



**Citation: Hasrat v. Belair, 2023 ONLAT 21-005835/AABS**

**Licence Appeal Tribunal File Number: 21-005835/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:

**Ahmad Hasrat**

**Applicant**

and

**Belair Insurance Company Inc.**

**Respondent**

**DECISION**

**VICE-CHAIR:**

**Chloe Lester**

**APPEARANCES:**

For the Applicant:

Anthony Andreopoulos, Counsel

For the Respondent:

Marina Linkletter, Counsel

**HEARD:**

**Via written submissions**

## OVERVIEW

- [1] Ahmad Hasrat, the applicant, was involved in an automobile accident on August 13, 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, Belair Insurance Company, and applied to the Licence Appeal Tribunal - Automobile Accident Benefits Service (the “Tribunal”) for dispute resolution.

## ISSUES

- [2] The issues in dispute, as amended by the parties in their submissions, 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 limit and in the Minor Injury Guideline (MIG)?
  - ii. Is the applicant entitled to \$1,236.57 (partially approved for \$1,075.36) for chiropractic and massage therapy, recommended by A Med Physiotherapy and Rehabilitation Inc. in a treatment plan (OCF-18) submitted on November 17, 2020?
  - iii. Is the applicant entitled to \$2,460.00 for a psychological assessment, recommended by A Med Physiotherapy and Rehabilitation Inc. in a treatment plan (OCF-18) submitted on December 8, 2020?
  - iv. Is the applicant entitled to \$2,816.37 for chiropractic and massage therapy, recommended by A Med Physiotherapy and Rehabilitation Inc. in a treatment plan (OCF-18) submitted on December 22, 2020?
  - v. Is the applicant entitled to \$2,259.78 for a chronic pain assessment, recommended by A Med Physiotherapy and Rehabilitation Inc. in a treatment plan (OCF-18) submitted on March 1, 2021?
  - vi. Is the applicant entitled to \$2,588.65 for chiropractic and massage therapy, recommended by A Med Physiotherapy and Rehabilitation Inc. in a treatment plan (OCF-18) submitted on April 19, 2021?
  - vii. Is the applicant entitled to interest on any overdue payment of benefits?

## RESULT

- [3] The applicant is outside of the MIG.

- [4] The applicant is entitled to a chronic pain assessment in the amount of \$2,259.78 and a psychiatric assessment in the amount of \$2,460.00 as detailed in the treatment plan recommended by A Med Physiotherapy. The applicant is also entitled to all three treatment plans for chiropractic and massage therapy in the amounts of \$1,236.57, \$2,816.37, and \$2,588.65. The applicant is entitled to interest in accordance with the *Schedule*.

## **ANALYSIS**

### ***The applicant is outside of the MIG***

- [5] The applicant is outside of the MIG because I find he has chronic pain syndrome.
- [6] Section 3(1) of the *Schedule* defines “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 injury.” 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 minor injuries.
- [7] Individuals may be entitled to greater funding limits above the \$3,500.00 limit if they can establish that their accident-related injuries are not minor or, under section 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 funding limits. 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 argues that he suffers from chronic pain syndrome because of the accident. The applicant relies on the diagnosis of Dr. Wilderman, who opined in his report dated September 16, 2021, that the applicant suffers from chronic pain syndrome. The applicant also relies on his family doctor’s records, physiatrist’s records, and treatment records from A Med Physiotherapy and Rehabilitation.
- [9] The respondent argues that the applicant has soft tissue injuries. It relies on the opinion of Dr. Hanna, a general practitioner, who concluded the applicant did not meet the diagnostic criteria for chronic pain syndrome. It also argues that the applicant must prove that chronic pain is separate from the initial soft tissue injuries falling under the MIG or sequelae from those injuries and to this end relies on the decision of *Aviva Canada Inc. v. Maverick Sleep*, 2018 ONFSCDRS 126 (CanLII).

