



Citation: Hutchinson v. CAA Insurance Company, 2025 ONLAT 24-009026/AABS

Licence Appeal Tribunal File Number: 24-009026/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:

Mia Hutchinson

Applicant

and

CAA Insurance Company

Respondent

DECISION

PANEL:

**Tami Cogan, Adjudicator
Henry Harris, Vice-Chair**

APPEARANCES:

For the Applicant:

Michael Gerhard, Counsel

For the Respondent:

Mitchell Barber, Counsel

Court Reporter:

Prashanth Thambipillai

Heard by Videoconference: May 5, 6, 7, 8 and 9, 2025

OVERVIEW

- [1] Mia Hutchinson (the “applicant”) was involved in an automobile accident on February 6, 2021, 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 CAA Insurance Company (the “respondent”) 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. Has the applicant sustained a catastrophic impairment as defined by the *Schedule*?
 - ii. Is the applicant entitled to an income replacement benefit (“IRB”) from December 22, 2023 to present?
 - iii. Is the applicant entitled to \$1,740.00 for physiotherapy services, proposed by Oshawa Chiropractic and Physiotherapy Wellness Centre in a treatment plan/OCF-18 (“plan”) submitted February 6, 2024?
 - iv. Is the applicant entitled to \$2,460.00 for a physiatry assessment, proposed by HydroHealth Evaluations Inc. in a plan submitted November 21, 2023?
 - v. Is the applicant entitled to \$2,000.00 for a functional abilities evaluation, proposed by HydroHealth Evaluations Inc. in a plan submitted July 25, 2023?
 - vi. Is the applicant entitled to attendant care benefits (“ACB”) in the amount of \$1,985.34 per month from June 14, 2023 to present?
 - vii. Is the respondent entitled to a repayment relating to its payment of an IRB?
 - viii. Is the respondent liable to pay an award under s. 10 of Reg. 664 because it unreasonably withheld or delayed payments to the applicant?
 - ix. Is the applicant entitled to interest on any overdue payment of benefits?

RESULT

- [3] The applicant has not sustained a catastrophic impairment as defined by the *Schedule*.
- [4] The applicant is not entitled to IRB, ACB, the plans in dispute or interest.
- [5] The respondent is not entitled to repayment of an IRB.
- [6] The application is dismissed.

PROCEDURAL ISSUES

Respondent's motion to exclude rebuttal report granted

- [7] The respondent filed a motion dated May 4, 2025 and received by the Tribunal on May 5, 2025 prior to the start of the hearing (the "respondent's Motion"). The respondent sought an order to exclude the s. 25 neurology rebuttal report of Dr. William Kingston, dated and served on May 1, 2025, two business days before the start of this hearing. The respondent submitted that the case conference report and order dated November 12, 2024 (the "CCRO") sets the document exchange date at 75 calendar days from the date of the November 7, 2024 case conference, which was January 21, 2025. The final responsive documents were to be exchanged 100 calendar days from the date of the case conference, which was February 15, 2025. The report is 75 days overdue.
- [8] The respondent submitted that the late exchange of the rebuttal report would cause irreparable prejudice to the respondent if it was admitted into evidence, as it has no time to obtain a reply report or to conduct a meaningful review of the rebuttal report, which is 32 pages in length.
- [9] The applicant did not dispute that the rebuttal report was exchanged late as she received it late from Dr. Kingston. The applicant explained that her witness list indicates that the rebuttal report would be provided in due course. We did not hear a persuasive reason why the receipt of the rebuttal report was not pursued earlier. Also, we did not hear submissions as to how the applicant would be prejudiced by the exclusion of the report.
- [10] We granted the respondent's Motion to exclude the rebuttal report. We find that the production of this report did not comply with the CCRO and that a notation on the witness list was insufficient notice that a rebuttal report was forthcoming. Even if the notation on the witness list did alert the respondent that a rebuttal report was forthcoming, the production of the report served two business days

prior to the hearing did not provide the respondent an opportunity for its experts to review the report and prepare to cross-examine the author. We find that these are factors that cannot be mitigated if the report is admitted into evidence this late. We find that the prejudice to the respondent outweighs the probative value of the rebuttal report.

