



Citation: Si Tu v. TD General Insurance Company, 2026 ONLAT 24-007836/AABS

Licence Appeal Tribunal File Number: 24-007836/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:

Tian You Si Tu

Applicant

and

TD General Insurance Company

Respondent

DECISION

ADJUDICATOR: **Ulana Pahuta**

APPEARANCES:

For the Applicant: **Anh Vo, Paralegal**

For the Respondent: **Karina Dziuba, Counsel**

HEARD: **By way of written submissions**

OVERVIEW

- [1] Tian You Si Tu, the applicant, was involved in an automobile accident on July 10, 2019, 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] This decision is a partial rehearing as a result of a reconsideration decision released May 12, 2026. In a decision dated January 12, 2026, the Tribunal had found that the applicant was not entitled to three multidisciplinary treatment plans, interest, or an award in relation to the multidisciplinary treatment plans and a previously resolved chronic pain assessment.
- [3] In the reconsideration decision, a rehearing was ordered on the three disputed multidisciplinary treatment plans, together with interest. The award determination was not set to be reheard at this hearing. The rehearing was to be conducted on the existing record, i.e. the submissions and evidence from the initial written hearing.

ISSUES

- [4] The issues to be decided in this hearing are:
 - 1 Is the applicant entitled to \$2,300.56 for multidisciplinary treatments, proposed by York Medical Centre in a treatment plan/OCF-18 dated December 13, 2022?
 - 2 Is the applicant entitled to \$2,300.56 for multidisciplinary treatments, proposed by York Medical Centre in a treatment plan/OCF-18 dated June 23, 2023?
 - 3 Is the applicant entitled to \$2,493.79 for multidisciplinary treatments, proposed by York Medical Centre in a treatment plan/OCF-18 dated May 27, 2024?
 - 4 Is the applicant entitled to interest on any overdue payment of benefits?

RESULT

- [5] I find that the applicant is entitled to the three multidisciplinary treatment plans, plus interest.

ANALYSIS

Treatment Plans

- [6] To receive payment for a treatment and assessment plan under s. 15 and 16 of the *Schedule*, the applicant bears the burden of demonstrating on a balance of probabilities that the benefit is reasonable and necessary as a result of the accident. To do so, the applicant should identify the goals of treatment, how the goals would be met to a reasonable degree and that the overall costs of achieving them are reasonable.

The proposed multidisciplinary treatment plans are reasonable and necessary

- [7] The applicant submitted three treatment plans on December 13, 2022, June 23, 2023, and May 27, 2024 proposing similar multidisciplinary physical rehabilitation, including: massage, physiotherapy, chiropractic treatment, acupuncture, and active rehabilitation. All three treatment plans had the same stated goals of: pain reduction, increased range of motion, return to activities of normal living and return to pre-accident work activities. The respondent denied all three OCF-18s on the basis that the proposed treatment is not reasonable and necessary.

Parties' Positions

- [8] The applicant argues that the proposed treatment is needed to address his ongoing accident related chronic pain. He submits that his complaints of persistent neck, upper and lower back pain are corroborated by his family doctor, Dr. Peter Chan's clinical notes and records ("CNRs"). The applicant also relies on a s. 25 chronic pain report dated May 9, 2024 from Dr. Sherman Li, and a psychiatry report from Dr. Joseph Wong dated November 23, 2023, both of whom diagnosed the applicant with chronic myofascial pain.
- [9] He submits that Tribunal case law supports that pain reduction is a reasonable goal of treatment, and that he has reported to multiple assessors that the proposed physical treatment has provided him with temporary pain relief and increased his functional abilities to participate in activities of daily living and return to work. The applicant also argues that his ongoing pain has affected his mental health, to the point that he was diagnosed with Major Depressive Disorder ("MDD") and Somatic Symptom Disorder ("SSD") by his s. 25 psychological assessor Dr. Arden McGregor.
- [10] The respondent argues that the proposed physical treatment is not reasonable and necessary. It submits that the applicant was removed from the Minor Injury Guideline solely on the grounds of psychological injury, on August 20, 2024, not on any physical grounds. In terms of the applicant's pain complaints post-accident, the respondent argues that the applicant has not established that he suffers from chronic pain syndrome. The applicant did not provide any submissions or lead evidence to establish that any of the six criteria set out in the

American Medical Association Guides (“AMA Guides”) for establishing chronic pain, have been met.

- [11] The respondent further submits that the applicant has not adduced evidence as to how the proposed treatment will achieve the goals set out in the treatment plan, more than three to five years after the accident. It argues that the applicant reported only temporary relief of his pain with treatment, with a rebound of intensity to baseline within a few days. The respondent relies on the s. 44 physiatry report of Dr. Oshidari dated May 1, 2024. Dr. Oshidari found that the applicant had only sustained a sprain/strain of the cervical and lumbar spine and contusion of the left shoulder blade with tension headaches, and that given the extensive treatment the applicant already had received, further treatment was not reasonable and necessary.

