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Court confirms injured claimant entitled to attendant care benefit because of pre-existing condition

Claimant cannot be removed from Minor Injury Guidelines and have injury deemed minor: court



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BY [Aidan Macnab](#) / 14 Feb 2024 / Share

An Ontario Divisional Court has confirmed that an insurer cannot deny attendant care benefits based on the claimant only having a “minor injury” if the claimant has been removed from the Minor Injury Guidelines because of a pre-existing medical condition that prevents a full recovery.

In [*Co-Operators Insurance Company v. Bennett*, 2024 ONSC 467](#), the injured claimant was in a motor vehicle accident and sustained minor injuries. However, she was removed from the treatment regime under the Minor Injury Guidelines (MIG) because she had a documented pre-existing medical condition. The insurance company tried to distinguish the MIG classification from the term “minor injury” in the Statutory Accident Benefits Schedule (SABS) and deny attendant care benefits based on exemptions for minor injuries. The Divisional Court confirmed the License Appeal Tribunal ruling that if a claimant is removed from the MIG, they cannot be deemed to have minor injuries for the purpose of denying benefits.

Counsel for the claimant Lawson Hennick says the decision reshaped the law in Ontario concerning attendant care benefits for injured car accident victims.

“It’s definitely a welcome change in the law,” he says.

“Once you’re out of the MIG, for any reason, the injury is not minor... You can’t remove them from the MIG and yet still define their injuries as minor and say that you can’t have access to attendant care benefits or to attendant care assessments.”

Section 18(1) of the SABS caps medical and rehabilitation benefits payable for a minor injury at \$3,500. But under s. 18(2), the limit does not apply to an insured person if their doctor provides compelling evidence that they have a pre-existing

medical condition documented before the accident, which will prevent them from “achieving maximal recovery” if they are subject to the \$3,500 cap.

In *Co-Operators Insurance Company v. Bennett*, the insurance company argued at the License Appeal Tribunal (LAT) and on appeal at the Divisional Court that the respondent, despite being removed from the MIG, was not entitled to an attendant care assessment because she only suffered minor injuries in the accident. The company argued that a plain reading of ss. 14.2 and 25(2) of the SABS exclude the respondent from an attendant care assessment. Under s. 14.2, an insurer is liable for attendant care benefits if the “impairment is not a minor injury.” Under s. 25(2), the insurer is not required to pay for an in-home attendant care assessment “unless the insured person has sustained an impairment that is not a minor injury.”

The LAT found that once a claimant is removed from the MIG, they are no longer subject to the MIG’s limits, and the test for the services to which they are entitled is whether they are “reasonable and necessary.” Once the injured person is off the MIG, the LAT ruled the insurer cannot categorize their injury as minor.

The LAT said that when an insurer determines the injured person suffered predominantly minor injuries but no longer remains in the MIG because of pre-existing medical conditions, “there is no further MIG discussion regarding her injuries and impairments.” The claimant has access to the “next level tier of funding for medical and rehabilitation benefits and assessments that are reasonable and necessary,” the LAT said.

The insurance company argued that the LAT erred in law by interpreting the SABS in a way that conflated “minor injury” with the MIG. Writing for the three-judge Divisional Court panel, Justice Janet Leiper agreed with the LAT’s analysis and rejected the insurer’s “piecemeal approach to interpretation,” which would lead to “illogical results” and treat claimants removed from the

MIG as if they were still in the MIG. The LAT’s statutory interpretation reads the words of the SABS “in their ordinary and grammatical meaning, in harmony with the scheme and object of the SABS, and in accord with the intention of the legislature.”

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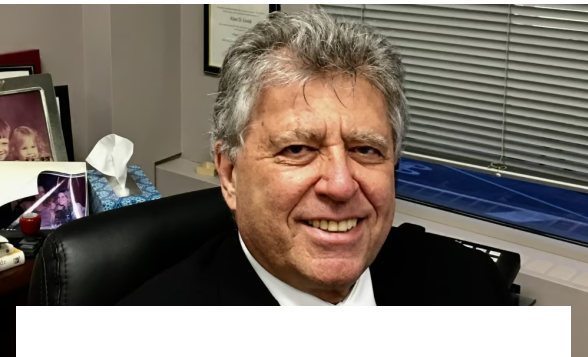
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