Respondent's motion to exclude particulars and strike special award claim granted

- [11] The respondent's Motion also sought an order to exclude the applicant's particulars of her claim under s. 10 of Reg 664 ("s. 10 claim"), which was served on April 30, 2025, three business days before the start of this hearing. The CCRO required the particulars to be provided to the respondent not later than 30 days after receipt of the adjuster's log notes. The log notes were to be provided to the applicant no later than 45 days after the case conference, which would have been December 22, 2024. Email correspondence indicates the log notes were provided to the applicant on January 24, 2025. Granting 30 days to produce particulars of the s. 10 claim means that such particulars were due by February 24, 2025.
- [12] The respondent submits that the late production of the particulars of the s. 10 claim would cause irreparable prejudice to the respondent if it was admitted into evidence and the applicant permitted to proceed with her s. 10 claim, as it only received the particulars three business days before the hearing and has not had time to review and respond to same.
- [13] The applicant does not dispute that the particulars of the s. 10 claim were exchanged late and that it was due to an administrative error. Further, the applicant submitted that the particulars of the claim are generic and broad statements, for which the respondent did not require a lot of time to prepare. Also, the applicant argued that the particulars are the same as those submitted on a previous application and therefore the respondent should have been aware. The applicant submitted that she should have the opportunity to pursue her claim.
- [14] We granted the respondent's motion to exclude the particulars of the s. 10 claim and as a result to strike the s. 10 claim as an issue in dispute at the hearing. The particulars were not provided to the respondent in accordance with the CCRO and the applicant did not provide a persuasive explanation for the delay. Without proper notice of the details of the claim, the respondent is prejudiced as it does not know the claim it must meet. It is well established that a party has the right to know the case. Given the timing on the late production by the applicant, we find

that the respondent would not have sufficient time to review the claim, identify potential evidence, prepare a defence, and have its witness(es) prepare to respond to the particulars of the s. 10 claim. Further, we find that the onus is on the applicant to put forward their case, in accordance with the Rules and in compliance with the CCRO.

ANALYSIS

The applicant has not sustained a catastrophic impairment as defined by the *Schedule*

- [15] The applicant seeks a catastrophic (“CAT”) impairment determination under paragraphs 6 and 7 of s. 3.1(1) of the *Schedule*, referred to as Criteria 6 and 7, respectively, as a result of her accident-related impairments. The applicant bears the burden of proof. Based on the evidence provided and the testimony of all witnesses, the applicant has not persuaded the Tribunal on a balance of probabilities that she sustained a CAT impairment. The following is a review of each criterion and our findings based on the evidence.

The applicant does not meet the CAT threshold under Criterion 6

- [16] To qualify for CAT status under Criterion 6, the applicant must prove that she has a physical impairment or combination of physical impairments that, in accordance with the *American Medical Association’s Guides to the Evaluation of Permanent Impairment*, 4th Edition, 1993 (the “Guides”), results in 55 per cent or more physical whole person impairment (“WPI”).
- [17] The applicant relies on the CAT Impairment Summary & Analysis Report dated September 20, 2023, commissioned by Omega Medical Associates (“Omega”). The assessments were completed by Dr. Robert Hastings, physiatrist; Dr. William Kingston, neurologist; Dr. Tajedin Getahun, orthopaedic surgeon; Dr. Peter Broadhurst, physiatrist; Dr. Lara Davidson, psychologist; and Priya Nair, occupational therapist (“OT”). Dr. Lisa Becker, physiatrist, and Dr. Harold Becker, general practitioner, prepared the Omega summary report. The Omega assessors determined that the applicant had a 53% WPI under Criterion 6, which they rounded to 55% WPI.
- [18] The respondent relies on the CAT insurer’s examination (“IE”) Impairment Analysis Report dated May 30, 2024, commissioned by SOMA Medical Assessments (“Soma”). The IE assessments were completed by Dr. Bruce Paitich, orthopedic surgeon; Dr. Garry Model, neurologist; Dr. Konstantine Zakzanis, neuropsychologist; Dr. Velan Sivasubramanian, psychiatrist; and

Venita Tandon, OT. Dr. Howard Platnick, general practitioner, prepared the Soma summary report. The Soma assessors determined that the applicant had a 14% WPI under Criterion 6, which they rounded to 15% WPI.