Analysis

- [12] I find that the applicant has met his onus to prove, on a balance of probabilities, that the three treatment plans for multidisciplinary physical treatment are reasonable and necessary.
- [13] The applicant has established that in the years post-accident, and at the time the OCF-18s were submitted, he continued to report ongoing neck and back pain. The CNRs of his family doctor, Dr. Chan, reveal that in March and May 2023, the applicant reported attending for chiropractic treatment, that his neck and upper back still hurt, and the applicant requested an X-ray. Although this X-ray did not reveal abnormal results, the applicant continued to report pain in August 2023, and Dr. Chan referred him to a physiatrist. In a November 23, 2023 report, Dr. Wong, physiatrist, diagnosed the applicant with a “chronic pain problem with myofascial strain”. In March 2024, the applicant continued to report neck and back pain to Dr. Chan. Dr. Chan noted that the applicant was attending physiotherapy, and recommended continuing with physiotherapy.
- [14] Accordingly, I agree with the applicant that the medical record establishes persistent pain complaints in the years post-accident. I further am not persuaded by the respondent’s argument that the applicant has not established that he suffers from chronic pain syndrome, or that he has not led submissions to establish that he meets three out of the six criteria to establish chronic pain under the AMA Guides.
- [15] Firstly, the applicant has already been removed from the MIG on psychological grounds. Therefore, it is not necessary for him to establish that he suffers from the additional MIG removal ground of chronic pain syndrome. Rather, in order to establish entitlement to the treatment plans in dispute, he would simply need to establish that the proposed treatment is reasonable and necessary to treat his accident-related injuries and pain symptoms. Secondly, the applicant was diagnosed by Dr. Wong in his November 23, 2023 consultation with “chronic pain problem with myofascial pain”. Similarly, Dr. Li, in his June 13, 2024 s. 25 chronic

pain assessment report diagnosed the applicant with chronic myofascial pain. Therefore, while he may not have been expressly diagnosed with “chronic pain syndrome”, two physiatrists diagnosed the applicant with chronic myofascial pain - one in 2023 and one in 2024.

- [16] While I agree with the respondent that Dr. Wong did not expressly recommend the multidisciplinary treatment proposed in the OCF-18s, this treatment was recommended in Dr. Li’s chronic pain assessment report. The applicant’s family doctor also recommended continuing physiotherapy in March 2024.
- [17] The applicant has also led evidence that his ongoing pain has led to psychological symptoms. His s. 25 psychological assessor, Dr. McGregor, noted that the applicant was losing hope and was discouraged that his pain would be relieved, that fear of re-injury has caused him to stop participating in sports and social activities, and that his sleep was disrupted due to pain. Dr. McGregor diagnosed the applicant with MDD and SSD, and recommended a multi-disciplinary approach, including psychotherapy and physical rehabilitation.
- [18] The respondent’s s. 44 psychological assessor, Dr. Kelly McCutcheon, similarly found that the applicant was experiencing some significant depressive and anxious symptomatology in the context of his ongoing pain and physical concerns, and diagnosed him with Adjustment Disorder with Mixed Anxiety and Depressed Mood. Dr. McCutcheon found that an OCF-18 for a psychological assessment was partially reasonable and necessary, but that she was unable to comment on the physical treatment plans in dispute, as they were beyond her scope of practice as a psychologist. Accordingly, I find that the evidence supports the applicant’s submission that his ongoing pain is also linked to his psychological symptoms.
- [19] While I agree with the respondent that the applicant has not shown significant improvement with the physical therapy he has received to date, the evidence has also established that he has not received consistent treatment for his accident-related pain. The respondent points to the applicant’s report to Dr. Wong that he had tried physiotherapy in the past without much improvement, and his report to Dr. Li that treatment only provided temporary relief from his somatic pain, with a return to baseline “within days”. The respondent’s s. 44 assessor Dr. Oshidari also found that the applicant had already received extensive treatment and that the proposed treatment plans were not reasonable and necessary.
- [20] However, the evidence establishes that while the applicant initially attended physiotherapy treatment, he stopped in February 2020, and attended only one other time in 2020, on December 23, 2020. The applicant submits that this was due to the COVID-19 pandemic lockdowns and concerns about COVID infections and his elderly parents. The applicant resumed treatment on December 5, 2022, however, he reported to various assessors that from that point, he could only attend treatment once every other week or only once a month due to financial constraints. This is supported by the treatment records. Therefore, I am not

persuaded by the respondent's argument that the applicant has already received extensive treatment for his accident-related pain. The records reveal that the applicant stopped treatment for more than two years, and after that attended on a limited basis.

- [21] Further, even with the limited treatment the applicant received, he still reported that it was beneficial. In his December 5, 2022 Pain Diagram, the applicant reported that previous treatment had helped him recover "60% but the pain still persists". His pain was noted as 7/10. In the follow-up June 2023 Pain Diagram, his pain was noted as 6/10 and the applicant reported that the treatment helped him relieve the pain. He similarly reported in the May 24, 2024 follow-up that he was "getting better". Therefore, even with inconsistent treatment, the applicant still reported that treatment was beneficial.
- [22] Accordingly, I find that the applicant has met his onus to prove, on a balance of probabilities, that the three treatment plans for multidisciplinary physical treatment, are reasonable and necessary. The three OCF-18s were submitted during a period when the applicant was reporting ongoing accident-related pain, and was diagnosed with chronic myofascial pain and psychological conditions linked to his ongoing pain. During this period, the applicant was also reporting some benefit of treatment, despite long gaps in care and limited attendance due to financial constraints. Physiotherapy treatment was recommended by his family doctor as late as March 2024, and these specific treatment modalities were recommended by the applicant's chronic pain assessor. I find that the applicant has established entitlement to these treatment plans.

Interest

- [23] Interest applies on the payment of any overdue benefits pursuant to s. 51 of the *Schedule*. Interest is payable on these treatment plans in accordance with s. 51 of the *Schedule*.

ORDER

- [24] I find that the applicant is entitled to the three multidisciplinary treatment plans, plus interest.

Released: June 16, 2026



**Ulana Pahuta
Adjudicator**