



Citation: Golden v. Economical Mutual Insurance Company, 2024 ONLAT 22-000651/AABS

Licence Appeal Tribunal File Number: 22-000651/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:

Ian Golden

Applicant

and

Economical Mutual Insurance Company

Respondent

DECISION

ADJUDICATOR: Harry Adamidis

APPEARANCES:

For the Applicant: Julia Logoutova, Paralegal

For the Respondent: Colin MacDonald, Counsel

HEARD: By written submissions

OVERVIEW

[1] Ian Golden, the applicant, was involved in an automobile accident on December 11, 2020, 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:

- 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 limit?
- ii. Is the applicant entitled to a non-earner benefit of \$185.00 per week from February 8, 2021, to date and ongoing?
- iii. Is the applicant entitled to \$3884.00 for physiotherapy services, proposed by Aqua Wellness in a treatment plan dated March 23, 2021?
- iv. Is the applicant entitled to \$2200.00 for psychological services, proposed by Aqua Wellness in a treatment plan dated April 28, 2021?
- v. Is the applicant entitled to \$2736.50 for physiotherapy services, proposed by Aqua Wellness in a treatment plan dated April 28, 2021?
- vi. Is the applicant entitled to interest on any overdue payment of benefits?

RESULT

[3] The applicant’s injuries are predominantly minor as defined in s. 3 of the Schedule and subject to treatment within the Minor Injury Guideline.

[4] The applicant is not entitled to a non-earner benefit, the treatment plans, nor interest.

ANALYSIS

Minor Injury Guideline (MIG)

[5] The applicant’s injuries are predominantly minor and treatable within the MIG.

- [6] 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.”
- [7] 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.
- [8] The applicant makes no submissions on removal from the MIG.
- [9] The respondent submits that the applicant failed to meet his onus to prove that his injuries fall outside the MIG.
- [10] The applicant has provided no basis to find that he can be taken out of the MIG. Consequently, I find that the applicant’s injuries are predominantly minor as defined in s. 3 of the Schedule.

Non-Earner Benefit (NEB)

- [11] The applicant is not entitled to an NEB.
- [12] Section 36(4) of the Schedule states:

36(4) Within 10 business days after the insurer receives the application and completed disability certificate, the insurer shall,

(a) pay the specified benefit;

(b) give the applicant a notice explaining the medical and any other reasons why the insurer does not believe the applicant is entitled to the specified benefit and, if the insurer requires an examination under section 44 relating to the specified benefit, advising the applicant of the requirement for an examination; or

(c) send a request to the applicant under subsection 33 (1) or (2).
O. Reg. 34/10, s. 36 (4).

- [13] Under s. 36(6) of the Schedule, if an insurer fails to comply with subsection 36(4) then the insurer must pay the benefit from the day the application was received until the day the insurer gives the notice.
- [14] According to the applicant, an NEB should be paid from January 26, 2021 to April 5, 2021 because the denial letter does not refer to s. 36 of the Schedule, and therefore, is deficient and invalid.
- [15] The respondent submits that its letter dated January 26, 2021 fulfills the requirements of the s. 36(4) of the Schedule and that the NEB is not payable.
- [16] Paragraph 36(4)(b) of the Schedule requires the insurer to provide a medical reason and any other reasons why the insured is not entitled to a benefit, and to advise if an examination is required. The respondent's letter dated January 26, 2021 advises that no medical records were received and that there is no way for the respondent to understand the applicant's pre- and post-accident functioning. In my view, the absence of medical evidence falls within the parameters of "medical reasons" for why the respondent does not believe the applicant is entitled to an NEB. The letter also states that the respondent intends to exercise its rights under 36(4)(b) and that further information regarding assessments will follow in a separate letter.
- [17] The January 26, 2021 letter meets the two requirements of s. 36(4)(b). The letter provides reasons why the respondent believes the applicant has not established entitlement to the NEB and advises the applicant that an assessment is being arranged. Consequently, I find that the applicant is not entitled to an NEB from January 26, 2021 to April 5, 2021 based on the provisions of s.36(6) of the Schedule.

Treatment Plans

- [18] The applicant is not entitled to the disputed treatment plans.
- [19] Having found that the applicant's injuries are held within the MIG, and given that the parties agree that the MIG limit has been exhausted, I further find that the applicant is not entitled to the treatment plan in the amount of \$3884.00 for physiotherapy services.
- [20] According to the applicant, the respondent ignored the report of Dr. Fahimeh Aghamohseni, psychologist. The applicant submits that the respondent's denial should be deemed not to meet the requirements of s.38(8) of the Schedule and that the treatment plan for psychological services is payable.

- [21] According to the respondent, Dr. Aghamohseni's report was not provided with the treatment plan and the treatment plan does not indicate that anything is enclosed. Moreover, the denial letter dated May 6, 2021 makes clear that the respondent has not received any medical documentation supporting a psychological impairment. The respondent submits that the denial letter communicated the rationales for the denial and that s. 38(8) does not apply.
- [22] Section 38(8) of the Schedule requires insurers to identify the goods, services, assessments, and examinations in the treatment plan that the insurer does not agree to pay for and provide medical reasons and all other reasons why the insurer considers the treatment plan to not be reasonable and necessary.
- [23] The denial letter dated May 6, 2021 states that the respondent will not pay for this treatment plan for various reasons, including the fact that it had not received any medical documentation supporting a psychological impairment sustained in the accident. On the face of it, the letter complies with the requirements of 38(8) as it states that it will not pay for the treatment plan and provides medical and other reasons why the plan is not reasonable and necessary.
- [24] The applicant appears to be arguing that the denial letter does not meet the requirements of s. 38(8) because it does not comment on the report of Dr. Aghamohseni. The respondent denies receiving this report. The applicant filed no reply submissions, and as such, has not pointed to any evidence showing the report was provided to the respondent with the treatment plan. Under these circumstances, I find that the respondent did not receive the report of Dr. Aghamohseni, and therefore, could not have considered this report at the time the denial letter was issued. Consequently, I find that there is no basis to deem the letter of May 6, 2021 to not comply with s. 38(8) of the Schedule. I further find that the applicant is not entitled to this treatment plan.
- [25] According to the applicant, the respondent did not provide medical reasons for its denial of the treatment plan in the amount of \$2736.50 for physiotherapy. More specifically, the denial letter did not provide a description of Mr. Golden's injuries. The applicant submits that this treatment plan is payable.
- [26] The respondent submits that there is no statutory or common law requirement to describe the applicant's injuries and that the plan is not payable.
- [27] I agree with the respondent. Section 38(8) requires the respondent to provide the medical reasons for not paying the treatment plan. There is no requirement to describe injuries as suggested by the applicant. The denial letter, dated April 8, 2021, references the medical documents reviewed by the respondent and cites

that documentation in their reasons for the denial. As such, I find that the denial letter provides medical reasons for the denial, and therefore, complies with s.38(8) the Schedule. Consequently, this plan is not payable.

Interest

[28] As no overdue benefits are payable, the applicant is not entitled to interest pursuant to s. 51 of the *Schedule*.

ORDER

[29] The applicant's injuries are predominantly minor as defined in s. 3 of the Schedule and therefore subject to treatment within the \$3,500.00 Minor Injury Guideline limit.

[30] The applicant is not entitled to a non-earner benefit, the treatment plans, nor interest.

Released: February 27, 2024



Harry Adamidis
Adjudicator