Citation: Asieduaa v. TD General Insurance Company, 2025 ONLAT 24-002324/AABS

Licence Appeal Tribunal File Number: 24-002324/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:

Princess Asieduaa

Applicant

and

TD General Insurance Company

Respondent

DECISION

ADJUDICATOR: **Harouna Saley Sidibé**

APPEARANCES:

For the Applicant: Steven Glowinsky, Counsel

For the Respondent: Nicole De Bartolo, Counsel

HEARD: **By way of written submissions**

OVERVIEW

[1] Princess Asieduaa, the applicant, was involved in an automobile accident on February 6, 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, TD General Insurance Company, and applied to the Licence Appeal Tribunal - Automobile Accident Benefits Service (the "Tribunal") for resolution of the dispute.

[2] A case conference was held on June 26, 2024. Following the conference, the Tribunal issued a Case Conference Report and Order ("CCRO") dated July 17, 2024, which scheduled a four-day hearing to proceed by videoconference, commencing on February 18, 2025.

[3] On August 28, 2024, the applicant filed a Notice of Motion with the Tribunal, on consent, requesting that the scheduled videoconference hearing be converted to a written hearing.

[4] The Tribunal granted the motion. In its Order dated August 30, 2024, the previously scheduled videoconference hearing dates were vacated, and the matter was converted to a written hearing.

ISSUES

[5] 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 ("MIG")?

ii. Is the applicant entitled to a non-earner benefit of $185.00 per week from March 6, 2022, to October 11, 2022?

iii. Is the applicant entitled to $3,488.24 for chiropractic services, proposed by In Motion Rehabilitation and Wellness Centre Inc. in a treatment plan/OCF-18 ("plan") dated July 4, 2022?

iv. Is the applicant entitled to $3,567.33 for chiropractic services, proposed by In Motion Rehabilitation and Wellness Centre Inc. in a plan dated October 5, 2022?

v. Is the applicant entitled to $2,496.09 for a chronic pain assessment, proposed by TDI Chronic Pain and Medical Assessments Inc. in a plan dated June 9, 2023?

vi. Is the applicant entitled to $2,299.22 for a psychological assessment, proposed by TDI Chronic Pain and Medical Assessments Inc. in a treatment plan/OCF-18 ("plan") dated April 4, 2024?

vii. Is the applicant entitled to $11,821.05 for a chronic pain program, proposed by In Motion Rehabilitation and Wellness Centre Inc. in a treatment plan/OCF-18 ("plan") dated June 3, 2024?

viii. Is the applicant entitled to $111.67 for prescriptions, submitted on a claim form (OCF-6) dated May 25, 2022?

ix. Is the respondent liable to pay an award under s. 10 of Reg. 664 because it unreasonably withheld or delayed payments to the applicant?

x. Is the applicant liable to pay costs?

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

[6] In preparation for the written hearing, the applicant submitted correspondence dated January 23, 2025, informing the Tribunal of the withdrawal of several issues previously identified in the CCRO. Issues 7, 8, 9, 10, and 12, as set out in the CCRO, are withdrawn.

RESULT

[7] For the reasons below, I find that:

1. The applicant's injuries are not predominantly minor, and therefore, she is not subject to the MIG monetary limit.

2. The applicant is not entitled to an NEB.

3. The applicant is entitled to the treatment plans for chronic pain assessment and chronic pain program, plus interest.

4. The applicant is not entitled to the treatment plans for psychological assessment, chiropractic services, and prescription medications.

5. The applicant is not entitled to an award.

6. The respondent is not entitled to Costs.

PROCEDURAL ISSUES

[8] The Tribunal issued a Motion Order dated August 30, 2024, changing the previously scheduled videoconference hearing to a written hearing. The Order specified procedural requirements, including page limits and submission deadlines. Additionally, the CCRO dated July 17, 2024, addressed the admissibility of late evidence.

[9] In its NoM dated February 14, 2025, the respondent raised two procedural issues: (1) the delayed production of evidence, and (2) the applicant's submissions exceeding the prescribed page limit. Each issue is addressed below.

