



**Citation: Aditya v. The Co-operators General Insurance Company, 2025 ONLAT
22-010805/AABS**

Licence Appeal Tribunal File Number: 22-010805/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:

Aditya Aditya

Applicant

and

Co-operators General Insurance Company

Respondent

DECISION

ADJUDICATOR: Harouna Sidibé

APPEARANCES:

For the Applicant: Vismay H Merja, Counsel

For the Respondent: Daniel M Himelfarb, Counsel

HEARD: By Written Submissions

OVERVIEW

- [1] Aditya Aditya, the applicant, was involved in an automobile accident on February 19, 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, The 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:
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 Minor Injury Guideline (“MIG”) limit?
 2. Is the applicant entitled to \$4,231.50 for physiotherapy services, proposed by Alpha Thistle town Rehab Inc. in a treatment plan/OFC-18 (“plan”) submitted June 29, 2022, and denied July 14, 2022?
 3. Is the applicant entitled to \$3,962.44 for physiotherapy services, proposed by Alpha Thistle town Rehab Inc. in a plan submitted August 22, 2022, and denied September 2, 2022?
 4. Is the applicant entitled to \$3,662.44 for physiotherapy services, proposed by Alpha Thistle town Rehab Inc. in a plan submitted April 30, 2023, and denied May 3, 2023?
 5. Is the respondent liable to pay an award under section 10 of Regulation 664 because it unreasonably withheld or delayed payments to the applicant?
 6. Is the applicant entitled to interest on any overdue payment of benefits?

RESULT

- [3] For the reasons below, I find that:
1. The applicant’s injuries are not predominantly minor, and therefore, he is entitled to treatment beyond the monetary limit of the MIG.

2. The applicant is entitled to the disputed plans, with interest pursuant to s.51 of the *Schedule*.
3. The applicant is not entitled to an award.

ANALYSIS

Applicability of the 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 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 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 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.
- [6] The applicant must demonstrate that he qualifies for treatment beyond the \$3,500 limit for the MIG. He claims that he should be exempt due to chronic pain syndrome from the accident. In contrast, the respondent argues that the applicant has not shown his injuries surpass the MIG definition, noting he only sustained soft tissue injuries without fractures or visible injuries and has no pre-existing medical conditions or psychological issues.

The applicant sustained injuries that warrant removal from the MIG

- [7] I find that the applicant’s injuries are not predominantly minor and that he is entitled to treatment beyond the monetary limit of the MIG.
- [8] The applicant argued that chronic pain syndrome should exempt him from the MIG, citing multiple Tribunal cases. He discussed his functional impairments with his physiotherapist, Dr. Aanchal Nanchahal, and Dr. Osama Benmoftah, an Orthopaedic Surgeon who conducted the s. 25 assessment. The applicant has had back pain for over two years since the accident, regularly visiting his family doctor and attending physiotherapy.

- [9] The Respondent contends that the Tribunal has determined that chronic pain alone does not exempt an applicant from the MIG because chronic pain must be coupled with some degree of functional impairment or disability.
- [10] I agree with the applicant's claim because their chronic pain syndrome is characterized by being continuous and involving a level of functional impairment. Evidence supporting the claim of functional impairment includes Dr. Benmoftah's diagnosis, the applicant's ongoing physiotherapy sessions, and the limitations he faces in his daily activities, such as going to the gym (see: Clinical Notes and Records ["CNRs"] from Alpha Thistlethorn Physiotherapy and Rehab, July 29, 2022, and Dr. Benmoftah's report). Dr. Benmoftah also concluded that the applicant's chronic pain, stemming from the accident, significantly affects his quality of life. According to Dr. Benmoftah, without a chronic pain treatment program, the applicant's condition is likely to worsen, adversely affecting both his recovery and mental well-being.
- [11] To clarify the foundations on which I find the applicant to be outside the MIG, I will analyze successively the applicant's post-accident injuries, his chronic pain assessment, and the functional impairments he has sustained.

