Citation: Jewer v. Economical Mutual Insurance Company, 2023 ONLAT 21-014586/AABS

Licence Appeal Tribunal File Number: 21-014586/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:

Cameron Jewer

Applicant

and

Economical Mutual Insurance Company

Respondent

DECISION

ADJUDICATOR: **Taivi Lobu**

APPEARANCES:

For the Applicant:	Lucianna S. Saplywy, Counsel Sarah Farquharson, Student-at-Law
For the Respondent:	Stephen Whibbs, Counsel Ainsley Shannon, Counsel
Court Reporter:	Jason Nebelung

Heard by Videoconference: **March 27–31, 2023**

OVERVIEW

[1] Cameron Jewer, the applicant, was involved in an automobile accident on December 18, 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. The parties also disagree about whether the applicant's accident-related impairments meet the definition of catastrophic ("CAT") under the *Schedule* (Criterion 8). The applicant applied to the Licence Appeal Tribunal - Automobile Accident Benefits Service (the "Tribunal") for resolution of the dispute.

[2] At the time of the accident, the applicant was a 19-year-old competitive bodybuilder. He was a front-seat passenger in a car driven by his girlfriend when it was struck by another vehicle. In addition to psychological diagnoses, the applicant's injuries were reported as a traumatic brain injury (TBI - frontal lobe, concussion), partial left eye blindness, dislocated right shoulder, herniated disc and whiplash.

ISSUES

[3] The issues in dispute are as follows:

i. Is the applicant entitled to the cost of medication for Cialis in the amount of $438.66, submitted on claim forms (OCF-6) dated October 13, 2020, November 6, 2020 and February 11, 2021?

ii. Has the applicant sustained a catastrophic impairment under section 3.1(1)8 of the *Schedule*? (Criterion 8)

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

RESULT

[4] I find that:

i. The applicant is not entitled to the cost of medication.

ii. The applicant has not sustained a catastrophic impairment in accordance with the *Schedule*.

iii. As no benefits are overdue, no interest is payable.

ANALYSIS

The applicant is not entitled to the cost of medication

[5] I find that the appellant is not entitled to the cost of the medication claimed.

[6] Section 15(1) of the *Schedule* provides that an insurer is liable to pay for all reasonable and necessary expenses incurred by or on behalf of the insured person as a result of the accident, including medication. To be entitled to payment, the applicant bears the burden of demonstrating on a balance of probabilities that the medication is reasonable and necessary as a result of the accident. I find that the applicant has not met this burden.

[7] The applicant submits that the two health professionals who assessed the applicant for catastrophic impairment – psychologist Dr. Brian Levitt and psychiatrist Dr. Ranjith Chandrasena – accepted that the applicant's erectile dysfunction was related to his accident-caused condition, and therefore the Cialis prescriptions should be accepted as reasonable and necessary.

[8] In response, the respondent submits that the applicant requires Cialis to address the effects of other substances used by the applicant for reasons unrelated to the accident– specifically, Dutasteride (a medication which the applicant had been prescribed for hair loss) and SARMS (a selective androgen receptor modulators used by some bodybuilders). The respondent relies on the applicant's health records (specifically, family physician and prescription records) which show that the applicant's family physicians, both Drs. John Taliano and Ali Salih Thiab, prescribed both Cialis and Dutasteride to the applicant, as well as the applicant's ambulance call report and the hospital emergency room record from the day of the accident which record SARMS as a substance used by the applicant.

[9] In determining whether the applicant has shown that the need for Cialis is due to the accident, I place limited weight on the assessment reports of Drs. Levitt or Chandrasena. While Drs. Levitt's and Chandrasena's assessments can be relied upon to show that erectile dysfunction is consistent with the psychological conditions which they diagnosed, both assessors appeared to accept that the Cialis prescription was because of the accident-caused condition, without embarking on a further enquiry. Neither assessed whether Cialis was prescribed because of the effects of other medications or substances used by the applicant. In fact, while the applicant was being prescribed Dutasteride, neither of their reports identified Dutasteride as one of the applicant's medications; nor is there any indication of the assessors considering the use of substances related to the applicant's body-building history.

