Citation: Selvaratnam v. Definity Insurance Company, 2026 ONLAT 24-006630/AABS

Licence Appeal Tribunal File Number: 24-006630/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:

Kanapathipil Selvaratnam

Applicant

and

Economical Mutual Insurance Company

Respondent

DECISION

ADJUDICATOR: **Dagmar Boettcher**

APPEARANCES:

For the Applicant: Jeremy Magence, Counsel

For the Respondent: Camilla Oblak, Counsel

HEARD: **By Way of Written Submissions**

OVERVIEW

[1] Kanapathipil Selvaratnam, the applicant, was involved in an automobile accident on January 28, 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, Economical Mutual 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:

i. 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 ("MIG") limit? Note: The parties agree the MIG limits have been exhausted.

ii. Is the applicant entitled to $2,479.83 for physiotherapy services, proposed by Pro Life Wellness Centre Inc. in a treatment plan/OCF-18 dated June 30, 2022?

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

RESULT

[3] I find that the applicant has not met his burden of demonstrating that his injuries fall outside the definition of a "minor injury" as defined in s. 3 of the *Schedule* and he is therefore subject to treatment within the $3,500.00 MIG limit.

[4] As the applicant remains within the MIG there is no entitlement to the benefits at issue.

[5] No interest is payable.

[6] The application is dismissed.

ANALYSIS

The injuries are predominantly minor and the MIG applies

[7] 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 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."

[8] 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 injury or condition combined with compelling medical evidence stating that the condition prevents maximal medical recovery of the minor injury sustained in the accident if they were 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.

[9] The applicant submits that he is not subject to the $3,500.00 MIG limit on benefits due to his pre-existing medical conditions as well as chronic pain developed as a result of the motor vehicle accident ("MVA"). In support of his position, the applicant relies upon the clinical notes and records ("CNRs") of Dr. Niththialuxmy Thamotharan, one consult with Dr. K. Jeyalingam, three letters from Dr. Sunu M. Liao, the CNRs of Pro Life Wellness Centre Inc. ("Pro Life"), and a consult with Dr. Read Abughaduma.

[10] The respondent submits that the applicant has not met his burden to prove, on a balance of probabilities, that his injuries should be treated outside the MIG and relies on the s. 44 Psychology Evaluation report dated July 28, 2022 by Dr. Douglas Saunders, the s. 44 Medical Evaluation report dated August 25, 2022 by Dr. Mohamed Lamine, and the s. 44 Orthopaedic Evaluation report dated October 9, 2024 by Dr. Gilbert Yee.

[11] For the reasons that follow, I find that the applicant has not demonstrated that his impairments warrant removal from the MIG.

Does the medical evidence support a diagnosis of a pre-existing condition?

[12] I find that the applicant has not made persuasive submissions with respect to the existence of a pre-existing condition that prevents maximal recovery if the applicant remains within the MIG.

[13] The standard for excluding an impairment on the basis of a pre-existing condition is well defined in s. 18(2) of the *Schedule*. The onus is on the applicant to provide compelling medical evidence, documented by a health practitioner before the accident occurred, that being subject to the MIG would prevent the insured person from achieving maximal recovery. It is not simply enough to show there is a pre-existing medical condition. The evidence must be both compelling and also indicate that such pre-existing condition would preclude the applicant's recovery from any accident-related minor injury.

[14] The applicant submits, within the initial sections of his written submission, that his pre-existing conditions include osteoarthritis, diabetes, hypertension, and pericardial effusion. However, within the summary of the applicant's written submissions, the applicant mentions only pre-existing medical conditions of diabetes and age. As a result of this inconsistency, my analysis includes all of the pre-existing conditions mentioned by the applicant.

[15] I am pointed to one reference within the CNRs of the family physician, Dr. Thamotharan, for osteoarthritis on March 7, 2021, and one mention within the CNRs of hypertension, pericardial effusion and diabetes on December 18, 2021. I note that within the summary of the applicant's written submissions, the applicant cites his age as a pre-existing medical condition but provides no authority, medical evidence or CNRs to support the assertion that age is a pre-existing medical condition that would prevent maximal recovery if kept within the MIG, as contemplated by s. 18(2).