Late Production of Evidence – CPSO Decision

[10] I find that the applicant submitted the College of Physicians and Surgeons of Ontario (CPSO) Decision late.

[11] The CCRO stipulates that any evidence not previously exchanged must be disclosed no later than 75 calendar days following the case conference, if a party intends to rely on it at the hearing. In this instance, the parties are required to present their evidence by September 9, 2024.

[12] The applicant submitted a decision from the CPSO, dated February 4, 2025, as part of her written submissions. This document had not been disclosed to the respondent prior to filing.

[13] The issue is whether the CPSO decision constitutes admissible fresh evidence.

[14] The respondent objects to the admissibility of the CPSO decision found at Tab 36 of the applicant's submissions, citing Rule 10.3 of the Licence Appeal Tribunal Rules, 2023 ("LAT Rules"). However, this Rule pertains specifically to testimony in videoconference hearings and does not apply to written hearings. Despite this, the respondent maintains that the document was not disclosed in a timely manner and is prejudicial, as it prevents Dr. Pankaj Eric Bansal, a family doctor, from adequately responding to the allegations contained therein.

[15] The applicant submits that the CPSO decision meets the criteria for fresh evidence as set out in *Palmer v. The Queen*, [1980] 1 SCR 759. She also relies on consumer protection principles from *Smith v. Co-operators*, 2002 SCC 30,

and the remedial nature of the *Schedule* as discussed in *Tomec v. Economical*, 2019 ONCA 882.

[16] The applicant argues that the CPSO decision satisfies all four *Palmer* criteria:

- Due diligence: The decision was released on February 4, 2025, after the September 9, 2024, production deadline, and was promptly served.
- Relevance: The decision addresses the conduct of Dr. Bansal, the respondent's section 44 assessor, and is potentially decisive.
- Credibility: The CPSO is an impartial regulatory body.
- Potential impact: The findings may affect the outcome of the hearing, including the determination of an award.

[17] The relevance of the *Palmer* test is questionable here, as it was designed for appellate cases, not for late disclosure of evidence in ongoing proceedings. Generally, tribunals decide on late evidence based on fairness, reasons for delay, relevance, probative value, and potential prejudice or disruption, factors that differ from those in the appellate context. The applicant has not explained why *Palmer* should apply now.

[18] The respondent maintains that it has not had the opportunity to obtain an independent medical opinion in response to the CPSO decision and that its inclusion would be prejudicial.

[19] In considering whether to admit the CPSO decision, I have applied the factors in Rule 9.3 of the LAT Rules.

[20] First, regarding the explanation for the applicant's non-compliance, the decision was issued after the production deadline, and while it was served promptly, no further justification was provided for why the applicant did not seek an extension or alert the respondent earlier.

[21] Second, I find there is prejudice to the respondent in admitting the CPSO decision at this stage. The prejudice arises because the respondent would have a limited opportunity to review the decision, assess its implications for Dr. Bansal's credibility, and prepare responsive evidence or submissions. This could disrupt the hearing schedule and compromise procedural fairness.

[22] Third, the information in the CPSO decision is not entirely outside the respondent's knowledge, as it concerns its own assessor; however, the

respondent would not have had access to the CPSO's findings or reasoning prior to disclosure.

[23] Fourth, the respondent opposes admitting the CPSO decision, citing concerns about timing and fairness.

[24] Finally, while the CPSO decision is relevant and credible, its probative value must be weighed against the prejudice caused by late disclosure. On balance, I find that the prejudice to the respondent outweighs the benefit of admitting the document.

[25] Accordingly, the CPSO decision dated February 4, 2025, and any references to it in the applicant's submissions, are excluded from the evidentiary record.

Excess Page Limits

[26] The applicant's written submissions exceed the page limits set out in the Tribunal's Motion Order dated August 30, 2024, which prescribed a 14-page limit for main submissions and required double-spacing.

[27] The respondent argues that the applicant circumvented these limits by embedding arguments within the evidentiary sections and using 1.5-line spacing, resulting in approximately 62 pages when reformatted.