[10] As the evidence does not show that the assessors addressed non-psychological causes leading to the prescription of Cialis, Drs. Levitt or Chandrasena's evidence cannot be relied upon to demonstrate that the applicant's requirement for Cialis is due to the accident.

[11] With regard to the respondent's submission that the applicant's use of Cialis relates to his use of SARMS, I recognize that at the hearing the applicant denied having used SARMS. The applicant testified that SARMS was used by his girlfriend who was with him in the accident and who is also a bodybuilder. He testified that SARMS usage was mistakenly recorded by paramedics and hospital emergency room staff on his records rather than being attributed to his girlfriend. While the applicant testified that any use of SARMS would have shown up in his blood tests at the hospital, there is no suggestion that blood-testing for SARMS had been done. The applicant did not produce evidence from his girlfriend to corroborate his evidence which contradicted the health records. Given the limited evidence before me, I am not persuaded that the health records were in error.

[12] In any event, evidence from prescribing physicians as to the circumstances of the Cialis prescription is directly relevant to determining whether the prescription was because of the accident or for other reasons. Despite having made coverage of the Cialis prescription an issue at the hearing, the applicant did not present evidence from the prescribing physician to show whether this was for an accident-related condition or whether it was to address the effects of another drug or substance.

[13] It is the applicant's responsibility to demonstrate on the balance of probabilities that the need for Cialis was due to the accident. He has not done so.

[14] The applicant's claim for the Cialis prescriptions is denied.

The applicant does not meet the definition of a catastrophic Impairment

[15] The applicant bears the onus of proving on the balance of probabilities that, as a result of the accident, he is catastrophically impaired under the *Schedule*. I find that he has not done so.

Assessment of Impairment Levels Under Criterion 8

[16] The applicant has applied for catastrophic impairment status under section 3.1(1)8 of the *Schedule* (Criterion 8). Criterion 8 determinations employ the American Medical Associations' *Guides to the Evaluation of Permanent Impairment,* 4th edition, 1993 (AMA Guides).

[17] The AMA Guides set out four functional domains: (1) activities of daily living; (2) social functioning; (3) concentration, persistence and pace and (4) adaptation (deterioration or decomposition in work or work like settings).

[18] There are four levels of impairment within each domain: no impairment, mild impairment, moderate impairment, marked impairment and extreme impairment. The levels are explained in the Table below:

Class 1: No Impairment	**Class 2:** Mild Impairment	**Class 3:** Moderate Impairment	**Class 4:** Marked Impairment	**Class 5:** Extreme Impairment
No impairment noted	Impairment levels are compatible with *most* useful functioning	Impairment levels are compatible with *some* but not all *useful* functioning	Impairment levels *significantly impede* useful functioning	Impairment levels *preclude* useful functioning

[19] Impairment under Criterion 8 must be as a result of a mental or behavioural disorder, and is considered catastrophic if the person has an “extreme” level of impairment in any one of the four functional domains or a “marked” level of impairment in at least three of the four functional domains.

[20] In *Pastore v Aviva,* 2012 ONCA 642 at para 6, the Court of Appeal set out the following approach for determining whether a person has sustained a catastrophic impairment due to a mental or behavioural disorder:

1. Did the accident cause the applicant to suffer a mental or behavioural disorder?

2. If it did, what is the impact of the mental or behavioural disorder on the applicant’s life and the level of impairment?

Mental or Behavioural Disorder

[21] Assessors for both the applicant and respondent arrived at accident-based psychological diagnoses. In his psychological assessment report of August 18, 2020, Dr. Levitt diagnosed the applicant with somatic symptom disorder (with post-concussive, neurological and pain symptoms), psychological factors

affecting pain, major depressive disorder, chronic, moderate to severe and posttraumatic stress disorder (in partial remission). The applicant produced subsequent assessments from two other psychologists: in 2021 by Dr. Jason Ramsay and 2023 by Dr. Tara McAuley, both of whom reached diagnoses consistent with Dr. Levitt's.

