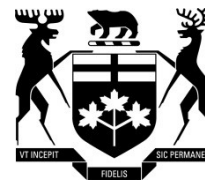


Safety, Licensing Appeals and
Standards Tribunals Ontario
Licence Appeal Tribunal

Tribunaux de la sécurité, des appels en
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Tribunal d'appel en matière de permis



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Tribunal File Number: 16-002818/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:

H.M.

Applicant

and

Unifund Assurance Company

Respondent

DECISION

ADJUDICATOR: Chris Sewrattan

APPEARANCES:

Counsel for the Applicant: Lisa Bishop

Counsel for the Respondent: Anju Sharma

HEARD: Written Hearing: April 11, 2017

Overview

- [1] The applicant was injured in a motor vehicle accident on October 9, 2014. She sought benefits under the *Statutory Accident Benefits Schedule – Effective after September 1, 2010* (the “*Schedule*”). The applicant was denied payment of the benefits by Unifund Assurance Company (“Unifund”) when she approached the payment limit under the *Minor Injury Guideline* (the “*Guideline*”).
- [2] The applicant seeks a determination from the Licence Appeal Tribunal (“the Tribunal”) that her injuries are outside the scope of the *Guideline* and entitled to payment for a number of treatment plans and assessments.

Issue:

- [3] I must determine the following issues:
1. Did the applicant suffer predominantly minor injuries as defined under the *Schedule*?
 2. Is the applicant entitled to a \$3,085.89 medical benefit for physiotherapy services, which is recommended by Prime Health Care Inc. in a treatment plan dated November 7, 2014?
 3. Is the applicant entitled to a \$2,388.50 medical benefit for physiotherapy services, which is recommended by Prime Health Care Inc. in a treatment plan dated January 19, 2016?
 4. Is the applicant entitled to the cost of an examination (\$2,000) for a psychological assessment, which is recommended by Prime Health Care Inc. and was submitted to Unifund on January 26, 2016?
 5. Is the applicant entitled to the cost of an examination (\$2,000) for a chronic pain assessment, which is recommended by Prime Health Care Inc. and was submitted to Unifund on February 10, 2016?
 6. Is the applicant entitled to interest on any overdue payment of benefits?
 7. Is the applicant entitled to costs under Rule 19.1?

Result:

- [4] The psychological injury sustained as a result of the motor vehicle accident is not predominantly minor and, as a result, the applicant’s treatment is not subject to the *Guideline*.

- [5] The applicant is entitled to the cost of examination for the psychological and chronic pain assessment, respectively. She is entitled to interest on these payments in accordance with s. 51 of the *Schedule*.
- [6] The applicant is not entitled to either of the treatment plans for physiotherapy services. I am not satisfied that the treatment plans have reasonable and necessary goals and methods for treating her injuries.
- [7] The applicant is not entitled to costs under Rule 19.1 of the *LAT Rules* because the conduct about which she complains, even if true, occurred outside of the Tribunal's proceeding.

Analysis:

1. Did the applicant suffer predominantly minor injuries which render his treatment is subject to the *Guideline*?

a) Psychological injury

- [8] The applicant asserts that both her psychological and physical impairments render her not subject to the *Guideline*. I find that only her psychological impairments render her not subject to the *Guideline*. I find that the applicant suffers from Adjustment Disorder with Mixed Anxiety and Depressed Mood, and a Specific Phobia relating to travelling in and around a vehicle.
- [9] My finding is based on the psychological report of Dr. Andrew Shaul, a psychologist. Dr. Shaul conducted a number of psychological tests on the applicant and diagnosed her with Adjustment Disorder with Mixed Anxiety and Depressed Mood, and a Specific Phobia relating to travelling in and around a vehicle. Dr. Shaul administered the Beck Depression Inventory and Beck Anxiety Inventory, both of which are 21-item questionnaires designed to measure degrees of depression and anxiety, respectively. The applicant's respective scores indicate that she suffers from moderate depression and severe anxiety. I find Dr. Shaul's testing methods to be sound, his results compelling, and the conclusions drawn from those results reasonable.
- [10] Unifund commissioned an independent psychological assessment by Dr. Alan Chan, a psychologist. Dr. Chan conducted different psychological tests on the applicant, and he had the benefit of reading Dr. Shaul's report. Dr. Chan concluded that the applicant does not suffer from a psychological impairment. Drawing largely from Dr. Chan's report, Unifund submits that the applicant has not proven that she suffers from a psychological impairment removing her from the *Guideline*. Unifund points out that the applicant told Dr. Chan that she did not think she required psychological treatment. She also told Dr. Chan that she continues to go to work, go to the gym, and drive on a daily basis.

