



**Citation: Sparks v. TD General Insurance Company, 2025 ONLAT 23-004181/AABS**

**Licence Appeal Tribunal File Number: 23-004181/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:

**Lauren Sparks**

**Applicant**

and

**TD General Insurance Company**

**Respondent**

**DECISION**

**ADJUDICATOR: Teresa Walsh**

**APPEARANCES:**

For the Applicant: Steven Arie Glowinsky, Counsel

For the Respondent: Jonathan White, Counsel

**HEARD: By way of written submissions**

## OVERVIEW

- [1] Lauren Sparks, the applicant, was involved in an automobile accident on February 6, 2020, and sought benefits from the respondent, TD General Insurance Company, pursuant to the *Statutory Accident Benefits Schedule - Effective September 1, 2010 (including amendments effective June 1, 2016)* (the “Schedule”).
- [2] The respondent denied the benefits in dispute. The applicant disagreed and applied to the Licence Appeal Tribunal - Automobile Accident Benefits Service (the “Tribunal”) for resolution of the dispute.

## ISSUES

- [3] As set out in the parties’ respective submissions for this hearing, the issue in dispute is:
- a) Is the applicant entitled \$4,746.00 for the cost of a neuropsychological catastrophic assessment, the cost of a neurocognitive catastrophic assessment, document support expenses, and harmonized sales tax (HST), proposed by Deena Rogozinsky in an OCF-18/treatment and assessment plan dated April 24, 2023 (the “treatment plan”)?
- [4] The applicant previously withdrew costs sought for one of the catastrophic assessments, plus HST, in the above treatment plan, and issue 2 of paragraph [2] in the Tribunal’s case conference report and order dated May 27, 2024 (the “CCRO”).

## RESULT

- [5] The applicant is entitled to \$2,260.00, comprised of \$2,000.00 for the cost of a neuropsychological catastrophic assessment, and \$260.00 for HST, proposed in the treatment plan.
- [6] The applicant is not entitled to \$2,486.00, comprised of \$2,000.00 for the cost of a neurocognitive catastrophic assessment, \$200.00 for document support expenses, and \$286.00 for HST, proposed in the treatment plan.

## PROCEDURAL ISSUES

### ***Length of applicant's initial submissions***

- [7] Pursuant to paragraph [7] of the CCRO, the applicant's initial written submissions for this hearing were limited to 10 pages, exclusive of evidence and case law.
- [8] Together with the applicant's initial written submissions of eight pages, she also filed a seven-page document entitled "Summary of Pertinent Evidence," which she asserts is part of her evidence.
- [9] The respondent argues that only the first two pages of the applicant's Summary of Pertinent Evidence should be considered by me, based on the 10-page submission limit provided for in the CCRO. The respondent submits that it is prejudiced by the applicant's non-compliance with the CCRO, although it did not provide any details of such prejudice.
- [10] I find that the Summary of Pertinent Evidence is part of the applicant's submissions, as it was prepared by the applicant to support her claim for the treatment plan costs in dispute.
- [11] As subparagraph [7](i) of the CCRO indicates, I may, as the hearing adjudicator, choose not to consider submissions which exceed the page limits. As the respondent did not point to specific prejudice to it due to the applicant's non-compliance with the CCRO, and I find none, I have considered the Summary of Pertinent Evidence as part of the applicant's submissions.

### ***Applicant's April 2, 2025 correspondence***

- [12] On April 2, 2025, six days after filing her hearing materials, the applicant filed correspondence with the Tribunal. This correspondence contains challenges to the respondent's denial letter for the treatment plan under ss. 36 to 38 of the *Schedule* and challenges to the respondent's s. 44 experts' qualifications and reports under ss. 44 and 45 of the *Schedule*.
- [13] I find that the April 2, 2025 correspondence contains additional submissions by the applicant. The applicant provided no reason(s) for her non-compliance with the CCRO, given that these submissions exceed the page limits, are not in the proper form of submissions, and were filed late.
- [14] The respondent did not address the April 2, 2025 correspondence in its hearing submissions. As the correspondence did not form part of the applicant's initial or

reply submissions, it is understandable why it may have been overlooked by the respondent.

