



**Citation: Lanzon v. Economical Insurance Company, 2023 ONLAT
20-005424/AABS**

Licence Appeal Tribunal File Number: 20-005424/AABS

In the matter of an application per subsection 280(2) of the *Insurance Act*, RSO 1990, c
I.8, in relation to statutory accident benefits.

Between:

Ronald Lanzon

Applicant

and

Economical Insurance Company

Respondent

DECISION

ADJUDICATOR:

Michael Beauchesne

APPEARANCES:

For the Applicant:

Satwant Merwar, Counsel

For the Respondent:

Earl Murtha, Counsel

Court Reporter:

Alyssa Scott

HEARD: by Videoconference:

October 26-28, 2022

OVERVIEW

- [1] Ronald Lanzon, the applicant, was involved in an automobile accident on October 4, 2012, and sought benefits per the *Statutory Accident Benefits Schedule*¹ (the “*Schedule*”). The applicant was denied benefits and catastrophic designation by the Economical Insurance Company, the respondent, 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:
- i. Has the applicant sustained a catastrophic impairment as defined by the *Schedule*?
 - ii. Is the applicant entitled to \$33,335.00 for catastrophic impairment assessments, recommended by Omega Medical in a treatment plan dated April 20, 2020?
 - iii. Is the respondent liable to pay an award under Regulation 664 because it unreasonably withheld or delayed payments to the applicant?
 - iv. Is the applicant entitled to interest on any overdue payment of benefits?

RESULT

- [3] The applicant is not catastrophically impaired.
- [4] The applicant is entitled to up to \$2,000 for a neuropsychological and psychological assessment and report, produced as part of a multidisciplinary catastrophic impairment determination by Omega Medical Associates.
- [5] The applicant is entitled to up to \$2,000 for an occupational therapy assessment and report, produced as part of a multidisciplinary catastrophic impairment determination by Omega Medical Associates.
- [6] The respondent is not liable to pay an award under Section 10 of O. Reg 664.

¹ Effective September 1, 2010, for the period of July 1, 2011, to January 21, 2013.

- [7] The applicant is entitled to interest on the neuropsychological and psychological assessment and report, as well as the occupational therapy assessment and report, both listed above.

ANALYSIS

The applicant is not catastrophically impaired

- [8] The applicant's Application for Determination of Catastrophic Impairment (dated April 13, 2017) indicates two criteria at issue: Criterion 7 and Criterion 8. However, a more recent (July 2019) multidisciplinary catastrophic determination assessment by Omega Medical Associates indicates the applicant "does not meet the catastrophic threshold under Criterion 7," and the parties confirmed at the outset of the hearing that only Criterion 8 remained at issue.
- [9] Therefore, the applicant must satisfy the test for catastrophic impairment as set out in Section 3 (2) (f) of the *Schedule*, and per Criterion 8 of the 4th Edition of the *American Medical Association's Guides to the Evaluation of Permanent Impairment* (the "*Guides*"). The applicant must prove the accident caused a Class 4 ("marked") impairment—which is one that significantly impedes useful functioning—or a Class 5 ("extreme") impairment, which is one that precludes useful functioning in one of the four areas of function contemplated by the *Guides*. These four areas are: activities of daily living; social functioning; concentration, persistence, and pace; and adaptation to work or work-like settings. As well, the impairment must result from a mental or behavioural disorder caused by the accident.
- [10] This dispute is narrow, in that the area of disagreement is whether the applicant has a marked impairment in adaptation. The *Guides* characterize adaptation as "deterioration or decompensation² in work or work like settings." This refers to a repeated inability to adapt to stressful circumstances, and the *Guides* further note that—in the face of such circumstances—the individual may withdraw from the situation or experience exacerbation of signs and symptoms of a mental disorder. The *Guides* describe stresses common to the work environment as attendance, making decisions, scheduling, completing tasks, and interacting with supervisors and peers.
- [11] The applicant's medical evidence on catastrophic impairment includes two separate determination assessments: the first, a two-part effort completed in

² To lose the ability to maintain normal or appropriate psychological defences, sometimes resulting in depression, anxiety or delusions.

2016 and 2017 by Dr. John Gilman (neuropsychologist), and the second in 2019 by Dr. Lisa Becker (physiatrist) and Dr. Harold Becker (family physician) of Omega Medical Associates. Dr. Gilman's assessment addressed brain injury per Criterion 7—and was not relied upon by the applicant during the hearing—and was therefore of little relevance to the issues in dispute. Further, I was not persuaded to find in favour of the applicant after considering the Omega assessment. The reasons for this follow.

