Citation: Mansoury v. Nordic Insurance Company of Canada, 2026 ONLAT 24-005082/AABS

Licence Appeal Tribunal File Number: 24-005082/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:

Mohammad Mansoury

Applicant

and

Nordic Insurance Company of Canada

Respondent

DECISION

ADJUDICATOR: **Melanie Malach**

APPEARANCES:

For the Applicant: Clayton Allen, Counsel

For the Respondent: Kyle McNerney, Counsel

HEARD: **By way of written submissions**

OVERVIEW

[1] Mohammad Mansoury, the applicant, was involved in an automobile accident on March 4, 2024, 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, Nordic Insurance Company of Canada, and applied to the Licence Appeal Tribunal - Automobile Accident Benefits Service (the "Tribunal") for resolution of the dispute.

ISSUES

[2] 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 ("MIG") limit?

ii. Is the respondent entitled to a repayment of $4,000.00 relating to its payment of an IRB for a period of March 24, 2024 to May 19, 2024?

iii. Is the applicant entitled to $2,200.00 for an occupational therapy assessment, proposed by iScope Concussion and Pain Clinic in a treatment plan submitted April 2, 2024?

iv. Is the applicant entitled to $2,486.00 for a psychological assessment proposed by Paramount Medical Assessment Ltd. in a treatment plan submitted June 11, 2024?

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

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

[3] The Case Conference Report and Order ("CCRO"), dated September 13, 2024, lists issue 2 as, "Is the applicant entitled to an income replacement benefit in the amount of $400.00 per week from May 20, 2024 to date and ongoing". The applicant advised in his submissions that he is withdrawing this issue. Therefore, I have not included it in the issues in dispute.

RESULT

[4] I find that the applicant's injuries are not predominantly minor as defined in s. 3 of the *Schedule* and therefore he is removed from the MIG.

[5] I find that the respondent is not entitled to a repayment of $4,000.000 relating to its payment of an IRB for the period of March 24, 2024 to May 19, 2024.

[6] I find that the applicant is entitled to the treatment plans for an occupational therapy assessment submitted on April 2, 2024 and a psychological assessment submitted on June 11, 2024, plus interest.

[7] The respondent is not liable to pay an award under s. 10 of Reg. 664.

PROCEDURAL ISSUES

[8] The applicant submits in his reply submissions that the respondent's written submissions contravene the CCRO because they were filed late and exceed the ordered page limit. The respondent's submissions were due on May 22, 2025, but were not filed and served until May 23, 2025 at 7:48 p.m. In addition, the respondent's submissions were five pages over the page limit of 15 pages. The applicant argues that there is no remedy to eliminate or substantially mitigate the prejudice he will suffer if the respondent's submissions are fully considered because the applicant has already filed his initial written submissions. The applicant requests that the respondent's written submissions be deemed inadmissible in their entirety, or alternatively, that the Tribunal not consider the additional five pages which exceed the page limit. The applicant relies upon the Tribunal decision in *Callis v. Definity Insurance Company,* 2024 CanLII 106212 (ON LAT).

[9] The respondent has not provided any response to the applicant's submissions with respect to its contravention of the CCRO as the respondent did not seek to file a sur-reply to respond.

[10] I agree that the respondent's submissions do not comply with the Tribunal's orders. The CCRO ordered that the respondent's submissions were due 14 calendar days prior to the scheduled hearing date and its submissions were limited to 15 pages. The respondent did not file or serve its submissions until May 23, 2025 at 7:48 p.m., which is two calendar days late. Further, its substantive submissions were 20 pages in length.

[11] While I agree that the respondent's submissions were late by two days, I disagree that this prejudiced the applicant to such an extent that striking all of the respondent's submissions is a proportional remedy. I find that the applicant was able to provide his reply submissions by his due date and he did not file a motion to request extra time.

[12] However, I agree that the applicant's alternate request to strike the respondent's submissions past 15 pages is appropriate and reasonable. The CCRO indicates that the hearing adjudicator may choose not to consider submissions which exceed the page limits. I choose to do so in this matter because I find that the respondent offered no explanation as to why its submissions exceeded the page limit. Further, the parties agreed to the ordered page length at the case conference, and the respondent did not seek an order for additional pages prior to making its submissions, nor did it attempt to remedy its non-compliance by filing a motion with its submissions to request additional pages. For practical purposes, this means that I considered the respondent's submissions up to and including page 18 of 23 of its submissions. I therefore did not consider the respondent's submissions with respect to the issue of the treatment plan for an occupational therapy assessment, submitted April 2, 2024; the treatment plan for a psychological assessment, submitted June 11, 2024; the award or interest.

