



Citation: Sayeed Mohammed v. Allstate Insurance, 2023 ONLAT 21-009833/AABS

Licence Appeal Tribunal File Number: 21-009833/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:

Abdul Sayeed Mohammed

Applicant

and

Allstate Insurance

Respondent

DECISION

ADJUDICATOR: Tanjoyt Deol

APPEARANCES:

For the Applicant: Agal Lankeswaran, Paralegal

For the Respondent: Athina Ionita, Counsel

HEARD: By Way of Written Submissions

OVERVIEW

[1] Abdul Sayeed Mohammed (the “applicant”) was involved in an automobile accident on December 18, 2020, 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 Allstate Insurance (the “respondent”) 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:
1. Are the applicant’s injuries predominantly minor as defined in section 3 of the *Schedule* and therefore subject to treatment within the \$3,500.00 limit and in the Minor Injury Guideline? (“MIG”)
 2. Is the applicant entitled to \$1,995.33 for the cost of a psychological assessment, proposed by Midland Wellness Clinic in a treatment plan/OCF-18 (“OCF-18”) dated July 21, 2021?¹
 3. Is the applicant entitled to \$3,237.48 for physiotherapy services, proposed by Midland Wellness Clinic in a OCF 18 dated August 11, 2021?
 4. Is the applicant entitled to \$1,300.00 for physiotherapy services (less approved and paid), proposed by Midland Wellness Clinic in a OCF 18 dated April 9, 2021?
 5. Is the applicant entitled to interest on any overdue payment of benefits?

Preliminary Issue 1- Missing OCF-18s and records of Dr. Narayansingh

- [3] The applicant failed to submit the OCF-18s that are in dispute and the clinical notes and records of Dr. Narayansingh, neurologist, that he referenced in his initial submissions.
- [4] In *J.R. v. Certas Home and Insurance Company*, 2018 CanLII 13161, on reconsideration it was determined that the Tribunal is obligated to ask parties to submit information that it believes a party meant to rely upon as evidence that

¹ The parties submitted that this OCF-18 was for psychological services, however upon my review of the OCF-18, the dispute is over the cost of a psychological assessment. As such, I find that this OCF-18 is for the cost of a psychological assessment, and not for psychological services.

formed the basis of the parties' dispute but was never filed. As such, the Tribunal reached out to both parties and requested that the complete OCF-18s and the records of Dr. Narayansingh be provided by October 17, 2023. On October 16, 2023, the respondent provided copies of all the OCF-18s that are in dispute. On October 17, 2023, the applicant provided a copy of the records of Dr. Narayansingh.

RESULT

- [5] I find that the applicant is removed from the MIG as he sustained a concussion from this accident.
- [6] I find that the applicant is not entitled to any of the OCF-18s in dispute or interest, as he has failed to demonstrate that they are reasonable and necessary.

ANALYSIS

The Minor Injury Guideline

- [7] Section 18(1) of the *Schedule* provides that medical and rehabilitation benefits are limited to \$3,500.00 if the insured 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."
- [8] An insured may be removed from the MIG if they can establish that their accident-related injuries fall outside of the MIG or, pursuant to section 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 impairment may warrant removal from the MIG. In all cases, the burden of proof lies with the applicant.
- [9] The applicant submits that he should be removed from the MIG as a result of his pre-existing injuries, his physical injuries, post MVA-concussion, chronic pain, and psychological injuries.
- [10] The respondent submits that the MIG applies to the applicant's injuries. The respondent submits that the applicant has not met his onus to demonstrate that he should be removed from the MIG on the basis of any pre-existing conditions, chronic pain, or psychological impairments.

[11] I find that the applicant has proven on a balance of probabilities that he was diagnosed with a concussion by his family physician, Dr. Papneja, and as such, the applicant is removed from the MIG. As I have decided that the applicant is removed from the MIG on the basis of a concussion, I do not need to consider whether the other grounds will remove him from the MIG.

The applicant is removed from the MIG as he was diagnosed with a concussion from this accident

- [12] I find that the applicant has met his burden to prove that he sustained a concussion as a result of the accident.
- [13] Concussions and post-concussive syndrome, if established, fall outside the MIG because the MIG relates only to “minor injuries”, as defined in section 3(1) of the *Schedule* and neither condition is in the definition. However, in order to be removed from the MIG, the applicant must present evidence that demonstrates that as a result of the accident, he suffered a concussion or post-concussive syndrome.
- [14] The applicant submits that he sustained a concussion following the accident, which should be sufficient to remove him from the MIG. To this end, the applicant relies on the clinical notes and records of his family physician, Dr. Papneja, who diagnosed him with “Post-MVA Concussion”.
- [15] On December 22, 2020, the applicant met with Ms. Siou, a postgraduate student, and Dr. Papneja. The applicant advised Ms. Siou and Dr. Papneja that following the accident, he had the following cognitive symptoms: difficulty tolerating bright lights, loud noises, felt very tired, and that his head felt heavy. Ms. Siou and Dr. Papneja opined that the applicant has increased sensitivity to light and diagnosed him with a “Post-MVA Concussion”.
- [16] The respondent also did not refer me to evidence that rebuts the diagnosis of a concussion made by the applicant’s family physician, nor did the respondent make any submissions that undermine this diagnosis. Accordingly, I find that the applicant has met his evidentiary onus to demonstrate that he sustained a concussion 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 in Dispute

- [17] Since the applicant is removed from the MIG, he can apply for medical and rehabilitation benefits above the MIG limits.
- [18] To receive payment for a treatment and assessment plan pursuant to sections 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.
- [19] The applicant submits that the extensive medical records that have been provided prove that the treatment plans are reasonable and necessary. However, his submissions were completely silent on whether the goals of the OCF-18s are reasonable, that they will be met to a reasonable degree and that the overall costs of achieving the goals are reasonable.
- [20] The respondent submits that the disputed OCF-18s are not reasonable and necessary, as the medical records indicate that physiotherapy has not been helpful for the applicant, and he does not require psychological intervention. To this end, the respondent relies on the section 44 assessment report of Dr. Dumitrescu, psychologist.