[11] Furthermore, Unifund questions the basis of Dr. Shaul's diagnoses. It asserts that the Beck Depression Inventory and Beck Anxiety Inventory are self-report questionnaires. They are amenable to manipulation in a self-serving manner.

[12] Unifund's submission is unconvincing in light of two tests administered by Dr. Chan. The Miller Forensic Assessment of Symptoms Test and Personality Assessment Inventory indicate that the applicant is:

1. *unlikely* to malingering or over-endorse a psychiatric illness; and,
2. *likely* to minimize or be unaware of problems or other areas where functioning might be less than optimal. She is reluctant to acknowledge personal limitations and will tend to repress or deny distress or other internal consequences that might arise from such limitations.

These two tests paint the picture of a psychological profile that explains why the applicant might tell Dr. Chan that she does not require psychological treatment, and why she continues to engage in normal activities of daily living like working and driving. The Miller Forensic Assessment of Symptoms Test and Personality Assessment Inventory cause me to prefer the conclusions drawn by Dr. Shaul over the conclusions drawn by Dr. Chan.

[13] Unifund alternatively submits that if the applicant does suffer from a psychological impairment it was not caused by the motor vehicle accident. To this end, Unifund points to the applicant's first mention of stress and/or anxiety to her family doctor, which is 18-months after the accident. Moreover, the applicant told another doctor that her low mood is due to stresses at work, relating to ill patients and irritable co-workers.

[14] Remaining mindful that it is the applicant's onus to prove causation, I am not swayed by Unifund's submission. Dr. Shaul's psychological report shows that the applicant attributes her feelings of depression and anxiety to the motor vehicle accident. On this basis, I am satisfied that the applicant's psychological impairment was caused by the motor vehicle accident.

[15] Given my decision, I do not need to consider whether a physical injury or pre-existing condition render the *Guideline* inapplicable.

2. Are the treatment plans reasonable and necessary?

a) The two treatment plans for physiotherapy services

[16] The applicant claims entitlement to two medical benefits for physiotherapy services, valued at \$3,085.89 and \$2,388.50 respectively. In order to receive payment, the applicant must prove that each treatment plan is reasonable and necessary.

[17] I am not persuaded that the treatment plans are reasonable or necessary. The applicant has provided evidence of her impairment. She has shown me each treatment plan's goal and the method of achieving it. But she has not shown me whether the treatment plans have reasonable and necessary goals and methods for treating her injuries. It is up to her to convince me that the treatment plans are reasonable and necessary. Since I am not convinced that they are, I must deny her entitlement to each treatment plan.

[18] Looking at the applicant's physical injuries, the applicant submits that she may suffer from chronic pain. The submission is based on the failure of her injuries to improve over time:

- October 9, 2014: the motor vehicle occurs
- October 10, 2014: the applicant complains to her family doctor that she suffers from "recurrent headache, lower back pain, neck pain and right wrist pain, and right hip pain"
- February 19, 2016: the applicant attends Easy Health Centre after completing some physiotherapy. She complains that her injuries did not get better. She claims to suffer from pain and stiffness in her shoulder, neck, wrist, back, hip and knee. As part of an orthopedic assessment, neurodynamic testing conducted that day indicates to the applicant's assessor that the applicant is experiencing "WAD II with multiple strain/strains, right shoulder, right wrist, low back, right hip and right knee pains, as well as myalgia, headaches."

