

**LICENCE APPEAL  
TRIBUNAL**

**TRIBUNAL D'APPEL EN MATIÈRE  
DE PERMIS**



**Safety, Licensing Appeals and  
Standards Tribunals Ontario**

**Tribunaux de la sécurité, des appels en  
matière de permis et des normes Ontario**

**Date: 2018-02-14**

**Tribunal File Number: 16-003821/AABS**

**Case Name: 16-003821 v Co-operators General Insurance Company**

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:

**Applicant**

**Applicant**

and

**Co-operators General Insurance Company**

**Respondent**

**DECISION**

**ADJUDICATOR:**

**Samia Makhamra**

**APPEARANCES:**

For the Applicant:

Yu Jiang, representative

For the Respondent:

Russell Tilden, counsel

**HEARD in writing:**

**May 31, 2017**

**Overview:**

[1] This decision addresses disputed issues arising from a motor vehicle accident that happened on August 16, 2014. The applicant was involved as the driver.

[2] The disputed issues are in respect of statutory accident benefits that are payable under the *Statutory Accident Benefits Schedule – Effective September 1, 2010, Ontario Regulation 34/10*, as amended (the “*Schedule*”).

[3] The applicant seeks payment for a number of medical benefits that the respondent denied. The basis for the respondent’s denials is that the applicant suffered predominantly minor injuries as defined in the *Schedule*. The applicant disputes the respondent’s position.

**The issues in dispute:**

[4] The issues in dispute are as follows:

- i. Are the applicant’s injuries predominantly minor injuries as defined in the *Schedule*, subject to treatment within the Minor Injury Guideline?
- ii. If the applicant’s injuries are found not to be predominantly minor, as defined in the *Schedule*, is the applicant entitled to receive payment for medical benefits for the following:
  - a) \$2,819.08 for chiropractic services set out in a treatment plan dated October 5, 2016 from Perfect Physio and Rehab Centre;
  - b) \$1,300.00 for chiropractic services set out in a treatment plan dated April 25, 2016 from Perfect Physio and Rehab Centre;
  - c) \$2,000.00 for a psychological assessment and report from Perfect Choice Psychological Services Inc., dated October 2, 2016; and
  - d) \$85.00 for a MIG discharge report (OCF-24) dated April 25, 2016.
- iii. Is the applicant entitled to interest for the overdue payment of benefits?

**Result:**

[5] The applicant’s injuries are not predominantly minor as defined in the *Schedule*. The applicant is entitled to the medical benefits in dispute and interest for any overdue payment of benefits.

**Facts:**

[6] The applicant was involved in a motor vehicle accident on August 16, 2014.

[7] The applicant saw Dr. Georgia Palantzas, chiropractor, at Perfect Physio shortly after the accident, on August 19, 2014. Dr. Palantzas completed a disability certificate where she indicated the applicant's inability to carry on a normal life and listed the following injuries: injury of muscle and tendon at neck level; dislocation; sprain and strain of joints and ligaments of thorax, lumbar spine, pelvis and shoulder girdle; headaches; and phobic anxiety disorders.

[8] Dr. Palantzas submitted a treatment and assessment plan (OCF 23) on the same date, wherein she provided her opinion that the applicant's injuries should not be in the Minor Injury Guideline as they were unlikely to resolve within the time frame of the Minor Injury Guideline.

[9] The applicant did not have a family doctor at the time of the accident.

[10] The applicant left the country in November 2014 for a family emergency. He returned to Canada in April 2016. The applicant states that he attended treatment while away.

[11] In December 2014, the respondent provided the remaining funds available under the Minor Injury Guideline to the applicant to enable him to seek treatment while away. It also advised him that no further medical-rehabilitation benefits were payable.

[12] As the applicant was out of the country for many months, the respondent could not schedule s. 44 insurer's examinations to address the issue of the applicability of the Minor Injury Guideline until his return.