The applicant has failed to demonstrate that the OCF-18 in the amount of \$1,995.33 for the cost of a psychological assessment is reasonable and necessary

- [21] I find that the applicant has failed to meet his evidentiary onus to prove that the cost of a psychological assessment is reasonable and necessary.
- [22] The applicant submits that he has psychological impairments following this accident. In support of this position, the applicant relies on the clinical notes and records of Dr. Papneja and Midland Wellness Centre.
- [23] The respondent relies on the section 44 report of Dr. Dumitrescu to support its position that this OCF-18 is not reasonable and necessary.
- [24] 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 still bears the onus of establishing on a balance of probabilities that an assessment is reasonable and necessary by pointing to

persuasive objective evidence that there are grounds to suspect that he has the condition for which he seeks the assessment. On the evidence, I find that the applicant has failed to satisfy that onus, and therefore is not entitled to the proposed psychological assessment, as he has not proven that it is reasonable and necessary.

- [25] Dr. Papneja, did not diagnose the applicant with a psychological impairment as a result of the accident. The applicant only advised Dr. Papneja once, on December 22, 2020, that he was afraid while driving long distances for work; however, he was not diagnosed with a psychological condition, referred to a specialist or prescribed any medication for this. Moreover, Dr. Papneja did not recommend a psychological assessment.
- [26] I place little weight on the record of Midland Wellness Clinic, dated April 9, 2019, that the applicant has ongoing psychological symptoms from this accident, as this is not supported by the other evidence, such as the records of his family physicians. Beyond December 2020, the applicant has not sought or advised Dr. Papneja or Dr. Kraft that he has ongoing psychological symptoms from this accident.
- [27] As a result, I find that the applicant has failed to establish that there were grounds to suspect that he had the condition for which he sought the assessment, and therefore, is not entitled to the proposed psychological assessment, as the applicant has not proven that it was reasonable and necessary.

The applicant has failed to demonstrate that the OCF-18s in the amount of \$3,237.48, and \$1,300.00, for physiotherapy services are reasonable and necessary

- [28] I find that the applicant has failed to demonstrate that the OCF-18s proposing physiotherapy services are reasonable and necessary.
- [29] The applicant submits that he has ongoing pain symptomology. The applicant further submits that he has had ongoing patellofemoral syndrome in his bilateral knees since 2015, and as such, the proposed OCF-18s are reasonable and necessary.
- [30] The respondent submits that the medical records show that physiotherapy has not been helpful for the applicant and as such further physiotherapy intervention is not warranted.

- [31] While I accept that pain relief is a legitimate goal of therapy, the applicant has not provided sufficient evidence that this treatment goal is being met to a reasonable degree with continued physiotherapy for his knee pain. The bulk of the applicant's self-reporting indicates that he reported no improvement in his pain complaints despite the physiotherapy treatment he had received to date. For example, on June 4, 2021, and January 25, 2022, the applicant advised Dr. Papneja that he has received no pain relief in his knees with physiotherapy treatment and that he stopped physiotherapy treatment in January 2022, because it made his knee pain worse. On June 4, 2021, Dr. Papneja also opined that the applicant was not responding well to physiotherapy treatment for his knees.
- [32] In addition, the applicant has also advised, Dr. Kraft, family physician, from the Cleveland Clinic on June 16, 2021, that he has not seen improvement with physiotherapy treatment that he received to date.
- [33] The applicant's submissions also support that he does not find pain relief for his knees with the proposed treatment. The applicant stated throughout his submissions that despite Dr. Kraft and Dr. Papneja recommending physiotherapy treatment, he has found no pain relief with this.
- [34] With respect to his other pain symptomology, the applicant advised section 44 assessor, Dr. Soric, physiatrist, that he received minimal improvement with physiotherapy treatment. On August 12, 2021, the applicant advised Dr. Soric that his left shoulder had only improved by 20% to 30% and that his lower back pain and upper back had not improved. Moreover, the applicant advised that he experienced relief with self-directed stretches.
- [35] The onus rests with the applicant to prove that the goals of treatment will be met to a reasonable degree. In my view, the applicant has self-reported on numerous occasions that physiotherapy treatment has not provided pain relief, and as such, I find that the proposed OCF-18s are not reasonable and necessary.

The applicant is not entitled to Interest

- [36] Interest is only payable on overdue payment of benefits pursuant to section 51 of the *Schedule*. Having found that the applicant is not entitled to the disputed OCF-18s, no payments are overdue, and thus no interest is payable.

ORDER

- [37] For the reasons set above, I find that:

- (a) The applicant is removed from the MIG, as he sustained a concussion from the subject accident; and
- (b) The applicant is not entitled to the proposed OCF-18s in dispute, as he failed to demonstrate that they are reasonable and necessary. As no benefits are due, no interest is payable.

Released: November 9, 2023

Tanjoyt Deol
Adjudicator