Citation: Gromova v. Primmum Insurance Company, 2026 ONLAT 24-006917/AABS

Licence Appeal Tribunal File Number: 24-006917/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:

Irina Gromova

Applicant

and

Primmum Insurance Company

Respondent

DECISION

ADJUDICATOR: **Jim Zotalis**

APPEARANCES:

For the Applicant: Tricia McAvoy, Counsel

For the Respondent: Selina Ferenac, Counsel

HEARD: **In Writing**

OVERVIEW

[1] Irina Gromova, the applicant, was involved in an automobile accident on November 8, 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, Primmum Insurance Company, and applied to the Licence Appeal Tribunal - Automobile Accident Benefits Service (the "Tribunal") for resolution of the dispute.

[2] The parties attended a case conference on October 4, 2024, and were unable to resolve the issues in dispute and thus the matter was set down for a written hearing.

[3] On March 26, 2025, the respondent filed a Notice of Motion requesting the Tribunal to:

1. Add a preliminary issue to the application barring the applicant from proceeding to a hearing for a chronic pain assessment because the applicant did not attend an insurer's examination under s.44 of the *Schedule*; and

2. Increase the page limit for the parties' submissions from seven (7) to twelve (12) pages.

[4] In a Motion Order dated March 27, 2025, the Tribunal ordered as follows:

1. The respondent's request to add the preliminary issue to the application as stated above is granted; and

2. The parties will file submissions on the motion separately from their submissions on the application, and therefore there is no need to increase the page limits for the latter, as the parties may file submissions of up to five (5) pages on the preliminary issue, and the respondent may file a reply to submission of up to two (2) pages.

PRELIMINARY ISSUE

[5] Is the applicant barred from proceeding to a hearing for a chronic pain assessment because the applicant failed to attend an insurer's examination ("IE") under s. 44 of the *Schedule*?

SUBSTANTIVE ISSUES

[6] The issues in dispute are:

1. Is the applicant entitled to $3,574.50 for physiotherapy services, proposed by Downsview Healthcare Inc. in a treatment plan/OCF-18 ("plan") dated November 22, 2022?

2. Is the applicant entitled to the assessments proposed by Downsview Healthcare Inc., as follows:

    i. $2,486.00 for a neurological assessment, in a plan dated May 2, 2023; and

    ii. $2,486.00 for a chronic pain assessment, in a plan dated June 16, 2023?

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

RESULT

[7] On the preliminary issue, I find that the applicant is not barred from proceeding to a hearing on the issue of a chronic pain assessment due to non-attendance at a scheduled IE.

[8] On the substantive issues, I find that:

1. the applicant is entitled to a chronic pain assessment and a neurological assessment proposed by Downsview Healthcare Inc., plus interest.

2. the applicant is entitled to physiotherapy services proposed by Downsview Healthcare Inc., plus interest.

ANALYSIS (PRELIMINARY ISSUE)

[9] Section 55(1)2 of the *Schedule* provides that an insured person shall not apply to the Tribunal if the insurer has provided notice that it requires an examination under section 44, but the insured person has not complied with that section.

[10] Section 44 provides that an insurer may require an insured person to be examined at an insurer's examination ("IE") to assess entitlement to a benefit under the *Schedule*, but not more than is reasonably necessary. A proper notice under s. 44(5) must state the medical and any other reasons for the examination; whether the insured's attendance is required at the IE; the name, title and

designation of the assessor conducting the IE; and the day, time and location of the assessment, and if the examination will require more than one day, the same information for the subsequent days. The Insurer shall make reasonable efforts to schedule the IE for a day, time and location that are convenient for the insured.

