



**Citation: Saab v. Economical Mutual Insurance Company, 2023 ONLAT 21-012807/AABS**

**Licence Appeal Tribunal File Number: 21-012807/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:

**Louay Saab**

**Applicant**

and

**Economical Mutual Insurance Company**

**Respondent**

**DECISION**

**ADJUDICATOR: Kate Grieves**

**APPEARANCES:**

For the Applicant: Shahzad Ayub, Counsel

For the Respondent: Colin McDonald, Counsel

**HEARD: By Way of Written Submissions**

## OVERVIEW

[1] Louay Saab (“the applicant”), was involved in an automobile accident on August 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 Economical Mutual 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:

1. Are the applicant’s injuries predominantly minor as defined in s. 3 of the Schedule and therefore subject to the *Minor Injury Guideline* (“MIG”) and the \$3,500.00 funding limit on treatment?
2. Is the applicant entitled to medical benefit in the amount of \$2,486.00 for a psychological assessment proposed by Imperial Medical Assessments Inc. in a treatment plan/OCF-18 dated December 23, 2020?
3. Is the applicant entitled to medical benefit in the amount of \$282.50 for a psychological pre-screening proposed by Imperial Medical Assessments Inc. in a treatment plan/OCF-18 dated December 23, 2020?
4. Is the applicant entitled to medical benefit in the amount of \$4,538.69 for psychological treatment proposed by Imperial Medical Assessments Inc. in a treatment plan/OCF-18 dated January 20, 2021?
5. Is the respondent liable to pay an award under s. 10 of O. Reg. 664 because it unreasonably withheld or delayed payments to the Applicant?
6. Is the applicant entitled to interest on overdue payment of benefits?

## RESULT

[3] The applicant sustained a minor injury as a result of the accident and is subject to the MIG and the \$3,500.00 funding limit on medical and rehabilitation benefits.

[4] The applicant is not entitled to the disputed medical benefits, and no interest or award is payable.

[5] The application is dismissed.

## PROCEDURAL ISSUES

- [6] The respondent argues that the applicant was in the course of his employment at the time of the accident, and therefore is not entitled to accident benefits pursuant to s. 61(1) of the *Schedule*, which states that the insurer is not required to pay benefits to an insured person who, as a result of an accident, is entitled to receive benefits under the *Workplace Safety and Insurance Act, 1997*. The applicant has not provided a copy of his WSIB file nor has he addressed the argument in his submissions.
- [7] The applicant reportedly told a s. 25 assessor that he typically worked 8 hours on Fridays, and the accident occurred on a Friday at 11:30 a.m. while he was “going to get food”. The report was not included in the evidence. The respondent submits that given that the accident occurred during a workday, and his job involved varying work locations, the implication is that the accident occurred during the course of his employment. In the absence of further evidence, the mere implication is insufficient to determine if s. 61 applies.

## ANALYSIS

### *The Minor Injury Guideline*

- [8] Section 18(1) of the *Schedule* provides that medical and rehabilitation benefits are limited to \$3,500.00 if the insured 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.”
- [9] 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 precludes recovery if they are 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.
- [10] The applicant did not make any submissions on applicability of the MIG. His submissions focus on alleged procedural errors made by the respondent in denying the treatment plans in dispute. He has not met his burden to prove that he sustained more than a minor injury.

### ***Treatment Plans***

- [11] To receive payment for a treatment and assessment plan under s. 15 and 16 of the *Schedule*, the applicant bears the burden of demonstrating on a balance of probabilities that the benefit is reasonable and necessary as a result of the accident. To do so, the applicant should identify the goals of treatment, how the goals would be met to a reasonable degree and that the overall costs of achieving them are reasonable.
- [12] An applicant may also establish entitlement to payment of a plan by showing that the respondent failed to comply with the notice requirements in s. 38(8) of the *Schedule* and that the goods and services were incurred during the period of non-compliance.
- [13] The applicant submits that the respondent's denial letters with respect to the pre-screen and psychological assessment did not comply with the requirements of s. 38(8), because they lacked detail or principled reasons for the denial, and suggests that the respondent did not review the medical documentation including the pre-screening report. With respect to the plan for psychological treatment, the applicant submits that the denial notice was issued three months after the OCF-18 was submitted, breaching the 10-day requirement to respond pursuant to s. 38(8).