[28] The applicant maintains that her substantive arguments fall within the 14-page limit and that the appearance of excess length is due to formatting and inclusion of supporting materials.

[29] While the submissions do not strictly comply with the formatting and page limits, the respondent has not demonstrated actual prejudice beyond the 14-page response cap.

[30] In the interest of resolving the matter on its merits, and consistent with the Tribunal's discretion under Rule 3.1(b) and s. 2 of the *Statutory Powers Procedure Act* ("SPPA") that encourage a liberal interpretation of the rules and resolving disputes on their merits, I accept the applicant's submissions in full. This approach balances procedural fairness with the Tribunal's mandate to ensure proportional and timely resolution of disputes.

ANALYSIS

Are the applicant's injuries predominantly minor?

[31] 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."

[32] The applicant may be removed from the MIG if she can establish her accident-related injuries fall outside of the MIG or, under section 18(2), that she has a documented pre-existing condition combined with compelling medical evidence stating that the condition precludes maximal recovery from the accident-related minor injury if she is kept within 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.

[33] The applicant asserts that she should be removed from the MIG due to a pre-existing condition of chronic pain and psychological impairment.

Pre-existing Condition

[34] I find that the applicant is not subject to the MIG.

[35] The applicant submits that her injuries extend beyond the definition of "minor injury" and that her pre-existing conditions, specifically lupus and fibromyalgia, warrant removal from the MIG. She relies on medical documentation from her treating physicians, including Dr. Simon Mok (family physician), Dr. Frank Lipson and Dr. Tony Xiaxin Zhang (rheumatologists), to support her claim that the accident caused a significant exacerbation of her conditions.

[36] The respondent maintains that the applicant sustained only minor injuries, namely sprains, strains, and WAD-type injuries. It relies on the opinion of Dr. Pankaj Bansal, who conducted an insurer's examination (IE) on July 22, 2022, and concluded that the applicant's injuries had resolved. The respondent argues that the applicant's post-accident symptoms are consistent with her longstanding pre-existing conditions.

[37] The applicant's medical history includes documented lupus and chronic pain symptoms dating back to at least 2014. Dr. Lipson diagnosed active lupus in 2017 and continued treating the applicant until mid-2022. His records indicate

ongoing symptoms such as a painful foot, heel spur, and pericarditis, potentially linked to lupus.

[38] Dr. Mok documented a significant increase in attendance following the accident, with consistent complaints of neck, shoulder, and back pain. Dr. Zhang diagnosed fibromyalgia on March 8, 2024, and Dr. Grigory Karmy, a physician specialized in pain management, on August 22, 2023, confirmed chronic pain syndrome, noting widespread tenderness, poor sleep, and functional impairment.

[39] In contrast, Dr. Bansal's IE report concluded that the applicant sustained only soft-tissue injuries that had resolved and did not prevent her from resuming pre-accident activities. However, his assessment was conducted six months post-accident and did not account for subsequent diagnoses of chronic pain syndrome and fibromyalgia.

[40] I give greater weight to Dr. Karmy's opinion over Dr. Bansal's for several reasons. Though Dr. Bansal's assessment was closer to the accident and focused only on soft-tissue injuries, it didn't consider the applicant's ongoing symptoms or later diagnoses. Dr. Karmy evaluated after prolonged pain and decline, providing a comprehensive report with signs of chronic pain syndrome. His later timing allowed him to see the full progression of the applicant's condition, making his diagnosis more persuasive and reflective of the current state.

[41] I accept that the applicant had pre-existing lupus and chronic pain symptoms prior to the accident.

[42] The second part of the test under section 18(2) requires evidence that the pre-existing condition will prevent maximal recovery if the applicant is subject to the $3,500 cap. Although Dr. Mok's handwritten notes are illegible, his letter dated November 6, 2023, states that the applicant continues to suffer from various symptoms, likely chronic in nature, and that her lupus and anxiety present barriers to recovery. He explains that prior to the accident, the applicant managed her symptoms without active treatment, but post-accident, she required physiotherapy, chiropractic care, massage therapy, and psychotherapy. Similarly, Dr. Karmy's chronic pain assessment dated August 22, 2023, indicates that the applicant's pre-existing chronic pain has worsened due to the accident, resulting in functional deterioration. The intake assessment from In Motion Rehabilitation & Wellness Centre also identifies barriers to recovery due to her high pre-existing conditions.

