



**Citation: Yang v. Dominion of Canada General Insurance Company (Travelers),
2022 ONLAT 20-008471/AABS**

Licence Appeal Tribunal File Number: 20-008471/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:

Zhuo Hua Yang

Applicant

and

Dominion of Canada General Insurance Company (Travelers)

Respondent

DECISION AND ORDER

VICE-CHAIR:

Chloe Lester

APPEARANCES:

For the Applicant:

Zhuo Hua Yang, Applicant
Yu Jiang, Paralegal

For the Respondent:

Jesse Boyd, Counsel

HEARD:

By Way of Written Submissions

DECISION AND ORDER

BACKGROUND

- [1] The applicant was involved in an automobile accident on January 5, 2018, and sought benefits pursuant to the Statutory Accident Benefits Schedule – *Effective September 1, 2010 (including amendments effective June 1, 2016)*.¹
- [2] Based on the initial injuries right after the accident, the respondent determined the applicant's injuries were minor and therefore subject to treatment within the \$3,500.00 Minor Injury Guideline (MIG) limits².
- [3] The applicant submitted treatment plans for various medical and psychological therapies that proposed treatment outside of the MIG limits. Based on a series of section 44 insurer's examinations (IE's), the applicant was removed from the MIG. The psychological treatment plans were approved, but the physical treatment plans were denied.
- [4] The applicant submitted an application to the Licence Appeal Tribunal - Automobile Accident Benefits Service ("Tribunal")³.

ISSUES

- [5] The issues to be determined in this hearing are:
 - a. Is the applicant entitled to the following treatment plans proposed by Easy Health Centre in the amount of:
 - i. \$1,168.89 (\$1,541.39 less amounts approved \$372.47) for chiropractic treatment dated July 4, 2018;
 - ii. \$1,463.03 for physiotherapy treatment dated October 2, 2018;
 - iii. \$1,857.00 for physiotherapy treatment dated November 22, 2018; and
 - iv. \$3,655.35 for physiotherapy treatment dated July 22, 2019;

¹ *Statutory Accident Benefits Schedule – Effective September 1, 2010, O. Reg. 34/10 as amended("Schedule")*.

² Superintendent's Guideline No. 01/14 Minor Injury Guideline, issued under s. 268.3 (1.1) of the Insurance Act.

³ Tribunals Ontario, Safety, Licensing Appeals and Standards Division, Licence Appeal Tribunal – Automobile Accident Benefits Service ("Tribunal")

- b. Is the applicant entitled to interest on any overdue payment of benefits?

RESULTS

- [6] The applicant is entitled to the treatment plans in the amount of \$1,541.39 dated July 4, 2018 (less amounts approved), \$1,463.03 dated October 2, 2018, and \$1,857.00 dated November 22, 2018. The other treatment plan was properly denied.
- [7] The applicant is entitled to interest if any payments are considered overdue.

LAW

- [8] Section 15 of the *Schedule* states that an insurer shall pay for all reasonable and necessary expenses incurred by the insured person for medical benefits. The process for applying for those benefits is contained in section 38 of the *Schedule*.
- [9] The applicant has the onus to prove that the treatment plans recommending chiropractic and physiotherapy services are reasonable and necessary for the injuries he sustained in the car accident.

ANALYSIS

- [10] The applicant claims that he is entitled to all the treatment plans in dispute because they are reasonable and necessary because of the injuries he sustained in the car accident. He argues that he has had ongoing physical issues since the car accident and they are recorded in his family doctor's, Dr. Chan, records. He also submits that he has been to specialists for those injuries which require ongoing treatment. The applicant also argues that the treatment plans meet the test for approval because the chiropractic and physiotherapy services alleviated his pain between sessions and improved his range of motion. The applicant also claims that the treatment plan denial letters were improper and failed to mention the medical and other reasons for the denial, which is contrary to the *Schedule*. Lastly, the *Schedule* is consumer protection legislation, and therefore, the applicant argues any provisions should be liberally interpreted in favour of the applicant.
- [11] The respondent argues that the treatment plans are not reasonable or necessary because the applicant returned to work right after the accident, and his physical injuries were considered minor. The respondent argues that the applicant was only removed from the MIG due to his psychological injuries, not his physical ones. The respondent submits that their psychiatry assessor opined that further facility-based treatment was not necessary and suggested pharmacological

injections instead. Lastly, the respondent argues that his main concerns were his left arm and hand issues that were pre-existing, not injured in the accident, and likely due to the applicant's diabetes.