#### *The applicant is not entitled to the cost of the pre-screen report*

- [14] The treatment plans for the pre-screen and the psychological assessment are both dated December 23, 2020. The pre-screening was completed on December 23, 2020, and was included with the submission of the OCF-18. Pursuant to section 38(2) an insurer is not liable to pay an expense that was incurred before the submission of the treatment plan, and none of the exceptions are applicable. I find that the applicant is not entitled to the cost of the pre-screen as it was incurred prior to the submission of the plan.

#### *The applicant is not entitled to the cost of the psychological assessment*

- [15] The applicant takes issue with the denial letter, dated January 7, 2021, on the basis that the respondent's notice was boilerplate, did not provide sufficient detailed reasons, and did not refer to the pre-screen report.
- [16] I find that the respondent's letter complied with s. 38(8) of the *Schedule*. It identifies the treatment plan in dispute, indicates that they reviewed the plan along with the medical documentation on file, that his reported injuries were whiplash, neck and back pain, there was no indication that there was a

psychological impairment, and given the time elapsed since the accident and the last treatment in October 2017, the lack of new medical evidence, there was no compelling evidence that the recommended assessment was in regard to injuries sustained in the accident. Further, there was no compelling evidence that he had a pre-existing medical condition that would prevent him from achieving maximum medical recovery if restricted to the \$3,500 limit. The letter states that the applicant was required to undergo an insurer's examination.

- [17] The insurer's examination assessors, Dr. T. Levy, general practitioner, and Dr. A. Rubenstein, psychologist, concluded in their reports dated August 18, 2021 that the applicant sustained minor soft tissue injuries and no psychological impairment.
- [18] By letter dated September 1, 2021, the respondent provided copies of the reports, provided a summary of the assessors' conclusions, and confirmed that the OCF-18 was not reasonable and necessary as his injuries fell within the MIG.
- [19] I find that these reasons outlined in the letters effectively communicate the respondent's reasons for denying the plan. The respondent is not required to refer to specific pieces of evidence. The legal standard to be met is not a standard of perfection. The reasons provided meet the principles outlined in the Tribunal's decision in *17-003774 v. Aviva Canada Inc* 2016 CanLII 84051 (ON LAT). It must allow for reasonable minds to disagree about the content of an insurer's file. The reasons are not to be measured by the inch. If the letter offers a principled rationale based fairly on an insured's file, the obligations of s. 38(8) are met. I find these letters were sufficiently clear and provided enough detail for the applicant to make an informed decision about whether to accept or dispute the respondent's decision.
- [20] The applicant does not direct me to any other medical evidence to support the reasonableness and necessity of the proposed assessment. Given that the focus of his submissions was on the sufficiency of the respondent's denial, I find that the applicant has not met his onus to prove entitlement to the OCF-18 in dispute.

*The applicant is not entitled to the cost of the psychological treatment*

- [21] The applicant submits that the respondent's denial was issued three months after the submission of the plan for psychological treatment, thereby breaching the 10-business day requirement for issuing a denial letter according to s. 38(8), and therefore, the respondent is required to pay for the benefits pursuant to s. 38(11)2.

[22] Although the OCF-18 is dated January 20, 2021, the HCAI confirmation indicates that it was not submitted until February 24, 2021. It was denied on March 10, 2021, within 10 business days, in compliance with s. 38(8) of the *Schedule*.

[23] Having found that the notice was provided within the timelines provided by the *Schedule*, and in the absence of any other submissions, I find that the applicant has not established entitlement to the plan for psychological treatment.

***Interest***

[24] Interest applies on the payment of any overdue benefits pursuant to s. 51 of the *Schedule*. No benefits are overdue, therefore no interest is payable.

***Award***

[25] The applicant sought an award under s. 10 of Reg. 664. Under s. 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. No benefits were unreasonably withheld or delayed, therefore no award is payable.

**CONCLUSION AND ORDER**

[26] I order that:

- i. The applicant sustained a minor injury as a result of the accident and is subject to the MIG and the \$3,500.00 funding limit on medical and rehabilitation benefits.
- ii. He is not entitled to the disputed OCF-18s.
- iii. No interest or award is payable.
- iv. The application is dismissed.

**Released:** October 25, 2023



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**Kate Grieves  
Adjudicator**