[43] Therefore, on the balance of probabilities, I find that the applicant has satisfied her burden of proving a pre-existing condition that would prevent her recovery from any accident-related minor injury, and she is removed from the MIG on this basis. She qualifies to claim medical and rehabilitation benefits beyond the $3,500 maximum.

[44] Since the applicant is outside the MIG, I do not need to address the argument regarding psychological impairment.

Is the applicant to the disputed treatment plans?

[45] To receive payment for an OCF-18 under sections 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.

[46] The purpose of an assessment is to determine whether a condition warrants further investigation. The applicant must show that there is a reasonable basis to believe that such a condition exists, and that the assessment is necessary to clarify the diagnosis or guide treatment.

Physiotherapy and Chiropractic Services

[47] I find that the applicant is not entitled to medical and rehabilitation benefits under the treatment plans dated July 4, 2022, and October 5, 2022.

[48] The treatment plan dated October 5, 2022, and signed by chiropractor Gail Wright, outlined services totalling $3,567.33. It included 16 physical rehabilitation sessions, 8 acupuncture sessions, 8 exercise sessions, provider travel time, and supporting documentation. The goals were to lessen pain, enhance range of motion and strength, and support a return to daily activities.

[49] However, the treatment plan from July 4, 2022, was not submitted into evidence nor mentioned in the applicant's submissions. Without details about its goals, cost, or expected outcomes, I cannot assess its reasonableness or necessity.

[50] The applicant asserts that she pursued active rehabilitation following the accident, including physiotherapy, chiropractic care, and acupuncture. She relies on clinical notes from In Motion Rehabilitation and her family physician, Dr. Mok, which document ongoing pain and reduced mobility. She also cites *Zeledon v. Aviva*, 2022 CanLII 11496 (ON LAT), to argue that both passive and active modalities may be reasonable when chronic pain impedes recovery.

[51] The respondent maintains that the proposed treatments are duplicative, excessive, and unsupported by objective medical evidence. It relies on the IE conducted by Dr. Bansal on July 22, 2022, which concluded that the applicant sustained only soft-tissue injuries and had reached maximal medical recovery. The respondent further argues that the applicant's symptoms are consistent with pre-existing conditions and not attributable to the accident.

[52] Clinical records from In Motion Rehabilitation document ongoing findings such as muscle spasms, reduced cervical and lumbar mobility, and functional limitations. Dr. Mok's notes confirm persistent pain despite treatment efforts. Additionally, Dr. Karmy diagnosed the applicant with chronic pain syndrome in his August 22, 2023, report. In contrast, Dr. Bansal opined that further passive therapy was not medically necessary and unlikely to yield functional improvement.

[53] While the applicant had pre-accident complaints related to lupus and widespread pain, the medical records indicate a post-accident worsening of symptoms and increased dependence on rehabilitation services. However, none of the treating practitioners, including Dr. Mok, explicitly recommended chiropractic care, acupuncture, or physical rehabilitation around the time of the plans.

[54] Since the applicant's treating providers did not offer direct recommendations for these services, and one of the treatment plans was not submitted as evidence, I find that the treatment plans dated July 4, 2022, and October 5, 2022, are neither reasonable nor necessary.

[55] Consequently, on a balance of probabilities, I find that the applicant is not entitled to these plans.

Chronic Pain Assessment

[56] I find that the applicant is entitled to funding for the chronic pain assessment proposed in the plan dated June 9, 2023.

[57] The plan, signed by Dr. Grigory Karmy, proposes a cost of $2,496.09 for a chronic pain assessment. The stated goals include pain reduction, increased range of motion, improved strength, return to activities of daily living, and return to both pre-accident and modified work activities. The plan includes the assessment itself, service preparation, and documentation of support activities.