[10] I find the applicant has chronic pain syndrome. Both assessors relied on the definition of chronic pain syndrome in the *American Medical Association Guides to Permanent Impairment* (AMA Guides). This is one of the many ways to diagnose a person with this condition. The AMA Guides state that a person must have three or more out of the six criteria to support the diagnosis:

- I. Use of prescription drugs beyond the recommended duration and/or abuse of or dependence on prescription drugs or other substances;
- II. Excessive dependence on health care providers, spouse, or family;
- III. Secondary physical deconditioning due to disuse and or fear-avoidance of physical activity due to pain;
- IV. Withdrawal from social milieu, including work, recreation, or other social contacts;
- V. Failure to restore pre-injury function after a period of disability, such that the physical capacity is insufficient to pursue work, family or recreational need; and;
- VI. Development of psychosocial sequelae after the initial incident, including anxiety, fear-avoidance, depression, or nonorganic illness behaviors

[11] Dr. Wilderman found that the applicant met all six criteria. I prefer the report of Dr. Wilderman over the report of Dr. Hanna because his report is more in line with the applicant's treatment records following the accident. The paragraphs to follow will demonstrate how the report of Dr. Wilderman was in line with the treatment records in the review of the criteria for chronic pain syndrome.

[12] Based on his family doctor's clinical notes and records, I find that the applicant meets the first criteria for chronic pain syndrome. He used prescription drugs beyond the recommended duration and/or abused or depended on prescription drugs or other substances. Within the first four months of the accident, the applicant went to see his family doctor numerous times complaining of the pain he was experiencing. During that time, he was prescribed two different types of medications, Baclofen and Mobicox, to assist with the muscle spasms and pain. After the initially prescribed medication proved ineffective, over the following twelve months, he was prescribed Mobicox and naproxen, both pain relievers. He was also referred to a physiatrist on July 14, 2021, by his family doctor and began receiving injections in his neck to alleviate the pain. Therefore, the applicant shows a dependence on prescription drugs, or that he used drugs

beyond the recommended duration and meets one criterion to support a diagnosis of chronic pain syndrome.

- [13] The applicant demonstrated that he satisfies the second criterion because he has failed to restore his pre-injury function after a period of disability, such that his physical capacity is insufficient to pursue work, family, or recreational needs. He reported to his family doctor on February 26, 2021, that he has not been playing with his daughter after the accident. He reported to both assessors that he decreased the amount of time he has been working each week. He also reported to both assessors that he is no longer able to participate in all the household chores he used to be responsible for. Therefore, I find the applicant meets this criterion to prove he has chronic pain syndrome.
- [14] The applicant also demonstrated that he meets the third criterion because he has developed psychosocial sequelae after the initial incident, including anxiety, fear avoidance, depression, or nonorganic illness behaviours. He reports to his treating physiotherapist on August 25, 2020, that he has anxiety, fear of driving and is having difficulty sleeping. He reported to his family doctor on February 26, 2021, that he has been irritable and argumentative and has not been playing much with his daughter. He reports to his family doctor again on March 1, 2021, that he has insomnia, is more irritable, and is argumentative at home after the accident. As a result, he was prescribed medication to assist with the insomnia. For these reasons, I find he meets another criterion to prove he has chronic pain syndrome as a result of the accident.
- [15] On the balance of probabilities, the applicant meets three or more of the AMA Guides criteria required to be diagnosed with chronic pain syndrome. This diagnosis does not fit within the definition of minor injuries. The applicant is therefore outside of the MIG.

***The applicant is entitled to a chronic pain assessment and a psychological assessment***

- [16] The applicant is entitled to a chronic pain assessment and a psychological assessment because of my finding that he suffers from chronic pain syndrome, and it is reasonable and necessary to investigate the cause of his ongoing pain and psychological complaints.
- [17] The applicant argues that he is entitled to a chronic pain assessment and a psychological assessment to investigate his ongoing complaints and to determine if he has a diagnosable condition. The applicant argues that the Tribunal has held that the test for an assessment is not whether the person has a

condition but whether there is enough to support that an investigation into the condition is warranted. The applicant points to the Tribunal's decisions in *R.A. v Aviva Insurance Company*, 2020 CanLII 57416 (ON LAT), *Corridon vs. Aviva Insurance Company*, 2021 CanLII 40645 (ON LAT), and *Almonte v Wawanesa Mutual Insurance Company*, 2022 CanLII 45254 (ON LAT) for support.

