapy three times per week¹¹. None of these treatment records were provided by the applicant. In addition, the applicant did not provide any diagnostic imaging or reports to link the applicant's subjective complaints of pain to any accident-related pathology or symptoms.
- [22] Finally, I do not find the applicant's claim that he was forced to switch careers due to his chronic pain persuasive. The applicant has not led any medical evidence to establish that he was unable to fulfill his employment duties as a result of the accident, nor has the applicant clearly established what his employment was at the time of the accident. There are discrepancies in how the applicant describes his job at the time of the accident. The applicant alternatively claimed that he had worked as a kitchen hand, a chef, or soon after the accident,

⁸ Applicant's Submissions, Tab 7, Psychological Assessment Report dated March 18, 2021

⁹ Applicant's Submissions, Tab 1, Clinical Notes and Records of Dr Wan

¹⁰ Applicant's Submissions, Tab 5, Treatment and Assessment Plan (OCF-18) dated February 15, 2019

¹¹ Applicant's Submissions, Tab 7, Psychological Assessment Report dated March 18, 2021

that he was “unemployed (landscaping)”¹². Without fulsome evidence as to the applicant’s employment and duties at the time of the accident, and medical reasons why he was unable to fulfill this role, the applicant cannot establish that he was forced to change his employment due to ongoing pain.

- [23] Based on all of the evidence before me, I find that the applicant has failed to prove on a balance of probabilities that his injuries are outside of the MIG as a result of chronic pain.

Does the Applicant have Psychological Impairments Caused by the Accident that would remove him from the MIG?

- [24] Lastly, psychological impairments, if established, fall outside the MIG, because such impairments are not included in the prescribed definition of “minor injuries.”

- [25] I find that the applicant has failed to prove on a balance of probabilities that he should be removed from the MIG as a result of a psychological impairment.

- [26] To establish psychological impairment, the applicant relies on: (i) a February 2019 pre-screening report of Dr. S. McDowell, psychologist, for an OCF-18 recommending a psychological assessment, wherein Dr. McDowell reported that the applicant described being emotionally distressed, struggling with depression, anxiety, irritability, fatigue and fear¹³; and (ii) a March 18, 2021 psychological assessment of Dr. Pojhan. Dr. Pojhan stated in his report that the applicant described feelings of sadness, depression, loneliness, irritability, sleep disturbances, tiredness and an increased desire to drink alcohol¹⁴. With respect to psychometric testing, Dr. Pojhan noted that the applicant’s RDSI score corresponded to the 99th percentile, which suggested severe clinical symptoms of depression. Dr. Pojhan diagnosed the applicant with Adjustment Disorder with Mixed Anxiety and Depressed Mood as well as Alcohol Use Disorder (Mild to Moderate), and recommended 12 individual counselling sessions to help identify the applicant’s treatment needs¹⁵.

- [27] In contrast, the respondent submits two psychological assessments of Dr. C. Bradbury, psychologist. In the first assessment report, dated October 13, 2020, Dr. Bradbury did not detect any significant accident-related psychological impairment and no psychological treatment was recommended¹⁶. Dr. Bradbury

¹² Applicant’s Submissions, Tab 1, Clinical Notes and Records of Dr Wan, entry dated November 22, 2018

¹³ Applicant’s Submissions, Tab 5, Treatment and Assessment Plan (OCF-18) dated February 15, 2019

¹⁴ Applicant’s Submissions, Tab 7, Psychological Assessment Report dated March 18, 2021

¹⁵ Applicant’s Submissions, Tab 7, Psychological Assessment Report dated March 18, 2021

¹⁶ Respondent’s Submissions, Tab 2, Combined Assessment Report dated October 13, 2020

subsequently reassessed the applicant and issued a report dated July 22, 2021, where she reaffirmed her conclusions that there was nothing from a psychological standpoint that would fall outside of the MIG or warrant psychological intervention¹⁷. It was noted by the respondent in its submissions that during these assessments, the applicant advised Dr. Bradbury that he had not suffered any psychological injury and that he did not feel he needed any psychological treatment.