[58] The applicant submits that by mid-2023, despite consistent rehabilitation efforts, she continued to experience widespread pain, fatigue, and reduced function. On the recommendation of her family physician, she pursued a multidisciplinary

chronic pain assessment to clarify diagnosis and guide future treatment. She argues that the assessment was reasonable and necessary, particularly given her complex medical history, including lupus.

[59] The respondent submits that the assessment was unnecessary and duplicative. It argues that prior IEs had already concluded that the applicant's impairments were minor and resolved, and that further assessment would not alter the treatment trajectory. The respondent relies on Dr. Bansal's IE dated July 22, 2022, which found no evidence of chronic pain syndrome.

[60] Dr. Karmy's report dated August 22, 2023, diagnosed the applicant with chronic pain syndrome. He documented widespread tenderness, poor sleep, cognitive difficulties, and functional impairment.

[61] Records from the applicant's family physician confirm consistent pain complaints, frequent use of medication, and ongoing functional limitations (See CNRs from Dr. Mok).

[62] The respondent's evidence, especially Dr. Bansal's IE, does not reflect the applicant's clinical progress beyond July 2022. Although Dr. Bansal assessed the applicant near the accident, his opinion was based on a six-month post-accident presentation and did not account for the deterioration observed in 2023. Chronic pain syndrome develops over time and requires ongoing observation of symptoms and declining function, which were not evident during Dr. Bansal's assessment.

[63] The applicant's clinical trajectory demonstrates that passive rehabilitation and routine therapy did not resolve her symptoms. Her treating physicians recommended escalation to a chronic pain assessment, which ultimately led to a formal diagnosis of chronic pain syndrome.

[64] Although the respondents' IEs reached different conclusions, these assessments predate the June 2023 treatment plan and the chronic pain diagnosis. Later evidence from Dr. Karmy and the applicant's doctors shows symptom progression and conservative treatment failure, which are crucial for assessing reasonableness and necessity. Therefore, I prioritize the longitudinal evidence from her treating providers, as it provides a fuller view of her condition over time.

[65] I find the chronic pain assessment proposed in the June 9, 2023, plan to be reasonable and necessary. The assessment was supported by the applicant's treating physicians, was based on persistent symptoms unresponsive to prior treatment, and led to a diagnosis that clarified the nature of her impairments.

[66] Accordingly, on a balance of probabilities, I find that the applicant is entitled to the chronic pain assessment plan.

Psychological Assessment

[67] I find that the applicant has not established entitlement to funding for a psychological assessment.

[68] The applicant did not submit the psychological assessment plan as evidence, nor did she reference it in her submissions. She did not explain what the plan was intended to address, the assessment's goals, the cost of the proposed services, or how progress would be measured. In the absence of this information, I am unable to assess the plan's compliance with the *Schedule*'s requirements.

[69] The applicant submits that her accident-related chronic pain significantly affected her mood, sleep, and concentration. By 2024, she reported symptoms of anxiety, depressed mood, irritability, and social withdrawal. On referral from her family physician, she underwent a psychological assessment to evaluate the impact of these symptoms on her functioning. She relies on Dr. Svetlana Gabidulina's clinical psychologist report dated June 4, 2024, which diagnosed adjustment disorder with mixed anxiety and depressed mood.

[70] The respondent submits that the psychological assessment was unnecessary. It relies on Dr. Kelly McCutcheon's psychological IE conducted on July 14, 2022, which found only mild symptoms and no formal DSM-5 diagnosis. The respondent argues that no compelling evidence emerged between 2022 and 2024 to justify a new assessment. It further submits that the applicant's reported symptoms are subjective, inconsistent, and not supported by objective testing. The respondent contends that any psychological impairment stems from pre-existing lupus and fibromyalgia rather than the accident.

[71] Dr. Gabidulina's report diagnosed adjustment disorder with mixed anxiety and depressed mood and recommended psychotherapy. Standardized psychological testing (BDI-II, BAI) confirmed moderate levels of anxiety and depression.