[11] The respondent directs me to *17-001138 v. CAA Insurance*, 2018 CanLII 76420 (ONLAT) for a list of criteria in determining whether an IE is reasonably necessary. In that case, the Tribunal applied the following criteria, as cited in *17-005291/AABS v. Travelers Canada,* 2018 CanLII 13172 (ONLAT);

1. The timing of the insurer's request;
2. The possible prejudice to both sides;
3. The number and nature of the previous insurer's examinations;
4. The nature of the examination(s) being requested;
5. Whether there are any new issues being raised in the applicant's claim that require evaluation; and
6. Whether there is a reasonable nexus between the examination requested and the applicant's injuries.

[12] When addressing the issue of a s.44 non-attendance to an IE, the operative section in an analysis of whether it is reasonably necessary is s. 44(5) of the *Schedule.* That section references the *medical and any other reasons* for the examination.

[13] The seminal case for a s. 44 analysis is *M.B. v. Aviva Insurance Canada*, 2017 CanLII 87160 (ON LAT Recon), which case holds that an insurer satisfies its obligation under s. 44(5) by explaining its decision with reference to the insured's medical condition and any other applicable rationale. That explanation will turn on the unique facts at hand. At the very least, it should include specific details about the insured's condition forming the basis for the insurer's decision or, alternatively, identify information about the insured's condition that the insurer does not have but requires. Additionally, an insurer should also refer to the specific benefit or determination at issue, along with any section of the *Schedule* upon which it relies.

THE TIMING OF THE INSURER'S REQUEST

[14] In examining the timing of the respondent's request for a physiatry IE, I note that the request came approximately thirteen months after the denial of the disputed OCF-18 for a chronic pain assessment. This is notable because the respondent had scheduled two other IEs for June 22 and June 23, 2023, respectively for psychology and neurology.

[15] The respondent made submissions that there was no delay in scheduling the missed IEs. It argues further that it advised the applicant of the IE well in advance and promptly rescheduled without delay. The respondent further argued that the applicant has never provided any reason for missing the scheduled and rescheduled examinations, even though the *Schedule* requires an applicant to provide a reasonable explanation for missing any properly scheduled examination.

[16] The letters to the applicant from the respondent are summarized as follows:

1. On September 5, 2024, the respondent sent a letter to the applicant advising that to determine entitlement to an OCF-18 for a chronic pain assessment, the applicant was to attend an IE with Dr. David Berbrayer, physiatry, on October 11, 2024. The applicant did not attend the IE.

2. On October 28, 2024, the insurer re-scheduled an IE with Dr. David Berbrayer, physiatrist, for November 21, 2024. The applicant did not attend the IE.

3. On November 25, 2024, the insurer re-scheduled an IE with Dr. Yong-Kyong Michael Ko, physiatrist, for January 14, 2025. The applicant did not attend the IE.

4. On December 3, 2024, the insurer re-scheduled an IE with Dr. David Berbrayer for December 27, 2024. The applicant did not attend this IE. The letter sent by the respondent stated this was the final notice and that it would not be re-scheduling any further IEs. The respondent noted that the applicant's requests to re-schedule dated November 7, 2024, and August 15, 2024, did not provide any reasons for the non-attendance.

5. As a result of the applicant's non-attendance at the scheduled IEs, the respondent advised the applicant on January 22, 2025, that she was not entitled to assert her claim for this OCF-18.

[17] Overall, with respect to timing, I find that the request for a physiatry IE was not reasonable given that the treatment plan was submitted on June 16, 2023, and denied on June 20, 2023, and the first letter to the applicant requesting an IE on this disputed treatment plan was sent out on September 5, 2024. I also find that the respondent made the request for the physiatry IE after the filing of the Tribunal application.

PREJUDICE TO BOTH SIDES

[18] The respondent submits that even if the applicant were to attend the missed IE for physiatry, the respondent would be prejudiced because it argues the Tribunal has placed little-to-no weight to IEs unless the IEs are contemporaneous to the date the treatment plan is authored. Further, the respondent argues that in the event the applicant is not barred from proceeding with the disputed treatment plan for a chronic pain assessment, the applicant's claim should nonetheless be stayed until the applicant attends a physiatry IE.