[13] The applicant resumed treatment when he returned to Canada. The following is a summary of the treatment he sought and/or received before attending any insurer's examinations:

- In April 2016, Dr. Palantzas submitted a treatment plan for chiropractic treatment, indicating the applicant's need to be treated outside of the Minor Injury Guideline;
- In October 2016, Dr. Tavares submitted a treatment plan recommending further chiropractic treatment;
- The applicant consulted a psychologist, Dr. Ming Che Yeh at Perfect Choice Psychological Services, in October 2016. Dr. Yeh documented difficulty sleeping, depression, frustration and vehicular anxiety; she submitted a treatment plan for a psychological assessment.
- The applicant continued physical therapy until November 2016, when his medical benefits were stopped;
- The applicant saw a family physician, Dr. Kin Man Pun, in December 2016, for complaints of neck and back pain. Some of Dr. Pun's recommendations included counseling, education for lower back pain, and continuing physiotherapy and massage;

- On a referral from Dr. Pun, the applicant underwent x-ray imaging of his cervical and lumbar spine in December 2016. Among other findings, the diagnostic report pointed to a minimal compression fracture at L1.

[14] In February 2017, the applicant attended two s. 44 insurer's examinations to address the issue of the applicability of the Minor Injury Guideline and corresponding treatment plans. The applicant attended for a psychological assessment with Dr. Louise Koepfler on February 9, 2017, and for a psychiatry assessment with Dr. Michael Ko on February 14, 2017. A multidisciplinary report concluding that the applicant's injuries were predominantly minor was issued on February 23, 2017.

[15] Dr. Koepfler concluded that the applicant did not suffer from a psychological impairment directly related to the accident, and no formal diagnosis was warranted. She indicated that there was no need for psychological treatment, and that from a psychological perspective the applicant's injuries were minor in nature.

[16] Dr. Ko concluded that the applicant sustained a predominantly minor injury, and that there were no accident-related impairments. He indicated that no further treatment would be necessary. Regarding the x-ray report of a minimal compression fracture at L1, Dr. Ko concluded this was an incidental finding. Dr. Ko relied on the mechanism of the accident (vehicle impacted from the side only, which means it would not have caused the fracture) and his clinical examination of the applicant as the basis for this conclusion.

[17] The applicant underwent a psychological assessment by Dr. Yeh in April 2017. Dr. Yeh diagnosed the applicant with an adjustment disorder with mixed anxiety and depressive reaction, and specific phobia. Her notes included depression, anxiety, poor sleep, increased irritable mood, lost enthusiasm and interest, travel anxiety, and use of medication for sleep and pain. She recommended 12 counselling sessions.

### **Analysis and reasons:**

[18] I begin this analysis with the issue of whether the applicant's injuries are to be treated within the Minor Injury Guideline.

[19] To address whether the Minor Injury Guideline applies, I must consider two questions:

- Are the applicant's injuries from the accident predominantly minor in nature? and/or
- Is there a pre-existing medical condition that was documented by a health practitioner before the accident that will prevent him from achieving maximal recovery if subject to the Minor Injury Guideline limit?

[20] The parties submitted written arguments, case law, and a number of documents in support of their positions. The applicant also submitted his own affidavit, and an affidavit by Dr. Tavares.

[21] The analysis focuses on whether the applicant's injuries from the accident are minor in nature; the applicant is not arguing that he suffers from a pre-existing medical condition as contemplated in the *Schedule*, nor has he submitted any evidence in this respect.

Are the applicant's injuries predominantly minor?

[22] In s. 3(1) of the *Schedule*, a "minor injury" is defined in 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". Section 18(1) sets out the limit of \$3,500 for medical and rehabilitation benefits for an insured person who sustains an impairment that is predominantly a minor injury, less any amounts paid in respect of the insured person in accordance with the Minor Injury Guideline.

[23] The applicant submits that he should not be in the Minor Injury Guideline because of his psychological disorders and the compression fracture.

[24] The respondent disagrees. The respondent argues that there is no objective evidence to rebut Dr. Ko's opinion that the compression fracture is incidental and unrelated to the accident. Further, there is no evidence that the fracture was caused by the accident, or that it is the cause of the applicant's complaints.

[25] Regarding the psychological argument, the respondent asks the Tribunal to assign less weight to Dr. Yeh's psychological assessment in light of the findings of its own assessor, Dr. Koepfler, and because Dr. Yeh's assessment was not properly before the respondent to allow for a response, or to adjust the applicant's claim accordingly. The respondent further submits that Dr. Palantzas' opinion or diagnosis of a psychological condition should be disregarded as this is outside her scope of practice as a chiropractor.

[26] For the reasons that follow, I find that the compression fracture takes the applicant out of the Minor Injury Guideline. I also find that the psychological diagnosis as noted by Dr. Yeh takes the applicant out of the Minor Injury Guideline. I discuss both findings next.