- [19] The following chart summarizes the WPI ratings assigned by each parties' assessors under Criteria 6 and 7. Our findings in relation to each and the rationale for our findings follow.

Impairment	Applicant's CAT Summary	Respondent's CAT Summary	Tribunal's Finding
Guides 4th Edition	CRITERION 6		
Medications Chapter 2, Section 2.2	3% Hastings	0% Paitich	0%
Cervicothoracic spine Chapter 3, Table 73	5% Hastings	0% Paitich	0%
Lumbosacral spine Chapter 3, Table 72	5% Hastings	0% Paitich	0%
Left upper extremity Chapter 3, Sections 3.1i, j and m	20% Hastings	5% Paitich	5%
Pelvic fractures Chapter 3, Section 3.4	10% Getahun	0% Paitich	0%
Left hip Chapter 3	2% Getahun	2% Paitich	2%
Headaches Chapter 15, Section 15.9	0% Kingston 0%	0% Moddel	0%
Mental status Chapter 4, Table 2	14% Kingston	7% Zakzanis	7%
Sleep disturbance Chapter 4, Table	5% Kingston	0% Moddel	0%
Dizziness Chapter 4, Table 11	5% Kingston	0% Moddel	0%
Total WPI Criterion 6 Combined Values Chart:	55% (rounded from 53%)	15% (rounded from 14%)	15% (rounded from 14%)

Impairment	Applicant's CAT Summary	Respondent's CAT Summary	Tribunal's Finding
	CRITERION 7		
Psychiatric/psychological Guides 6th Edition, Chapter 14, Tables 14.11-14.16	10% Davidson	10% Sivasubramanian	10%
	TOTAL CRITERION 7 COMBINED RATING		
Total WPI Criterion 7 Combined Values Chart:	58% (53% + 10%)	20% (14% + 10%) (rounded from 22%)	25% (14% + 10%) (rounded from 23%)

[20] We place little weight on the Omega reporting because we find that the following WPI% ratings relied on by the applicant in the Omega summary report were not supported by the methodology in the Guides or the medical records before us:

- i) *Medications.* Dr. Hastings rated the applicant at 3% WPI for risks and potential side effects associated with the use of pregabalin for accident-related sensory symptoms, based on the Guides, Chapter 2, section 2.2, for “Adjustments for the Effects of Treatment or Lack of Treatment”. In our view, Dr. Hastings’ analysis is not supported by the Guides. The Guides require raters to identify how the impaired person has superficially regained the previous status of good health because medications are masking their actual or true health condition, and also allow an impairment rating in this same area where accident-related medication is causing side effects.

Dr. Hastings did not identify how the applicant’s use of pregabalin either masks poor health or is causing side effects that have resulted in a physical impairment that is ratable in the Guides, nor were we directed to evidence in this regard. Additionally, the applicant testified that she currently only takes this medication infrequently and did not complain of any side effects which would elicit a rating. Consequently, we find that Dr. Hastings has not sufficiently explained the basis for rating the applicant under Chapter 2 of the Guides. For these reasons, we place little weight on this rating relied on by the applicant.

- ii) *Cervicothoracic spine and lumbosacral spine.* We prefer the report of Dr. Paitich over that of Dr. Hasting. Firstly, in Dr. Paitich’s report dated May 30, 2024, based on his examination of the applicant on March 13, 2024, he found her to have full range of movement (“ROM”) in her cervical and lumbosacral spine. This is consistent with the earlier findings of the July 7, 2023 s. 25 CAT EMG Evaluation Report of Dr. Peter Broadhurst,

physiatrist, who found ROM to be within normal limits on physical examination. In contrast, Dr. Hasting conducted his assessment of the applicant on July 10, 2023, three days after Dr. Broadhurst, and rated her for non-uniform loss of ROM, which we find is not consistent with the findings of Dr. Broadhurst or Dr. Paitich. In addition, while both doctors used Table 73 in Chapter 3 of the Guides, Dr. Paitich's finding of DRE category I impairment was based on a diagnosis of myofascial strain injury. In contrast, Dr. Hastings did not advance a diagnosis in reaching a finding on DRE category II impairment, as is contemplated in the Guides. For these reasons, we place little weight on Dr. Hastings' rating relied on by the applicant.

