



Citation: Kolanski v. TD Insurance Meloche Monnex, 2021 ONLAT 19-011756/AABS

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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:

Marta Kolanski

Applicant

and

TD Insurance Meloche Monnex

Respondent

DECISION AND ORDER

ADJUDICATOR: Theresa McGee, Vice-Chair

APPEARANCES:

For the Applicant: Allen Wynperle, Counsel

For the Respondent: Andrez Beloso, Counsel

HEARD: By way of written submissions

OVERVIEW

- [1] The applicant, Marta Kolanski, was involved in an automobile accident on November 3, 2017, and sought benefits from the respondent, TD Insurance Meloche Monnex, pursuant to the *Statutory Accident Benefits Schedule - Effective September 1, 2010*¹ (the “*Schedule*”).
- [2] The respondent denied the applicant certain benefits based on its determination that the Minor Injury Guideline applied to the treatment of her accident-related injuries. She then applied to the Licence Appeal Tribunal (“Tribunal”) for resolution of the dispute.

ISSUES IN DISPUTE

- [3] The issues to be decided are as follows:
- a. Did the applicant sustain predominantly minor injuries as defined under the *Schedule*?
 - b. Is the applicant entitled to a medical benefit in the amount of \$2,282.32 for chiropractic treatment recommended by Zachary Cassidy in a treatment plan (OCF-18) submitted on July 19, 2018, and denied on August 1, 2018?
 - c. Is the applicant entitled to a medical benefit in the amount of \$2,200.00 for a Psychological Assessment recommended by Psychology Health Solutions in a treatment plan (OCF-18) submitted on July 19, 2018, and denied on August 1, 2018?
 - d. Is the applicant entitled to interest on any overdue payment of benefit?

RESULT

- [4] The applicant’s accident-related injuries exceed the *Schedule*’s definition of a minor injury. Accordingly, the Minor Injury Guideline does not apply. The applicant has established, on a balance of probabilities, that the medical benefits in dispute are reasonable and necessary. The respondent is liable to pay the benefits with interest calculated in accordance with the *Schedule*.

ANALYSIS

¹ O. Reg. 34/10.

Minor Injury Guideline

- [5] To be eligible for the benefits claimed in this application, the applicant must prove on a balance of probabilities that her accident-related impairment is not predominantly a minor injury. The term “minor injury” is defined under s. 3 of the *Schedule* 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.”
- [6] The applicant has presented evidence that shows she suffered a head injury and post-concussion syndrome as a result of the accident. A head injury is not a minor injury within the meaning of the *Schedule*.
- [7] On the day of the accident, the applicant was transported to the emergency department of a nearby hospital. She was assessed by an emergency physician and diagnosed with “HI” [head injury].
- [8] On November 9, 2017, approximately one-week post-accident, the applicant was seen by her family physician, Dr. Mary Syty-Golda and diagnosed with concussion syndrome and a head injury in relation to the accident. She was also diagnosed with whiplash and cervical spine strain. Dr. Syty-Golda referred the applicant for rehabilitation.
- [9] A head injury clearly exceeds the definition of a minor injury under the *Schedule*. The respondent’s position that the Minor Injury Guideline applies to the applicant is untenable. I appreciate the respondent’s submission that the applicant did not provide it with the records of her treating practitioners until some time in 2020. However, the respondent was provided with a Disability Certificate (OCF-3) completed by Dr. Syty-Golda on November 9, 2017 that clearly identifies a mild head injury and post-concussion syndrome among the applicant’s accident-related injuries.
- [10] The Minor Injury Guideline does not apply in respect of the applicant. She will be entitled to medical and rehabilitation benefits up to a maximum of \$65,000.00 if she can establish, on a balance of probabilities, that they are reasonable and necessary as a result of the accident under s. 15(1) of the *Schedule*.

The disputed medical benefits are reasonable and necessary as a result of the accident

- [11] The applicant claims \$2,282.32 for chiropractic treatment recommended by Dr. Zachary Cassidy, Chiropractor, in a treatment plan (OCF-18) dated July 19,

2018. The plan proposed to reduce the applicant's pain, increase her strength and range of motion, and to achieve certain functional goals through 12 weeks of chiropractic care. The plan identified the applicant's migraine and memory issues as the focus of treatment.

