**Citation: Ahmed v. Economical Mutual Insurance Company, 2023 ON LAT 20-015344/AABS**

**Licence Appeal Tribunal File Number: 20-015344/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:

**Safiq Ahmed**

**Applicant**

and

**Economical Mutual Insurance Company**

**Respondent**

**DECISION**

**VICE-CHAIR:** **Monica Ciriello**

**APPEARANCES:**

For the Applicant: Adam Moftah, Counsel

For the Respondent: Ainsley Shannon, Counsel

**HEARD: In Writing** **May 13, 2023**

## OVERVIEW

[1] Safiq Ahmed, the applicant, was involved in an automobile accident on September 26, 2017, 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, Economical Mutual Insurance Company, and applied to the Licence Appeal Tribunal - Automobile Accident Benefits Service (the "Tribunal") for resolution of the dispute.

## PRELIMINARY ISSUE

[2] The Case Conference Report and Order ("CCRO") dated September 21, 2021, set out a deadline for submissions and evidence for both the applicant and the respondent. The applicant's final productions were to be exchanged by February 28, 2022 and submissions to the Tribunal by March 28, 2022. The applicant failed to make submissions on March 28, 2022. The respondent complied with the CCRO and filed its submissions on April 11, 2022.

[3] On April 19, 2022 the applicant made a motion to the Tribunal to extend his submission deadline, the Tribunal granted the extension until May 27, 2022. On May 27, 2022 the applicant's submissions simply enclosed a list of records and did not include any written arguments. Furthermore, its submissions included two new documents that were never provided to the respondent by the February 28, 2022 deadline: clinical notes and records ("CNRs") of Alliance Diagnostic Technologies and CNRs of Art Rehabilitation Center.

[4] The respondent submits that the applicant should not be entitled to rely on the new documents given their late production. It is the respondent's position that if these documents are considered, it will compound the prejudice already faced by the respondent, as the respondent, in compliance with the Tribunal Rules, revealed its entire argument prior to the applicant making any submissions.

[5] I find that the two new documents failed to comply with the CCRO. The prejudice to the respondent outweighs their probative value and, as a result, I decline to admit them into evidence.

[6] I would be remiss if I did not caution the parties that anytime there is non-compliance with a previous Order, parties risk exclusion of the submissions or evidence or both.

## ISSUES

[7] The issues in dispute are:

i. Are the applicant's injuries predominately 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 ("MIG")?

ii. Is the applicant entitled to $1,475.36 for chiropractic services, proposed by Art Rehab in a treatment plan ("OCF-18") submitted on May 9, 2018?

iii. Is the applicant entitled to $1,998.80 for chiropractic services, proposed by Alliance Diagnostics and Treatments Inc, in OCF-18 submitted on September 28, 2018?

iv. Is the applicant entitled to $837.68 for chiropractic services, proposed by Art Rehab in OCF-18 submitted on June 22, 2018?

v. Is the applicant entitled to $2,200.00 for psychological services, proposed by Art Rehab in OCF-18 submitted on November 8, 2017?

vi. Is the applicant entitled to $2,486.00 for psychological services, proposed by Pilowsky Psychology Professional Corporation in OCF-18 submitted on July 12, 2018?

vii. Is the applicant entitled to $2,200.00 for psychological services, proposed by Art Rehab in OCF-18 submitted on November 8, 2017?

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

## RESULT

[8] I find that:

i. The applicant's injuries are predominately minor and therefore subject to the treatment within the $3,500.00 limit of the MIG.

ii. The applicant is not entitled to any of the treatment plans in dispute; and

iii. The applicant is not entitled to interest.

## ANALYSIS

## APPLICABILITY OF THE MINOR INJURY GUIDELINE ("MIG")

[9] The MIG establishes a framework available to injured persons who sustain a minor injury as a result of an accident. A "minor injury" is defined in s. 3(1) of the *Schedule* as, "one or more of a strain, sprain, whiplash associated disorder, contusion, abrasion, laceration or subluxation and includes any clinically associated sequelae to such an injury."

[10] Section 18(1) of the *Schedule* provides that medical and rehabilitation benefits are limited to $3,500.00 if the applicant sustains an impairment that is predominantly a minor injury in accordance with the MIG.

[11] An applicant may receive payment for treatment beyond the $3,500.00 limit if they can demonstrate that a pre-existing condition, documented by a medical practitioner, prevents maximal medical recovery under the MIG or, if they provide evidence of an injury that is not included in the minor injury definition in s.3(1). The Tribunal has also determined that chronic pain with functional impairment or a psychological condition may warrant removal from the MIG.