[72] Family physician records from 2023 and 2024 document increased emotional distress, sleep disturbance, and ongoing psychological symptoms.

[73] Dr. McCutcheon's IE acknowledged mild anxiety and low mood but concluded that these symptoms were not clinically significant and did not warrant treatment.

[74] I accept that the applicant's psychological condition may have worsened by 2024 and that Dr. Gabidulina's findings are supported by objective testing. However,

without the plan in evidence, I cannot assess whether the proposed psychological assessment meets the threshold of being reasonable and necessary under the *Schedule*. The Tribunal requires that treatment plans be submitted in evidence and sufficiently detailed to allow for meaningful adjudication. In this case, the applicant has not met that requirement.

[75] Accordingly, on a balance of probabilities, I find that the applicant has not demonstrated entitlement to funding for the psychological assessment.

Chronic Pain Program

[76] I find that the applicant is entitled to funding for the chronic pain program proposed in the plan dated May 28, 2024.

[77] The treatment plan, signed by Gail Wright, proposes a total of $11,821.05 for a multidisciplinary chronic pain program. The stated goals include pain reduction, increased range of motion, improved strength, return to activities of daily living, and return to both pre-accident and modified work activities. The plan outlines 35 sessions of physical rehabilitation, 35 sessions of back muscle stimulation, 35 sessions of multi-site exercise therapy, and supportive activity documentation.

[78] The applicant submits that following the chronic pain and psychological assessments, her treating providers recommended a structured 12-week chronic pain program involving physiotherapy, occupational therapy, psychological counselling, and pain education. She argues that the program is a logical extension of earlier treatment and directly targets her accident-related chronic pain and psychological sequelae. She further submits that chronic pain management is recognized in medical literature and Tribunal jurisprudence as an evidence-based approach to improving coping and function.

[79] The respondent submits that the proposed program is not reasonable or necessary. It argues that the program is excessively costly and unlikely to yield measurable functional improvements. The respondent relies on Dr. Bansal's IE dated July 22, 2022, which concluded that the applicant sustained only minor, self-limiting soft-tissue injuries. It also cites Dr. McCutcheon's psychological IE from July 14, 2022, which found no clinically significant psychological impairment. The respondent maintains that any impairments requiring such a program stem from pre-existing lupus and fibromyalgia rather than the accident.

[80] Dr. Karmy's chronic pain report dated August 22, 2023, diagnosed chronic pain syndrome and recommended interdisciplinary management.

[81] Dr. Gabidulina's psychological report dated June 4, 2024, diagnosed adjustment disorder with anxiety and depression and recommended psychotherapy.

[82] The applicant's family physician, Dr. Mok, documented frequent pain complaints, sleep disruption, and functional impairment throughout 2023 and 2024.

[83] The respondent's IEs predate these developments and do not account for the applicant's clinical deterioration into late 2023 and 2024.

[84] I accept that the applicant suffers from chronic pain syndrome with associated psychological impairment. The evidence suggests that conventional modalities, such as physiotherapy, chiropractic care, and acupuncture, offer only limited benefits. Both Dr. Karmy and Dr. Gabidulina recommended a multidisciplinary approach to address the applicant's complex and evolving symptoms.

[85] I am not persuaded by the respondent's submission that the proposed program addresses purely pre-existing conditions. While the applicant had lupus and fibromyalgia prior to the accident, the evidence supports that the accident exacerbated her symptoms and contributed to the development of chronic pain syndrome.

[86] Applying the test under sections 15 and 16 of the *Schedule*, I am satisfied the applicant has shown, on a balance of probabilities, that the proposed program is reasonable and necessary due to the accident. The treatment goals —pain reduction, improved function, and return to daily and work activities —are clearly identified. Evidence from Dr. Karmy and Dr. Gabidulina explains how these goals would be addressed through a structured, multidisciplinary approach supported by medical literature and Tribunal jurisprudence as effective for chronic pain and psychological effects. While the cost of $11,821.05 is high, it is proportionate to the program's scope and justified by the applicant's documented failure with less intensive options. Cost alone does not make the plan unreasonable when credible evidence supports a likely functional benefit.