- [12] A second treatment plan, dated July 19, 2018, was completed on the applicant's behalf by Mr. Sean Shahrokhnia. Mr. Shahrokhnia proposed a Psychological Assessment to evaluate the applicant's cognitive issues and difficulties with life management arising from the accident: specifically, difficulties with concentration, confused thoughts, trouble with memory, lack of motivation and anxiety. The assessment would consist of a clinical examination, diagnostic tests, consultation with a treatment provider, and a review of the applicant's history.
- [13] The respondent denied the treatment plans on August 1, 2018 citing the Minor Injury Guideline and requesting that the applicant attend Insurer's Examinations. The applicant complied with this request. On August 20, 2018, she was assessed by Dr. Fabio Salerno, Psychologist, and on September 4, 2018, by Dr. Allan Kopyto, General Practitioner. Drs. Salerno and Kopyto issued their multidisciplinary report jointly on September 12, 2018.
- [14] Both Dr. Kopyto and Dr. Salerno opined that the applicant's accident-related injuries fell within the Minor Injury Guideline. Neither expert opined on the reasonableness and necessity of the disputed treatment plans; the question was considered inapplicable as they had determined that the Minor Injury Guideline applied. Dr. Kopyto diagnosed the applicant with musculoligamentous sprains and strains and post-traumatic headaches. Dr. Salerno concluded that the applicant's psychological symptoms fell below the threshold for formal diagnosis.
- [15] The respondent submits that the applicant did not provide her treating practitioners' clinical notes and records despite the respondent requesting those records. I appreciate that Dr. Kopyto and Dr. Salerno may not have had the benefit of a comprehensive review of the applicant's medical records as a result of the applicant's failure to provide them at the time of assessment. However, the respondent indicates that it received the bulk of the clinical notes and records in March of 2020. The applicant provided clinical notes and records from a limited number of the applicant's visits with Dr. Syty-Golda, (most of them dated before the accident), and certain reports of Dr. Syty-Golda and Dr. Andrew Gomez-Vargas, a neurologist, in August and September of 2020. This was after the deadline for productions initially agreed to by the parties and ordered by the Tribunal, and as a result, the respondent did not have time to secure responsive reports to the late-produced records.

- [16] The Tribunal acknowledged the limitations on the respondent's ability to marshal responsive evidence in its March 25, 2021 order, stating that the applicant's late production of the records would be considered as a matter of their weight. Ostensibly though, the respondent did have the opportunity to provide the records it received from the applicant in March 2020 to its assessors and to secure addenda reports. That was not done. The Tribunal is left with expert evidence from the respondent that addresses only the Minor Injury Guideline issue, and not whether the disputed benefits meet the test for reasonableness and necessity under the *Schedule*.
- [17] I find that both the disputed chiropractic treatment and the Psychological Assessment are reasonable and necessary for the management of the applicant's residual symptoms of a head injury. The continuing effects of the applicant's post-concussive symptoms are documented in the May 31, 2018 report of Dr. Giammarco, the applicant's treating neurologist. That report, authored approximately six weeks before the submission of the treatment plans, notes the applicant's continued struggles with memory.
- [18] I find on a balance of probabilities that both chiropractic care and a full Psychological Assessment are reasonable interventions given the applicant's persistent cognitive challenges. The applicant continued to report issues with cognitive functioning and anxiety in August and September 2018 when she was assessed by Dr. Salerno and Dr. Kopyto.
- [19] For an assessment to be considered reasonable and necessary, an applicant need only establish that it is reasonably possible that they have the condition the assessment is designed to investigate. There are notations in the clinical records of Dr. Syty-Golda that the applicant's post-concussion syndrome had improved to the point that she was ready to return to work by December 15, 2017, and that her headaches had spontaneously improved by May of 2018. However, the record shows that at that stage she had lingering post-concussive symptoms. The applicant reported to Dr. Salerno in August 2018 that problems with cognitive functioning and anxiety had slowed her job search. This is consistent with the functional limitations noted in the psychological pre-screen report of Mr. Shahrokhnia that accompanied the treatment plan for a Psychological Assessment.
- [20] Since the cognitive difficulties the applicant continued to complain of in the summer of 2018 had both physiological and psychological dimensions, both chiropractic care and psychological evaluation are reasonable and necessary

responses to those challenges. The applicant has discharged her evidentiary onus and is therefore entitled to the benefits in dispute.

CONCLUSION AND ORDER

- [21] The applicant sustained an impairment in the accident that is not a predominantly minor injury. The Minor Injury Guideline does not apply.
- [22] The respondent shall pay \$4,482.32 for the cost of chiropractic treatment and a Psychological Assessment plus interest calculated in accordance with s. 51 of the *Schedule*.

Released: April 15, 2021

Theresa McGee, Vice-Chair