The applicant's catastrophic impairment (vis-à-vis the 2019 assessment by Omega Medical Associates) was not determined by a physician

- [12] I am not persuaded the applicant's catastrophic impairment was determined by a physician as required by the *Schedule*. In fact, Section 45 (2) 1 of the *Schedule* provides that an assessment or examination in connection with a determination of catastrophic assessment shall be conducted only by a physician—defined as a person authorized by law to practice medicine—but may be assisted by other regulated health professionals.
- [13] The applicant's multidisciplinary catastrophic impairment evaluation—dated July 29, 2019, and authored by Drs. Lisa and Harold Becker—indicates the applicant “meets the catastrophic threshold for mental and behavioural impairments under Criterion 8 with Marked (Class 4) impairment in Adaptation.” Drs. Lisa and Harold Becker further indicate they arrived at this opinion “based on a review of the medical brief and analysis of (the applicant's) clinical presentation at the time of these evaluations.”
- [14] However, there is no analysis in this report that pertains to the physicians' Criterion 8 finding. Rather, the section of the report that deals with Criterion 8 only restates the diagnoses offered by Dr. Davidson and includes various verbatim excerpts from Dr. Davidson's assessment that pertain to the insurer's examination and causation. Excerpts were similarly included from Nikita D'Souza's (occupational therapist) assessment, and the report concludes with a summary of Dr. Davidson's impairment ratings and an invitation to the reader to refer to Dr. Davidson's and Ms. D'Souza's assessments for more details.
- [15] In my view, this multidisciplinary catastrophic impairment evaluation—as it pertains to Criterion 8—acts only as a covering letter or executive summary of the assessments undertaken by Dr. Davidson and Ms. D'Souza. The *Schedule* insists that a physician must conduct determination of catastrophic impairment, and there is no evidence that Drs. Lisa and Harold Becker conducted this determination. That is to say, their failure to conduct the determination is made out by the absence of independent thought, reasoning, or analysis of the reports

of the regulated health professionals they called upon to assist with the assessment.

- [16] In short, I find that Drs. Lisa and Harold Becker abdicated their responsibility and instead depended on their assistants to conduct the determination that only they, as physicians, are eligible to do under the *Schedule*. And while the *Schedule* does indeed enable physicians to be assisted in making the determination, the spirit of the legislation is not consistent with reducing the “conducting” role of the physician to a rubber-stamped, copy-and-paste determination, or to otherwise be dependant on their assistants for insights the physicians need to contemplate and determine for themselves. Indeed, in my view, the *Schedule* can only be interpreted this way, otherwise it would not require the neuropsychologist exemption for Criterion 7 claims provided at Section 45 (2) 2, which is referenced in the next paragraph.
- [17] I therefore cannot find the applicant’s catastrophic determination was conducted by a physician as required by the *Schedule*. In my opinion, it was Dr. Davidson who—in addition to assisting with the assessment—actually conducted the determination of catastrophic impairment. And as a neuropsychologist—defined by the *Schedule* as a psychologist authorized to practise neuropsychology—Dr. Davidson is precluded from determining catastrophic impairment, unless the impairment is only a brain impairment (i.e., Criterion 7) per Section 45 (2) 2 of the *Schedule*. As earlier indicated, this case does not pertain to catastrophic impairment determination under Criterion 7.
- [18] It therefore follows that I can put no weight on the July 2019 catastrophic impairment determination offered in the assessment and reports of Omega Medical Associates.
- [19] This includes the in-home and situational assessment—conducted by Ms. D’Souza on June 5, 6 and 7, 2019—that assisted Dr. Davidson to conduct the applicant’s catastrophic impairment determination. The report shared many observations of the applicant’s ability to adapt to stressful circumstances—pertaining to making decisions and completing tasks in particular—in both home and community settings. Ms. D’Souza also provided testimony at the hearing that was consistent with her reported findings.
- [20] However, I am mindful that occupational therapists, as regulated professionals, are allowed only to assist a physician who conducts a determination of catastrophic impairment. Without a complementary analysis of the observations made during the three-day assessment by a physician in the context of catastrophic determination, I am unable to give weight to this evidence.

[21] The other two reports that complete the multidisciplinary catastrophic impairment evaluation conducted by Omega Medical Associates focused on neurology and psychiatry, and as such, did not produce information relevant to a Criterion 8 application.

Diminished value of applicant and witness testimony owing to a lack of compelling medical evidence

[22] The applicant and Kenneth Deviney provided testimony that described the applicant's adaptability to stressful circumstances. While I am mindful that catastrophic impairment is a legal test and not a medical one, I also recognize that a finding of catastrophic impairment must have a medical basis in evidence.