- [12] Once the applicant is removed from the MIG, the respondent has an obligation to re-evaluate the treatment plans it denied the applicant based on the injuries being minor and subject to the MIG monetary limits. The respondent argues that the only reason why the applicant was removed was because of his psychological injuries and therefore it properly denied the physical treatment plans. The classification of injuries in section 18 of the *Schedule* is for the main purpose of determining the monetary limits one could receive if the individual benefit tests are met. Once the applicant was no longer classified as having minor injuries, the applicant had access to greater funding, up to \$65,000, for benefits. The *Schedule* does not differentiate between the reasons why someone is removed from the MIG and the treatment they could receive. Once the applicant is removed, all treatment plans are subject to the test of being reasonable and necessary.
- [13] I find three of the four treatment plans reasonable and necessary for the following reasons.
- [14] The denial letters for the treatment plans dated July 4, 2018, October 2, 2018, and November 22, 2018⁴, were because there was no more funding left under the MIG limits. Once that reason was no longer true, then the respondent has an obligation to re-evaluate the reasonableness and necessity of the treatment plans previously denied because now the applicant has access to greater benefit limits. This involves providing medical reasons and other reasons for the denial of the treatment plan as per section 38(8) of the *Schedule*.
- [15] Since the respondent failed to provide medical and other reasons for the denials, as per section 38(11) 2 of the *Schedule*, the respondent is liable to pay all services outlined in those treatment plans until proper notice is given.
- [16] On that basis alone, the applicant is entitled to the first three treatment plans.
- [17] That being said, the applicant continued to complain of his accident-related injuries to his family doctor from the time of the accident until November 22, 2018. Since three treatment plans goals during this time period were to reduce

⁴ Applicant's Submissions Tab 8, Tab 11 and the respondent's submissions page 24

the applicant's pain, I find the treatment plans reasonable and necessary to improve upon his accident-related impairments.

[18] As for the fourth treatment plan⁵, the clinical notes from the family doctor reflect that the accident-related pain complaints were in the back, shoulder, and neck areas⁶. After November 22, 2018, the applicant's pain complaints change to pain in his left elbow, wrist and hand.⁷ The applicant is later referred to a neurologist who determines that his left side arm pain complaints are likely due to his diabetes.⁸ It appears the accident-related injuries had resolved by November 22, 2018, and that the continued pain complaints were likely due to his diabetes. Therefore, I find that the treatment plan dated July 22, 2019, in the amount of \$3,655.35 is not reasonable and necessary as the accident-related injuries had resolved.

CONCLUSION AND ORDER

[19] The applicant proved on the balance of probabilities that three of the treatment plans proposed by Easy Health Centre are reasonable and necessary. I order that the applicant is entitled to the treatment plans in the amount of:

- a. \$1,541.39 (less amounts approved) dated July 4, 2018;
- b. \$1,463.03 dated October 2, 2018; and
- c. 1,857.00 dated November 22, 2018.

[20] The applicant is entitled to interest if the treatment has been incurred, billed in accordance with the treatment plan, and are considered overdue.

Released: March 23, 2022



**Chloe Lester
Vice-Chair**

⁵ Treatment Plan in the amount of \$3,655.35 dated July 22, 2019

⁶ Applicant's Submissions Dr. Chan Records Tab 2 Page 6-21

⁷ Applicant's Submissions Dr. Chan Records Tab 2 Page 3

⁸ Applicant's Submissions Dr. Chan Records Tab 2 Page 61-64 Consultation report by Dr. Dhanani Dec 23, 2019