[22] Upon conducting an insurer examination for catastrophic impairment status, Dr. Chandrasena prepared a report dated August 23, 2021 concluding that the applicant had developed post traumatic stress disorder and a major depressive disorder as a sequelae of the accident. While Dr. Chandrasena did not diagnose the applicant with somatic symptom disorder, he testified that he considered intolerance of pain as being part of the applicant's major depressive disorder.

[23] Given the diagnoses of the assessors, pain-related mental and behavioural restrictions will be included in the assessment of impairment levels.

Criterion 8 – Impairment levels

[24] The applicant submits that due to the accident, the applicant has a marked level of impairment based on mental and behavioural disorders in all four domains of function: activities of daily living; social functioning, concentration, persistence and pace; and adaptation, as determined by Dr. Levitt.

[25] The respondent submits that the applicant does not meet the Criterion 8 requirements for catastrophic impairment, which is the conclusion arrived at by Dr. Chandrasena. Dr. Chandrasena determined that the applicant had a moderate level of impairment in two domains of function (activities of daily living and concentration persistence and pace) and a marked level in the remaining two domains. The respondent further submits however, that both the assessments of both Drs. Levitt and Chandrasena relied excessively on the applicant's self-reporting and should be approached with caution as the applicant's self-reports are not reliable. The respondent refers to *Liu v. 1226071 Ontario Inc,* 2209 ONCA 571 (para 27) for the proposition that the test for catastrophic impairment is a legal, not a medical test and that this finding is to be made by the trier of fact, not the medical experts.

[26] At the hearing, the applicant presented testimonial evidence from the applicant, the applicant's mother with whom the applicant resides, Dr. Levitt, and the applicant's treating occupational therapist, Hilary Aldworth. The respondent presented testimonial evidence from Dr. Chandrasena and occupational therapist Leslie Hisey.

[27] The applicant relied on the application for determination of catastrophic impairment completed by Dr. Melody Nguyen, and the catastrophic impairment assessment report of psychologist Dr. Brian Levitt. In addition, the documents presented included evidence from the applicant's family physicians: Dr. Vinod Patel, Dr. Taliano and Dr. Thiab; cannabis practitioner, Dr. Hugh Mitchell; occupational therapists Alicia Kralt, Jacquelyn Bonneville, Hilary Aldworth, Stacy Schincariol, and Allyson Weldon (life care planner) as well as occupational therapy assistants; speech language pathologist Natalia Evans; dietitian Aimee Hayes; vocational rehabilitation assessors, Maria Ross and Cheryl Teason; psychiatrist Dr. Imran Naqvi; Lawlor Therapy Support Services and Derek Long, rehabilitation support worker; and psychologists Dr. Catherine Milner, Dr. Jason Ramsay, and Dr. Tara McAuley.

[28] The respondent relied on insurer examinations – namely a catastrophic impairment assessment report of Dr. Chandrasena and in-home and situational assessments of occupational therapist, Leslie Hisey. The respondent also relied on surveillance evidence, and selected records from other health professionals and rehabilitation workers who saw the applicant in a treatment or consulting capacity.

[29] In addition, the parties relied on documentation such as school, ambulance, prescription and hospital records.

[30] I have considered the above evidence in relation to the applicant's abilities in all four domains of function.

Pre-accident function

[31] The applicant asked that pre-accident function be considered when considering the effect of the accident on the applicant and his impairment level.

[32] The applicant's mother testified about numerous qualities of her son's pre-accident life, including that he was a great companion, had lots of friends, was fastidious in his cleanliness, participated in household activity, was dedicated as a bodybuilder, and had a regimented approach to his food preparation and eating habits as a bodybuilder. The applicant's testimony included that prior to the accident he was very social, had a great relationship with his girlfriend, and was actively training as a competitive body builder. He also spoke of rewarding work in a veterinary clinic.