- iii) *Left upper extremity.* We prefer the upper extremity impairment rating for left shoulder of 5% and left elbow of 2% by Dr. Paitich over that of Dr. Hastings, who reported a rating of 12% for left shoulder and 4% for left elbow. Both doctors undertook ROM testing to obtain their results, and Dr. Hastings noted in his rebuttal report dated March 14, 2025 that the reason for the disparity between his and Dr. Paitich's ROM measurements is unclear. As Dr. Paitich indicated in his testimony, his ROM measurements are similar to the ratings found in Dr. Broadhurst's s. 25 CAT EMG Evaluation Report. Dr. Paitich testified that using the Guide to convert Dr. Broadhurst's testing results in ROM impairment of 6% for shoulder and 2% for elbow, representing similar results to Dr. Paitich at 5% and 2%, respectively. We prefer the ratings of Dr. Paitich because his assessment is corroborated by Dr. Broadhurst. Whereas Dr. Hasting's assessment, although closer in time to Dr. Broadhurst's assessment, is not consistent.

In addition, we are not persuaded that the grip strength impairment rating of Dr. Hastings is warranted. He assessed the applicant to have left forearm atrophy and found that the elbow fracture materially contributed to her grip strength loss. We prefer Dr. Paitich's explanation and reference to the Guides that a grip strength impairment rating should only be applied in rare cases as it is not believed to be an additional impairing factor and that it is duplicative of rating for ulnar neuropathy nerve which is the cause of the loss of strength. Further, we are persuaded by Dr. Paitich's assessment because it is corroborated by Dr. Broadhurst who made clinical findings of no atrophy noted in the applicant's upper limb or hand and that tone was normal in her upper limbs, to which he diagnosed very mild chronic ulnar neuropathy.

- iv) *Pelvic fractures.* In our view, Dr. Getahun's WPI% rating for pelvic fractures is not supported by the medical record we were directed to or the methodology outlined in the Guides for assigning ratings.

In order to be ratable in section 3.4 of the Guides, a healed pelvic fracture must have displacement and, in some instances, also deformity and residual signs. Dr. Getahun indicates the applicant suffered a rami fracture and crush of the left sacrum but does not identify in his report whether there is displacement, deformity or residual signs. Dr. Getahun testified that the pelvic injury is a crushing-type fracture that he views as a displaced fracture because it has not been physically returned to its original position. Further, Dr. Getahun's rating of 10% is based on a bi-lateral displaced rami fracture. We have not heard evidence that the applicant sustained a bi-lateral rami fracture. The Guides do not give a rating for a unilateral undisplaced rami fracture or a unilateral displaced rami fracture. We prefer the evidence of Dr. Paitich, who identifies the pelvic injury as an undisplaced fracture to the sacral ala and pubic ramus and refers to a CT scan report of the pelvis on the date of the accident which identifies an undisplaced fracture involving the left sacral ala as was also diagnosed on February 8, 2021 by Dr. Matthew Tsuji, orthopaedic surgeon. Dr. Paitich testified that when the force that caused the break was released, the bones returned to their natural position.

We are not persuaded by Dr. Getahun's testimony as this explanation was not articulated in his report and is not corroborated by the preponderance of medical evidence. For these reasons, we place little weight on this rating relied on by the applicant.

- v) *Mental status.* Both parties' CAT assessors diagnosed the applicant with mild traumatic brain injury and rated her in the first tier of mental status impairment found in Table 2 of Chapter 4 of the Guides. This tier has a scale of 1%-14% WPI rating for an existing impairment but able to perform satisfactorily most activities of daily living ("ADLs"). Dr. Kingston rated the applicant at 14%, the upper end of such range. We find such rating is not persuasive as it was based primarily on the subjective cognitive difficulty impeding her from returning to her previous job at a casino. However, at the time of the assessment, she was working at another job. She also returned to driving, which was not reported on by Dr. Kingston. We find there is a lack of medical evidence to justify this WPI% rating at the upper end of the range. For these reasons, we place little weight on this rating relied on by the applicant.

