



**Citation: Weng v. Co-operators General Insurance Company, 2025 ONLAT 23-014596/AABS**

**Licence Appeal Tribunal File Number: 23-014596/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:

**De Quan Weng**

**Applicant**

and

**Co-operators General Insurance Company**

**Respondent**

**DECISION**

**ADJUDICATOR:**

**Ulana Pahuta**

**APPEARANCES:**

For the Applicant:

Aylina Dhanji, Counsel

For the Respondent:

Emily Schatzker, Counsel

**HEARD:**

**By way of written submissions**

## OVERVIEW

- [1] De Quan Weng, the applicant, was involved in an automobile accident on June 6, 2022, 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, Co-operators General Insurance Company, 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?
  - ii. Is the applicant entitled to an income replacement benefit in the amount of \$250.83 per week from October 13, 2022 to date and ongoing?
  - iii. Is the applicant entitled to \$348.00 (\$1,300.00 less \$952.00 approved) for physiotherapy services, proposed by UHeal Rehab Centre in a treatment plan dated August 11, 2022?
  - iv. Is the applicant entitled to \$3,749.56 for physiotherapy services, proposed by UHeal Rehab Centre in a treatment plan dated September 16, 2022?
  - v. Is the applicant entitled to \$2,200.00 for a psychological assessment, proposed by Somatic Assessments and Treatment Clinic in a treatment plan dated November 22, 2022?
  - vi. Is the applicant entitled to \$127.70 for medication expenses, submitted on a claim form (OCF-6) dated October 17, 2022?
  - vii. Is the applicant entitled to \$253.80 for medication expenses, submitted on a claim form (OCF-6) dated November 23, 2022?
  - viii. Is the respondent liable to pay an award under s. 10 of Reg. 664 because it unreasonably withheld or delayed payments to the applicant?
  - ix. Is the applicant entitled to interest on any overdue payment of benefits?

## RESULT

[3] I find that:

- i. The applicant is removed from the Minor Injury Guideline;
- ii. The treatment plans in dispute are reasonable and necessary;
- iii. The applicant is entitled to the expenses claimed in the OCF-6s;
- iv. The applicant is not entitled to an income replacement benefit;
- v. The applicant is entitled to interest in accordance with s. 51 of the *Schedule*; and
- vi. The respondent is not liable to pay an award.

## ANALYSIS

### ***Minor Injury Guideline (“MIG”)***

- [4] Section 18(1) of the *Schedule* provides that medical and rehabilitation benefits are limited to \$3,500.00 if the insured person sustains impairments that are predominantly a minor injury. 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.”
- [5] An insured person 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.

### ***The applicant is removed from the MIG due to his accident-related psychological impairments***

- [6] The applicant submits that he sustained psychological impairments as a result of the June 6, 2022 motor vehicle accident. He also argues that this accident exacerbated his previous injuries from a June 10, 2021 accident. The applicant relies on the clinical notes and records (“CNRs”) of his family physician Dr. Heung Wing Li, submitting that they establish his diagnosis of post traumatic

stress disorder (“PTSD”), and ongoing psychological complaints of insomnia, nightmares, low mood and driving phobia. The applicant also relies on a psychological pre-screen report of Dr. Sharleen McDowell, who had recommended that the applicant be removed from the MIG. Finally, the applicant submits that the OCF-3 and OCF-18 forms establish his ongoing psychological symptoms post-accident.