ANALYSIS

Application of the Minor Injury Guideline

[13] I find that the applicant sustained a non-minor injury as a result of the accident and is removed from the MIG.

[14] 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) of the *Schedule* defines a "minor injury" as "one or more of a strain, sprain, whiplash associated disorder, contusion, abrasion, laceration or subluxation and includes any clinically associated sequelae to such an injury."

[15] An insured may be removed from the MIG if they can establish that their accident-related injuries fall outside of the MIG or, under s. 18(2) of the *Schedule*, that they have a documented pre-existing condition combined with compelling medical evidence stating that the condition precludes maximal medical recovery if they are kept within the confines of the MIG. In all cases, the burden of proof lies with the applicant.

[16] In this matter, the applicant submits that he should be removed from the MIG because he suffered a concussion and a psychological impairment. The respondent disagrees.

[17] I find that the applicant has proven on a balance of probabilities that he suffered a concussion in the accident, and his injuries accordingly fall outside of the MIG, for the following reasons.

[18] If established, concussions, fall outside of the MIG because the MIG relates to "minor injuries", as defined in s. 3(1) of the *Schedule.* However, in order to be removed from the MIG, the applicant must present evidence that demonstrates that as a result of the accident, he suffered a concussion.

[19] The applicant submits that he was diagnosed with a concussion following the accident and relies upon the Emergency Department notes from Cortellucci Vaughan Hospital, dated March 6, 2024 and March 25, 2024; the Clinical Notes and Records ("CNRs") of Dr. Jayant Shankerprasad Bhatt of Rapid Access Clinic, the Disability Certificate of Dharmin Patel, physiotherapist, of Focus Physiotherapy (Bolton) Inc., dated March 18, 2024; and the initial assessment of Linda C. Johnson of iScope Concussion and Pain Clinics, dated March 27, 2024.

[20] The respondent submits that the applicant did not suffer a concussion as a result of the accident and only suffered minor injuries. The respondent submits that the findings of the CT scan of the applicant's head on March 6, 2024 were unremarkable. The respondent further submits that the applicant made no further reports regarding his accident-related complaints after April 19, 2024, and he did not attend with any treating medical profession for his accident-related complaints thereafter. The respondent relies upon the IE General Practitioner report of Dr. Isa Mohammed dated September 4, 2024 and the IE Paper Review report of Dr. Davar Nikneshan, neurologist, dated September 4, 2024.

[21] I find that the applicant has directed me to persuasive medical evidence to establish that he suffered a concussion as a result of the accident.

[22] I find that the hospital records from Cortellucci Vaughan Hospital dated March 6, 2024, confirms a diagnosis of concussion. The provider notes indicate that since the accident, the applicant has had ongoing headaches, complaints about photophobia, nausea and vomiting. A referral was made by the hospital to iScope Pain & Concussion Clinic.

[23] On March 8, 2024, the applicant was examined by Dr. Bhatt at Rapid Access Clinic, where he complained of neck and shoulder pain, stiffness and muscular discomfort. Dr. Bhatt diagnosed the applicant with musculoskeletal pain and post-concussion symptoms.

[24] On March 18, 2024, Mr. Patel, prepared a Disability Certificate, diagnosing the applicant with a strain/sprain of the cervical spine, sprain/strain of the lumbar spine, sprain/strain of the shoulder joint, rotator cuff capsule, myalgia, headaches, concussion and anxiety.

[25] I find that the applicant returned to Rapid Access Clinic on March 25, 2024, March 31, 2024, April 11, 2024, and April 19, 2024, with continued complaints of concussion symptoms.

[26] On March 25, 2024, the applicant returned to the Emergency Department at Cortellucci Hospital and noted he was still experiencing ongoing headaches on and off. He advised that he was taking Naproxen with no relief and he did not want to take Percocet. After discussion about pain medications, the applicant indicated that he would wait for his outpatient follow-up with neurology for further recommendations.

[27] On March 27, 2024, the applicant underwent a telephone consultation with Linda Johnson, nurse practitioner, at iScope Concussion and Pain Clinic to evaluate his concussion. He reported headaches, neck pain, low back pain, short term memory problems, difficulty concentrating, feelings of being emotional, depressed, anxious and irritable, and difficulty sleeping. A diagnosis of mild traumatic brain injury (mTBI), post-traumatic vestibulopathy, post-traumatic vision syndrome, post-traumatic headaches, mood disturbance, sleep disturbance, and mechanical neck and back pain. Ms. Johnson recommended that he undergo an interdisciplinary concussion management program. A treatment plan for vestibular physiotherapy treatment was submitted on April 2, 2024 and denied by the respondent.