- vi) *Sleep disturbance.* Dr. Kingston rated the applicant at 5% WPI for sleep disturbance in the first tier of sleep impairment at Table 1 of Chapter 4 of the Guides. However, he notes contributing factors of mood and pain issues. While Dr. Kingston recognizes that a deduction for pain is necessary to avoid double counting, we find his report does not specifically outline how the rating and deduction was applied for pain or mood issues. Additionally, the applicant reports that she has longstanding sleep issues prior to the accident, which worsened due to pain. We find this WPI% rating is not supported due to this potential double counting and the applicant's prior history of sleep disturbance. For these reasons, we place little weight on this rating relied on by the applicant.
- vii) *Dizziness.* Dr. Kingston rated the applicant at 5% WPI for dizziness, which is in the mid-range of the first tier of auditor nerve impairment at Table 11 of Chapter 4 of the Guides. For his rating, Dr. Kingston indicates she has some intermittent and relatively infrequent dizziness that warrants a partial first tier rating. However, the applicant's self-reporting of dizziness does not show a consistent pattern. Dr. Kingston's report references the September 7, 2022 EMG report of Dr. Shariq Mumtaz, neurologist, where the applicant denies any dizziness while other records cited in his report show some complaints. The Guide provides for a rating where there is minimal disequilibrium impairment that limits activities in hazardous surroundings. We find that we have not been pointed to medical evidence that supports the applicant's activities have been limited as a result of dizziness. For these reasons, we place little weight on this rating relied on by the applicant.

[21] We accept the insurer's examination ("IE") assessors WPI% rating. When added up in accordance with the Combined Values Chart in the Guides, the applicant's total rating under Criterion 6 is 15% WPI. Consequently, we find she does not meet the 55% WPI CAT threshold under Criterion 6.

The applicant does not meet the CAT threshold under Criterion 7

[22] To qualify for CAT status under Criterion 7, the applicant must prove that she has a combination of physical and mental or behavioural impairment ratings from medical professionals, excluding traumatic brain injury, that meet the combined 55% WPI threshold. The mental or behavioural impairment rating is determined in accordance with the methodology in Chapter 14, Section 14.6 of the American Medical Association's *Guides to the Evaluation of Permanent Impairment*, 6th Edition, 2008 (the "Guides 6th Edition"), and is combined with the physical

impairment WPI rating from Criterion 6 using the Combined Values Table in the Guide.

- [23] To obtain the WPI% rating under Chapter 14, three scales are administered by assessors to determine a person's score which include: i. the Brief Psychiatric Rating Scale ("BPRS"), ii. the Global Assessment of Function ("GAF"), and iii. the Psychiatric Impairment Rating Scale ("PIRS"). The median score is then taken from the three scales and represents a person's total WPI% from a psychological perspective.
- [24] The applicant relies on the assessment of Dr. Davidson, psychologist, who diagnosed her with Persistent Depressive Disorder, moderate, with associated anxiety. The differential diagnosis is Other Specified Depressive Disorder (depressive episode with insufficient symptoms) with associated anxiety. The applicant was also diagnosed with Somatic Symptom Disorder, with predominant pain, moderate. Dr. Davidson administered the three scales outlined in Chapter 14, which converted into a total WPI equalling 5-10%. The doctors who prepared the Omega summary report applied a 10% WPI as the rating within that range.
- [25] The respondent relies on the assessment of Dr. Sivasubramanian, psychiatrist, who indicated that he was in general agreement with Dr. Davidson's diagnostic impressions and impairment ratings. Administering the three scales outlined in Chapter 14, Dr. Sivasubramanian found the applicant to have a 10% WPI.
- [26] Since both assessors agree that the applicant's total psychiatric/psychological WPI is 10%, this is not in dispute.
- [27] *Total Criterion 7 Combined Rating:* For clarity, we find that when 10% is added to the applicant's Criterion 6 WPI of 14% in accordance with the Combined Values Chart in the Guides, the total is 23%, not 22% as found by the respondent. Further, when this value is rounded in the manner set out in Chapter 2 of the Guides, we find the applicant's total WPI under Criterion 7 is 25%, not 20% as found by the respondent. Given our findings above, the applicant does not meet the 55% threshold under Criterion 7.