*Compression fracture at L1:*

[27] The difficulty with the compression fracture is that the x-ray was taken many months after the accident, though I am aware of the circumstances of this case, including the applicant's absence from the country, and the fact that he did not have a family physician at the time of the accident.

[28] However, given the facts of this case, the evidence, and the parties' submissions, I am not prepared to accept that the fracture is unrelated to the accident for the reasons that follow.

[29] The applicant consistently complained of back pain from the accident. This is noted in the following documents:

- Clinical notes from Perfect Physio of August 19, 2014, with pain noted in the areas of cervical, thoracic and lumbar spine, and shoulder, also described as throbbing, stiff and shooting, and pain intensity in the 7 to 8/10 range – a disability certificate was completed by Dr. Palantzas as a result;
- Clinical notes from Perfect Physio of August 25, 2014, with pain noted in the same areas as above, described as moderate and moderate to severe;
- A treatment and assessment plan completed by Dr. Palantzas in April 2016 (this is one of the medical benefits in dispute) recommending chiropractic treatment, active therapy and acupuncture, with one of the goals being pain reduction;
- A treatment and assessment plan completed by Dr. Tavares in October 2016 (this is one of the medical benefits in dispute) recommending treatment similar to Dr. Palantzas' with one of the goals being pain reduction;
- A treatment and assessment plan completed by Dr. Yeh in October 2016 (this is one of the medical benefits in dispute) noting his complaints of pain;
- The visit to Dr. Pun in December 2016 — this visit led to the x-ray referral;
- The report of the multidisciplinary s. 44 assessments, noting complaints of pain to varying degrees; and
- The psychological assessment by Dr. Yeh in April 2017, noting his continued complaints of physical pain.

[30] I have considered Dr. Ko's opinion that the fracture was an incidental finding. He explains this by referring to the clinical examination, where he found no tenderness along the midline, and the mechanism of injury given what he knew about the accident — he assumes that the applicant's car was impacted on the driver's side only (but not from the back), which might explain why a fracture would not result from the accident.

[31] The applicant has not provided a report to rebut Dr. Ko's opinion, but has indicated that the applicant has not been involved in any other accident or trauma since the accident. In addition, while the applicant did suffer from back pain in the years before the accident, it was stable and he was not in pain before the accident. The applicant disputes Dr. Ko's assumption that the applicant's car was not impacted from the back, and refers, among other documents, to the application for accident benefits (OCF1) as evidence.

[32] The parties provided extensive submissions on how the accident happened and its relationship to the compression fracture. I see that the accident has been described as a side and back impact, or side impact only. However, given that I do not have

conclusive evidence in this regard, I do not need to prefer one over the other, as I am not prepared to draw any conclusions regarding the accident and the mechanism of injury.

[33] I understand that on examination, Dr. Ko found no tenderness along the midline where the fracture is located, which also informed his opinion that the fracture was incidental. Nevertheless, because the applicant complained of back and lower back pain consistently in the months that followed the accident, I am less inclined to rely entirely on Dr. Ko's clinical assessment in this regard.

[34] More importantly, in looking at all the evidence, I find it is more likely than not that the fracture is related to the accident. Specifically, I note that the applicant: has consistently complained of back pain since the accident; the family physician who saw him in December 2016 noted his complaints of back pain, including that he takes medication for pain relief; the applicant did not suffer from back pain around the time before the accident; and, he has not been involved in any other accident or trauma since. A compression fracture takes the applicant out of the minor Injury guideline as it does not fall within the definition of a "minor injury" according to the *Schedule*.

*Psychological diagnosis and treatment:*

[35] I rely on the following documents to find that the applicant suffered from a psychological disorder that required treatment outside of the minor injury guideline:

- Dr. Yeh's pre-screening when she completed a treatment and assessment plan for a psychological assessment in October 2016;
- The clinical notes from the treatment providers who saw him for treatment and assessment in the months before he left the country, and in the months following his return; the notes from his visit to the family physician in December 2016; and
- Dr. Yeh's findings when she conducted a psychological assessment of the applicant in April 2017.

[36] The above documents describe the applicant as having difficulty falling and remaining asleep due to pain and recurring nightmares, that he is constantly tired and fatigued, which contributes to low mood and feelings of depression, and that he has become more depressed and irritable since the accident.