[33] The records of the applicant's family physician, Dr. Patel, show that about one year before the accident, on January 12, 2017, the applicant attended for a

general assessment and was identified as being “healthy” and having “no musculoskeletal pain, no claudications, no headaches, no dizziness, no fatigue, no depression.” Dr. Patel’s chart does not suggest that there was any event or change in the ensuing months before the December 2017 accident.

[34] There are also other factors relevant to the applicant’s pre-accident function, with evidence about the challenges faced by the applicant in recent years. While the applicant had previously been doing well at school, the applicant had four to five previous concussions (primarily sports-related) going into his high school years and there was upheaval in his home life. His records show that for close to two years before the accident he was unable to complete his grade 12 coursework, failing grade 12 courses in the 2016 spring semester, and then re-enrolling and withdrawing from different schools in both the fall semesters of 2016 and 2017. Although he was scheduled for a semester starting in January 2018 for his grade 12 credits, the applicant was not in school at the time of the accident, having withdrawn two months earlier because of excessive absenteeism.

[35] The applicant’s unreliability in showing up for appointments was one of the factors raised in relation to the applicant’s post-accident impairment. The pre-accident evidence suggests that attending scheduled events had to some extent been an issue in the applicant’s pre-accident functioning: His family physician’s chart documents the applicant as a no-show for a specialist’s appointment arranged for March of 2017 and the applicant withdrew from the fall 2017 school semester in October because of excessive absenteeism.

[36] With regard to the applicant’s pre-accident employment, most of the applicant’s assessors and treatment providers relied on the applicant’s self-reports and proceeded on the understanding that the applicant was engaged in part-time work at a veterinary clinic at the time of the accident. I place limited weight on the extent of such employment. The information provided by the applicant’s employer on an OCF-2, as stated by Ms. Hisey in her in-home assessment report, documents him as working part-time from February 22, 2017 to November 25, 2017 – showing that he was not employed at the time of the accident. The applicant submitted at the hearing that Ms. Hisey’s information referencing the employer’s OCF-2 was wrong and was contradicted by the preponderance of other evidence. However, all of the other evidence about the applicant’s pre-accident employment appears to be based on the applicant’s self-reports. The applicant has not provided employment or other records to correct what he submits is wrongly reported information from the employer.

[37] In accordance with the submission of the applicant, I have applied the test as set out by the Divisional Court in *Sabadash v State Farm et al.* 2019 ONSC 1121 at para 31(b) and considered whether but for the accident, the applicant would have his current level of impairment in each of the four domains of function. I accept that any pre-accident challenges faced by the applicant would likely have been magnified by the 2017 accident.

Domain of Function: Activities of Daily Living

[38] Chapter 14 of the AMA Guides describe "Activities of Daily Living" as including activities such as self-care, personal hygiene, communication, ambulation, travel, sexual function, sleep, social and recreational activities. The Guides state:

> In the context of the individual's overall situation, the quality of these activities is judged by their independence, appropriateness, effectiveness and sustainability. It is necessary to define the extent to which the individual is capable of initiating and participating in these activities independent of supervision or direction. What is assessed is not simply the number of activities that are restricted, but the overall degree of restriction or combination of restrictions.

[39] When explaining what is meant by the overall degree of restriction, the AMA Guides give the example that while a person might be able to cook and clean, if they were too fearful to leave the home to shop or see a physician, the restriction may be considered marked.

[40] Dr. Levitt rated the applicant as being markedly impaired in the domain of activities of daily living, whereas Dr. Chandrasena rated the applicant's impairment as being moderate.

[41] When considering the totality of evidence in relation to the independence, appropriateness, effectiveness and sustainability of the applicant's activities of daily living, I find that the evidence shows the applicant's accident-related impairment under Criterion 8 to be at a moderate, not marked, level of impairment.

[42] The applicant has an interaction of disorders which impede useful daily functioning. While the applicant is able to carry out basic self-care and personal hygiene tasks, there are post-accident changes. He now relies on a barber to trim his beard because of vision and depth perception deficits related to his eye injury. It can take him longer to dress and undress, and because of pain, his mother sometimes assists him with donning socks. Pre-accident, the applicant

showered multiple times a day, whereas now he showers once a day. The applicant struggles with low mood, does not work out as he once did, has deep concerns with his self image and how others see him, avoids crowds, tends to seclusion, struggles with pain when he does things, and has problems with sleep hygiene and quality.