a) The applicant's post-accident injuries

- [12] The applicant visited Alpha Thistlethorn Rehab Inc. on February 26, 2022, where Dr. Aanchal Nanchahal noted accident-related injuries, including low back pain and strains of the sacroiliac joint and lumbar spine, along with symptoms of unhappiness and phobic anxiety disorder. The applicant returned for follow-up visits on April 27, 2022, November 9, 2022, and May 13, 2023. Dr. Youssef, the health practitioner at Alpha Physio & Rehab, found normal back motion but noted pain each time, so physiotherapy was recommended. The applicant attended physiotherapy sessions from February 26, 2022 to May 3, 2023.
- [13] The respondent indicated that the applicant did not sustain any fractures, dislocations, tears, or concussions from the accident. It pointed out that the applicant reported significant improvement, claiming a 60% recovery on May 16, 2022, and reaching a 30% to 40% improvement by August 15, 2022, allowing him to complete household chores independently. The respondent also noted that Dr. Aanchal, the health practitioner who completed the OCF-3 form on February 26, 2022, is a physiotherapist and not qualified to diagnose psychological impairments. The respondent stated that the applicant went to Scarborough Health Hospital's emergency department for back pain on February 7, 2022, 12 days before the accident. However, the hospital records have not

been submitted, violating the Case Conference Report and Order ("CCRO") from May 24, 2023.

- [14] I find that the applicant consistently reported persistent low back pain during visits to Alpha Thistle town Rehab Inc. He received recommendations for physiotherapy to address this pain. I do not agree with the respondent's arguments because chronic pain accompanied by functional impairment can justify removal from the MIG. Although the applicant demonstrated partial improvement in May and August 2022, these gains may be attributed to ongoing physiotherapy, highlighting his continued need for treatment. Additionally, the applicant has paid \$4,602.56 out of pocket for physiotherapy, which supports this assertion. While I agree that Dr. Aachal, as a physiotherapist, cannot diagnose psychological conditions, the applicant's request to be removed from the MIG is based on chronic pain rather than psychological impairments. Concerning the CNRs from the Scarborough Health Hospital's emergency department, I do not agree with the respondent's position. The applicant has included the records in his submissions (See: Tab 4 of the applicant's submissions). Although these documents may not have been submitted by the CCRO deadline, the applicant is not asserting a pre-existing condition to be exempt from the MIG, and the respondent is not contending, in its submissions, that the applicant's back pain existed before the accident.

b) Chronic Pain Assessment

- [15] On June 21, 2023, the applicant had a Section 25 examination with Dr. Benmof tah. The orthopedic report identified a chronic pain disorder, including chronic whiplash-associated disorder (WAD) type II, and sprains and strains in the cervical spine, left shoulder, thoracic spine, and left hip. It also noted lumbar spine issues that worsened existing lower back pain, along with symptoms of depression and anxiety, indicating the need for a neurologist's assessment.
- [16] The respondent claimed that Dr. Benmof tah did not review the applicant's complete medical records, starting only from November 2022. It argued that the conclusions were based solely on self-reported impairments, making them unreliable. Additionally, the respondent pointed out that Dr. Benmof tah made an unqualified psychological diagnosis using the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5), without conducting any psychological testing.
- [17] I do not agree with the respondent's argument because Dr. Benmof tah detailed the medical documents he reviewed, including hospital records from February 7-8, 2022, and clinical notes from Alpha Physiotherapy and Dr. Youssef covering

the relevant dates. I concur with the respondent that Dr. Benmofteh, an Orthopaedic Surgeon, lacks the qualifications to diagnose psychological impairments. However, he recommended a psychological assessment and suggested consulting a neurologist for headaches. He acknowledged that he could not provide such an assessment and encouraged the applicant to request a thorough evaluation. The report suggests that Dr. Benmofteh's opinion was based on the applicant's reported symptoms, general observations, and a physical examination that included a range of motion testing.