[16] The respondent's submissions consider the pre-existing conditions of diabetes and age which are referenced within the applicant's submissions entitled "Position of the Applicant" and submits that the applicant does not provide evidence to substantiate that age and diabetes are pre-existing medical conditions that will prevent him from achieving maximal recovery if kept within the MIG. The respondent cites *Dearcangelis v Economical Insurance Company*, 2024 CanLII 33177 (ON LAT) in which age was cited as an impediment to the applicant's healing process. The respondent submits that the Tribunal has found that where there is no reference to whether the applicant's pre-existing conditions are exacerbated by the accident, or whether his recovery from his accident-related injuries would be impeded by his pre-existing conditions, the applicant

would not meet the test for removal from the MIG. The respondent also submits that the s. 44 Insurer Examination reports of Drs. Lamine, Yee and Saunders found no pre-existing condition that would prevent the applicant from achieving maximal medical recovery if subjected to the confines of the MIG.

[17] I have placed more reliance upon the evidence put forward by the respondent. I agree with the respondent that the medical evidence put forward by the applicant that diabetes would preclude the applicant's recovery from any accident-related injuries or would prevent maximal medical recovery from his accident-related impairments has not been supported within the CNRs of Dr. Thamotharan. I find also that the medical evidence I am pointed to regarding the applicant's age, diabetes and his ability to recover from any accident-related injuries is not persuasive.

[18] The CNRs provided by Dr. Thamotharan indicate one reference to osteoarthritis, hypertension, pericardial effusion and diabetes prior to the MVA. However, the existence of pre-existing conditions is only the first part of the test for removal from the MIG. Dr. Thamotharan's CNRs do not state that any of the pre-existing conditions relied upon by the applicant would prevent him from reaching maximal medical recovery from his accident-related injuries if kept within the MIG, as required for removal by s. 18(2).

[19] I find therefore that I am not persuaded by the medical evidence put forward by the applicant to support his submission that osteoarthritis, hypertension, pericardial effusion, diabetes, or age are pre-existing conditions that would impair maximal recovery if kept within the MIG. The applicant is not removed from the MIG on the basis of a pre-existing condition.

Does the medical evidence support a diagnosis of chronic pain?

[20] I find that the applicant has not proven, on a balance of probabilities, that he suffers from chronic pain with functional impairment. It is well established that ongoing or lingering pain does not automatically take a person out of the MIG. The pain must be of a continued severity resulting in functional impairment.

[21] The applicant relies upon an OCF-3 and an OCF-23, both completed by Stacey Nolan, Chiropractor, on February 9, 2022. I am pointed to the OCF-3 which indicates that the applicant was having difficulty with prolonged postures, bending, twisting, sitting and stair use. The OCF- 23 lists a multiplicity of injuries, stress, and peripheralization of pain as barriers to recovery.

[22] The applicant relies also upon the CNRs of Pro Life which the applicant submits show consistent and ongoing pain with some improvement. I am pointed to the Pro Life reassessment of May 12, 2022 completed by the physiotherapist Kanica Berry, which notes that, although the pain was 30%-40% better, it was still there. A further reassessment by the physiotherapist on June 30, 2022 indicates that the pain in the applicant's low back and shoulder was only 50% better. The subsequent OCF-18 dated May 12, 2022 reported that the applicant was having difficulty with various activities including repetitive lifting, carrying, standing, twisting, or overhead reaching.

[23] The applicant relies further upon a referral by Dr. Thamotharan to Dr. Laio, Physiatrist, and subsequently relies upon the letters from Dr. Laio dated January 10, 2023, March 30, 2023, and September 7, 2023. I am also pointed to a referral letter from an Orthopaedic Surgeon, Dr. Read Abughaduma, after an MRI of the applicant's left shoulder was completed at the request of the applicant.

[24] The respondent submits that the applicant has not provided a clinical analysis of the pain becoming chronic, such that the severity is outlined and the functional impairment or limitations it causes are related to the accident. The respondent submits that self-reporting of pain to medical professionals is not sufficient to demonstrate one suffers from chronic pain requiring removal from the MIG and that the CNRs of the family doctor do not show any evidence of ongoing complaints of chronic pain and there has been no diagnosis or a referral to a pain specialist.

[25] The respondent also submits that the diagnosis within the OCF-3 is outside the scope of a Chiropractor, and while the OCF-3 lists chronic post-traumatic headaches, the respondent submits that the applicant himself denied having headaches to his family doctor on May 18, 2022. Additionally, the respondent submits that it is well established in the jurisprudence that an OCF-18 is not medical evidence and points me to *Kiddidapillai v Allstate Insurance*, 2023 CanLII 107290 (ON LAT) in support of its position.

[26] As referred to by the respondent, the Tribunal has held that the six criteria in the American Medical Association Guides ("*Guides*") are a useful interpretive tool for assessing claims of chronic pain. Although, the *Guides*' six criteria for chronic pain were not incorporated in the *Schedule*, this Tribunal has consistently considered them a useful tool for assessing claims of chronic pain in accident benefits disputes in the absence of a diagnosis of chronic pain. The respondent submits that the applicant did not address these criteria or provide evidence that

would suggest he meets at least three of the six criteria, as contemplated by the *Guides*.