- [15] As set out below in the Analysis section of this decision, while I have considered the applicant's April 2, 2025 correspondence/submissions, I do not find merit to any of the challenges raised therein.

## **ANALYSIS**

### ***Establishing entitlement to assessment costs***

- [16] To receive payment for a treatment and assessment plan under s. 15 and s. 16 of the *Schedule*, the applicant bears the burden of demonstrating on a balance of probabilities that the benefit sought in the plan is reasonable and necessary as a result of the accident. To do so, the applicant should identify the goals of the treatment or assessment, how the goals would be met to a reasonable degree, and that the overall costs of achieving them are reasonable.
- [17] The purpose of an assessment is to determine whether a condition exists. An insured bears 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.
- [18] There must be medical evidence supporting the treatment and assessment plan. A treatment and assessment plan on its own does not establish on a balance of probabilities that the benefits sought are reasonable and necessary.
- [19] Here, costs of the neuropsychological catastrophic assessment (the "neuropsychological CAT assessment") and the neurocognitive catastrophic assessment (the "neurocognitive CAT assessment") are being sought in connection with an October 2021 application to determine if the applicant sustained a catastrophic impairment under Criterion 4 of s. 3.1 of the *Schedule* (the CAT application). As such, ss. 25(1)5 of the *Schedule*, which requires an insurer to pay reasonable assessment fees in support of such an application, is also applicable.

### ***Neuropsychological CAT assessment is reasonable and necessary***

- [20] I find that the applicant has proven on a balance of probabilities that the cost of the neuropsychological CAT assessment sought in the treatment plan, plus HST, are reasonable and necessary.

- [21] The treatment plan itself provides little necessary information or support for this assessment. Under the “Goals” section of Part 9, the only information provided is “Neuropsychological CAT Assessment.” There is no information contained elsewhere in the treatment plan regarding the applicant’s reported neuropsychological impairments and how they relate to the proposed assessment.
- [22] On the other hand, the medical evidence before me is of assistance in assessing the need for a neuropsychological assessment.
- [23] The applicant saw her family physician Dr. Hanet on February 12, 2020, within six days of the accident. Notes of this visit mention the accident, the applicant’s “headaches, trouble concentrating and memory, anxiety at night, sleeping ++ and unable to work.” Dr. Hanet’s subsequent appointment notes for February, March and April 2020 also reference the accident, the applicant’s ongoing headaches, light sensitivity, dizziness, fatigue and inability to work.
- [24] The applicant attended hospital emergency departments on multiple occasions between June and October 2020 with complaints of chronic migraines reported to have started after the accident.
- [25] A CT scan of the applicant’s head performed in June 2020 indicates “no acute intracranial process identified to account for the patient’s presentation,” and a July 2020 MRI of the brain similarly provides “no evidence for trauma sequelae.” A Single Photon Emission Computed Tomography (“SPECT”) scan performed in July 2020 is reported as showing normal perfusion to the brain. However, in his June 17, 2021 report on behalf of the applicant, Dr. Siow, a radiologist and nuclear medicine physician, opines that raw data from the SPECT scan shows “perfusion abnormalities in the anterior temporal lobes and the inferior frontal lobes” and that “these are the most common locations for traumatic brain injury.”
- [26] In her June 22, 2021 s. 44 report regarding the applicant’s claim for an income replacement benefit, psychologist Dr. Komissarova expresses the view that, as a result of the accident, the applicant suffers a psychological impairment of sufficient severity to prevent her from performing her pre-accident job tasks.
- [27] Particularly relevant to the assessments in issue is Dr. Wiseman’s s. 44 neurocognitive assessment of the applicant. In her May 16, 2022 assessment report, Dr. Wiseman opines that it is possible that the applicant sustained a mild traumatic brain injury in the accident, and equally possible that she did not. Based on pre- and post-accident medical records, testing results and an

interview, Dr. Wiseman finds no presence of a brain injury causing catastrophic impairment under Criterion 4.