[87] Accordingly, on a balance of probabilities, I find that the chronic pain program is reasonable and necessary.

Prescription Medications

[88] I find that the applicant has not established entitlement to reimbursement for prescription medication expenses.

[89] The applicant did not submit an OCF-6 or equivalent documentation outlining the nature, purpose, or necessity of the claimed medications. There is no explanation

of what the proposed treatment was intended to address, its goals, cost breakdown, or how progress would be evaluated.

[90] The applicant asserts that she incurred out-of-pocket costs for prescription medications, such as analgesics and anti-inflammatories, prescribed by her treating physician to manage post-accident pain. She relies on her Ministry of Health drug claims history and pharmacy invoices to support her claim.

[91] The respondent disputes the claim, arguing that the $111.67 in prescription expenses is not payable. It contends that the medications were prescribed for pre-existing conditions, including lupus and fibromyalgia, rather than for accident-related injuries.

[92] Dr. Mok's clinical records confirm that he prescribed anti-inflammatories, muscle relaxants, and analgesics following the accident.

[93] The applicant submitted an invoice and a patient medication history from Shoppers Drug Mart dated June 17, 2022. However, the invoice does not specify the prescribed drugs, and the medication history includes multiple prescriptions for Amlodipine, a drug used to treat hypertension, which is not consistent with the pain management treatment claimed by the applicant.

[94] The Tribunal requires that claims for medical and rehabilitation benefits be supported by an OCF-6 or equivalent documentation that clearly outlines the nature, purpose, and necessity of the proposed expense. The applicant has not met this requirement in relation to her prescription medication claim.

[95] Accordingly, on a balance of probabilities, I find that the applicant has not demonstrated entitlement to reimbursement for prescription medication expenses.

Is the applicant entitled to an NEB?

[96] The applicant did not make any submissions regarding her entitlement to an NEB of $185.00 per week from March 6, 2022, to October 11, 2022. As no evidence or argument was provided in support of this claim, I find that the applicant has not met her burden of proof.

Interest

[97] Interest applies on the payment of any overdue benefits pursuant to s. 51 of the *Schedule.* The applicant is entitled to interest on any overdue benefits payment in accordance with section 51.

Award

[98] The applicant seeks an award under section 10 of Regulation 664. Under section 10, the Tribunal may grant an award of up to 50 per cent of the total benefits payable if it finds that an insurer unreasonably withheld or delayed the payment of benefits. The Tribunal has determined that an award is justified where the delay or withholding of benefits by the insurer is unreasonable conduct, meaning "behaviour which is excessive, imprudent, stubborn, inflexible, unyielding or immoderate." [See, for e.g., *17-006757 v. Aviva Insurance Canada*, 2018 CanLII 81949 (ON LAT); and *S.M. v. Unica Insurance Inc.*, 2020 CanLII 61460 (ON LAT Reconsideration]. The onus is on the applicant to prove, on a balance of probabilities, that the respondent's conduct meets this threshold.

[99] The applicant submits that the respondent unreasonably withheld and delayed payment of benefits by:

- Applying the MIG without proper consideration of her pre-existing conditions;
- Failing to instruct its IE assessors to evaluate whether she met the chronic pain or pre-existing condition exceptions under section 18(2) of the *Schedule*;
- Denying treatment plans despite consistent and contemporaneous medical evidence from her family physician and treating specialists.

[100] The applicant relies on *S.M. v. Unica Insurance*, 2020 CanLII 12816 (ON LAT), in which an award was granted against an insurer that failed to assess the medical evidence and unreasonably withheld benefits. She argues that the respondent's conduct forced her to pursue extensive litigation to obtain modest benefits and that such conduct warrants a punitive remedy.

[101] The respondent denies any unreasonable conduct. It submits that all denials were based on IEs conducted by qualified professionals, including Dr. Bansal (family physician, July 22, 2022) and Dr. McCutcheon (psychologist, July 14, 2022). The respondent argues that reliance on IE reports, even if later rejected by the Tribunal, does not amount to unreasonable conduct. It distinguishes *S.M.*, noting that in that case the insurer ignored compelling medical evidence, whereas here it obtained and relied on IE reports before issuing denials.