[27] I do not find the evidence I am pointed to within the OCF-3 and OCF-23 compelling, as both were completed only two weeks after the MVA. Two weeks subsequent to a motor vehicle accident cannot reasonably be held to be considered chronic, as the pain must be of a continued severity. Additionally, both the OCF-3 and OCF-23 identify the injuries as Whiplash Associated Disorder 2 ("WAD2") with sprain and strain injuries and the initial assessment by Dr. Nolan notes headache (HA) and WAD. These physical impairments are consistent with a minor injury.

[28] I find also that the applicant was referred to a specialist in internal medicine due to his diabetes, and on February 12, 2022, Dr. Jeyalingam reported to the family doctor that the applicant advised he had not suffered any injuries during the MVA, and that his mild aches and pains had settled down.

[29] I was also pointed to the CNRs of Pro Life by the applicant, however I found those of the physical therapist Kanica Berry to be virtually illegible, and I am therefore not able to confirm the applicant's submission regarding consistent, ongoing pain in the applicant's neck, shoulder, back and right knee within her CNRs. I am, however, able to discern the notes of Stacey Nolan on February 9, 2022 in which Dr. Nolan notes WAD. On February 14, 2022, February 23, 2022 and March 9, 2022, Dr. Nolan notes that the applicant reports he feels better. On March 21, 2022, the applicant reports he feels the same. In all cases Dr. Nolan's notes indicate the prognosis is "Good."

[30] I was also pointed to the letters of Dr. Laio dated January 10, 2023 and March 30, 2023, however, I note that these letters show lumbar strain, improvement and recommend simple yoga-based exercises, the application of heat, and continued daily walking routine. No medication was prescribed.

[31] The applicant also points me to an ultrasound report of his left shoulder completed March 24, 2023 which found a full thickness tear of the supraspinatus tendon. However, the CNR of Dr. Thamotharan on February 14, 2023 indicates that the applicant reported experiencing left shoulder pain only for the past 3 weeks and stated the cause as due to lifting a heavy suitcase. The applicant reported to Dr. Laio on March 10, 2023 that his left shoulder had been painful for the past 3-4 months. On November 15, 2023, the applicant reported to Dr. Read Abughaduma, Orthopaedic Surgeon, that his left shoulder had been painful for almost a year. The applicant was then referred for an MRI and on February 17, 2024 the MRI confirmed the full thickness tear but went on to state that the tear

may not be chronic. This is repeated in the CNRs of Dr. Thamotharan who recommended only exercise, pain medication and a follow-up.

[32] I agree with the respondent's submission that that the applicant's reporting of his left shoulder pain was inconsistent through three different doctors and appointments. This inconsistent reporting together with the MRI results and the lack of any change in treatment by any of the doctors or specialists, does not persuade me that the shoulder pain rises to the threshold of chronic pain with functional impairment, or that the full thickness tear is a result of the MVA.

[33] I have also placed more weight on the evidence provided by the respondent because the s. 44 Medical Evaluation report by Dr. Mohamed Lamine of September 13, 2022 found no objective accident-related musculoskeletal or potential neurological impairment. The s. 44 Orthopaedic Evaluation report of Dr. Gilbert Yee dated October 9, 2024 stated the applicant had residual symptomatology related to myofascial strains of the left shoulder, and Dr. Yee stated the applicant's rotator cuff injuries likely were more consistent with lifting a heavy suitcase, than the MVA.

[34] As referenced by the respondent, the applicant made no submissions or reference to the *Guides*. While the applicant states that he was taking pain killers daily, I was not pointed to any specific CNRs that support this assertion. I did find occasional references to Tylenol and Advil within the CNRs, both before and after the MVA. I also found that the applicant advised Dr. Laio on January 10, 2023 that he was taking pain medications once per week. Therefore, I do not find the references to Tylenol compelling evidence of the use of prescription drugs beyond the recommended duration, or abuse or dependence on prescription drugs as found within the *Guides*. Although there is no statutory requirement that the applicant must satisfy the criteria in the *Guides,* I find that the submissions of the applicant do not align with or make reference to any of the other criteria within the *Guides*.

[35] I am satisfied that the applicant has not established, on a balance of probabilities, that he suffers from chronic pain with functional impairment that would warrant removal from the MIG.

Treatment Plan - Did the insurer fail to comply with s. 38 (8) and (11) of the Schedule with regards to the OCF-18 in the amount of $2,479.83 for Physiotherapy Services?