[19] The applicant argues that the respondent concedes that an IE that is not scheduled contemporaneous to the disputed treatment plan is of little value; however, the respondent fails to appreciate that the same logic applies to an IE that is scheduled approximately thirteen months after submission of a treatment plan.

[20] I am not persuaded by the strength of the argument of the respondent with respect to the weight of the evidence of IEs in relation to the disputed treatment plan because it chose to schedule the physiatry IE more than 13 months after it denied the disputed treatment plan. Notwithstanding the fact the applicant did not attend the scheduled physiatry IE, it was already more than a year post denial of the treatment plan. The respondent had already scheduled two other IEs in June 2023 but provided no explanation as to why it chose not to schedule the physiatry IE until more than a year later. I find that any prejudice to the respondent may have been mitigated by scheduling the physiatry IE closer in time to the denial of the disputed treatment plan.

NUMBER AND NATURE OF PREVIOUS INSURER'S EXAMINATIONS

[21] The respondent argues that the number of previous examinations, namely an IE with a psychologist and neurologist are unrelated to the requested IE with a physiatrist and thus the requested IE is not excessive since neither a psychologist nor a neurologist can make a diagnosis of physical injuries.

[22] The applicant submitted that because the respondent made decisions to schedule IEs for psychology and neurology at or around the same time (i.e. June 22 and 23, 2023) it denied the disputed treatment plan, it could have easily referred the disputed OCF-18 to the assessors for the scheduled IEs, or requested the assessors to conduct a paper review, or in the further alternative, arranged a timely physiatry IE. Instead, the applicant argues the respondent does not provide an explanation as to why it waited and ultimately requested a physiatry IE more than a year later, on September 5, 2024.

[23] I find that the respondent did not require the applicant to submit to an unreasonable number of IEs (three in total) but that the timing of the physiatry IE made it unreasonable in the circumstances.

REASONABLE NEXUS BETWEEN THE EXAM BEING REQUESTED AND INJURIES OF THE APPLICANT

[24] The respondent submits that there was a reasonable nexus between the exam being requested and the injuries of the applicant. Specifically, the respondent argues that the physiatrists scheduled to examine the applicant are qualified to assess the applicant's injuries and determine the appropriate course of treatment.

[25] The applicant made no submissions with respect to this factor.

[26] The respondent's letter of September 5, 2024, indicates that the respondent relies on the following medical evidence denying the chronic pain assessment. The neurological evaluation and assessments completed by Dr. Vincenzo Santo Basile and Dr. Garry Moddel, dated December 19, 2023, and June 23, 2023, respectively. Part of that medical evidence relied on and as provided by Dr. Moddel, dated June 23, 2023, relies on findings that the applicant did not sustain a mild traumatic brain injury because of the accident. Based on the medical evidence I find that the respondent has not established a clear nexus between the applicant's injuries and the requested physiatry IE because of the lack of causal connection between an alleged brain injury and a chronic pain assessment.

[27] Given my findings above with respect to the totality of the factors analysed, I find the respondent has not established that the applicant is barred from proceeding with the issue of the OCF-18 dated June 16, 2023, for a chronic pain assessment.

ANALYSIS (SUBSTANTIVE ISSUES)

Is the applicant entitled to a chronic pain assessment, proposed in a plan dated June 16, 2023?

[28] I find the applicant is entitled to the proposed chronic pain assessment.

[29] The purpose of an assessment is to determine whether a condition exists. For an insured, they bear the onus to demonstrate that there are grounds on which to believe that a condition exists that would warrant further investigation by way of an assessment.

[30] The applicant filed her application with the Tribunal on May 30, 2024.

[31] The applicant submitted an OCF-18 (dated June 9, 2023) recommending a chronic pain assessment, on June 16, 2023. The respondent denied this plan via letter dated June 20, 2023.

