

**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**

Citation: **O.T. vs. Allstate Canada, 2019 ONLAT 18-006520/AABS**

**Date: July 18, 2019
File Number: 18-006520/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:

O.T.

Appellant

and

Allstate Insurance Company of Canada

Respondent

DECISION

PANEL: Derek Grant, Adjudicator

APPEARANCES:

For the Applicant: Alexei Antonov, Counsel

For the Respondent: Ryan Kirshenblatt, Counsel

HEARD: In Writing on: March 11, 2019

OVERVIEW

- [1] The applicant (“O.T.”) was injured in an automobile accident (“the accident”) on September 15, 2016 and sought insurance benefits pursuant to the *Statutory Accident Benefits Schedule – Effective September 1, 2010*¹ (the “Schedule”). When his claims for benefits were denied by the respondent (“Allstate”), O.T. applied to the Licence Appeal Tribunal – Automobile Accident Benefits Service (the “Tribunal”).
- [2] Allstate denied O.T.’s claims because it determined that all of his injuries fit the definition of “minor injury” prescribed by section 3(1) of the *Schedule*, and therefore, fall within the Minor Injury Guideline² (“the MIG”). O.T.’s position is the opposite.
- [3] If O.T.’s position is correct, then I must address if the medical treatment plans claimed are reasonable and necessary.
- [4] If Allstate’s position is correct, then O.T. is subject to a \$3,500.00 limit on medical and rehabilitation benefits prescribed by section 18(1) of the *Schedule*, and in turn, a determination of whether claimed benefits are reasonable and necessary will be unnecessary.

ISSUES

- [5] Did O.T. sustain predominantly minor injuries as defined by the *Schedule*? Is his entitlement to medical benefits limited by the MIG?
- [6] If O.T.’s injuries are not within the MIG, then I must determine the following issues:
 - a. Is the medical benefit in the amount of \$3,327.60 for physiotherapy services recommended by Prime Health Care Inc., and submitted in a treatment plan dated January 16, 2017 and denied on January 30, 2017, reasonable and necessary?
 - b. Is the cost of examination expense in the amount of \$1,230.92 for an attendant care assessment, recommended by Prime Health Care Inc., and submitted in a treatment plan dated February 15, 2017, and denied on February 27, 2017, reasonable and necessary?
 - c. Is the cost of examination expense in the amount of \$2,000.00 for a psychological assessment, recommended by Prime Health Care Inc. and submitted in a treatment plan dated March 20, 2017, and denied on April

¹ O. Reg. 34/10.

² Minor Injury Guideline, Superintendent’s Guideline 01/14, issued pursuant to s. 268.3 (1.1) of the *Insurance Act*.

3, 2017, reasonable and necessary?

- d. Is O.T. entitled to interest on any outstanding payment of benefits?
- e. Is O.T. entitled to an award under *Ontario Regulation 664* because Allstate unreasonably withheld or delayed the payment of benefits?

RESULT

- [7] Based on the evidence before me, I find that O.T.'s injuries are subject to treatment within the MIG. Therefore, I do not need to consider if the treatment plans are reasonable and necessary.

ANALYSIS

The Minor Injury Guideline

- [8] The *Guideline* establishes a framework for the treatment of minor injuries. The term "minor injury" is defined in subsection 3(1) of the *Schedule* 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." Subsection 18(1) of the *Schedule* limits recovery for medical and rehabilitation benefits for such injuries at a cap of \$3,500.00, if the insured person sustains an impairment that is predominantly a minor injury in accordance with the *Guideline*.
- [9] Section 18 further provides that the \$3,500.00 limit does not apply to an insured person "if her health practitioner determines and provides compelling evidence that the insured person has a pre-existing medical condition that was documented by a health practitioner before the accident and that will prevent the insured person from achieving maximal medical recovery from the minor injury if the insured person is subject to the \$3,500.00 limit."
- [10] The onus is on O.T. to prove on a balance of probabilities that his entitlement to medical benefits is not subject to the *Guideline*, and its prescribed \$3,500.00 limit for minor injuries.