[28] I give little weight to the IE report of Dr. Mohammed. The respondent submits that Dr. Mohammed found no evidence of any neurological or radicular findings related to the subject accident. I find upon review of her report that she notes that the applicant has “experienced light sensitivity, headaches, anxiety and sleep disturbance since the accident”, but does not address these complaints within the conclusions in her report. Her assessment focused on an examination of the applicant’s shoulders, spine, arms and legs and she did not comment on whether the applicant suffered a concussion.

[29] I also give little weight to the IE report of Dr. Nikneshan, neurologist. I find that Dr. Nikneshan did not provide an opinion on the diagnosis of a concussion made at Cortellucci Hospital, the symptoms indicated in the CNRs or the report of iScope Concussion. I find that he directed his opinion to whether the applicant suffered a mTBI and did not comment on the applicant's complaints of memory issues, dizziness, nausea and photophobia. He did find that the applicant suffers from persistent headaches secondary to trauma to his neck and made recommendations on the applicant's current medications in respect to his ongoing headaches.

[30] Despite the respondent's assertions, I find that the medical evidence relied upon by the applicant supports that he suffered a concussion in the accident. The medical evidence submitted following the accident from Cortellucci Hospital and the CNRs from Rapid Access Clinic, is contemporaneous to the accident and the records note the applicant's symptoms at the time. These records support the diagnosis of a concussion and the applicant's ongoing concussion related complaints. The report of Ms. Johnson further confirms the diagnosis of a concussion.

[31] For the reasons outlined above, I find that the applicant has proven on a balance of probabilities, that he sustained a concussion in the accident, and is therefore removed from the MIG on this basis. As I have found that the applicant is removed from the MIG on this basis, I do not need to deal with whether the applicant can also escape the MIG via a psychological impairment.

IRB Repayment

[32] I find that the respondent is not entitled to a repayment of IRBs paid in the amount of $4,000.00.

[33] The respondent submits that it is entitled to a repayment of $4,000.00 relating to its payment of an IRB for the period of March 24, 2024 to May 19, 2024. The respondent argues that the applicant wilfully misrepresented material facts with respect to his application for IRBS.

[34] Section 52(1) of the *Schedule* provides that an insured person is liable to repay an insurer any benefit that is paid to the person as a result of an error on the part of the insurer, the insured person, or any other person, or as a result of wilful misrepresentation or fraud.

[35] Section 52(2) of the *Schedule* provides that the insurer must give the insured notice of the amount that is required to be repaid. Section 52(3) limits an insured's liability to repay an amount if notice is not given within 12 months after the payment of the amount that is to be repaid, unless the overpayment is due to wilful misrepresentation or fraud.

[36] The Tribunal has defined wilful misrepresentation as "any manifestation by words or other conduct by one person to another that, under the circumstances, amount to an assertion not in accordance with the facts." The Tribunal has also held that "silence or failure to report" can constitute wilful misrepresentation. It is the insurer's onus to prove that the insured wilfully misrepresented his employment status.

[37] The respondent submits that the applicant submitted his Application for Accident Benefits ("OCF-1") indicating that he was unable to work following the accident. The respondent accepted the applicant's representation in good faith and provided IRBs in the amount of $400.00 per week starting on March 11, 2024. These payments were stopped on or about May 7, 2024. No reason for the stoppage has been provided.

[38] The Psychological IE report of Dr. McDowall dated September 4, 2024, notes that the applicant reported that he had not returned to work. In an Examination Under Oath ("EUO") dated August 26, 2024, the applicant again made representations that his injuries arising from the accident kept him from returning to work in any role. On October 3, 2024, the applicant submitted a signed Request for Information for IRB Calculation form indicating that he had still not returned to work at 5&10 Wellness Centre and that he was unable to submit any paystubs or bank statements to the respondent relating to employment income earned from March 4, 2024 to present as he "Has not worked since March 4, 2024".

[39] The respondent submits that it retained the services of Intrepid Investigations regarding the applicant's representations regarding his return to work and a report was prepared dated September 13, 2024. The investigator was able to confirm that the applicant had returned to work as early as July 17, 2024 and was observed to be working on that date, as well as on July 18, 2024, and again on September 4, 2024.

[40] By letter dated October 28, 2024, the respondent wrote to the applicant and his legal counsel regarding its determination that the applicant had wilfully misrepresented material facts regarding his IRB and demanded repayment of $4,000.00 paid to the applicant between March and May 2024.