[102] The respondent's denials of treatment plans were consistently based on IE findings, particularly Dr. Bansal's conclusion that the applicant sustained minor,

self-limiting injuries. While those opinions were later contradicted by the applicant's treating providers, Dr. Karmy (for chronic pain) and Dr. Gabidulina (for psychological impairments), there is no evidence that the respondent ignored or suppressed relevant medical information available at the time of its decisions.

[103] The respondent's adjuster notes indicate that the respondent reviewed and relied upon its IE results in making benefit determinations.

[104] I accept that the respondent's position was supported by IE evidence available at the time, and there is no indication that the respondent acted in bad faith or disregarded relevant medical documentation.

[105] While I prefer the longitudinal and more recent evidence from the applicant's treating providers, I am not satisfied that the respondent's conduct meets the threshold of unreasonableness required for an award.

[106] Accordingly, on a balance of probabilities, I find that the applicant is not entitled to an award.

Costs

[107] The respondent has requested costs pursuant to Rule 19 of the LAT Rules. I find that no costs are payable.

[108] Rule 19.1 of the Licence Appeal Tribunal Rules permits a party to request costs where another party has acted unreasonably, frivolously, vexatiously, or in bad faith during the proceeding.

[109] In determining whether to award costs and the appropriate amount, Rule 19.5 requires the Tribunal to consider all relevant factors, including:

- The seriousness of the misconduct;
- Whether the conduct breached a Tribunal direction or order;
- Whether the conduct interfered with the Tribunal's ability to conduct a fair, efficient, and effective process;
- Prejudice to other parties; and
- The potential impact of a cost award on access to the Tribunal system.

[110] The respondent seeks costs under Rule 19, alleging that the applicant engaged in unreasonable conduct. Specifically, it points to:

- The applicant's submissions exceeding the page limits set out in the Motion Order;
- The inclusion of late evidence (the CPSO decision dated February 2025); and
- The need to bring multiple motions to enforce Tribunal orders.

[111] The respondent submits that these actions caused unnecessary expense and prolonged the proceedings.

[112] The applicant maintains that her conduct was reasonable throughout and that any procedural delays or motions were necessitated by the respondent's rigid reliance on the MIG and refusal to approve treatment plans despite consistent medical evidence. She further argues that the respondent's motion practice, including its attempt to strike her submissions for exceeding page limits, unnecessarily complicated the process.

[113] The procedural record confirms that the Motion Order dated August 30, 2024, imposed strict page limits. The applicant's submissions exceeded those limits, but I exercised discretion to permit up to the 14-page maximum and excluded the late CPSO evidence.

[114] Both parties participated in extensive motion practice and raised legitimate procedural concerns. Each side allocated resources to both procedural and substantive issues.

[115] Under Rule 19.1, the Tribunal may award costs where a party's conduct falls below the standard of reasonableness expected in Tribunal proceedings.

[116] While the applicant did not comply with the page limits, I permitted her to advance her arguments in the interest of fairness. I do not find that her conduct rose to the level of bad faith, vexatiousness, or unreasonableness.

[117] The procedural complexity in this matter arose from the zealous advocacy of both parties. I find that each contributed to the length and intensity of the proceedings.

[118] Therefore, on a balance of probabilities, I find that the applicant is not liable for Costs.

ORDER

[119] For the above reasons, it is ordered that:

i. The applicant's injuries are not predominantly minor, and therefore, she is not subject to the MIG monetary limit.

ii. The applicant is not entitled to an NEB.

iii. The applicant is entitled to the treatment plans for chronic pain assessment and chronic pain program, plus interest.

iv. The applicant is not entitled to the treatment plans for psychological assessment, chiropractic services, and prescription medications.

v. The applicant is not entitled to an award.

vi. The respondent is not entitled to Costs.

Released: November 17, 2025

Harouna Saley Sidibé
Adjudicator