



Citation: Jin v. Certas Home and Auto Insurance Company, 2023 ONLAT 20-011392/AABS

Licence Appeal Tribunal File Number: 20-011392/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:

Wen Hua Jin

Applicant

and

Certas Home and Auto Insurance Company

Respondent

DECISION

VICE-CHAIR: Brett Todd

APPEARANCES:

For the Applicant: Yu Jiang, Paralegal

For the Respondent: Yann F. Grand-Clement, Counsel

HEARD BY WAY OF WRITTEN SUBMISSIONS

BACKGROUND

- [1] Wen Hua Jin (the “applicant”) was involved in an automobile accident on January 16, 2019 and sought benefits pursuant to the *Statutory Accident Benefits Schedule - Effective September 1, 2010 (including amendments effective June 1, 2016)* (the “Schedule”).
- [2] Certas Home and Auto Insurance Company (the “respondent”) characterized the applicant’s injuries as a “minor injury” as defined in s. 3 of the *Schedule*, subjected her to the Minor Injury Guideline (the “MIG”) and its \$3,500.00 funding limit on treatment, and denied certain medical benefits. The applicant submitted an application to the Licence Appeal Tribunal – Automobile Accident Benefits Service (the “Tribunal”).
- [3] Following an insurer’s examination (“IE”) of the applicant, the respondent removed the applicant from the MIG in September 2021 and approved the treatment plans/OCF-18s and interest in dispute. As a result, the applicant withdrew these issues, which had been identified in a Tribunal Case Conference Report and Order dated August 26, 2021 that set down the disputed items to be heard in a written hearing scheduled for March 31, 2022.
- [4] This leaves in dispute the request for an award, as the applicant claims that the insurer unreasonably withheld and delayed payments with regard to the MIG and the three treatment plans originally in dispute.

ISSUES IN DISPUTE

- [5] The following issue is in dispute:
 1. Is the respondent liable to pay an award pursuant to s. 10 of Regulation 664 because it unreasonably withheld or delayed payments to the applicant, plus interest?

RESULT

- [6] I find that:
 - i. The respondent is ordered to pay an award under s. 10 of Regulation 664 in the amount of 30 per cent of the value of the three treatment plans that were originally in dispute, plus interest. As the value of these treatment plans is \$10,372.28, the award is for \$3,457.43, plus interest as specified under Regulation 664.

ANALYSIS

- [7] I agree with the applicant and find that the respondent unreasonably withheld and delayed payment of the three treatment plans that were originally in dispute. The respondent did not respond to medical evidence produced by the applicant in a responsible or timely fashion. I primarily fault the insurer for maintaining the applicant's status within the MIG well beyond the point where further medical investigation was clearly warranted to properly and efficiently assess her claims to having sustained injuries beyond that defined as minor in the *Schedule*.
- [8] Section 10 of Regulation 664 permits the Tribunal to award a lump sum of up to 50 per cent of the amount that the applicant was entitled to receive, along with interest on all amounts owing, if the insurer is found to have unreasonably withheld or delayed such payments. It is well established, however, that an award should not be ordered simply because an insurer made an incorrect decision. To warrant an award under Regulation 664, an insurer's conduct must be excessive, imprudent, stubborn, inflexible, unyielding, and/or immoderate.
- [9] I am persuaded by the applicant's submissions that the respondent acted in a stubborn and inflexible manner. The applicant provided the insurer with the clinical notes and records ("CNRs") and recommended treatment plans of the following medical experts as of November 2019, all of which indicate that the applicant was suffering from psychological impairments that are not included in the *Schedule's* definition of minor injuries:
- i. Dr. Nancy Ho, family physician, who indicated that the applicant suffered from an "anxious and depressed mood" in her notes in June 2019 (the exact date is illegible, although some of the handwritten notes themselves are legible);
 - ii. Dr. Thomas Blau, chiropractor, who recommended investigating the applicant's complaints of poor sleep, emotional distress, phobic anxiety, fatigue, and cognitive difficulties in clinical notes and a treatment plan, both dated November 6, 2019; and,
 - iii. Dr. Bruce Cook, psychologist, who recommended a psychological assessment due to the applicant's reported symptoms of depression, poor appetite, sleep difficulties, fatigue, and travel anxiety in a treatment plan dated May 22, 2019.
- [10] Even if I assign little weight to the assessments of Dr. Ho and Dr. Blau due to their lack of expertise in psychological matters, it is important that all three

medical professionals—including a trained psychologist—concur in their observations and opinions regarding the applicant’s symptoms. They present a united front with regard to the applicant’s claims of suffering from psychological injury as a result of the accident.