- [28] In the applicant's s. 25 neuropsychological CAT assessment report dated June 7, 2023, supervising psychologist Dr. Gladshteyn disagrees with Dr. Wiseman's findings regarding Criterion 4. Dr. Gladshteyn references Dr. Wiseman's findings of marked impairments for the applicant in the domain of Concentration, Persistence and Pace and the domain of Adaptation. Dr. Gladshteyn opines that these domain findings are consistent with a Lower Moderate Disability score, and a positive Criterion 4 result, based on the relevant guidelines.
- [29] The applicant asserts that this Tribunal has routinely found that a s. 25 assessment is reasonable and necessary:
- a) where there is a question regarding whether the applicant's impairments stem at least in part from the accident; and
  - b) to ensure that the applicant has an opportunity to obtain an opinion from an appropriate medical expert of their choosing to address this question (see, for example, *17-007215 v. Aviva General Insurance*, 2018 CanLII 141011 (ON LAT), *L.D. v. Aviva Insurance Canada*, 2020 CanLII 12700 (ON LAT) and *Rathakrishnan v. Aviva Insurance Company*, 2023 CanLII 50585 (ON LAT)).
- [30] The applicant submits that Dr. Gladshteyn's neuropsychological CAT assessment is reasonable and necessary because the medical records, s. 44 reports and s. 25 reports, some of which are referenced above, raise a question as to whether the applicant's neuropsychological impairments stem from the accident. The applicant further submits that as the *Schedule* is consumer protection legislation, she is entitled to retain an appropriate expert of her choosing to explore and address the impairment question, and to further address whether she has sustained a CAT impairment under Criterion 4.
- [31] The respondent submits that the applicant had the opportunity to complete neuropsychological/neurocognitive CAT assessments after she filed her CAT application in October 2021 and before the respondent's s. 44 CAT reports were completed in November 2022. The respondent argues that Dr. Gladshteyn's neuropsychological CAT assessment report is a rebuttal report, which is impermissible under s. 25 of the *Schedule*.
- [32] While I agree with the respondent that Dr. Gladshteyn's neuropsychological CAT assessment report could have been completed, and funding sought for it, prior to

June 2023, I do not find it to be a pure rebuttal report to Dr. Wiseman's neurocognitive assessment report. While both experts opine on whether the applicant has sustained a CAT impairment under Criterion 4, each expert conducts different testing as part of their assessment. Further, each expert responds to different referral questions, in addition to the question regarding whether the applicant sustained a CAT impairment under Criterion 4.

- [33] Additionally, I agree with the applicant that the neuropsychological CAT assessment of Dr. Gladshteyn is reasonable and necessary because the medical evidence before me raises a question regarding whether the applicant's neuropsychological impairments stem from the accident. I also agree that, in furtherance of the *Schedule's* goal of ensuring consumer protection, the applicant is entitled to retain an appropriate expert of her choosing to address this question and whether the applicant has sustained a CAT impairment under Criterion 4.
- [34] Based on the foregoing, I find that the applicant has proven on a balance of probabilities that the cost of the neuropsychological CAT assessment, plus HST, are reasonable and necessary.

***Neurocognitive CAT assessment is not reasonable and necessary***

- [35] I find that the applicant has not proven on a balance of probabilities that the cost of the neurocognitive CAT assessment, plus HST, are reasonable and necessary.
- [36] The applicant's submissions do not address why both a neuropsychological CAT assessment and a neurocognitive CAT assessment are reasonable and necessary to support her CAT application on Criterion 4.
- [37] Further, I identified no information in the treatment plan in support of the reasonableness and necessity of both assessments. The treatment plan does indicate that Dr. Gladshteyn is to conduct both assessments.
- [38] Based on the materials before me, I understand that Dr. Gladshteyn has only prepared a neuropsychological CAT assessment and report to date. Dr. Gladshteyn's report does not address what, if any, additional information is necessary for her neurocognitive CAT assessment and report.
- [39] In the second paragraph of her neuropsychological CAT assessment report, Dr. Gladshteyn states:

*A neuropsychological assessment was performed to ascertain whether there are any cognitive impairments that resulted from [the applicant's] accident, which*

*may be impacting her everyday functioning and to determine the degree and nature of deficits; to provide recommendations to treating health professionals regarding any rehabilitation needs related to neurocognitive functioning; and to validate [the applicant's] feelings of cognitive impairments should any be identified during testing.*

- [40] Details of the applicant's self-reported cognitive functioning before the accident and at the time of the neuropsychological CAT assessment contained in Dr. Gladshiteyn's report include: the ability to concentrate during conversations, while reading, or watching television; the ability to use a computer; remembering appointments; remembering where she has left everyday items; and multitasking.
- [41] Dr. Gladshiteyn describes administering twelve subtests as part of a Cognitive Assessment Battery and provides the results in her neuropsychological CAT report. Her report includes a diagnosis of Minor Neurocognitive Disorder, and she recommends cognitive rehabilitation training and follow-up for the applicant.
- [42] Based on the cognitive-related information in Dr. Gladshiteyn's neuropsychological CAT report summarized above, I find that a stand-alone neurocognitive CAT assessment would overlap with, if not duplicate, many aspects of the neuropsychological CAT report.
- [43] Subsection 25(5) of the *Schedule* provides that an insurer shall not pay more than a total of \$2,000.00, plus HST, for conducting any one assessment.
- [44] In summary, based on the foregoing evidence before me, and the lack of any submissions by the applicant, I find that the applicant has not proven on a balance of probabilities that the cost of a neurocognitive CAT assessment by Dr. Gladshiteyn, plus HST, are reasonable and necessary.

***Document support expenses are not reasonable and necessary***

- [45] I find that the applicant has not proven on a balance of probabilities that the cost of the document support expenses sought, plus HST, are reasonable and necessary.
- [46] The applicant's hearing materials contain no submissions of any significance regarding these expenses.
- [47] Based on the lack of any supporting information, I find that the applicant has not proven on a balance of probabilities that these expenses and HST are reasonable and necessary.

***Applicant's additional submissions challenging the respondent's denial letter and s. 44 expert qualifications and reports***

- [48] Regarding the applicant's additional submissions in her correspondence of April 2, 2025, purporting to challenge the respondent's denial letter to the treatment plan and the qualifications and reports of the respondent's s. 44 experts, I find that:
- a) Sections 36 and 37 of the *Schedule*, relied on by the applicant in challenging the respondent's denial letter, are not applicable here, as no specified benefits are in dispute.
  - b) The applicant's purported challenges to the respondent's denial letter under s. 38 of the *Schedule* are not supported by any submissions of significance.
  - c) No notices of the respondent under ss. 44(5) or 45(3) of the *Schedule* are in dispute, or are otherwise in evidence, in this hearing.
  - d) Rule 10.4 of the *Common Rules of Practice and Procedure* is not applicable to this written hearing, as no expert is providing oral testimony.
  - e) Pursuant to ss. 45(2)2 of the *Schedule*, the respondent's expert Dr. Wiseman, who is indicated to be Board Certified in Clinical Neuropsychology, is qualified to conduct an assessment to address whether the applicant sustained a traumatic brain injury under Criterion 4 of s. 3.1 of the *Schedule*.
- [49] Based on the foregoing, I find no merit to any of the applicant's additional submissions in her April 2, 2025 correspondence.

## ORDER

- [50] The applicant is entitled to \$2,000.00 for the cost of a neuropsychological CAT assessment, plus \$260.00 for HST, proposed by Deena Rogozinsky in the treatment plan dated April 24, 2023.
- [51] The applicant has not proven on a balance of probabilities that she is entitled to \$2,000.00 for the cost of a neurocognitive CAT assessment, \$200.00 for document support expenses, and \$286.00 for HST, proposed by Deena Rogozinsky in the treatment plan dated April 24, 2023.

**Released:** November 28, 2025



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**Teresa Walsh**  
**Adjudicator**