[23] This aspect is lacking here because the applicant's medical evidence relies on an assessment by a neuropsychologist who is ineligible to conduct a catastrophic determination outside of a Criterion 7 claim. This being the case, in absence of a compelling medical basis for the applicant's claim, the testimony of the applicant and Mr. Deviney, while insightful, was insufficient to meet the applicant's burden of proof for catastrophic impairment as defined by the *Schedule*.

The applicant is entitled to an occupational therapy in-home and situational assessment.

[24] Section 25 (1) 5 of the *Schedule* provides that an insurer shall pay reasonable fees to determine whether the insured person has sustained a catastrophic impairment, including any assessment or examination necessary for that purpose. This is to be read in combination with Section 25 (5) (a), which limits the cost of any one assessment or examination to \$2,000.00. The applicant bears the onus of proving on a balance of probabilities that each item in a treatment and assessment plan is reasonable and necessary for the purpose of applying for a CAT determination under Section 45 of the *Schedule*.

[25] The applicant did not provide the disputed catastrophic assessment plan—dated April 20, 2020, in the amount of \$33,335.00—in his evidence brief. As such, I have no breakdown of the costs in this plan. I do know, however, that several of the reports in evidence belonged to that plan, namely a physical medicine and rehabilitation assessment conducted by Dr. Lisa Becker, a neurological assessment conducted by Dr. Dale Robinson (neurologist), the neuropsychological and psychological assessment conducted by Dr. Davidson, and the occupational therapy assessment conducted by Ms. D'Souza.

- [26] I do not find the neurological or psychiatry assessments to be reasonable or necessary. The applicant's case involved a Criterion 8 impairment, which is an impairment resulting from a mental or behavioural disorder. The neurology report explored impairment related to neurological conditions under Criterion 7, which is not relevant to a Criterion 8 impairment. The psychiatry assessment aimed to outline the applicant's Whole Person Impairment Rating as it specifically relates to his physical injuries, not his psychological injuries. As such, I decline to order the respondent to pay the costs associated with these assessments.
- [27] I do, however, find the neuropsychology and psychology assessment and report to be reasonable and necessary despite its lack of bearing on my decision. This is because I believe the applicant's psychological impairments were worth exploring to determine if he was catastrophically impaired per Criterion 8. Indeed, the subject matter of this psychological investigation is highly relevant to the applicant's case and was relied upon extensively by the applicant during the hearing. I therefore find this assessment and report should be paid up to the maximum allowable value under the *Schedule*, or the actual cost of the assessment and report, whichever is the lesser amount.
- [28] I also find the occupational assessment and report to be both reasonable and necessary because the applicant's functional limitations owing to psychological impairments were worth exploring to determine if he was catastrophically impaired. In fact, the aim of the report was, in part, to evaluate the current functional level of the applicant's adaptation to stress, which was relevant to the applicant's case. I therefore find this assessment and report should be paid up to the maximum allowable value under the *Schedule*, or the actual cost of the assessment and report, whichever is the lesser amount.

The applicant is entitled to interest

- [29] I find that interest applies on the payment of the neuropsychological and psychological assessment and report—as well as the occupational therapy assessment and report—per Section 51 of the *Schedule*.

The respondent is not liable to pay an award

- [30] The applicant sought an award under Section 10 of Reg. 664. Under Section 10, the Tribunal may grant an award of up to 50 per cent of the total benefits payable if it finds that an insurer unreasonably withheld or delayed the payment of benefits.

[31] I find the respondent is not liable to pay an award. The payments owing on the applicant's claim are for the neuropsychology and psychology assessment and report, and the occupational therapy assessment and report. Although I agree the amount payable in respect of these reports is overdue because the respondent failed to pay the benefit within the time required by the *Schedule*, I do not believe payment was unreasonably withheld or delayed. In fact, at the time the proceeding concluded, there were no particulars of the award claim before the Tribunal, and the applicant therefore presented me with no grounds to consider an award in favour of the applicant. As such, I decline to order an award.

ORDER

[32] The applicant's claim of catastrophic impairment is dismissed.

[33] The respondent shall pay the cost of the neuropsychology and psychology assessment and report, as well as the occupational therapy assessment and report, up to \$2,000 each, or the actual cost of these specific assessments and reports, whichever is the lesser amount.

[34] The respondent shall pay interest owing on the cost of the neuropsychology and psychology assessment and report, as well as the occupational therapy assessment and report.

[35] The applicant's award claim is dismissed.

Released: May 16, 2023

A handwritten signature in black ink, appearing to read 'Michael Beauchesne', is written over a circular stamp or seal. The signature is somewhat stylized and overlaps the stamp.

Michael Beauchesne
Adjudicator