[41] The applicant denies any allegation of misrepresentation regarding his employment status. He has withdrawn the issue of ongoing IRB entitlement. The applicant submits that the respondent has not produced any evidence showing that the applicant was working during the time period for which it is claiming repayment.

[42] I agree with the applicant that the respondent has not provided any evidence that the applicant was working during the period that he received an IRB, from March 24, 2024 to May 7, 2024. I find that the respondent has not provided any information as to why it stopped paying the applicant IRBs on May 7, 2024. I find that the denial letter dated October 28, 2024, indicates that it was terminating the applicant's IRBs pursuant to s. 53 of the *Schedule* as of the date of this letter.

[43] I find that the respondent is relying solely on the Intrepid Investigations report in support of its position. Upon review of the report, I find that surveillance and spot checks were conducted on eleven separate days and the applicant was only observed on three of these days. On July 17, 2024, he was seen driving to his known place of employment arriving at 12:58 p.m. and departing at 5:25 p.m. On July 18, 2024, he was also observed at his known place of employment during a spot check. On September 4, 2024, another spot check confirmed that his vehicle was present in the parking lot of his known place of employment. I find that these surveillance dates are well past the date that he was paid an IRB.

[44] I further find that the respondent has not provided any further evidence to support that the applicant wilfully misrepresented that he was not working from March 24, 2024 to May 7, 2024. I find that the respondent's evidence that the applicant was working post-dates the period for which it now seeks repayment. While there is some inconsistency with the applicant's statements at his Examination Under Oath that he could not work and the investigation evidence, the onus is on the respondent to prove that the applicant misrepresented during the repayment period. I am not prepared to rely on inference to find that the applicant was misrepresenting during that time based on later inconsistency, in light of the *Schedule's* consumer protection mandate. I therefore find that the respondent has not met its onus of proving wilful misrepresentation during this time period.

[45] For the reasons outlined above, I find that the respondent has not proved on a balance of probabilities that it is entitled to a repayment of $4,000.00 relating to its payment of an IRB for the period of March 24, 2024 to May 19, 2024.

Medical and Rehabilitation Benefits

[46] To receive payment for a treatment and assessment plan 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. In the context of an assessment, while the applicant does not need to prove the condition exists, he must prove with persuasive evidence that there is some accident-related condition that warrants investigation via the proposed assessment.

Entitlement to the treatment plan for an occupational therapy assessment

[47] I find that the applicant is entitled to the treatment plan for an occupational therapy assessment.

[48] The applicant claims entitlement to $2,200.00 for an occupational therapy assessment, proposed by iScope Concussion and Pain Clinics, in a treatment plan submitted on April 2, 2024.

[49] The applicant relies on the initial assessment at iScope Concussion and Pain Centres, dated March 27, 2024. He submits that he was diagnosed with a concussion and suffers from a mTBI as per the Ontario Neurotrauma Foundation Guidelines, post traumatic vestibulopathy, post-traumatic vision syndrome, post traumatic headaches, mood disturbance, mechanical neck and back pain, and sleep disturbance. The applicant submits that the purpose of the occupational therapy assessment is to evaluate functional limitations in his activities of daily living, which the applicant submits are significantly impaired. He submits that he requires assistance with personal care, household chores and is unable to return to work.

[50] As found above, due to the respondent exceeding the page numbers ordered in the CCRO, I did not consider the respondent's submissions with respect to the applicant's entitlement to this treatment plan.

[51] I find that the applicant is entitled to the treatment plan for an occupational therapy assessment. As concluded above, I find that the applicant has proven on a balance of probabilities that he suffered a concussion in the accident. Therefore, in the context of the occupational therapy assessment proposed, he has provided persuasive evidence that he suffered some accident-related condition that warrants investigation via the proposed assessment. I find based

on his reported functional limitations, which were supported by the medical evidence at the time the treatment plan was proposed, he has proven that the occupational therapy assessment was reasonable and necessary.

[52] For the reasons outlined above, I find that the applicant has proven on a balance of probabilities that the treatment plan recommending an occupational therapy assessment is reasonable and necessary.

Entitlement to the treatment plan recommending a psychological assessment

[53] I find that the applicant is entitled to the treatment plan for a psychological assessment.

[54] The applicant claims entitlement to $2,486.00 for a psychological assessment proposed by Paramount Medical Assessment Ltd., in a treatment plan submitted on June 11, 2024.