[43] He relies on his mother to help him get going during the day, coordinate appointments, prompt him to attend to schedules and activity, get prescriptions refilled, provide housekeeping support and so forth. While she is away on travels, she arranges for other family members to be at the house. The applicant's need for cueing and reminders was demonstrated by documentation from the rehabilitation support worker showing that with text message reminders the night before and five minutes before their appointments, the applicant was prepared for sessions approximately 85 percent of the time, but was either asleep or not at home the remaining times.

[44] The applicant's mother described to an associate of Dr. Levitt's, Dr. Ron Kaplan, that the applicant used to be fastidious about cleanliness but now does not make his bed, and if left to do his own laundry, he might let two to three weeks pass without attending to it or leave a load of laundry in the washer. She cleans his bathroom because he does not, and does most meal preparation. These reports are generally consistent with the evidence from both occupational therapists called by both parties. The evidence shows that post-accident the applicant may make bacon and eggs, microwave a meal or arrange for fast food on his own. He has had limited success with "Hello Fresh" but generally does not plan or prepare meals on his own. This is in contrast to descriptions of his pre-accident body building regime where, for example, he would carefully prepare six small meals in advance for each day.

[45] The applicant has some ability to travel and function in the community: for example, he drives on his own and is able to go to stores, although he prefers to go during quieter times as crowds make him anxious. His mother explained that much of what the applicant can do will depend on his mood.

[46] I accept the respondent's submission that neither Drs. Levitt nor Chandrasena had the full scope of relevant information before them when they arrived at their impairment ratings.

[47] Dr. Levitt, who ascribed a marked level of impairment to the applicant's activities of daily living, testified that information about the applicant's activities such as participating at the gym, sea-doo trips, travelling out-of-country, using a snowblower, and a scenario of the applicant picking up a friend and shopping for

a Christmas present, would be relevant to his assessment and he would have many questions about how such activities were carried out. The evidence before me on such matters included the following:

- With regard to gym-related activity, in a multi-month report in March 2020, the applicant's rehabilitation support worker stated that the applicant "often reported consistently participating in his fitness program for three to five times a week for one to two and a half hours" with the support and encouragement of a friend. In August 2020, the applicant reported having joined a new gym, although not yet accessing it because of Covid protocols in place at the time. Ms. Hisey's in-home assessment report also spoke to the applicant's continued attendance at a gym. In 2020, the applicant's family physician chart included a surgical consult note for a hernia and documented the applicant's reports of working out regularly.

- With regard to the applicant's post-accident sea-doo trips, the applicant reported to Ms. Hisey in the 2021 in-home assessment that he was no longer interested in going out on his sea-doo because of the pain he experienced afterward. However, the applicant nonetheless had continued this activity post- accident, advising his rehabilitation support worker in August 2020 that before the accident, he could tolerate riding his sea-doo at least three to four times a week, but now rides a maximum of one to two times weekly. In addition to this report, the applicant went on two sea-doo trips over a two week period with his rehabilitation support worker. On the first trip, the applicant navigated 30 kms roundtrip on the Niagara River during which he independently resolved an unexpected fuel supply issue by enlisting the help of another boater at a local marina. The second trip was about 20 kms round trip.

- With regard to out of country travel, there was evidence about a challenging trip to England which the applicant took with his mother to visit his grandmother about a year after the accident. At the hearing both the applicant's mother and his occupational therapist, Hilary Aldworth, testified about the applicant's subsequent trips to Nashville and Cuba. According to a December 29, 2022 life-care plan report completed by occupational therapist, Allyson Weldon, the applicant called his mother frequently during his trip to Nashville, and "when symptomatic would end his nights earlier than intended." It was reported to Ms. Weldon that the trip to Cuba was easier as it was at an all-inclusive resort and not very busy. Ms. Aldworth testified that the applicant's Cuba trip was with a friend; the applicant's accompaniment for the Nashville trip was unclear.