[36] As I have found that the applicant remains within the MIG, I am not required to determine whether the treatment plans submitted in this dispute are reasonable and necessary.

[37] As an alternative argument, the applicant submitted that he is entitled to the disputed treatment plans because the respondent's denials did not comply with the requirements in s. 38(8) of the *Schedule*. The applicant submits that the medical and other reasons cited should include details about the insured's condition forming the basis for the insurer's decision.

[38] Sections 38(8) and 38(11) of the *Schedule* set out strict notice requirements for insurers responding to treatment plans and specific consequences if they fail to comply. Section 38(8) requires an insurer to inform an insured person within ten business days after it receives an OCF-18 which goods, services, assessments, and/or examinations it agrees to pay for, and which it does not, as well as the medical and other reasons why it considered any of the goods and services to not be reasonable and necessary.

[39] If an insurer fails to comply with its obligations under s. 38(8), the following consequences set out in s. 38(11) of the *Schedule* are triggered:

i. The insurer is prohibited from taking the position that the insured person has an impairment to which the Minor Injury Guideline applies.

ii. The insurer shall pay for all goods, services, assessments, and examinations described in the treatment and assessment plan that relate to the period starting on the 11th business day after the day the insurer received the application and ending on the day the insurer gives a notice described in subsection s. 38(8).

[40] The applicant submits that the treatment plan in dispute was denied with "boilerplate" language that does not meet the standard outlined in s. 38(8).

[41] In support of its position, the applicant points me to *17-006967 v Certas Home and Auto Insurance Company*, 2018 CanLII 95582 (ON LAT) and *16-003316/AABS v. Peel Mutual Insurance Company*, 2018 CanLII 39373 (ON LAT). The applicant submits that the respondent has to establish that the denial was clear and unequivocal and that specific, meaningful details regarding the

applicant's condition forming the basis for the insurer's decision are provided within the denial.

[42] The respondent submits that its denial of the treatment plan was compliant with s. 38(8). In particular, the denials were delivered within 10 business days of submission, that MIG is the medical reason provided, and that the respondent invited the applicant to supply more medical documentation for consideration, should the applicant believe the injuries do not fall within the MIG.

[43] The respondent submits further that the Divisional Court found within *Aviva General Insurance Company v Catic*, 2022 ONSC 6000 (CanLII) that while an insurer's late denial of a treatment plan triggers automatic payment for goods/services, this only applies to those actually incurred by the claimant during the "shall-pay" period, not future or non-incurred expenses. The respondent submits the applicant has not provided any proof that the subject treatment plan was incurred during the period referred to in the Divisional Court decision.

[44] The respondent submits that the OCF-18 was denied because there had been insufficient medical evidence provided to substantiate ongoing accident-related injuries and therefore the applicant was confined to the MIG. The respondent advised the applicant in the denial letter that a s. 44 Insurer's Examination was being scheduled which would assist the respondent in determining whether the MIG continued to apply, and on page 2 of the denial, invited the applicant to submit evidence including documentation, but not limited to clinical notes and records/hospital records showing any documented pre-existing condition or diagnosis. The respondent further submits that the Tribunal has found that the insurer is not required to fabricate medical reasons when the applicant has not provided medical evidence which is in the control of the applicant to provide and refers me to *Tentativa v Co-operators General Insurance company*, 2025 CanLII 25846 (ON LAT) in support of this position.

[45] The applicant does not direct me to any provision in the *Schedule* or caselaw which holds that an itemized breakdown of services is required, particularly in a situation where the full amount of the OCF-18 was being denied (as opposed to a situation where an OCF-18 is only partially denied).

[46] While there is little in the applicant's submissions pointing me to the specifics of the alleged s. 38(8) non-compliance, I agree with the respondent that stating that it believes the MIG applies satisfies the requirement for providing a medical reason in this context and that additional medical documentation was invited.

[47] The applicant has not met his onus to demonstrate that the denial notices were not compliant with s. 38(8).

Treatment Plan

[48] As I have found that the applicant is not entitled to funding beyond the MIG limit, it is unnecessary for me to consider whether the treatment plan dated June 20, 2022 is reasonable and necessary.

Interest

[49] As I have found that there is no overdue payment of benefits, the applicant is not entitled to interest pursuant to s. 51 of the *Schedule*.

ORDER

[50] I order the following:

i. The applicant remains within the MIG and is subject to the $3,500.00 funding limit;

ii. The applicant is not entitled to the treatment plan in dispute;

iii. The applicant is not entitled to interest; and

iv. The application is dismissed.

Released: January 28, 2026

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Dagmar Boettcher
Adjudicator