- [7] The respondent submits that the applicant has not established an accident-related psychological impairment. It argues that little weight should be placed on Dr. Li’s insomnia and PTSD diagnoses and his prescriptions for Cymbalta and Zopiclone, since there was no basis for diagnosing the applicant with a psychological impairment, beyond his own self-reporting. It further relies on its s. 44 psychiatry report of Dr. Robert Hines, who found the applicant uncooperative and determined that the applicant’s subjective emotional symptoms were predominantly a minor injury. Finally, the respondent submits that little weight should be placed on the pre-screen report, as it was prepared only a week after the accident and provided no diagnoses.
- [8] I find that the applicant has met his burden to prove that he sustained psychological impairments as a result of the accident.
- [9] The CNRs of the applicant’s family doctor reveal that the applicant reported psychological symptoms soon after the accident, on June 13, 2022. In addition to reporting neck pain, the applicant disclosed issues with sleep, nightmares, and phobia relating to driving. Dr. Li diagnosed the applicant with PTSD and neck sprain and strain and prescribed Zopiclone, Naproxen and Cymbalta. The applicant continue to report psychological symptoms on July 7, 2022, August 12, 2022, October 13, 2022, November 18, 2022, January 20, 2023, June 10, 2023 and September 15, 2023. Dr. Li reiterated his PTSD diagnosis a number of times in the year and a half post-accident, and renewed the prescription for Zopiclone, Naproxen and Cymbalta throughout this period.
- [10] I note the respondent’s psychiatric assessor Dr. Hines’ findings that there was no objective evidence of emotional or cognitive difficulties during the assessment and that there was no substantial evidence of an accident-related diagnosis. However, I place greater weight on the CNRs of the applicant’s treating family doctor, Dr. Li. I am not persuaded by the respondent’s argument that little weight should be placed on Dr. Li’s PTSD and insomnia diagnoses or his prescriptions for medication, since they were based only on the applicant’s self-reporting of symptoms.

- [11] The applicant regularly attended at Dr. Li's office for treatment post-accident, and I accept his CNR entries as corroborating evidence of the applicant's post-accident psychological impairments. In the year and a half after the accident Dr. Li consistently noted the applicant's psychological symptoms, diagnosed the applicant with PTSD and insomnia, and prescribed psychotropic medication. Although the respondent points to the fact that Dr. Li did not make a psychiatric referral, I note that at many of these appointments Dr. Li noted that he had himself provided psychosocial support and stress management.
- [12] Accordingly, I find that the applicant has met his evidentiary onus to demonstrate that he sustained a psychological impairment as a result of the accident, and as this condition is not within the *Schedule's* definition of "minor injury," he is removed from the MIG.

### ***Treatment Plans***

- [13] Sections 14 and 15 of the *Schedule* set out that an insurer shall pay for all reasonable and necessary expenses incurred by or on behalf of an insured person as a result of an accident.
- [14] The applicant has the onus of proving on a balance of probabilities that the treatment plans are reasonable and necessary because of the accident. To meet this burden, the applicant should identify the goals of the plan, how the goals are being met to a reasonable degree and whether the time and cost expended to achieve these goals is proportional to the benefit of treatment.

### ***The OCF-18s for physiotherapy services are reasonable and necessary***

- [15] The applicant submitted two OCF-18s dated August 11, 2022 and September 16, 2022 for physiotherapy services, active therapy and massage treatment. Both treatment plans had the listed goals of pain reduction, increase in strength, increased range of motion, return to activities of normal living and return to modified work. The August 11, 2022 OCF-18 was partially approved up to MIG limits, and the respondent denied the September 16, 2022 OCF-18 in full.
- [16] The applicant submits that he has reported neck pain, shoulder and back pain for two years post-accident. He relies on the hospital records, Dr. Li's CNRs, the various assessments and the OCF forms, to argue that the proposed treatment is reasonable and necessary to improve his functional limitations and reduce his pain.