- Ms. Aldworth's report from November 2022 stated that with the help of a new snowblower, the applicant had cleared a large snowfall over the course of a four hour period, with many breaks (a twenty car driveway). The applicant reported to Allyson Weldon that using a zero-turn riding mower exacerbated his back pain due to the jostling motion. Nonetheless the evidence shows that the applicant has some ability to participate in home maintenance, with his mother testifying that using the zero-turn mower and snowblower gives him a sense of accomplishment. Records also suggest that the applicant has supported other household activity with, for example, his chiropractic records from November 2021 indicating that he "has been moving this week – lots of lifting," and reports of the applicant helping to fix the pool liner and participating in the installation of a dock.

- With regard to the evidence about the applicant picking up a friend and going shopping for a gift, surveillance over the course of three hours in December 2020 showed the applicant as driving to a friend's house, using a lint roller on his jacket, and stepping inside her home for a few minutes before they went to a Bass Pro shop. The applicant and his friend then went back to his house for an hour, after which he drove her back to her place, stopping at a Burger King drive-through before returning home again. The applicant testified that he needed his friend's support to help address his anxiety level when having to go into the community and find a gift for a friend; and he felt the repercussions of this three hour activity afterward.

[48] At the hearing, Dr. Chandrasena was asked about the applicant's out of country travel. He responded that he was not aware of this, although this was something which would usually be addressed in an assessment. Dr. Chandrasena described out-of-country travel as a highly skilled cognitive act, with a series of matters going through customs and immigration and returning; and commented that if the travel was during Covid restrictions, the activity would have been more demanding. Dr. Chandrasena did not recall any information about the applicant going to a gym post-accident, but testified that post-accident body-building activity outside of the home and entailing interaction with others would be inconsistent with his assessment.

[49] I am not persuaded that either assessor had the full scope of relevant information when reaching their conclusions, and find that the evidence which I have been directed to at the hearing shows that the applicant has useful function, beyond what has been addressed in the reports of the assessors.

[50] In assessing the applicant's activities of daily living, Dr. Chandrasena's report expressly stated he had arrived at a moderate rating for the applicant "based on a libido impairment requiring medication for erectile dysfunction." He testified at the hearing that if something else was causing the dysfunction requiring a Cialis prescription, that would be relevant. Dutasteride was not identified in the medications listed in his report and Dr. Chandrasena testified that did not recall any discussion with the applicant about Dutasteride. As I have found earlier, the applicant has not met his onus of demonstrating that the need for Cialis was due to the accident rather than other factors. Accordingly, a libido impairment which Dr. Chandrasena assumed from the Cialis prescription, is not included in arriving at the Criterion 8 impairment level.

Conclusion – activities of daily living – moderate level of impairment

[51] The applicant's activities of daily living are impaired due to factors such as lack of motivation, low mood, fatigue, sleep issues, and pain. I also accept that there are issues of sustainability – that the applicant's activity one day can be at the expense of his ability to function on the following day. I find however that the totality of the evidence at the hearing, when considered alongside the assessments of Dr. Levitt and Dr. Chandrasena, show that the applicant has not demonstrated a marked level of impairment as a result of mental and behavioural disorders due to accident-based injuries. The applicant's impairment levels in the domain of activities of daily living are compatible with some, but not all, useful functioning, which is a moderate impairment level.

Domain of Function: Concentration, Persistence and Pace

[52] According to the AMA Guides, the domain of concentration, persistence and pace speak to qualities needed to perform many activities of daily living including task completion.

> Task completion refers to the ability to sustain focussed attention long enough to permit the timely completion of tasks commonly found in activities of daily living or work settings…Strengths and weaknesses in mental concentration may be described in terms of frequency of errors, the time it takes to complete the task and the extent to which assistance is required to complete the task.

[53] Dr. Levitt found the applicant to be markedly impaired whereas Dr. Chandrasena rated the applicant as being moderately impaired in the domain of concentration, persistence and pace.