The applicant is not entitled to IRB

- [28] We find the applicant has not established entitlement to IRB.
- [29] To receive payment for an IRB under s. 5(1) of the *Schedule*, the applicant must be employed at the time of the accident and, as a result of and within 104 weeks after the accident, suffer a substantial inability to perform the essential tasks of

that employment. The applicant must identify the essential tasks of their employment, which tasks they are unable to perform and to what extent they are unable to perform them. The applicant bears the burden of proving on a balance of probabilities that they meet the test.

- [30] To receive payment for a post-104 week IRB under s. 6 of the *Schedule*, the applicant must demonstrate on a balance of probabilities that they suffer from a complete inability to engage in any employment or self-employment for which they are reasonably suited by education, training or experience.
- [31] The applicant did not refer us to any evidence to demonstrate her entitlement to IRB. In her closing submissions, the applicant entered as an exhibit the August 15, 2023 explanation of benefits (the “EOB”). The EOB indicates that her IRB needed to be recalculated based on four IE reports which indicate that the applicant is no longer entitled to IRB as she does not suffer a complete inability to engage in any employment for which she is reasonably suited by education, training or experience. With her closing submissions, the applicant also entered into evidence the May 5, 2025 income replacement report of Bluepoint Valuations. The report calculates the amount of IRB in the event that her long-term disability (“LTD”) payments cease, and indicates she is currently receiving LTD as at the date of the report. However, the applicant did not lead evidence that she suffers a substantial inability to perform the essential tasks of that employment, or that she suffers from a complete inability to engage in any employment or self-employment for which they are reasonably suited by education, training or experience.
- [32] Accordingly, we find on a balance of probabilities that the applicant has not established that she is entitled to IRB.

The applicant is not entitled to ACB in the amount of \$1,985.34 per month

- [33] We find the applicant has not established entitlement to ACB.
- [34] Section 19 of the *Schedule* states that an insurer shall pay for all reasonable and necessary expenses incurred by or on behalf of an insured person as a result of an accident for ACBs provided by an aide or attendant. Section 42 of the *Schedule* details the procedures for claiming ACB, including the form to be used and timing of its submission. To apply for ACB, an insured is required to submit an Assessment of Attendant Care Needs (“Form 1”) on the prescribed form. Section 42(3) states that an insurer has 10 business days after the submission of the Form 1 to provide notice of the ACB it agrees to pay, refuses to pay and the

medical and other reasons for the denial. Alternatively, it can provide notice requesting an IE.

[35] Section 3(7)(e) provides that to meet the definition of incurred the following three criteria must be satisfied:

- i. The applicant received the service to which the expense relates;
- ii. The applicant paid the expense or promised to pay the expense or is legally obligated to pay the expense; and
- iii. The person who provided the service:
 - a) did so in the course of his or her employment, occupation, or profession in which he or she would ordinarily have been engaged, but for the accident; or
 - b) sustained an economic loss as a result of providing the goods or services to the insured person.

[36] We find the applicant is not entitled to ACB for the period claimed because she did not direct us to evidence that ACB expenses have been incurred by her to the date of the hearing. In her closing submissions, the applicant entered as an exhibit the October 13, 2023 explanation of benefits in which the respondent denied paying ACB. However, the applicant did not direct us to the test for ACB or her position on how she qualifies for this benefit.

[37] In addition, we were not persuaded by the June 14, 2023 s. 25 in-home assessment report of Remik Zakrzewski, OT. The Form 1 was prepared by Mr. Zakrzewski who testified that he made his recommendations for attendant care needs without testing or observing the applicant's ability to perform many of the functions he was reporting on, such as feeding and personal care. As well, the observations and analysis section of the report repeats the same wording in most sections as opposed to making unique findings of the applicant's abilities and needs. As such, we give little weight to Mr. Zakrzewski's recommendations for attendant care needs.

[38] Accordingly, we find on a balance of probabilities that the applicant has not met her onus of demonstrating entitlement to ACB.

Treatment Plans

- [39] To receive payment for a 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.