[37] How then to address Dr. Koepfler's assessment that the applicant's condition did not warrant a psychological diagnosis, assessment or further treatment? Because the applicant has consistently complained of feelings of depression, I am not prepared to prefer Dr. Koepfler's report over the reports of his treatment providers. I note that the applicant asked me to disregard Dr. Koepfler's report in its entirety, alleging, among other things, that she was biased. The applicant's arguments alleging bias by Dr. Koepfler are not substantiated and I am not prepared to accept them.

[38] The respondent asked that I not rely on a psychological diagnosis by the two treating chiropractors, Dr. Palantzas and Dr. Tavares. I agree. A psychological diagnosis is not within the scope of chiropractic practice. However, their notes of the applicant's complaints are relevant.

[39] Dr. Yeh's results indicated that the applicant experienced significant emotional and psychological distress since the accident as reflected in his depression, anxiety, and somatic distress. Specifically, Dr. Yeh diagnosed him with an adjustment disorder (mixed anxiety and depressive reaction) and specific (isolated) phobia. Noting his ongoing physical pain, irritability, depression, concentration difficulties and fear of traveling, she recommended counselling to assist him in developing the necessary coping and adaptive skills.

Treatment and assessment plans in dispute:

[40] I have found that the applicant's injuries from the accident do not fall within the Minor Injury Guideline. Next, I must determine if the applicant is entitled to the medical and cost of examination benefits he claims.

[41] Section 15(1) of the *Schedule* provides that medical benefits shall pay for all reasonable and necessary expenses incurred by an insured or on behalf of an insured person as a result of the accident, including chiropractic and psychological services. Further, s. 38 provides that an insurer is not required to pay an expense in respect of a medical benefit until the insured submits a treatment and assessment plan that is reasonable and necessary for the insured's treatment and rehabilitation.

*A medical benefit in the amount of \$85.00 for a MIG discharge report (OCF 24), dated April 25, 2016*

[42] Having found that the applicant's injuries from the accident are not predominantly minor, this benefit is payable as it was invoiced for the completion of the Minor Injury Discharge report.

*Treatment and assessment plan for chiropractic services in the amount of \$1,300.00, dated April 25, 2016 from Perfect Physio and Rehab Centre*

[43] I am satisfied that this treatment is reasonable and necessary for the following reasons: the applicant had complaints of pain; this treatment plan included seven sessions of chiropractic treatment with the goals of pain reduction, increased range of motion and increase in strength; the functional goals were to assist him in returning to activities of normal living, pre-accident exercise and social activities.

*Treatment and assessment plan for chiropractic services in the amount of \$2,819.08, dated October 5, 2016 from Perfect Physio and Rehab Centre*

[44] I am satisfied that this treatment is reasonable and necessary for the following reasons: the applicant had complaints of pain, and back pain specifically; this treatment plan included 14 sessions of chiropractic treatment and 14 sessions of active



therapy/acupuncture, with the goals of pain reduction, increased range of motion and increase in strength. The functional goals were to assist him in returning to activities of normal living, pre-accident exercise and social activities. While this is similar to the above plan (dated April 2016), it is more comprehensive and includes a portion of active therapy.

*Treatment and assessment plan for a psychological assessment in the amount of \$2,000.00, dated October 20, 2016 from Perfect Choice Psychological Services Inc.*

[45] I am satisfied that this treatment is reasonable and necessary: the applicant had complaints of depression and anxiety and, given that the respondent obtained a psychological assessment from Dr. Koepfler, it seems reasonable to me that the applicant be able to obtain his own assessment, in other words, a second opinion, to determine if the accident affected his psychological state.

**Order:**

[46] For the reasons provided above, I order the following:

1. The applicant's injuries are not predominantly minor injuries and do not fall within the Minor Injury Guideline.
2. The applicant is entitled to:
  - a) \$2819.08 for chiropractic services set out in a treatment plan dated October 5, 2016 from Perfect Physio and Rehab Centre;
  - b) \$1300.00 for chiropractic services set out in a treatment plan dated April 25, 2016 from Perfect Physio and Rehab Centre;
  - c) \$2000.00 for a psychological assessment and report from Perfect Choice Psychological Services Inc., dated October 2, 2016; and
  - d) \$85.00 for a MIG discharge report (OCF-24) dated April 25, 2016.
3. The respondent shall pay to the applicant interest on any overdue payment in accordance with section 51 of the *Schedule*.

**Released:** February 14, 2018

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**Samia Makhamra, Adjudicator**