[54] At the hearing, in addition to relying on Dr. Levitt's rating of a marked impairment, applicant's counsel directed me to evidence including the applicant's need to be motivated and supported to initiate tasks, the consistent evidence of reliance on others for scheduling and cuing, and his inability to multitask.

[55] The respondent pointed to evidence of the applicant being able to carry out some activity and follow through, submitting that the evidence did not amount to a marked level of impairment.

[56] I prefer the position of the respondent. I find that the totality of the evidence shows that the applicant's impairment level is compatible with some, but not all useful functioning in the domain of concentration, persistence and pace.

[57] The evidence shows that the applicant requires support to schedule and initiate activity, that he has challenges in concentration and follow through, and that he experiences fatigue with for example, being able to carry out an activity but then paying for it later. Yet there is also significant evidence of the applicant having useful function in this domain. The applicant drives independently, goes for drives to get out of the house, and obtained his full G driver's licence after the accident. As discussed earlier, the applicant independently navigated multi-kilometer sea doo trips. A 2022 Vocational Situational Assessment and Functional Capacity Assessment of the applicant was carried out by Maria Ross and Cheryl Tiessen, while documenting fatigue, concentration and stamina issues, also recorded the applicant as meeting quality requirements in five of seven work samples and meeting pace requirements in five of six samples.

[58] The duration of Dr. Chandrasena's assessment, including testing, was one hour and fifty minutes, with the interview portion being between one to one and a half hours. Dr. Chandrasena testified that he did not observe the applicant having difficulties in this domain during his meeting with the applicant. He testified that if a person was markedly impaired, he would expect to see some waning concentration after a half hour, and an inability to continue an interview after one and a half hours.

[59] At the hearing itself, the applicant testified on consecutive days (about one and one quarter days in total) without notable disruption for breaks or fatigue. While it may have been challenging, the applicant was able to maintain focus and express himself.

Conclusion – concentration, persistence and pace – moderate level of impairment

[60] I find that the totality of the evidence at the hearing shows the applicant has a moderate level of impairment in the domain of concentration, persistence and pace.

Domain of Function: Adaptation

[61] The AMA Guides explain the domain of Adaptation (or "Deterioration or Decompensation in Work or Work-like settings") as a

> repeated failure to adapt to stressful circumstances. In the face of such circumstances the individual may withdraw from the situation or experience exacerbation signs and symptoms…He or she may decompensate and have difficulty maintaining activities of daily living, continuing social relationships and completing tasks. Stressors common to the environment include attendance, making decisions, scheduling, completing tasks and interacting with others.

[62] Both Drs. Levitt and Chandrasena found the applicant to be markedly impaired in the domain of adaptation. I agree.

[63] A marked level of impairment in this domain is supported by direct observations from a 2022 Vocational Situational Assessment and Functional Capacity Assessment which was carried out over three days and documented a deterioration of mood, emotional tolerance and cognitive stamina as well as attendance issues. The assessment concluded that the applicant's work function was "not compatible with the demands of competitive employment on a full or part-time basis at this time."

Conclusion – adaptation – marked level of impairment

[64] The evidence shows that when the applicant's emotional stamina declines, he can become difficult to be around and retreat into seclusion. I find that his difficulties in attendance, scheduling and emotional stamina, combine to significantly impede him in the domain of adaptation and that he has a marked impairment in this domain.

Domain of Function: Social Functioning

[65] The AMA *Guides* describe "Social Functioning" as the capacity to interact appropriately and communicate effectively with other individuals:

> It includes the ability to get along with others such as family members, friends, neighbours, grocery clerks, lenders, etc. Impaired social functioning may be demonstrated by history of altercations, evictions, firings, fear of strangers, avoidance of interpersonal relationships, social isolation, or similar events or characteristics. Strengths in social functioning may be documented by an individual's ability to initiate social contact with others, communicate clearly with others and interact and actively participate in group activities, cooperative behaviour, consideration for others, awareness of others' sensitivities and social maturity also need to be considered.

