



Citation: Emam v. Economical Insurance, 2024 ONLAT 22-010341/AABS

Licence Appeal Tribunal File Number: 22-010341/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:

Elyas Emam

Applicant

and

Economical Insurance

Respondent

DECISION

ADJUDICATOR:

Nadia Mauro

APPEARANCES:

For the Applicant:

Anil Hampole, Counsel

For the Respondent:

Stephen Whibbs, Counsel

HEARD:

By Way of Written Submissions

OVERVIEW

- [1] Elyas Emam, the Applicant, was involved in an automobile accident on April 12, 2021, and sought benefits pursuant to the *Statutory Accident Benefits Schedule - Effective September 1, 2010 (including amendments effective June 1, 2016)* (the "Schedule"). The Applicant was denied benefits by the Respondent, Economical Insurance, and applied to the Licence Appeal Tribunal - Automobile Accident Benefits Service (the "Tribunal") for resolution of the dispute.

ISSUES

- [2] The issues in dispute are:
- i. Are the Applicant's injuries predominantly minor as defined in s. 3 of the *Schedule* and therefore subject to treatment within the \$3,500.00 Minor Injury Guideline limit ("MIG")?
 - ii. Is the Applicant entitled to \$1,300.00 for chiropractic treatments proposed by Dr. G. Palantzas of Total Recovery Rehab Centre, submitted September 22, 2021, and denied October 1, 2021?
 - iii. Is the Respondent liable to pay an award under s. 10 of Reg. 664 because it unreasonably withheld or delayed payments to the applicant?

RESULT

- [3] The Applicant has demonstrated that he suffers from a psychological impairment that warrants removal from the MIG.
- [4] The Applicant is entitled to the treatment plan, and interest.
- [5] The Applicant is not entitled to an award.

ANALYSIS

MIG

- [6] I find that the Applicant has met his onus and has demonstrated that his accident-related injuries warrant removal from the MIG.
- [7] An insured may be removed from the MIG if they can establish that their accident-related injuries fall outside of the MIG or, under s. 18(2), that they have a documented pre-existing injury or condition combined with compelling medical evidence stating that the condition precludes recovery if they are kept within the confines of the MIG. The Tribunal has also determined that chronic pain with

functional impairment or a psychological condition may warrant removal from the MIG. In all cases, the burden of proof lies with the applicant.

- [8] The Applicant submits that as a result of the accident he has suffered psychological disorders and physical injuries that warrant removal from the MIG. The Respondent submits that the treatment and medical records do not contain evidence to suggest that the Applicant suffered from any non-minor injuries or anything beyond fleeting difficulties with psychological symptoms post-accident.

The Applicant has a psychological impairment that warrants removal from the MIG

- [9] I am persuaded that the Applicant has sustained a psychological impairment as a result of the accident that would warrant removal from the MIG.
- [10] An applicant may be removed from the confines of the MIG should they have sustained a psychological impairment as a result of the accident, as psychological impairments are not captured within the definition of minor injuries under s. 3(1) of the *Schedule*.
- [11] The Applicant relies on the clinical notes and records (“CNRs”) of physician, Dr. Li of Birchwood Walk-In Clinic, and OCF-18 completed by Dr. Georgia Palantzas, submitted on September 22, 2021 (the “OCF-18”), to support his submission that he suffers from a psychological impairment. The Applicant argues that he should not be kept within the confines of the MIG given the medical evidence provided by Dr. Li and Dr. Palantzas. The Applicant submits that the MIG is not meant to deal with impairments such as his ongoing psychological disorders and physical injuries.
- [12] The Respondent submits that Dr. Li lacked the evidentiary foundation to make the diagnosis of PTSD and that the symptoms and timeline reported did not meet the threshold for such a diagnosis under the DSM-V. The Respondent further argues that the Applicant sought almost no treatment for their alleged psychological impairments and there is no evidence that he requires treatment beyond the MIG limits.
- [13] Based on the evidence provided, I am satisfied that the Applicant’s psychological impairments warrant removal from the MIG.
- [14] On April 17, 2021, the Applicant first presented to Dr. Li with psychological complaints of nightmares and phobia while driving. Dr. Li subsequently diagnosed PTSD, provided psychological support, and prescribed several pharmaceuticals. The Applicant continued to return to Dr. Li, who provided psychological support and prescription medication. The final CNR of Dr. Li, around eight months later, dated April 1, 2022, reflects continued psychological

complaints of low mood, nightmares, phobia with driving and crossing the road, and poor libido. Dr. Li maintained his diagnosis of PTSD.