[32] In my analysis, I have reviewed the letter of June 20, 2023, denying the applicant of the treatment plan for a chronic pain assessment. The letter states in part:

> "We are in receipt of the clinical notes and records provided on your behalf by Dr. Slavina dated April 14, 2023, and Dr. Drakhshan dated April 24, 2023. Based on a review of the medical evidence documented by a health practitioner before the accident, we are unable to determine if your pre-existing medical condition is sufficient to exclude you from the Minor Injury Guideline. Based on the above rationale, we will not forward payment of the above goods and/or services until such a time [as] an Insurer Examination is completed, and we are able to make a determination based on Section 44 Insurer Examination report results."

[33] The letter of denial dated June 20, 2023, does not state precisely what benefits and/or assessments the respondent is denying, simply that the Treatment and Assessment Plan prepared by Downsview Healthcare Inc., and dated June 9, 2023, has been denied. Further, the respondent's explanation does not address why the applicant is not entitled to have a chronic pain assessment based on a review of the CNRs of Dr. Slavina and Dr. Drakhshan. A proper denial should state what pre-existing medical condition the respondent is referring to in the denial letter. The respondent has not done so in this case. I find the denial letter of June 20, 2023, to be non-compliant with s. 38(8) of the *Schedule*.

[34] I turn next to the issue of the follow-up letter and whether this has cured the previously deficient notice referenced above. Although the denial letter of September 5, 2024, appears to cure the deficient denial letter of June 20, 2023, I

find that the applicant filed her application with the Tribunal on May 30, 2024. The consequence is that the shall-pay period in s. 38(11)2 cannot be closed off by the respondent using a compliant Explanation of Benefits. As such, the applicant can proceed and incur the expense and invoice it, upon which the insurer "shall-pay" per ss. 38(11)2 and 38(15) of the *Schedule*.

[35] For the reasons stated above, I find the applicant is entitled to a chronic pain assessment as proposed by Downsview Healthcare Inc. in a plan dated June 9, 2023.

Is the applicant entitled to physiotherapy services proposed by Downsview Healthcare Inc. in a plan dated November 22, 2022?

[36] I find the applicant is entitled to the treatment plan in dispute for physiotherapy services as per the following reasons.

[37] The applicant submits that the respondent's denial of the proposed OCF-18 was deficient, as it did not comply with the requirements of s.38(8) of the *Schedule*. The applicant made submissions that the insurer's denial makes a bald assertion that the MIG applies but does not make reference to the injuries sustained, nor does it provide any medical reasons for the insurer's position. The applicant further asserts that given no proper denial was provided by the respondent, the applicant argues that pursuant to s. 38(11) the treatment plan is payable.

[38] The *Schedule* sets out strict notice requirements for insurers responding to treatment plans and specific consequences if they fail to comply. For example, s. 38(8) requires an insurer to inform an insured person within 10-business days after it receives the OCF-18 of the medical and other reasons why it considered the goods and services not to be reasonable and necessary if it denies a treatment plan.

[39] Further, if an insurer fails to comply with its obligations under s. 38(8), then s.38(11) is engaged which obligates an insurer to pay for all goods, services, assessments and examinations described in the treatment plan that relate to the period starting on the 11th business day after the day that the insurer received the treatment plan until such time that it gives notice that complies with s. 38(8) of the *Schedule*. As such, the insurer is given an opportunity to "cure" a defective notice.

[40] After review of the respondent's denial letter of November 23, 2022, I find that the respondent's reasons do not provide clear and specific medical and other reasons under s. 38(8) of the *Schedule*. I agree with the applicant that the

respondent makes a bald assertion that the MIG applies and does not make reference to the injuries sustained by the applicant, nor does it provide any medical reasons for the respondent's position. The medical and other reasons provided in a denial of a treatment plan should be clear and sufficient enough to allow an unsophisticated person to make an informed decision to either accept or dispute the decision at issue. Only then will the explanation serve the *Schedule's* consumer protection goal. I find that the determination made by the respondent, namely, "that it has not received any compelling medical information that would exempt you from treatment under the MIG" to be insufficient given that Part 6 of the OCF-18 lists concussion as the primary injury and sequelae as a direct result of the accident. There is no reference to the applicant having sustained only a minor injury; rather, it states that the applicant has "an impairment that entitles you to receive goods or services under the Minor Injury Guideline." In my view, the language is boilerplate, overly simplified and does not provide any further elaboration as to what constitutes an impairment under the MIG.

