



Citation: Abebe v. Economical Insurance Company, 2024 ONLAT 22-012539/AABS

Licence Appeal Tribunal File Number: 22-012539/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:

Amaria Abebe

Applicant

and

Economical Insurance Company

Respondent

DECISION

ADJUDICATOR: Kenneth Nixon

APPEARANCES:

For the Applicant: Natalia Poliakova, Paralegal

For the Respondent: Ainsley Shannon, Counsel

HEARD: By way of written submissions

OVERVIEW

- [1] Ameria Abebe, the applicant, was involved in an automobile accident on May 5, 2021, 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, Insurer, 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 s. 3 of the *Schedule* and therefore subject to treatment within the \$3,500.00 Minor Injury Guideline limit? Note: The parties agree the MIG limits have been exhausted.
 2. Is the applicant entitled to the following treatment plans/OCF-18 (“plan”), proposed by Premier Medical Centre Inc:
 - (i) \$199.50 (\$1,297.00 less \$1,097.50 approved) for physiotherapy services, in a plan dated August 11, 2021, and denied October 21, 2021; and
 - (ii) \$1,297.00 for physiotherapy services, in a plan dated November 1, 2021, submitted January 21, 2022, and denied July 29, 2022?
 3. Is the applicant entitled to \$2,900.00 for a psychological assessment, proposed by Dr. Jeremy Frank and Associates in a plan dated November 12, 2021, submitted November 25, 2021, and denied December 10, 2021?
 4. Is the applicant entitled to interest on any overdue payment of benefits?

RESULT

- [3] I find that the applicant’s injuries meet the definition of “minor” injury under the Schedule. The applicant is therefore subject to treatment within the MIG limits.
- [4] As the applicant continues to be within the MIG and the MIG limits have been exhausted, the applicant is not entitled to the treatment plans in dispute.

- [5] As a result of the above, there are no overdue payments of benefits and accordingly no interest is payable by the respondent.

ANALYSIS

The Minor Injury Guideline ("MIG")

- [6] Section 18(1) of the Schedule provides that medical and rehabilitation benefits are limited to \$3,500.00 if the insured person sustains impairments that are predominantly minor injuries. 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".
- [7] An insured person may be removed from the MIG if it can be established that accident-related injuries fall outside of the MIG, or under s.18.(2) if there is documentation of a pre-existing injury or condition combined with compelling medical evidence stating that the condition precludes recovery if kept within the confines of the MIG. In all cases, the burden of proof lies with the applicant.
- [8] The burden is on the applicant to demonstrate, on a balance of probabilities that the injuries fall outside of the MIG. In this instance, the applicant submits that he should be removed from the MIG based on the diagnosis of Post Traumatic Stress Syndrome.
- [9] Based on the evidence before me, I find that the applicant has not proven on a balance of probabilities that they suffer from Post Traumatic Stress Disorder (PTSD) or other psychological or physical impairments arising from the accident and, as a result their injuries fall within the MIG.

Does the applicant suffer from PTSD or other psychological impairments arising from the accident that would remove them from the MIG?

- [10] The applicant submits that they should be removed from the MIG because of symptoms diagnosed as PTSD including headaches, anxiety, depression as a result of the accident.
- [11] The applicant relies on:
- (a) The records of Dr. Jeremy Frank from the Eglington Health Care Centre whose report indicates difficulty sleeping, nightmares and anxiety, loneliness irritability and anger and;

- (b) The records of the Eglington Health Centre from April 8, 2022, where it was noted that the applicant has been seeing a psychiatrist for Workplace Safety and Insurance Board (WSIB) for work related injuries, which state the PTSD appeared to be related to the motor vehicle accident.

[12] The respondent relies upon:

- (a) The report of family doctor (Dr. Vanniyasingam) from December 6, 2020, (six months prior to the MVA) whereas the applicant reported migraines and difficulty with sleeping; and
- (b) The WSIB application pertaining to a work-related injury on July 12, 2021, where the applicant states they have not suffered any previous injuries; and
- (c) Subsequent visits to Premier Medical Centre on July 21, 2021, and July 28, 2021, where the applicant reported significant improvement, back is better and there are no concerns; and
- (d) On February 23, 2022, during a psychological assessment by Dr. Kirsh it was noted that there were no pre-existing mental health issues and attributed all psychological symptoms and functional deficits to the workplace injury sustained on July 12, 2021, where the applicant fell from a 16ft ladder and suffered a fractured right wrist.

[13] I find that the applicant has not proven on a balance of probabilities that they should be removed from MIG. The evidence of the respondent compels me to believe that a psychological impairment (PTSD) was not sustained as a result of the accident of May 5, 2021, and therefore the psychological injuries are not outside of the MIG. I was not persuaded by any medical evidence or documentation that the injuries sustained were as a result of the accident of May 5, 2021, would preclude recovery if kept within the confines of the MIG. And that the impairment(s) claimed are more likely a result of the workplace injury sustained on July 12, 2021, to which the applicant is currently receiving collateral treatment through WSIB. My decision is based on the findings below.

- The report dated May 21, 2021, by Dr. Mitesh Rajodlya which noted the complaints of headaches, whiplash disorder, neck pain, sprain and strains, contusions and sleep disorders are injuries that are defined as “minor injuries” in the Statutory Accident Benefits Schedule.

- The evidence submitted by Dr. Vanniyasingam also diagnosed the applicant with “soft tissue injuries and abrasions” which are consistent with the report of Dr. Mitesh Rajodiya.
- The applicant reported issues of “migraines and difficulty sleeping” to Dr. Vanniyasingam on December 26, 2020, which was 6 months prior to the accident.
- Dr. Kirsh noted in the applicants WSIB assessment that all psychological symptoms (PTSD) were not sustained as a result of the accident of May 5, 2021, but were a result of the workplace injury of July 12, 2021.
- The applicant reported to Dr. Shafer and Mr. Batten during the WSIB assessment of October 7, 2021, that all injuries in the May 2021 motor vehicle accident had been resolved.
- The applicant also reported to Ms. Courtney (psychotherapist) that his ongoing psychological issues were a result of “the workplace accident, and the workplace accident alone”.

The applicant has not established by any medical evidence or documentation provided the PTSD was a result of the accident of May 5, 2021. The impairment(s) claimed are more likely a result of the workplace injury sustained on July 12, 2021, to which the applicant is currently receiving collateral treatment through WSIB. The applicant has also not established that the other injuries fall outside the guidelines of the definition of “minor injuries” in the SABS.

Treatment Plans not payable

- [14] As the applicant continues to be within the MIG and the MIG limits have been exhausted, the applicant is not entitled to the treatment plans in dispute.

Interest

- [15] As a result of the above, there are no overdue payment of benefits and accordingly no interest is payable by the respondent.

ORDER

- [16] For the reasons outlined above, I find:
- i. The applicant’s injuries are subject to the MIG treatment limits.

- ii. The applicant is not entitled to the physiotherapy treatment plans in dispute; and
- iii. The applicant is not entitled to interest.

Released: November 25, 2024

A handwritten signature in blue ink, appearing to read "Kenneth Nixon", written over a horizontal line.

Kenneth Nixon
Adjudicator