- [18] Dr. Benmofteh concluded that the applicant has chronic pain syndrome because he meets four out of the six criteria outlined in the American Medical Association (AMA) Guides. The threshold for diagnosing chronic pain syndrome is meeting at least three of the six criteria. While the AMA Guides criteria for chronic pain have proven to be a useful interpretative tool for the Tribunal, an insured person is not required to meet this standard to be considered as having sustained chronic pain.
- [19] The respondent contended that the applicant did not meet three of the six AMA criteria because: 1) no medication was prescribed post-accident (only Tylenol was used); 2) no signs of dependence on medication or healthcare; 3) no evidence of needing help from family or friends; and 4) no anxiety or psychosocial issues linked to the accident. Furthermore, the applicant showed no functional impairment in daily or work life.
- [20] In his report, Dr. Benmofteh provided a comprehensive analysis of the diagnostic criteria for chronic pain syndrome. He explained each criterion and noted that the applicant met the requirements for criteria 2 (Excessive dependence on healthcare providers, spouse or family), for criteria 3 (Secondary physical deconditioning due to disuse and/or fear avoidance of physical activity due to pain), for criteria 4 (Withdrawal from social milieu, including work, recreation, or other social contracts), and for criteria 5 (Failure to restore pre-injury function after a period of disability, such as that physical capacity is insufficient to pursue work, family, or recreational needs).
- [21] I do not agree with the respondent's arguments, as they lack any compelling medical evidence demonstrating that the applicant did not meet at least three of the six criteria. The applicant must demonstrate, on a balance of probabilities, that he has chronic pain with functional impairment that justifies treatment outside of the MIG. He has submitted a Section 25 examination that confirms he suffers from chronic pain syndrome. The respondent did not submit a Section 44 assessment to counter the Section 25 assessment provided by the applicant.

Therefore, I fully accept Dr. Benmoftah's report for several reasons: the assessment was conducted by a qualified professional (an Orthopedic Surgeon), the assessor thoroughly addressed all relevant issues, including chronic pain, and the assessor utilized recognized guidelines, such as the AMA Guides.

c) Functional impairments

- [22] Experiencing functional impairments, the applicant reported that he could no longer work as a shipper due to pain and subsequently found a less physically demanding role as an inventory control specialist. However, he continues to face physical challenges that hinder his ability to complete his coursework at Canadore College (See: Dr. Benmoftah's report).
- [23] The respondent submitted that the applicant started working part-time at TOC Logistics two months after his accident. He then transitioned to a full-time position and was promoted to Inventory Control Specialist by October 2022. Despite ongoing pain, the applicant excelled at work and successfully completed his Logistics and Supply Chain program at Canadore College in June 2022.
- [24] The applicant expressed that his difficulties were overlooked while he pursued this position, citing challenges with concentration and completing his studies. He mentioned that he devoted all his energy to his work. Dr. Benmoftah concurs, stating that the applicant experiences increased pain while working, struggles to concentrate, and has had to postpone his exams.

d) Conclusion

- [25] Accordingly, I find that the applicant has established that he should be treated beyond the monetary limit of the MIG because he suffers from accident-related chronic pain syndrome.

Treatment Plans

- [26] 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.
- [27] Alpha Thistle town Rehab Inc. proposed three OCF-18s for physiotherapy services, all of which were denied. The first request, dated June 17, 2022, was for \$4,231.50, seeking 18 sessions of MVA physiotherapy, 8 sessions of laser

therapy, 8 sessions of massage therapy, and 6 sessions of chiropractic care. The second request, dated August 15, 2022, was for \$3,962.44, asking for 24 sessions of MVA physiotherapy, 8 sessions of massage therapy, 12 sessions of laser therapy, and 1 Shiatsu back massage. The third request, dated April 22, 2023, was for \$3,662.44, proposing 24 sessions of rehabilitation and multiple body therapies. All the OCF-18s had similar goals of pain reduction and return to normal activities.