Accident-related injuries – Physical

- [11] O.T. has not provided me with evidence to establish that his physical injuries are anything but minor. To the contrary, I find that the evidence supplied is consistent with a minor injury. The medical reports, clinical notes and records, and the injuries indicated in the treatment plans are consistent with the definition of 'minor injuries'.

Treating Practitioners

- [12] The evidence submitted by O.T. from Dr. Vyvyen Le, Chiropractor, who completed a disability certificate on behalf of O.T. and Family Physician, Dr. Vohra, who treated O.T. immediately following the accident, establish on balance that O.T. sustained soft tissue injuries as a result of the accident.
- [13] For instance, in her Disability Certificate dated January 1, 2017, Dr. Le diagnosis O.T. with “cervical spine strain/sprain, thoracic spine strain/sprain, arm and shoulder unspecified injury (right side), post-traumatic headache, behaviour – other anxiety disorder, behaviour – other sleep disorder, eye and vision problems (right), and face contusions (right). I place little weight on any psychological diagnosis provided by Dr. Le, because as a Chiropractor, psychological diagnoses are beyond her area of expertise.
- [14] At the first post-accident visit to Dr. Vohra, on December 27, 2016, there is no note of any headache or right arm/shoulder complaints made by O.T. Further, Dr. Vohra notes O.T. having “no visual trouble”. In addition, the emergency records of the Trillium Health Partners Hospital ruled out any head injury. The hospital records also indicate O.T.’s “blurry vision, has since resolved”. It should be noted that O.T. was referred to Optometrist Dr. Lui, who concluded that O.T. only had a mild scar which was healing well.
- [15] Based on the above, O.T. has failed to persuade me that his physical injuries fall outside of the MIG.

Accident-related injuries - psychological

- [16] I find that O.T. did not suffer from any accident-related psychological injuries that do not fall within the MIG.

Dr. Shaul Pre-Screen Report

- [17] O.T. submitted a Psychological Pre-Screen Interview Report, completed by Dr. Shaul, Supervising Psychologist and Ms. Iliois, Therapist, in relation to a treatment plan submitted on March 20, 2017. I place very little weight on this report as it does not provide me with evidence to show that O.T.’s reported psychological impairment(s) are anything other than symptoms or sequelae arising from the soft tissue injuries sustained in the accident. The report is based entirely on a series of questions asked of O.T. during the screening process. In essence it is a self-report of O.T.’s symptoms and difficulties.
- [18] No psychometric tests were administered by Dr. Shaul or by Ms. Iliois. during the pre-screen assessment. The report recommends an assessment but contains no diagnosis based on an objective conclusion.
- [19] Without the presence of an objective medical opinion providing a basis to indicate the existence of a psychological impairment that is not sequelae of minor injuries, I am unable to conclude that O.T. suffers from a psychological impairment that is not subject to the MIG.

- [20] O.T. has not provided medical evidence to demonstrate that he is unable to recover under the MIG as a result of his psychological symptoms. Therefore, he has not met the onus of establishing his entitlement beyond the MIG limits.
- [21] O.T. is limited to the \$3,500.00 limit in benefits available under the MIG, which has been exhausted, and I therefore do not need to address the question of whether the treatment plans are reasonable and necessary.
- [22] For the reasons stated above, I find that O.T. is not entitled to the treatment plans.

CONCLUSION

- [23] O.T. sustained predominantly minor physical injuries that fall within the MIG. Accordingly, O.T. is not entitled to payment for the treatment plans claimed in this application.
- [24] As I have found that O.T. is not entitled to any of the treatment plans, Allstate cannot have been found to have unreasonably withheld payment, therefore O.T. is not entitled to an award.
- [25] O.T.'s application is dismissed.

Released: July 18, 2019

Derek Grant, Adjudicator