



Citation: Wang v. Allstate Canada, 2022 ONLAT 20-013725/AABS

Licence Appeal Tribunal File Number: 20-013725/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:

Jin Biao Wang

Applicant

and

Allstate Canada

Respondent

DECISION

VICE-CHAIR: Tyler Moore

APPEARANCES:

For the Applicant: Yu Jiang, Paralegal

For the Respondent: Sonya Katrycz, Counsel

HEARD: By Way of Written Submissions

BACKGROUND

- [1] The applicant was involved in an automobile accident on September 28, 2019. He was the seat-belted driver of a vehicle that was struck on the front end by another vehicle that failed to stop at a red light. The applicant was transported to hospital by ambulance and was discharged the same day.
- [2] The applicant sought benefits pursuant to the Statutory Accident Benefits Schedule – *Effective September 1, 2010 (including amendments effective June 1, 2016)* ¹(“Schedule”)
- [3] The applicant was denied certain benefits by Allstate Canada (“the respondent”) and submitted an application to the Licence Appeal Tribunal - Automobile Accident Benefits Service (“Tribunal”).
- [4] A case conference was held on March 26, 2021, and a written hearing was scheduled.

ISSUES

- [5] The issues to be decided in the hearing are:
 1. Are the applicant’s injuries predominantly minor as defined in section 3 of the *Schedule* and therefore subject to the Minor Injury Guideline (“the MIG”) and the \$3,500.00 funding limit on medical benefits?
 2. Is the applicant entitled to chiropractic treatment in the amount of \$4,416.71, recommended by Dr. Palantzas in a treatment plan (“OCF-18”) submitted on October 5, 2019, subject to s.44 assessments?
 3. Is the applicant entitled to an examination expense in the amount of \$2,200.00 for a psychological assessment recommended in a treatment plan dated January 21, 2020?
 4. Is the applicant entitled to interest on overdue payment of benefits?

RESULT

- [6] The applicant has failed to demonstrate that his injuries and impairments warrant treatment beyond the MIG. His treatment is confined to the \$3,500 limit of the MIG. That amount has already been exhausted.

¹ O. Reg. 34/10 as amended.

[7] Accordingly, the disputed treatment plans are not reasonable and necessary, and no interest is payable.

LAW

[8] Section 18(1) of the *Schedule* sets out that medical and rehabilitation benefits are limited to \$3,500.00 if the insured person sustains an impairment that is predominantly minor 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.”

[9] An insured person may successfully be removed from the MIG if they can establish that their accident-related injuries fall outside of the MIG or, pursuant to section 18(2), that they have a documented pre-existing injury or condition combined with compelling medical evidence stating that the condition prevents recovery if they are kept within the MIG. The Tribunal has also determined that chronic pain with functional impairment or a diagnosed psychological condition may justify removal from the MIG.

[10] The applicant bears the onus to establish entitlement to coverage beyond the \$3,500.00 limit for minor injuries on a balance of probabilities.

SUBMISSIONS AND ANALYSIS

[11] The applicant submits that the impairments he sustained as a result of the accident warrant treatment beyond the MIG. He argues that he suffers from chronic pain and psychological symptoms that negatively impact his daily life. For reasons that follow, I find that the applicant has not established that his accident-related impairments warrant treatment beyond the MIG.

Did the applicant suffer predominantly minor injuries?

[12] In support of his claim, the applicant relies on clinical notes and records from Scarborough Hospital dated the day of the accident, Dr. Chung’s clinical notes and records, clinical notes from Total Recovery Rehab Centre, and a psychological assessment from Dr. McDowall/Ms. Fang in March 2021. Specifically, the applicant argues that hospital records demonstrate that he suffered a head injury as a result of his accident, Dr. Chung’s notes illustrate that he has fatigue/ongoing left-sided headaches/neck pain/back pain², and Total

² Tab 2 of the applicant’s supporting documents - Dr. Chung clinical notes dated October 12, 2019 - applicant’s submissions, page 2.

Recovery Rehab Centre noted in their MIG discharge report dated September 1, 2020 that the applicant required additional treatment outside of the MIG. A March 2021 psychological assessment by Dr. McDowall also indicates that the applicant's diagnoses include major depressive disorder with anxious distress and specific travel phobia³.

- [13] The respondent argues that there are several inaccurate representations made by the applicant throughout the evidence.
- [14] I agree with the respondent, and as outlined below, I have concerns with the applicant's overall credibility. Given the applicant's self-report inconsistencies, I have attributed limited weight to his evidence and the opinions in the assessments they are based upon. I have instead given more weight to Dr. Chung's clinical notes and records, the hospital records from the day of the accident, and objective assessment measures/diagnostic imaging findings.
- [15] Hospital records from the day of the accident and Dr. Chung's clinical notes make no mention of any loss of consciousness stemming from the accident. The IE assessments conducted by Dr. Shreekant Sharma, psychiatrist, and Dr. Alborz Oshidari, physiatrist on March 25, 2020, however, note that the applicant reported a loss of consciousness for 5 to 10 minutes after the accident⁴. This was echoed by Dr. McDowall in her psychological report. Another inconsistency relates to the applicant's self-report that he consulted with Dr. Chung because of intolerable pain a few days after the accident, and Dr. Chung then referred him to physiotherapy. Both Dr. Chung's clinical notes and the notes from Total Recovery Rehab Centre, however, show that this was not the case. The applicant's accident occurred on September 28, 2019. He first attended a physiotherapy assessment a week later, on October 5. He did not consult with Dr. Chung until two weeks after the accident, on October 12, 2019.
- [16] As far as the applicant's injuries, the respondent submits that the applicant complained only of physical symptoms and that there is no mention in Dr. Chung's clinical notes of any psychological issues. The applicant also only saw Dr. Chung once in 2020 and once in 2021. I find that lends a great deal of support to the finding that the applicant's injuries were minor. Hospital records from the date of the accident also show that the applicant did not suffer any loss of consciousness, he was ambulatory at the scene of the accident, he was not confused, he did not have a concussion, he was neurologically normal on

³ Dr. McDowall psychological assessment dated March 16, 2021, page 8.