- [28] The applicant claimed that he has been experiencing back pain for over two years since the accident and has been regularly visiting his family doctor while consistently attending physiotherapy sessions.
- [29] The respondent contended that Dr. Benmofteh recommended participation in a chronic pain program along with other treatments but did not detail the plan or goals of such programs.
- [30] I find that the treatment plans are necessary and reasonable, as their primary objective is to help the applicant reduce his pain. Dr. Benmofteh stated, "The client will be assessed to develop a comprehensive multidisciplinary chronic pain treatment plan, along with a long-term maintenance program." Contrary to what was stated by the respondent, Dr. Benmofteh did indeed specify the goals of the proposed treatment program in the 'Recommendations' section of his report. These goals include: Helping patients develop coping mechanisms for chronic pain, Maximize the potential for a normal life through rehabilitation, Restoring functionality for deconditioned patients, Integrating pain management with overall rehabilitation, Reducing or eliminating reliance on painkillers, Minimizing pain-related behaviours, Teaching stress management techniques, Supporting a return to daily activities, Improving interpersonal relationships and Fostering self-management of chronic pain.
- [31] Moreover, the goals are consistent with what is outlined in the OFC-18s. The denied OFC-18s indicated that the treatment goals are pain reduction and increased range of motion. Also, the CNRs from Alpha Thistle town from June 3, 2022 to September 9, 2022, stated that the applicant experienced relief from previous physiotherapy sessions. Additionally, Dr. Benmofteh states that after completing the chronic pain program, the applicant will need ongoing treatment to manage his chronic pain syndrome. This includes monthly sessions of Psychological Counseling, Massage Therapy, Chiropractic Care, Physiotherapy, and support from a Social Worker, with an estimated cost of \$15,000 to \$20,000 over five years.

[32] Accordingly, I find that the applicant has established that he is entitled to the disputed treatment plans.

Interest

[33] Interest applies to overdue benefits under s. 51 of the *Schedule*. The applicant is entitled to interest for any overdue payments related to physiotherapy services.

Award

[34] Pursuant to s. 10 of Regulation 664, the respondent may be liable to pay an award if the Tribunal finds that it unreasonably withheld or delayed the payment of a benefit. When such a finding is made, the Tribunal may order up to 50% of the withheld or delayed payment along with interest at the rate of 2% per month, compounded monthly.

[35] The applicant requested an award under s. 10 of Regulation 664.

[36] I find that the applicant is not entitled to an award for the following reasons.

[37] The applicant bears the responsibility to prove, on a balance of probabilities, that the respondent unreasonably withheld or delayed the payment of benefits in order to be eligible for an award. However, the applicant did not address the claim for an award in his submissions.

[38] The respondent contends that the applicant should not be entitled to an award because he did not make any submissions regarding a special award. I concur with the respondent's position that the applicant failed to demonstrate that the respondent unreasonably withheld or delayed the payment of benefits.

[39] Consequently, the applicant did not, on a balance of probabilities, meet the onus of demonstrating that the respondent has unreasonably withheld or delayed the payment of benefits. Therefore, I conclude that the applicant is not entitled to an award.

ORDER

[40] For the reasons outlined above, I find that:

1. The applicant's injuries are not predominantly minor, and therefore, he is entitled to treatment beyond the monetary limit of the MIG.
2. The applicant is entitled to \$4,231.50 for physiotherapy services, proposed by Alpha Thistle town Rehab Inc. in a plan submitted June 29,

2022, and denied July 14, 2022, to \$3,962.44 for physiotherapy services, proposed by Alpha Thistle town Rehab Inc. in a plan submitted August 22, 2022, and denied September 2, 2022 and to \$3,662.44 for physiotherapy services, proposed by Alpha Thistle town Rehab Inc. in a plan submitted April 30, 2023, and denied May 3, 2023, with interest pursuant to s.51 of the *Schedule*.

3. The applicant is not entitled to an award.

Released: January 14, 2025



Harouna Sidibé
Adjudicator