



Citation: Siow v. Allstate Insurance Company of Canada, 2021 ONLAT 20-004763/AABS

**Released Date: 04/22/2021
File Number: 20-004763/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:

Ryan Chi-Wing Siow

Applicant

and

Allstate Insurance Company of Canada

Respondent

DECISION

ADJUDICATOR: Theresa McGee, Vice-Chair

APPEARANCES:

For the Applicant: Mary Tran, Paralegal

For the Respondent: Jaime Naumis, Counsel

HEARD: By way of written submissions

REASONS FOR DECISION

OVERVIEW

- [1] The applicant, Ryan Chi-Wing Siow, was involved in an automobile accident on March 12, 2018, and sought benefits from the respondent, Allstate Insurance Company of Canada, pursuant to the *Statutory Accident Benefits Schedule - Effective September 1, 2010*¹ (the “*Schedule*”).
- [2] The respondent determined that the applicant’s injuries fell within the Minor Injury Guideline and denied him medical benefits outside the \$3,500.00 funding limit available under s. 18(1) of the *Schedule*. The applicant then applied to the Licence Appeal Tribunal (“Tribunal”) for resolution of the dispute.

ISSUES

- [3] The issues to be decided are:
- a. 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 limit and in the Minor Injury Guideline?
 - b. Is the applicant entitled to \$3,090.09 for chiropractic treatment, recommended by Life Point Medical Inc. in a treatment plan (OCF-18) dated June 25, 2018?
 - c. Is the applicant entitled to \$4,164.59 for psychological treatment, recommended by Life Point Medical Inc. in a treatment plan dated October 3, 2018?
 - d. Is the applicant entitled to \$3,020.36 for chiropractic treatment, recommended by Life Point Medical Inc. in a treatment plan dated December 17, 2018?
 - e. Is the applicant entitled to the assessments recommended by Life Point Medical Inc. as follows:
 - i. \$1,845.72 for a psychological assessment, in a treatment plan (plan) dated May 24, 2018; and

¹ O. Reg. 34/10.

ii. \$1,699.51 for a functional abilities' evaluation, in a plan dated November 27, 2018?

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

RESULT

[4] The applicant has failed to discharge his onus of proving entitlement to benefits outside the Minor Injury Guideline. It is therefore unnecessary to determine whether the specific benefits in dispute are reasonable and necessary as a result of the accident. Since no benefits are owing, no interest is payable. The application is dismissed.

ANALYSIS

[5] The applicant bears the onus of establishing, on a balance of probabilities, that he is entitled to the medical benefits he seeks. To do so, he must show that his accident-related injuries are more than predominantly minor injuries. Section 3 of the *Schedule* 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."

[6] Under s. 18(1) of the *Schedule* and in accordance with the Minor Injury Guideline, the funding available for the treatment of minor injuries is \$3,500.00. In the applicant's case, this funding has been exhausted. If the applicant cannot demonstrate he sustained injuries that were not predominantly minor, the analysis will end. It will not be necessary to examine whether the specific benefits that are in dispute meet the test for reasonableness and necessity under s. 15(1) of the *Schedule*.

[7] The applicant submits that he should not be subject to the Minor Injury Guideline because he sustained a psychological impairment in the accident, and psychological injuries and impairments exceed the definition of a minor injury. He also refers in his submissions to a referral he received to a chronic pain specialist. Although chronic pain is not a focus of his submissions, I will briefly speak to the evidence of chronic pain.

[8] The applicant has tendered little in the way of medical evidence in support of his application. He has provided the clinical notes and records of Dr. Jackson Poon and Dr. Drue Mandel, both family physicians. Between the two physicians, notes exist from only a handful of visits ranging from July 27, 2018 to August 31, 2020.

- [9] At the applicant's July 27, 2018 visit to Dr. Poon, his first after the accident, there is no mention of the accident or of any related injuries or complaints. There are no further records from Dr. Poon in 2018. On January 19, 2019, the accident features in Dr. Poon's clinical notes, accompanied by the remark "insurance company wants [patient] to be checked today." Dr. Poon diagnosed the applicant with "post-MVA soft tissue injuries/strains". He recommended physiotherapy and noted that he would refer the applicant to a pain clinic.
- [10] Dr. Poon's diagnosis is consistent with the *Schedule's* minor injury definition. There is no evidence that the applicant was ever assessed at a pain clinic. There is no diagnosis of a chronic pain disorder from a qualified health practitioner in the record before me.
- [11] The applicant did see a chiropractor, Dr. Tam Pham, on March 21, 2018, approximately two weeks post-accident. Dr. Pham prepared a Disability Certificate (OCF-3) on the applicant's behalf listing injuries that all fall within the minor injury definition.
- [12] The applicant directs me to consider the Psychological Rehabilitation Screening Report and Psychological Assessment Report of Dr. Svetlana Gabidulina, Psychologist. The screening report accompanied the treatment and assessment plan (OCF-18) dated May 23, 2018, proposing the psychological assessment.
- [13] Aside from the opinion of Dr. Gabidulina, the practitioner who conducted the psychological assessment, there is no evidence from any health practitioner to substantiate the applicant's submission that he suffered a psychological impairment as a result of the accident. It is trite law that a treatment and assessment plan (OCF-18) is not in itself evidence capable of establishing the reasonableness and necessity of the proposed services.
- [14] Dr. Gabidulina's reports lack evidentiary weight. They are not based on a review of the applicant's medical records. Instead, they rely solely on the applicant's self-reports as to his clinical history and the causation of his symptoms. It is unclear what basis, other than the applicant's own reported history, Dr. Gabidulina has for her finding of "psychological difficulties triggered by the accident." The psychometric tests Dr. Gabidulina administered are of limited weight because they lack the context of the applicant's prior accident-related treatment documented in objective medical records.
- [15] The authorship of the screening report is questionable. Although the report is solely attributed to Dr. Gabidulina, the report uses the language "we are writing this report" and "in our professional opinion". If Dr. Gabidulina had assistance in

interviewing the applicant or reaching conclusions about his psychological condition, the report does not disclose the identity and qualifications of that person.

- [16] Finally, I find that Dr. Gabidulina's report fails to document psychological symptoms that exceed the definition of a minor injury, which includes "any clinically associated sequelae to" a minor injury. The Minor Injury Guideline contemplates that an injured person may face psycho-social issues associated with minor, soft tissue injuries. In my view, the symptoms documented by Dr. Gabidulina, including difficulty with memory and focus, rumination, decreased energy, and irritability, do not cohere with her diagnostic conclusions.
- [17] In sum, the applicant has failed to discharge his evidentiary onus. I am not satisfied that he sustained anything more than minor, soft tissue injuries and the clinically associated sequelae of those injuries as a result of the accident. Because the \$3,500.00 available to him under the Minor Injury Guideline has been exhausted, I need not consider whether the disputed treatments and assessments are reasonable and necessary as a result of the accident.

CONCLUSION

- [18] The applicant has not demonstrated entitlement to the benefits claimed in this application. The Minor Injury Guideline applies. Since no benefits are owing, no interest is payable. The application is dismissed.

Released: April 22, 2021

**Theresa McGee
Vice-Chair**