- [11] In addition, the applicant directly reported complaints regarding her psychological and physical injuries in a number of conversations during 2019 with the insurer’s adjusters on the file. The adjusters initiated these calls for reasons unclear in the submissions, despite being notified as of February 4, 2019 that the applicant had secured legal counsel. Whether these phone calls were appropriate given the circumstances, the applicant submits that she made direct complaints of her medical concerns to these adjusters on at least two occasions. This is not disputed by the respondent. The applicant also requested a psychological IE assessment on November 1, 2019, which was denied by the respondent on November 4, 2019, citing the applicant’s status within the MIG as the reason.
- [12] In this case, the award analysis turns on the sizable gap between the two psychological assessments conducted of the applicant. Following the psychological assessment treatment plan recommendation noted above, Dr. Cook examined the applicant on April 1, 2020 and completed a report on April 6, 2020. He diagnosed the applicant with severe depressive disorder and generalized anxiety disorder, along with symptoms of irritability and anhedonia (inability to feel pleasure), cognitive difficulties resulting in attention/concentration and short-term memory problems, and chronic pain.
- [13] Yet even though this Dr. Cook report was provided to the insurer by May 2020, Certas took an additional 16 months between this submission and arranging a psychological IE assessment of the applicant by Dr. Sadiq Hasan, psychiatrist, on September 8, 2021. Dr. Hasan’s resulting report, dated September 21, 2021, included a diagnosis of adjustment disorder with mixed anxiety and depressed mood, a psychological impairment that is not included in the *Schedule s. 3(1)* definition of a minor injury. While this conclusion resulted in the respondent quickly removing the applicant from the MIG and resolving the treatment plans in dispute, this long process still unreasonably delayed the provision of deserved benefits to the applicant by well over a year.
- [14] I do not agree with the respondent’s explanation that this lengthy delay was unavoidable. The respondent relies on the grounds that the handwritten CNRs of Dr. Ho were illegible, but that the respondent made an effort to “decipher” an additional series of the physician’s notes submitted in July 2021 and determined that they appeared to indicate that the applicant was suffering from psychological

issues. As a result, Certas says that it promptly arranged the Dr. Hasan examination for September 8, 2021. I acknowledge that Dr. Ho's notes are very challenging to read; however, this is not relevant to my finding since I assign little weight to the Dr. Ho CNRs. In my view, the crux of the award claim argument rests on the long delay between the Dr. Cook and the Dr. Hasan assessments.

- [15] Furthermore, the respondent contradicts itself with its comments about the illegibility of the Dr. Ho CNRs. In its written submissions, Certas claims that it kept the applicant in the MIG and did not arrange an IE assessment despite the Dr. Cook diagnoses because similar psychological observations were not reflected in Dr. Ho's records. This is a strange claim to make, given that the respondent is simultaneously asserting that Dr. Ho's CNRs were illegible until the insurer was able to decipher portions of them in July 2021. Also, I was readily able to make out the "anxious and depressed mood" note in Dr. Ho's CNRs from June 2019. Regardless, the Dr. Ho CNRs are substantially irrelevant, as the Dr. Cook report contains a full analysis of the applicant along with a diagnosis of depression and anxiety. The respondent did not need to rely on handwritten CNRs with this report readily available and fully readable—a full 16 months before its own psychological IE with Dr. Hasan.
- [16] For the above reasons, I find that the applicant is entitled to an award. The insurer acted in a stubborn and inflexible manner by failing to promptly respond to new medical evidence presented by the applicant, which resulted in the delay of psychological treatment.
- [17] This leaves the question of quantum. I have carefully considered the parties' positions, although I note that the applicant did not make submissions regarding the quantum of the award sought. I elect to award a value of 30 per cent. I am awarding this higher value because of the extreme length of the delay caused by the respondent's refusal to properly examine the applicant following the Dr. Cook psychological assessment. In addition, as the CNRs and treatment plans noted, the applicant's psychological injuries were suspected as early as 2019. The respondent seems to have locked into an opinion that the applicant's injuries were minor in nature, and that she would remain in the MIG, despite medical evidence to the contrary that should have warranted further investigations on the part of the insurer. Although I do credit the insurer with removing the applicant from the MIG and resolving all issues in dispute shortly after receipt of the Dr. Hasan report, the considerable length of time that the respondent denied the entitled psychological benefits warrants a 30 per cent award.

ORDER

[18] The respondent is ordered to pay an award under s. 10 of Regulation 664 in the amount of 30 per cent of the value of the three treatment plans that were originally in dispute, plus interest. As the value of these treatment plans is \$10,372.28, the award is for \$3,457.43, plus interest as specified in Regulation 664.

Released: February 21, 2023



Brett Todd
Vice-Chair