[41] For the reasons stated above, I find the respondent's denial of the treatment plan did not comply with s. 38(8). Accordingly, the OCF-18 for physiotherapy services is payable from the 11th business day onwards pursuant to s. 38(11) of the *Schedule*.

Is the applicant entitled to a neurological assessment proposed by Downsview Healthcare Inc. in a plan dated May 2, 2023?

[42] I find the applicant is entitled to a neurological assessment for the following reasons.

[43] 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.

[44] The purpose of an assessment is to determine whether a condition exists. For an insured, they bear the onus to demonstrate that there are grounds on which to believe that a condition exists that would warrant further investigation by way of an assessment.

[45] The applicant submitted that the neurological assessment (OCF-18, dated May 1, 2023) outlined the goals of the plan which is to determine if there is an accident-related neurological impairment and to provide recommendations for

recovery. The applicant further argued that this was supported by the neurological report of Dr. Basile, dated December 19, 2023. The applicant also submitted that the report confirmed that the goals were justifiable and reasonable and that the proposed cost is within the fee guidelines.

[46] The respondent made submissions that there is no medical evidence to suggest that the applicant sustained a neurological impairment as a result of the accident. Further, the respondent argues that there are no recommendations by any health practitioners for a neurology assessment nor are there any prescriptions for any medications to address any accident-related neurological complaints.

[47] The respondent also submits that Dr. Basile acknowledges in his report that despite the confusion the applicant allegedly experienced at the time of the accident, she had a full recall of the event. The respondent also submitted that there is no mention of confusion or memory issues in Dr. Salvina's clinical notes and records. Further, during a s. 44 IE with Dr. Moddel, the applicant remembered the accident in detail, was alert, and gave her history in a clear and logical manner. The respondent also maintains that the applicant's vertigo symptoms are not accident related as they manifested several weeks after the accident.

[48] I am persuaded on a balance of probabilities that the applicant has demonstrated that she is entitled to a neurological assessment for the following reasons.

[49] The applicant attended her family physician, Dr. Slavina, and reported, among other complaints in the clinical notes and records ("CNRs") of November 21, 2022, headaches on/off and nausea, light headness/dizziness and neck pain; however, the applicant was not referred for a neurology assessment. In a further CNR from the same doctor (Dr. Slavina) dated December 12, 2022, the notation includes reports of neck pain/thoracic spine and on/off upper extr numbness with a plan to cont rehab.

[50] The CNRs of Dr. Afrooz Drakhshan, dated February 24, 2023, and April 8, 2023, at the SunMed clinic, indicate the reasons for the visits as dizziness and as assessment of vertigo.

[51] The family doctor CNRs of April 19, 2023, note the following: vertigo on/off light headness/dizziness, neuro non focal, a/p vertigo nos, rv to VNG.

[52] I find that the medical evidence in the case of notations of vertigo and a referral for diagnostic testing to determine the cause of the dizziness or vertigo has satisfied me on a balance of probabilities that a condition exists that would

warrant further investigation by way of a neurological assessment. I am persuaded that the applicant's complaints of vertigo symptoms several weeks after the accident may be related to the subject accident and as such, I am satisfied that the applicant has demonstrated those symptoms warrant further investigation.

[53] The applicant argued that with respect to assessments, proof of a diagnosis is not required but evidence that the condition may be prevalent is sufficient to warrant an assessment and directed me to the case of *Z.K. v. Allstate Insurance Company of Canada*, 2020 CanLii 106429 (ONLAT) to support this proposition. I agree with the reasoning in that case and I find that in the present case, the applicant's pain complaints to her various health practitioners coupled with a referral for diagnostic testing of a neurological issue (i.e. return visit for VNG) and the taking of pain medication all speak to the evidence that exists suggesting that a condition may be present and that warrants further investigation.