- [15] The OCF-18, dated September 22, 2021, reports psychological symptoms such as sleep disorder, nervousness, anxious personality disorder, stress, unhappiness, depressive episode, and irritability and anger. These reported complaints are relatively consistent with the records of Dr. Li.
- [16] I give little weight to the Respondent's argument with respect to an incorrect diagnosis of PTSD based on the criteria under the DSM-V. The Respondent has not provided any medical evidence, or expert opinion, to contradict Dr. Li's diagnosis of PTSD.
- [17] Although I agree with Respondent, in part, that there are limited records of treatment for the Applicant's psychological impairments, the Applicant has made consistent complaints of psychological symptomology since his initial visit with Dr. Li. In that respect, Dr. Li has continued to provide psychological support and has prescribed psychotropics to treat the Applicant's impairments.
- [18] A diagnosis of accident-related PTSD is a psychological impairment that would generally remove an insured from the MIG. As I am not pointed to any contradictory medical evidence, I find that on a balance of probabilities, the Applicant has suffered an accident-related psychological impairment that would warrant the removal from the MIG.

Is the Proposed Treatment Plan Reasonable and Necessary?

- [19] To receive payment for a treatment and assessment plan under s. 15 and 16 of the *Schedule*, the Applicant bears the burden of demonstrating on a balance of probabilities that the benefit is reasonable and necessary as a result of the accident. To do so, the Applicant should identify the goals of treatment, how the goals would be met to a reasonable degree and that the overall costs of achieving them are reasonable.

The OCF-18 for Chiropractic Services is Reasonable and Necessary

- [20] The Applicant submitted an OCF-18, dated September 22, 2021, for six weeks of chiropractic treatment ("the OCF-18"). The OCF-18 identifies goals of pain reduction, increased range of motion, increased strength, and to return to activities of normal living and pre-accident work activities. The Applicant relies on CNRs from Dr. Li that he has suffered pain in the neck and head, as well as pain on his right side that radiated to the shoulder and arm.
- [21] The Respondent argues that the Applicant has received little treatment for his accident-related concerns, and that he has not attended physical therapy since December 13, 2021. I give this argument little weight. In my view and in this

case, the Respondent cannot simply rely on the fact that the Applicant has not continued with treatment after it denies further treatment. This does not equate to the proposed treatment as not reasonable or necessary. Contemporaneous evidence must be considered to establish if the treatment plan is needed.

- [22] On review of the OCF-18, Dr. Palantzas reports that the “patient exhibits pain and impairment, limited ability to function, and decreased ROM in the cervical, thoracic and lumbar spine and shoulder region.” The CNRs of Dr. Li report chief physical complaints neck pain and diagnosis of neck sprain/strain. On August 3, 2021, the Applicant continued to complain of neck pain, and Dr. Li subsequently advised him to continue with physiotherapy and massage. It would appear that the Applicant was receiving some physical therapy during this time. The last CNR of Dr. Li, dated April 1, 2022, several months after the submission of the OCF-18 in dispute, indicates the Applicant continued to complain of neck pain and Dr. Li made an additional recommendation for physiotherapy. Despite these corroborating attendances with Dr. Li, I have not been pointed to any contradictory medical opinion or evidence that would negate the Applicant’s need for the proposed treatment.
- [23] Given the evidence, I find that the Applicant has established, on a balance of probabilities, that the OCF-18 is reasonable and necessary.

Interest

- [24] The Applicant is entitled to interest in accordance with s. 51 of the *Schedule* for the OCF-18 dated September 22, 2021, for chiropractic services.

Award

- [25] The Applicant sought an award under s. 10 of Regulation 664. Under s. 10, the Tribunal may grant an award of up to 50 per cent of the total benefits payable if it finds that an insurer unreasonably withheld or delayed the payment of benefits.
- [26] While the Applicant makes some submissions with respect to timeliness and delay, he does not make specific submissions as to whether the Respondent acted unreasonably in its denials, such that the Respondent’s conduct rose to a level that would substantiate the request for an award. As such, I do not find that the Applicant is entitled to an award.

ORDER

- [27] For the reasons outlined above, I find that:
- i. The Applicant’s accident-related psychological impairments warrant removal from the MIG;

- ii. The Applicant is entitled to the September 22, 2021, OCF-18 for chiropractic treatment, and interest;
- iii. The Applicant is not entitled to an award.

Released: September 20, 2024



**Nadia Mauro
Adjudicator**