- [18] The respondent argues that the applicant sustained nothing more than minor injuries and that the assessments should not be considered reasonable and necessary. It relies on its s. 44 reports from Dr. Hanna, who opined that the applicant sustained strains and sprains from the accident, and from Dr. Mandel, who opined that he did not have enough objective information to support a psychiatric diagnosis.
- [19] Sections 14 and 15 of the *Schedule* provide that an insurer is only liable to pay for reasonable and necessary medical expenses incurred because of an accident. The applicant bears the onus of proving on a balance of probabilities that any proposed treatment or assessment plan is reasonable and necessary.
- [20] I find that the assessments are reasonable and necessary because further investigation is warranted into formal diagnoses and appropriate treatment based on the applicant's ongoing pain and psychological complaints.
- [21] As indicated above, the applicant has made ongoing pain complaints for several years and has attempted numerous pain relief medications that have proven ineffective. During this time, he also complained to his treating practitioners about ongoing psychological symptoms of anxiety, fear of driving, being irritable and argumentative, and having insomnia. I agree with the applicant's submissions that the Tribunal has consistently held that a full diagnosis of impairment is too high of a bar to determine whether an assessment is reasonable and necessary. Based on the consistent reporting of these issues to his treating practitioners and to the assessors, as well as my finding that he suffers from chronic pain syndrome, I find the applicant has met his onus to demonstrate that the assessments are reasonable and necessary. In a review of the cost, both treatment plans are in line with the *Schedule* and charge no more than \$2,000.00 for the file review, assessment and to write the report.
- [22] Any interest owed is in accordance with the *Schedule* and if the assessment has not been pursued, as in the case of the psychological assessment, the applicant may now incur the assessment.

***The applicant is entitled to three treatment plans for chiropractic and massage therapy***

- [23] The applicant argues that the treatment plans for chiropractic and massage therapy are reasonable and necessary because the goals being recommended in the treatment plans are reasonable and proportional to the impairments. The applicant also argues that physical therapy was recommended by his treating practitioners and his independent assessor.
- [24] The respondent argues that the treatment plans are not considered reasonable and necessary because Dr. Hanna opined that since the applicant had soft tissue injuries, healing should have occurred within the first 12 weeks and that further facility-based treatment is unlikely to have long-term benefits.
- [25] I find the applicant has met his onus and is entitled to further physical therapy, as the treatment goals are in relation to his impairments, and are in line with recommendations from his treating practitioners in the treatment plans and medical records. The treatment plans requested chiropractic and massage therapy approximately once per week for 29 weeks during the first year of the accident, to improve upon his accident-related impairments and to increase his functionality. Not only did his treating chiropractor recommend ongoing therapy, but so did Dr. Giorshev, his treating pain specialist. Ongoing physical therapy was also recommended by the applicant's independent medical assessor Dr. Wilderman as part of a chronic pain program. It is apparent based on the applicant's ongoing complaints that the injuries did not heal within the normal healing time for soft tissue injuries. I also find the cost of the treatment plans reasonable since they are in line with the FSCO professional fee guidelines.
- [26] I do not have enough evidence to demonstrate whether the treatment plans were incurred. If the treatment plans were not incurred, the applicant may pursue the treatment. If the therapy was incurred, the applicant would be entitled to interest in accordance with the *Schedule*.

**Costs**

- [27] The respondent requests costs for the hearing because the applicant did not produce enough evidence to support their claim and it argues this application before the Tribunal was frivolous and unreasonable.
- [28] Since I found in favour of the applicant, I do not find the application was unreasonable or frivolous or that the applicant had not produced enough

evidence to support his claim. The respondent has not met its burden for costs. None are awarded.

**ORDER**

- [29] The applicant proved that his injuries should not be considered minor and is entitled to apply for treatment above the MIG funding limits.
- [30] I order that the applicant is entitled to the following treatment plans in the amount of:
- i. \$1,236.57 (partially approved for \$1,075.36) for chiropractic and massage therapy, recommended by A Med Physiotherapy and Rehabilitation Inc. on November 17, 2020;
  - ii. \$2,460.00 for a psychological assessment, recommended by A Med Physiotherapy and Rehabilitation Inc. on December 8, 2020;
  - iii. \$2,816.37 for chiropractic and massage therapy, recommended by A Med Physiotherapy and Rehabilitation Inc. on December 22, 2020;
  - iv. \$2,259.78 for a chronic pain assessment, recommended by A Med Physiotherapy and Rehabilitation Inc. on March 1, 2021; and
  - v. \$2,588.65 for chiropractic and massage therapy, recommended by A Med Physiotherapy and Rehabilitation Inc. on April 19, 2021.
- [31] The applicant is entitled to interest in accordance with the *Schedule*.

**Released: June 15, 2023**



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**Chloe Lester  
Vice-Chair**