- [17] The respondent argues that further physiotherapy treatment is not reasonable and necessary. It submits that the applicant reported to its s. 44 psychiatry assessor, Dr. Zabieliauskas that he has resumed his work and activities, and he demonstrated full range of motion without exhibiting pain complaints. Dr. Zabieliauskas found that the applicant had sustained soft tissue strains and sprains as a result of the accident, which had since healed and that there were no residual accident-related impairments.
- [18] I find that the applicant has met his onus to prove that the proposed physiotherapy treatment is reasonable and necessary. The applicant was still consistently reporting accident-related pain at the time the OCF-18s were submitted. The CNRs of Dr. Li reveal that in August, September and November 2022, he was reporting neck pain and was prescribed Naproxen for pain. Dr. Li diagnosed the applicant with neck sprain during this time, and recommended on August 12, 2022, September 20, 2022 and November 18, 2022 (contemporaneously with the OCF-18 submission) that the applicant continue with physiotherapy. Although I note the respondent's assessor's findings that the applicant did not have any accident-related impairments, I place greater weight on the family physician's CNRs and his recommendation for continued physiotherapy treatment.

*The OCF-18 for a psychological assessment dated November 22, 2022*

- [19] I find that the applicant has met his onus to prove, on a balance of probabilities, that the proposed psychological assessment is reasonable and necessary.
- [20] In determining whether an assessment is reasonable and necessary, it must also be noted that assessments, by their nature, are speculative. The purpose of an assessment is to determine if a condition exists. Notwithstanding their speculative nature, the applicant bears the onus to demonstrate that there are grounds on which to believe that a condition exists that would warrant further investigation by way of an assessment.
- [21] As noted above, the CNRs of the applicant's family physician, Dr. Li, establish that throughout 2022 the applicant reported accident-related psychological symptoms, was diagnosed with PTSD and was prescribed psychotropic medication. I find that the medical evidence led by the applicant establishes that further investigation into the applicant's accident-related psychological impairments is reasonable and necessary.

OCF-6s for prescription medication are reasonable and necessary

- [22] The applicant submitted two OCF-6 claim forms dated October 17, 2022 and November 23, 2022 for medication expenses. Both OCF-6s proposed reimbursement for Duloxetine (to treat depression and anxiety), Zopiclone (to treat insomnia) and Naproxen (a pain medication). All of the medications had been prescribed by the applicant's family physician Dr. Li.
- [23] I find that the applicant has met his onus to prove that the expenses for prescription medication are reasonable and necessary. All of the medications are consistent with the applicant's accident-related impairments and were prescribed by his treating physician. The applicant has established entitlement to the reimbursement of medication expenses.

***Income Replacement Benefits ("IRBs")***

- [24] I find that the applicant has not established entitlement to IRBs from October 13, 2022 to date and ongoing.
- [25] To receive payment for an IRB under s. 5(1) of the *Schedule*, the applicant must be employed at the time of the accident and, as a result of and within 104 weeks after the accident, suffer a substantial inability to perform the essential tasks of that employment. The applicant must identify the essential tasks of their employment, which tasks they are substantially unable to perform and to what extent they are unable to perform them. The applicant bears the burden of proving, on a balance of probabilities, that they meet the test.
- [26] The applicant submits that his pre-accident employment was as a full-time massage therapist and that the essential tasks involved performing muscle tests, administering massage techniques, maintaining records and moving equipment. He argues that due to his accident-related pain, he was forced to stop working, as he was unable to perform any heavy labour. The applicant relies on the OCF-3 prepared by his chiropractor Dr. Richard Tavares, which indicated that the applicant was unable to perform the essential tasks of his employment.
- [27] The respondent submits that the applicant has not established entitlement to IRBs. It relies on its s. 44 physiatry assessment where the applicant reported returning to work, and that he drove to his office. Dr. Zabieliauskas found that the applicant had full range of motion without pain complaints, and concluded that the applicant had returned to work and could continue to do so without any physical restrictions or functional limitations. The respondent further relies on its

s. 44 psychiatry assessment, where Dr. Hines found no evidence of a psychiatric impairment.

