

**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: Jolicoeur vs. RBC Insurance, 2020 ONLAT 19-009997/AABS.

**Released Date: 12/17/2020
File Number: 19-009997/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:

Katelyn Jolicoeur

Applicant

and

RBC Insurance

Respondent

DECISION AND ORDER

PANEL:

Theresa McGee, Vice-Chair

APPEARANCES:

For the Applicant:

Laura Bassett
Counsel

For the Respondent:

Sonya M. Katrycz
Counsel

HEARD:

By way of written submissions

REASONS FOR DECISION AND ORDER

OVERVIEW

- [1] The applicant, (“K.J.”) was involved in an automobile accident on June 22, 2017 when her vehicle collided head-on with a left-turning vehicle. The force of the initial collision sent her vehicle into a nearby pole. K.J.’s head hit the driver’s side window. Air bags deployed. She was taken to hospital by ambulance and was treated in the emergency department.
- [2] K.J. sought benefits pursuant to the *Statutory Accident Benefits Schedule - Effective September 1, 2010* (“the *Schedule*”).¹ The respondent, RBC Insurance, determined that K.J.’s injuries were predominantly minor and held her to treatment within the Minor Injury Guideline (“MIG”).² K.J. applied for benefits beyond the \$3,500.00 funding limit for the treatment of minor injuries which the respondent denied. K.J. applied to the Licence Appeal Tribunal - Automobile Accident Benefits Service (“Tribunal”) for a resolution of the dispute.

ISSUES IN DISPUTE

- [3] I am to decide the following issues:
- i. Are the applicant’s injuries of a nature that they fall within the MIG?
 - ii. Is the applicant entitled to \$2,165.00 for physiotherapy recommended by Godrej Engineer, submitted January 8, 2018 and denied January 8, 2018?
 - iii. Is the applicant entitled to \$1,516.40 for occupational therapy services recommended by Laura McPhee, submitted February 9, 2018 and denied February 12, 2018?
 - iv. Is the respondent liable to pay an award under Regulation 664 because it unreasonably withheld or delayed payments to the applicant?
 - v. Is the applicant entitled to interest on any overdue payment of benefits?

RESULT

- [4] As a result of the accident, K.J. sustained a head injury, which is not a minor injury. As such, the MIG does not apply. However, K.J. has failed to establish, on a balance of probabilities, that the disputed treatment is reasonable and

¹ Ontario Regulation 34/10.

² Superintendent’s Guideline No. 01/14.

necessary as a result of the accident. No benefits are owing, and no interest is payable. There is no award.

ANALYSIS

A head injury not a minor injury

- [5] K.J. submits that in addition to numerous soft tissue sprain and strain injuries, she sustained a mild traumatic brain injury, or concussion, as a result of the accident. She submits that she continues to suffer from post-concussive symptoms and that her injuries fall outside the definition of a minor injury in s. 3 of the *Schedule*. Because of this, she submits her treatment should not be subject to the \$3,500.00 monetary limit set out in s. 18 of the *Schedule* for the treatment of predominantly minor injuries.
- [6] The respondent submits that K.J. has not proven that she suffered a concussion as a result of the accident. The hospital records from the date of the accident only mention the word “concussion” in the context of K.J.’s medical history (she sustained more than one concussion as a teenager), and the clinical notes and records of K.J.’s family physician are also silent as to any traumatic brain injury. The respondent submits that the only evidence K.J. has presented of a concussion diagnosis are the clinical notes and records of a walk-in clinic physician from March 2018, and that doctor’s assessment was based solely on K.J.’s erroneous self-reports rather than objective findings.
- [7] In the hospital records from the date of the accident, Dr. Audrey-Anne Brousseau diagnoses K.J. as having sustained a “head injury / MVA”. While this diagnosis does not use the specific terminology advanced by K.J. in her submissions, namely “concussion” or “mild traumatic brain injury”, a head injury is not included in the definition of a minor injury under the *Schedule*. Therefore, the MIG does not apply to the treatment of K.J.’s accident-related injuries.
- [8] While I have found that the MIG does not apply, K.J. still bears the onus of establishing, on a balance of probabilities, that the disputed treatment is reasonable and necessary as a result of the accident under s. 15 of the *Schedule*. For the reasons that follow, I find that K.J. has not met this onus.

The disputed treatment is not reasonable and necessary

- [9] There are two Treatment and Assessment Plans (OCF-18s) in dispute: one for 20 sessions of physiotherapy, submitted January 8, 2018 and the other for occupational therapy services, dated February 9, 2018 (though identified as a

claim for “services”, this is actually a proposal for an occupational therapy “assessment, private living space” and a headset).