[55] The applicant submits that the psychological assessment is required to determine his correct diagnosis and treatment recommendations. Without this assessment, he argues that he is left without a clear mental health plan. The applicant submits that he reported significant psychological symptoms since the accident, including anxiety, depression, suicidal ideation, insomnia and avoidance of driving. He argues that he has been prescribed Amitriptyline as a result of his psychological impairments stemming from the accident.

[56] The applicant submits that the respondent's own IE assessor Dr. McDowall confirmed that he suffered a psychological impairment. Dr. McDowall declined to diagnose the applicant with a psychological impairment however she acknowledged symptom endorsement consistent with depression, anxiety, sleep disturbance and suicidal ideation. During the assessment, Dr. McDowall recorded that the applicant scored 57 on the Beck Depression Inventory which falls in the severe range, and a 59 on the Beck Anxiety Inventory, also in the severe range. The applicant argues that despite recording these scores, Dr. McDowall refused to interpret them, calling the results invalid because of "over-endorsement". The applicant submits that this position effectively discredits the possibility that a person suffering from serious psychological trauma may endorse extreme symptoms. The applicant further submits that the report notes moderate range of past failures, self-dislike, crying, changes in appetite and endorsed suicidal thoughts or wishes.

[57] As found above, due to the respondent exceeding the page numbers ordered in the CCRO, I did not consider the respondent's submissions with respect to the applicant's entitlement to this treatment plan.

[58] I find that the applicant is entitled to the treatment plan for a psychological assessment. I find that the scores noted on the Beck Depression Inventory and the Beck Anxiety Inventory, in Dr. McDowall's IE report, were in the severe range, therefore supporting the applicant's position that he suffers a psychological impairment. In addition to the subjective complaints made by the applicant during this assessment, I find that the applicant has provided persuasive evidence that he suffered some psychological impairment that warrants investigation via the proposed assessment. I agree with the applicant that Dr. McDowall's finding that the applicant giggled, smiled and presented himself very relaxed and positive during the assessment, does not mean that he does not have a psychological impairment. I therefore find that the test results from Dr. McDowall's assessment support my finding that the proposed assessment is reasonable and necessary.

[59] For the reasons outlined above, I find that the applicant has proven on a balance of probabilities that the proposed psychological assessment is reasonable and necessary.

Interest

[60] Interest applies on the payment of any overdue benefits pursuant to s. 51 of the *Schedule.* As I have found that the applicant is entitled to the treatment plans for an occupational therapy assessment and a psychological assessment, interest is payable on any overdue benefits.

Award

[61] The applicant sought an award under s. 10 of Reg. 664. Under s. 10, the Tribunal may grant an award of up to 50 percent of the total benefits payable if it finds that an insurer unreasonably withheld or delayed the payment of benefits.

[62] The applicant submits that the respondent is liable to pay an award because it unreasonably withheld or delayed payments to the applicant. I find that the applicant did not provide any specific submissions with respect to his entitlement to an award.

[63] I find that just because I have found that the applicant is removed from the MIG and that the respondent was incorrect in its denial of the treatment plans in dispute, it does not automatically entitle the applicant to an award. An insurer is not held to a standard of perfection, but rather, it should be held to a standard of reasonableness. The purpose of an award is to make an insurer accountable for misconduct and to deter it and others from future similar acts.

[64] I find that the case law has established that an award should be granted only where there is unreasonable behaviour from an insurer in withholding or delaying payments, which can be seen as excessive, imprudent, stubborn, inflexible, unyielding or immoderate.

[65] I find that the respondent was entitled to rely on the opinions of its assessors in the IE reports in denying the applicant's entitlement to the treatment plans in dispute. I do not find that the applicant has proven that the respondent's conduct was excessive, imprudent, stubborn, inflexible, unyielding or immoderate.

[66] For the reasons outlined above, I do not find that the applicant has proven on a balance of probabilities that he is entitled to an award.

ORDER

[67] For the reasons outlined above, I find that:

i. The applicant's injuries are not predominantly minor as defined in s. 3 of the *Schedule* and therefore he is removed from the MIG;

ii. The respondent is not entitled to a repayment of $4,000.000 relating to its payment of an IRB for the period of March 24, 2024 to May 19, 2024;

iii. The applicant is entitled to the treatment plans for an occupational therapy assessment submitted April 2, 2024 and a psychological assessment submitted June 11, 2024, plus interest; and

iv. The respondent is not liable to pay an award under s. 10 of Reg. 664.

Released: January 7, 2026

Melanie Malach

Melanie Malach
Adjudicator