[54] The respondent also submitted that Dr. Basile's evidence in an unrelated Ontario court case (upheld by the Court of Appeal) was excluded as his report in that case did not offer a fair, balanced and objective opinion. The respondent argues that little or no weight should be thus given to Dr. Basile's report in this case.

[55] The applicant argues that the respondent has not provided notice of its intention to challenge the report of the applicant's experts, contrary to Rule 10 of the LAT Rules and that submissions on the credibility of expert reports without proper notice is inappropriate.

[56] I agree with the applicant with respect to the Rule 10 notice requirement and its implications for a fair adjudication on the merits.

[57] Rule 10.4 is clear in that it states:

A party intending to challenge an expert witness' qualifications, report, or witness statement must:

1. Give notice, with reasons for the challenge, to the other parties no later than 21 days before the hearing; and

2. File a copy of the notice with the Tribunal as part of the hearing brief filed by the party pursuant to Rule 9.

[58] The Notice of Hearing, dated October 15, 2024, issued by the Tribunal sets the written hearing date for June 27, 2025. The respondent's reply submissions were filed with the Tribunal on June 12, 2025.

[59] Any party intending to give notice to challenge an expert witness' qualifications, report or witness statement must do so no later than 21 days before the hearing.

[60] In this case, the date to provide notice to challenge on the above stated grounds is June 5, 2025. As the respondent did not file any notice to challenge under Rule 10.4 of the LAT rules, I find that paragraph 13 of the respondent's reply submissions is not properly before the Tribunal; therefore, I place no weight on that submission.

[61] Finally, the respondent argued that even if the Tribunal were to make a finding that the neurological assessment was reasonable and necessary, coverage is precluded by virtue of s. 47(2) of the *Schedule*. The respondent submits that there is no basis to believe that such an assessment could not have been sought by way of a referral from the family doctor through OHIP.

[62] The applicant in her reply submissions argued that the proper analysis under s. 47(2) of the *Schedule* is not whether any assessment might be available under OHIP, but whether the same nature of assessment as outlined in the OCF-18 would be available. The applicant further argued that there is no evidence of this in the present case.

[63] I agree with the analytical framework that is presented in the case law that the applicant directs me to, namely in *G.T. v. Unifund Assurance Company*, 2017 CanLii 81567 (ON LAT). The respondent must advance some evidence that, on balance, establishes that the benefit at issue, whether in whole or in part, was reasonably available to the applicant (i.e. the insured) from a collateral provider. The respondent has not done so in this case.

[64] The respondent has made submissions that there is no basis to believe that the disputed assessment could not have been sought by way of a referral from the family doctor through OHIP. This Tribunal has long held that submissions themselves are not substitutes for evidence. The respondent has not provided any evidence that this benefit was reasonably available to the applicant through OHIP. Only if the respondent advances such evidence will the burden shift back to the applicant to demonstrate that the benefit at issue was not in fact reasonably available.

[65] For the reasons stated above, I find the applicant is entitled to a neurological assessment as proposed by Downsview Healthcare Inc.

Interest

[66] Interest applies on the payment of any overdue benefits pursuant to s. 51 of the *Schedule.* As I have found that overdue benefits are payable to the applicant, interest applies to such benefits in accordance with s. 51 of the *Schedule*.

ORDER

[67] For the reasons stated above, the Tribunal Orders as follows:

i. I find the applicant is not statute-barred from proceeding with the issue of a chronic pain assessment.

ii. I find the applicant is entitled to a chronic pain assessment and a neurological assessment proposed by Downsview Healthcare Inc., plus interest.

iii. I find the applicant is entitled to physiotherapy services proposed by Downsview Healthcare Inc., plus interest.

Released: March 5, 2026

Jim Zotalis
Adjudicator