⁴ Dr. Sharma psychiatric examination dated March 25, 2020, page 6. Dr. Oshidari physiatry examination dated March 25, 2020, page 5.

assessment, there was no diagnosis of a head injury, and the applicant was discharged the same day with no prescription medication and no orders for diagnostic imaging⁵.

- [17] The s.44 assessment report dated March 25, 2020 from Dr. Oshidari also supports that the applicant's injuries were minor. Dr. Oshidari reported that the applicant had 95% range of motion in his neck and full range of motion in his shoulders/lower back. Physically, he was diagnosed with a sprain/strain of the neck, tension headaches, and shoulder contusion, but was otherwise completely normal⁶. Dr. Oshidari was of the opinion that the applicant had reached maximum medical recovery.
- [18] The same holds true for Dr. Sharma's s.44 psychiatric assessment dated March 25, 2020. Dr. Sharma indicated that the applicant noted some difficulty initiating and maintaining sleep, and that he was occasionally irritable, but the applicant did not endorse feelings of depression. The applicant continued to socialize and work. Dr. Sharma concluded that the applicant did not suffer from any DSM-V diagnoses, he was not suffering from any psychological impairments from the accident, and there was no evidence of post-traumatic stress disorder⁷.
- [19] The applicant did not submit any s.25 assessments to refute Dr. Oshidari's physical examination findings, and there are no OHIP or prescription summaries on file that might support his claim. I must remind the applicant that he bares the onus of proving that his accident-related impairments are not predominantly minor.
- [20] I accept that the applicant hit the left side of his head during the accident, and that he sustained a bump on his head/bruising as well as left-sided tension headaches. This was corroborated by Dr. Chung and in hospital records from the day of the accident. On October 12, 2019, Dr. Chung reported that the applicant described his symptoms as left-sided headaches, and neck/shoulder/low back pain. Dr. Chung diagnosed the applicant with whiplash⁸. Subsequent x-rays of the neck and low back were unremarkable.
- [21] By the end of October 2019, only a month post-accident, Dr. Chung reported that the applicant had full range of motion in his neck, and that his back/shoulder pain

⁵ Tab 1 of the applicant's supporting documents - The Scarborough Hospital emergency department record dated September 28, 2019, page 6.

⁶ Dr. Oshidari psychiatry examination dated March 25, 2020, page 8.

⁷ Dr. Sharma psychiatry examination dated March 25, 2020, page 12.

⁸ Tab 2 of the applicant's supporting documents - Dr. Chung clinical notes dated October 12, 2019 - applicant's submissions, page 2.

was better⁹. Apart from a prescription for Naproxen and a recommendation to use Voltaren gel on October 12, 2019, Dr. Chung's clinical notes do not show that any other medication has been prescribed. This contradicts Dr. McDowall's report, which noted that the applicant was prescribed painkillers, sleeping pills, and anti-anxiety medications shortly after his accident¹⁰.

- [22] I concur with the respondent, that at no point in Dr. Chung's clinical notes dated after the accident does he mention that the applicant was suffering from any psychological impairments. Prior to the accident, however, in June 2019, Dr. Chung did note that the applicant complained of fatigue while driving. The applicant was referred for a sleep study to rule out sleep apnea, but no sleep study report or diagnosis was submitted for review. As a result, I cannot conclude that any fatigue or sleep difficulties reported by the applicant were directly caused or aggravated by the accident itself.
- [23] I find that Dr. Chung's clinical notes corroborate Dr. Sharma's findings. While the applicant endorsed some feelings of irritability following his accident, he did not suffer from any diagnosable psychological condition.
- [24] The applicant returned to his pre-accident work as truck driver/construction worker immediately following the accident. At the time of Dr. McDowall's report in March 2021, he continued to work in a physically demanding role as a roofing contractor. There were occasions that he was not working as often, but that was reportedly because of the seasonal nature of his job. The applicant was also able to drive himself to and from work and to jobsites, which I find contradicts Dr. McDowall's diagnosis of a specific travel phobia.
- [25] I accept that the applicant may continue to have some residual limitations from the injuries he sustained from the accident. But, from a functional perspective the evidence does not support that he has been significantly impaired either physically or psychologically to the point that would warrant treatment beyond the MIG limit.
- [26] Having considered the totality of evidence, submissions and caselaw cited, I find that on a balance of probabilities, the applicant sustained predominantly minor injuries that do not require removal from, or treatment beyond the MIG. Given that I have found that the applicant has failed to meet his burden of proving that

⁹ Tab 2 of the applicant's supporting documents - Dr. Chung clinical notes dated October 31, 2019 - applicant's submissions, page 2.

¹⁰ Dr. McDowall psychological assessment dated March 16, 2021, page 3.

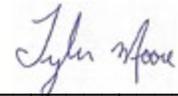
he should be removed from the MIG and that he has exhausted the funding limit for minor injuries, it is not necessary to consider the disputed treatment plans.

CONCLUSION

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

- i. The applicant's injuries are predominantly minor as defined in s. 3 of the *Schedule*.
- ii. The applicant is not entitled to the disputed treatment plans because they propose treatment that exceeds the \$3,500.00 funding limit provided for minor injuries.
- iii. As no benefits are overdue, no interest is payable.

Released: June 21, 2022



Tyler Moore
Vice-Chair