- [28] On the evidence, I prefer the reports of Dr. Bradbury over the report of Dr. Pojhan,
- [29] Firstly, Dr. Bradbury's reports were more comprehensive, in that they included a review of the applicant's medical records. For the July 22, 2021 assessment report, Dr. Bradbury reviewed 15 documents, including the clinical notes and records of Dr. Wan, the Psychology Assessment Report of Dr. Pojhan, as well as various claims forms. In contrast, Dr. Pojhan expressly noted in his report that he did not review any supportive documents, stating that "(n)o medical file was available to review"¹⁸. Moreover, Dr. Bradbury assessed the applicant twice, the second time after having reviewed Dr. Pojhan's report.
- [30] Both competing assessment reports included a clinical interview and psychometric testing with the applicant. However, the respondent notes in its submissions that the applicant exhibited extreme responses to the psychological tests conducted by Dr. Pojhan and inconsistent self-reports. For example, the applicant placed in the 99th percentile of the RDS Inventory, exhibiting severe symptoms of depression, but the subsequent Pain Patient Profile testing only indicated that he was experiencing below average symptoms of depression. Dr. Pojhan provided no explanation for the discrepancy between the two findings.
- [31] In addition, Dr. Pojhan appears to diagnose the applicant with Alcohol Use Disorder, based solely on the applicant's conflicting self-reports of drinking. At one point in Dr. Pojhan's report the applicant claimed that he now gets drunk every night in order to fall asleep but only drank on holidays previously. However, the applicant had also claimed in the report that he drank roughly 24 beers per week which was "a little more" than before the accident¹⁹. The alcohol consumption described by Dr. Pojhan does not appear to be reflected anywhere in the medical records, and in the psychological assessment reports of Dr. Bradbury, the applicant claimed to only drink in social settings. The

¹⁷ Respondent's Submissions, Tab 5, S.44 Psychological Examination Report dated July 22, 2021

¹⁸ Applicant's Submissions, Tab 7, Psychological Assessment Report dated March 18, 2021, p.3

¹⁹ Applicant's Submissions, Tab 7, Psychological Assessment Report dated March 18, 2021, p.4

inconsistencies in test results and self-reporting did not appear to be questioned by Dr. Pojhan. Such inconsistencies, or at least a lack of explanation, weakened Dr. Pojhan's opinion.

[32] Most significantly, Dr. Bradbury's reports accord with the available medical evidence. There is little support in the records of the applicant's family physician that he suffered psychological impairment as a result of the accident. The applicant does not point me to any CNR's from Dr. Wan where psychological complaints or symptoms were raised in the two-year period following the accident, despite his having attended at Dr. Wan's a number of times. I was unable to decipher any entries where psychological impairment or treatment was discussed, other than one entry which may read, "cogn symp"²⁰. Similarly, the applicant has not provided any clinical notes from any treatment provider indicating that he was receiving psychological treatment. Dr. Bradbury's opinion that there was not any significant accident-related psychological impairment, is consistent with the totality of the evidence. This included the fact that the applicant self-reported to Dr. Bradbury twice that he did not need psychological treatment and that he made no significant psychological complaints to his family physician post-accident.

[33] As a result, I find that the applicant's medical records do not contain persuasive evidence of psychological impairment caused by the accident. The applicant has failed to adduce any persuasive medical evidence of an alleged psychological impairment.

Treatment Plans

[34] As I have found that the applicant has failed to prove that his accident-related impairments warrant treatment beyond the MIG limits, it is unnecessary for me to consider the reasonableness and necessity of the disputed treatment plans because the maximum of \$3,500.00 for medical and rehabilitation benefits available under the MIG has been exhausted.

Interest

[35] Given there are no overdue payment of benefits, the applicant is not entitled to interest pursuant to s. 51 of the *Schedule*.

²⁰ Applicant's Submissions, Tab 1, Clinical Notes and Records of Dr Wan, entry dated January 14, 2021

ORDER

[36] The application is dismissed, and I find the following:

- (i) The applicant's injuries are predominantly minor and therefore subject to treatment within the \$3,500.00 limit of the Minor Injury Guideline;
- (ii) Chiropractic Treatment in the amount of \$225.64 is not reasonable or necessary, and not payable;
- (iii) The cost of a psychological assessment in the amount of \$2,200.00 is not reasonable or necessary, and not payable;
- (iv) No interest is payable pursuant to s. 51 of the *Schedule*.

Released: June 20, 2022



Ulana Pahuta
Adjudicator