Occupational therapy services

- [10] K.J. submits that the plans are reasonable and necessary because she continued to suffer from post-concussive symptoms after her MIG treatment had ended. She relies on the Occupational Therapy Report and Assessment of Laura MacPhee, Occupational Therapist, as evidence of her symptoms and their impact on her functioning. Of note in these records is the difficulty K.J. was facing at work. Although she returned to work soon after the accident, she continued to suffer from headaches, fatigue, sensitivity to light and noise and difficulty concentrating. K.J. had anxiety about poor performance and her reputation at work; she worried that she might lose her job if her limitations persisted.
- [11] Despite K.J.’s difficulties at work, Ms. MacPhee’s report and assessment both note that K.J. was living independently, performing all personal care and housekeeping tasks without assistance, and engaging in an active social and recreational life.
- [12] K.J. also relies on the Neurological Assessment Report of Dr. P. Gaskovski, Psychologist, dated May 25, 2020. Dr. Gaskovski documented K.J.’s ongoing severe headaches and sensitivity, which required her to take many sick days and to work from home. It took almost a year, Dr. Gaskovski noted, for K.J. to tolerate working in the office for a full day. In the spring of 2019, K.J. was terminated from her employment and was told in an exit interview that this was due to her concentration difficulties. Dr. Gaskovski diagnosed K.J. with Adjustment Disorder.
- [13] I find that K.J. has not met her onus of establishing that the proposed occupational therapy services are reasonable and necessary. The evidence she has presented shows that she struggled with functional limitations at work, but that in other areas of her life, she remained functional. K.J. has not made submissions or presented evidence as to how the specific intervention proposed - an assessment of her private living space - is reasonable and necessary as a result of the accident. Nor has she made submissions about the reasonableness and necessity of a headset.

Physiotherapy services

- [14] K.J. submits that the proposed physiotherapy services are reasonable and necessary because her treating chiropractor, Dr. Engineer, noted she was still experiencing symptoms (pain, headaches, sensitivity to light, and having to strain her eyes at work) when her treatment under the MIG ceased in January of 2018.
- [15] I am not persuaded, based on the evidence, that K.J. has an ongoing need for facility-based physical therapy beyond what the insurer has already provided. The evidence K.J. has presented in support of her application relates primarily to the persistence of symptoms related to her head injury. I am not persuaded that her other physical injuries, (soft tissue sprains and strains) required the facility-based care proposed, and K.J. has not established that the treatment goals identified in the treatment plan - increased range of motion, pain reduction, increased strength and a return to activities of normal living - relate to head injury rehabilitation.
- [16] I am not satisfied that the specific interventions proposed in the disputed treatment plans are reasonable and necessary for the treatment of K.J.'s accident related injuries. Since the treatment is not reasonable and necessary as required under s. 15 of the *Schedule*, the respondent is not liable to pay the benefits in dispute.

Award under Regulation 664

- [17] K.J. submits that the respondent's unfounded denials of treatment have inhibited her recovery from her accident related injuries, and that the respondent should be liable to pay an award.
- [18] K.J. has not persuasively argued that an award is warranted in this case. An award under s. 10 of Regulation 664 will be appropriate if there is evidence that the insurer has unreasonably withheld or delayed the payment of benefits. It is not enough to show that an insurer simply 'got it wrong' in denying benefits. To merit an award, an insurer must display behaviour that is "excessive, imprudent, stubborn, inflexible, unyielding or immoderate": see *Plowright and Wellington*.³
- [19] The evidence in the record before me does not show bad faith conduct of the required nature. While it is unclear to me why the insurer held K.J. to the MIG given that hospital records showed she sustained a head injury in the accident, an injury that clearly falls outside the definition of a minor injury, there is insufficient evidence to ground a finding of unreasonable denial or delay of

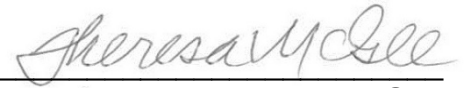
³ *Plowright and Wellington Insurance Company* (FSCO A-003985, October 29, 1993) page 17.

benefits. K.J. has the onus of establishing that an award is justified. She has not met that onus.

CONCLUSION

[20] K.J. is not entitled to the benefits claimed in this application. No interest is payable. There is no award. The application is dismissed.

Released: December 17, 2020

A handwritten signature in cursive script that reads "Theresa McGee".

Theresa McGee
Vice-Chair