[12] It is the applicant's burden to establish entitlement to coverage beyond the $3,500.00 cap on a balance of probabilities.[1]

### *The applicant is not removed from the MIG*

[13] I find that the applicant has not met his onus to demonstrate that he should be removed from the MIG.

[14] I find that the applicant failed to make any argument or analysis guiding me through the evidence on which he relies. The entirety of the applicant's submissions is an enclosed list of records, with no written arguments. Furthermore, it is even unclear on what basis the applicant seeks to be removed from the MIG. This is enough to dismiss the application without reference to the respondent's evidence, though I still considered it as noted below. As a further aside, it is trite that the Tribunal does not have a duty to sift through evidence in order to make the case for the applicant; to do so risks the Tribunal inappropriately acting as an advocate for a party instead of a neutral arbiter in a dispute.

[1] *Scarlett v. Belair Insurance,* 2015 ONSC 3635, para. 24 (Div. Ct.).

[15] I am persuaded by the respondent's multi-disciplinary assessment of the applicant's condition which included a physiatry assessment, a psychological assessment, and a neurology assessment.

[16] The physiatry report, by Dr. Yuri Marchuk, physical medicine and rehabilitation physician, dated January 3, 2018, opined that the applicant suffered from whiplash associated disorder, cervicothoracic bilateral shoulder myofascial dysfunction, and lumbar musculoligamentous dysfunction, all of which fall under the definition of "minor" under the *Schedule*. Dr. Marchuk found no basis for MIG removal.

[17] The psychological report, by Dr. Marc Mandel, psychologist, dated January 3, 2018 noted that the applicant had not undergone any psychological assessments or treatment since the accident. Furthermore, the applicant was not taking any prescription pain medications. In terms of functionality, the applicant reported that he had returned to his regular duties of employment within weeks of the accident. Dr. Mandel opined that there was a lack of consistent, objective information present that would suggest that the applicant suffers clinically significant symptoms that would indicate a substantial psychological impairment or disability as a direct result of the subject motor vehicle accident at this time. Dr. Mandel found that from a psychological perspective, service beyond the MIG limits were not required, and Dr. Mandel further opined that there was no pre-existing condition that would affect the applicant's ability to recover within the MIG limits.

[18] The neurology report, by Dr. Jamsheed Desai, neurologist, dated January 3, 2018 found no neurological diagnoses attributable to the accident, nor any neurological impairments. Dr. Desai opined, that from a neurological perspective, the applicant does not require treatment outside the MIG.

[19] After reviewing the evidence, I agree with the respondent. I find that there is nothing persuasive in the record to contradict the findings of the three physicians.

[20] The applicant's injuries fall squarely within the definition of a minor injury, and therefore the applicant's injuries do not warrant a removal from the MIG.

[21] Therefore, the applicant is not entitled to any of the treatment plans in dispute.

***Interest***

[22] Given that there is no unreasonable delay in payments to the applicant or overdue payments of benefits, the applicant is not entitled to interest.

### *Costs*

[23] I find that throughout the proceeding the applicant's behaviour was not considerate of the Tribunal's process. The applicant did not file a case conference summary, did not meet the original deadline for submissions and did not contact respondent's counsel or the LAT regarding this failure. Further, the applicant brought a motion for extension of that deadline three weeks after the original deadline and eight days after becoming aware of his failure. When the applicant finally did make submissions, there were no written submissions to consider, and two new documents that were never produced to the respondent.

[24] I find that the applicant acted unreasonably and in bad faith.

[25] I order costs against the applicant in the amount of $1,000.00. I do so under my authority pursuant to section 17.1 of the *Statutory Powers and Procedures Act,* R.S.O. 1990, c. 22 and pursuant to Rule 19 of the Tribunal's Rules and Practice and Procedure.

## ORDER

[26] The application is dismissed, and I find that:

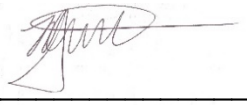
i. The applicant's injuries are predominately minor and therefore subject to the treatment within the $3,500.00 limit of the MIG;

ii. The applicant is not entitled to any of the treatment plans in dispute;

iii. The applicant is not entitled to interest; and

iv. The applicant must pay $1,000.00 in costs to the respondent.

**Released:** June 8, 2023



**Monica Ciriello**
Vice-Chair