[66] The applicant submits that I should accept the applicant as having a marked impairment level as proposed by both Drs. Levitt and Chandrasena. The respondent submits that the evidence as a whole does not support factors contemplated by the AMA Guides for marked impairment in social functioning. I agree with the respondent. I find that the totality of evidence shows that the applicant has a moderate level of impairment in the domain of social functioning: that he has some, but not all, useful functioning.

[67] Dr. Levitt factored in the applicant's report of declined sexual functioning, requiring a Cialis prescription. However, as addressed previously, the applicant did not establish that the Cialis prescription was required because of an accident-related condition.

[68] Both Drs. Levitt and Chandrasena relied on a range of factors pertaining to the applicant's social functioning. For example, Dr. Levitt pointed to the applicant's post-accident depression and anxiety leading to isolation and withdrawal, his lack of reliability, self-image and self-esteem issues, a lack of reliability in making plans, avoiding interaction with people outside of the home, avoiding confrontation and embarrassment, retreating to his space in the home, and limiting his engagement with others. Dr. Chandrasena referenced the applicant's reports of a confrontational incident with a relative post-accident, a falling out with a social worker, his pattern of retreating rather than stating his opinion, his report of friends observing that he is a lot different now, his mother's reports that he does not engage or explain himself and can be difficult to be around.

[69] In determining the applicant's impairment level, I have considered such above-noted factors in the context of the overall hearing evidence and accept the respondent's position that the evidence does not support that the applicant has a marked impairment in the domain of social function.

[70] In arriving at this conclusion, I note that the applicant's rehabilitation support worker documented the applicant's participation in their rehabilitation activities

such as dining out, going for walks, shopping, playing billiards and going to the driving range. The support worker stated that once the applicant was engaged in the community activity, he seemed more talkative, jovial and reported feeling less isolated. I appreciate Dr. Levitt's testimony that a support worker is paid to engage in such activity as part of the applicant's rehabilitation. Nonetheless, the rehabilitation support worker's report speaks of the quality of engagement of which the applicant is capable, and there is considerable evidence showing that such social engagement is not limited to therapists.

[71] In addition to the applicant's report of participating in a fitness program with a friend three to five times per week, traveling on recreational trips to Nashville and Cuba, and surveillance showing the applicant spending time with a friend and shopping for a holiday gift, the record contains further positive indications of the applicant's social functioning. For example:

- in January 2020, the applicant reported to his rehabilitation support worker that he had a positive Christmas holiday with friends and family.

- in August 2020, the applicant reported to his occupational therapist that it was challenging for him to do online classwork during the summer months as he had limited time with two friends before they moved away.

- the applicant continued an on and off again with the person who was his girlfriend at the time of the 2017 accident, testifying at the hearing that they still maintained contact from time to time as they had gone through trauma together.

- a rehabilitation assistant's chart from May to July 2022 noted that the applicant had a friend stay over for most of a week in May; the following month, noted that the applicant had a few friends over; and the following month, noted that the applicant was going away for a few days.

Conclusion – social functioning – moderate level of impairment

[72] While the evidence shows that the applicant's social functioning has declined after the accident, I find that the totality of the evidence shows that his impairment level is compatible with some but not all useful function. This is a moderate level of impairment.

Conclusion – Catastrophic Impairment

[73] I find that the applicant does not have a marked impairment in at least three of four domains of function as required under Criterion 8. He is therefore not catastrophically impaired under section 3.1(1) 8 of the *Schedule.*

Interest

[74] As there are no benefits overdue, no interest is owing.

ORDER

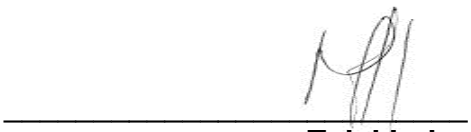
[75] The application is dismissed as follows:

i. The applicant is not entitled to the cost of medication.

ii. The applicant is not catastrophically impaired.

iii. No interest is payable.

Released: October 27, 2023



Taivi Lobu
Adjudicator