The applicant is not entitled to \$1,740.00 for physiotherapy services

- [40] We find the applicant has not proven on a balance of probabilities that the plan for physiotherapy services is reasonable and necessary.
- [41] The plan dated February 6, 2024 was prepared by Chia Tori, physiotherapist, and sought funding of \$1,740.00 for 20 - 1 hour physiotherapy sessions.
- [42] A treatment plan in and of itself is insufficient to establish entitlement to a benefit. The applicant did not provide any submissions or direct us to any evidence to support entitlement to this plan or the other plans in dispute, other than having the plans in dispute entered as exhibits during her closing submissions.
- [43] Accordingly, we find on a balance of probabilities that the applicant has not met her onus of demonstrating that the plan for physiotherapy services is reasonable and necessary.

The applicant is not entitled to \$2,460.00 for a physiatry assessment

- [44] We find the applicant has not proven on a balance of probabilities that the plan for a physiatry assessment is reasonable and necessary.
- [45] The plan dated November 21, 2023 was prepared by Dr. David Huang, chiropractor, and sought funding of \$2,460.00 for a physiatry assessment, inclusive of \$200.00 for documentation support.
- [46] The applicant did not provide any submissions or direct us to any evidence to support entitlement to this plan.
- [47] Accordingly, we find on a balance of probabilities that the applicant has not met her onus of demonstrating that the plan for a physiatry assessment is reasonable and necessary.

The applicant is not entitled to \$2,000.00 for a functional abilities evaluation

- [48] We find the applicant has not proven on a balance of probabilities that the plan for a functional abilities evaluation is reasonable and necessary.
- [49] The plan dated May 23, 2023 (indicated in the CCRO and listed as submitted July 25, 2023) was prepared by Dr. David Huang, chiropractor, and sought funding of \$2,000.00 for a functional abilities evaluation, inclusive of \$200.00 for documentation support.
- [50] The applicant did not provide any submissions or direct us to any evidence to support entitlement to this plan.
- [51] Accordingly, we find on a balance of probabilities that the applicant has not met her onus of demonstrating that the plan for a functional abilities evaluation is reasonable and necessary.

The respondent is not entitled to repayment of IRB

- [52] We find the respondent has not proven on a balance of probabilities that it is entitled to repayment of IRB.
- [53] Section 52(1)(a) provides that a person is liable to repay to the insurer any benefit that is paid to the person as a result of an error on behalf of the insurer, the insured person or any other person, or as a result of wilful misrepresentation or fraud. Section 52(2)(a) provides that if a person is liable to repay an amount to an insurer under this section, the insurer shall give the person notice of the amount that is required to be repaid, and s. 52(3) provides timelines for repayment requests. If the notice required is not given within 12 months after the payment of the amount that is to be repaid, the person to whom the notice would have been given ceases to be liable to repay the amount unless it was originally paid to the person as a result of wilful misrepresentation or fraud. Section 52(5) provides that the insurer may charge interest on the outstanding balance of the amount to be repaid starting on the 15th day after the notice is given under subsection (2) and ending on the day repayment is received in full.
- [54] The respondent has the burden of proving that the income replacement benefit was paid as a result of an error, wilful misrepresentation, or fraud on a balance of probabilities.
- [55] As the respondent did not address the issue of repayment of IRB at the hearing or provide submissions or evidence regarding the quantum or circumstances of

the alleged overpayment, we find it has not met its burden in proving that an overpayment was made or that it is entitled to a repayment pursuant to s. 52.

[56] Accordingly, we find on a balance of probabilities that the respondent is not entitled to a repayment of IRB.

Interest

[57] Interest applies on the payment of any overdue benefits pursuant to s. 51 of the *Schedule*. Since no benefits are owing, interest does not apply.

ORDER

[58] For the reasons outlined above, we order that:

- i. The applicant has not sustained a catastrophic impairment as defined by the *Schedule*.
- ii. The applicant is not entitled to IRB, ACB, the plans in dispute or interest.
- iii. The respondent is not entitled to repayment of IRB.
- iv. The application is dismissed.

Released: July 14, 2025



Tami Cogan
Adjudicator



Henry Harris
Vice-Chair