[19] Unifund commissioned an assessment, dated January 4, 2017, from Dr. Hossein, a physiatrist. Dr. Hossein concluded that from a musculoskeletal perspective the motor vehicle accident caused the applicant to sustain "sprain/strain injuries of the cervical, lumbar, right wrist ligament/joint, and right gluteus muscle tendinopathy". Dr. Hossein's diagnosis properly places the applicant's physical injuries in context. I prefer his conclusions over that of the neurodynamic testing conducted in February 2016 because I afford greater weight to an opinion from a physiatrist than neurodynamic testing on a musculoskeletal injury. Moreover, Dr. Hossein's report provides greater detail about his testing method than the scant orthopedic assessment papers provided with the neurodynamic testing. I am able to assess how Dr. Hossein arrived at his conclusions. I accept Dr. Hossein's testing methods and conclusion derived from those tests.

[20] Given the context of the applicant's physical injury, I am unable to say whether the two treatment plans for physiotherapy are reasonable and necessary means of treating the injury. Since the applicant is required to prove this, her claim must fail.

b) The psychological assessment

- [21] The applicant claims entitlement to \$2,000 for the cost of an examination for a psychological assessment. Again, she must prove that the assessment is reasonable and necessary. In light of my factual findings about the applicant's psychological impairment in section 1(a) of this decision, I find that the cost of the examination for a psychological assessment is a reasonable and necessary expense.
- [22] Unifund submits that the expense is not reasonable or necessary because the applicant was referred to an OHIP-funded program and has not attended. In Unifund's view, the applicant has an obligation to use OHIP-funded treatment prior to seeking accident benefits.
- [23] In the context of this case, the applicant does not have to defer to OHIP-funded treatment. The OHIP-funded treatment in question and the accident benefit are different programs. The applicant is entitled to avail herself of the accident benefit that is reasonable and necessary. Based on the facts of this case, the applicant is not required to defer to a different program funded by OHIP. I find the examination proposed is both reasonable and necessary.
- [24] The applicant is entitled to \$2,000 for the cost of an examination for a psychological assessment.

c) The chronic pain assessment

- [25] The applicant claims entitlement to \$2,000 for the cost of an examination for a chronic pain assessment. According to Unifund, the applicant's subjective reports of pain and the objective evidence of her functionality are not congruent with a person who is suffering from chronic pain.
- [26] The applicant has proven entitlement to \$2,000 for the cost of an examination for a chronic pain assessment. The timeline of her injuries' improvement, or lack thereof, in s. 2(a) of this decision demonstrates that the applicant continues to suffer from pain. And to the extent that the applicant's behaviour is incongruent with the behaviour of a chronic pain sufferer, I attribute this up to the applicant's psychological disposition. Dr. Chan's results from the Miller Forensic Assessment of Symptoms Test and Personality Assessment Inventory, described in paragraph 12, show that the applicant is inclined to underplay her difficulties and push on through problems.
- [27] It is reasonable and necessary that the applicant be given an opportunity to explore whether she suffers from chronic pain.

Interest

[28] The applicant is entitled to interest for the cost of examinations for her psychological and chronic pain assessments, respectively. Interest is payable in accordance with s. 51 of the *Schedule*.

Costs

[29] The applicant claims costs for Unifund's alleged failure to properly adjust her claim in a fair and responsible manner. Costs under Rule 19.1 of the *LAT Rules* apply to conduct occurring within the Tribunal's proceeding. The conduct complained of, even if true, occurred outside of the Tribunal's proceeding. The costs claim is denied.

Conclusion:

[30] The psychological injury sustained as a result of the motor vehicle accident is not predominantly minor and, as a result, the applicant's treatment is not subject to the *Guideline*. The applicant is entitled to the cost of examination for a psychological and chronic pain assessment, respectively. She is also entitled to interest on these payments in accordance with s. 51 of the *Schedule*.

[31] The applicant is not entitled to either of the treatment plans for physiotherapy services, or costs.

Released: June 12, 2017



Chris Sewrattan, Adjudicator