- [28] The respondent further argues that although the applicant claims that prior to the accident he had worked full-time as a massage therapist, he had reported to prior assessors that he had only worked part-time. The respondent also cites multiple instances after the accident where the applicant reported to assessors and Dr. Li that he had returned to work. Finally, the respondent argues that the applicant is non-compliant with s. 33(1) of the *Schedule* and therefore, pursuant to s. 33(6) it was not liable to pay IRBs to the applicant.
- [29] I find that the applicant has not met his onus to prove, on a balance of probabilities, that he is entitled to IRBs.
- [30] With respect to the respondent's argument that the applicant was non-compliant with s. 33(1) requests, the respondent has submitted letters dated June 30, 2022, July 18, 2022, July 29, 2022 and August 18, 2022 where the respondent requested employment, medical and financial records. The respondent's accountant Insignia Forensic Group further requested documentation relating to the applicant's self-employment income by way of letters dated July 5, 2022, July 27, 2022 and August 19, 2022. When these documents were not received, the respondent sent letters to the applicant holding him in s. 33 non-compliance.
- [31] Despite having the right of reply, the applicant did not provide reply submissions to address the issue of his s. 33(1) non-compliance. The correspondence submitted by the respondent establishes multiple s. 33 requests for employment and financial information and subsequent letters to the applicant confirm that these requested documents had not been provided. The information requested would be reasonably required to assess the quantum of IRBs. Without any submissions or evidence from the applicant as to whether these requests had been fulfilled, I find that the respondent has established that the applicant is non-compliant with s. 33(1) of the *Schedule* and therefore, pursuant to s. 33(6) it was not liable to pay IRBs to the applicant during the period in dispute.
- [32] Further, with respect to his substantive entitlement to IRBs, the CNRs of Dr. Li reveal that the applicant reported multiple times post-accident that he had returned to work as a massage therapist. The applicant also reported to Dr. Zabieliauskas that he had returned to work and to Dr. Hines that the amount of time that he worked depended on his energy level. The respondent has also led evidence that the applicant had reported to prior assessors that he had not been working full-time prior to the accident. The applicant did not provide reply submissions to address the issue of his return to work, or the frequency of his

employment pre-accident. Without any submissions or evidence on this issue from the applicant, I am unable to compare the details of the applicant's pre and post-accident employment.

[33] Finally, the applicant has provided limited medical evidence in support of his claim that he was substantially unable to perform the essential tasks of his employment. Both of the respondent's assessors found that the applicant was able to (and did) return to work. Dr. Zabieliauskas noted that the applicant had no physical restrictions or functional limitations that would prevent him from working. Although the applicant refers to Dr. Li's CNRs in support of his claim, the CNR entries reference the fact that the applicant had been working as a massage therapist post-accident. I further agree with the respondent that an OCF-3 alone does not establish an entitlement to IRBs.

[34] As such, I find that the applicant has not met his evidentiary onus to prove entitlement to IRBs from October 13, 2022 to date and ongoing.

### ***Interest***

[35] Interest applies on the payment of any overdue benefits pursuant to s. 51 of the *Schedule*. The applicant is entitled to interest in accordance with s. 51 for the treatment plans and OCF-6s in dispute.

### ***Award***

[36] The applicant sought an award under s. 10 of Reg. 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.

[37] I find that the applicant has not established that an award is warranted. Although I have found that the applicant is removed from the MIG and he is entitled to some disputed benefits, it is well-settled that insurers are not held to a standard of perfection, and a s. 10 award is not punishment for arriving at an incorrect conclusion. The applicant makes the general submission that the respondent ignored his medical records, that IRBs had never been paid and that such conduct should be deterred. However, he does not provide any specific details or lead me to evidence that the respondent's conduct was excessive, imprudent, stubborn, unyielding or immoderate to justify an award.

## ORDER

[38] For the reasons above, I find that:

- i. The applicant has established that his accident-related impairments warrant removal from the MIG;
- ii. The applicant is entitled to the treatment plans in dispute and the expenses claimed in the OCF-6s;
- iii. The applicant is not entitled to an IRB;
- iv. The applicant is entitled to interest in accordance with s. 51 of the *Schedule*; and
- v. The respondent is not liable to pay an award.

**Released: November 10, 2025**



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**Ulana Pahuta  
Adjudicator**