Citation: Muir v. Dominio of Canada General Insurance Company (Travelers), 2026 ONLAT 24-013613/AABS

Licence Appeal Tribunal File Number: 24-013613/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:

Linda Muir

Applicant

and

Dominion of Canada General Insurance Company (Travelers)

Respondent

DECISION

ADJUDICATOR: **Melanie Malach**

APPEARANCES:

For the Applicant: Micheal Rotondo, Counsel

For the Respondent: Sharon Dagan, Counsel

HEARD: **By way of written submissions**

OVERVIEW

[1] Linda Muir, the applicant, was involved in an automobile accident on November 25, 2020, 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, The Dominion of Canada General Insurance Company (Travelers), 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. Is the applicant entitled to $88,942.31 for Home Modifications, proposed by Princeton Hills Medical Assessments, in a treatment plan dated August 5, 2021?

ii. Is the applicant entitled to the services and assessment proposed by Polyclinic Rehabilitation Institute Inc., as follows:

(a) $3,976.16 for physical rehabilitation services, in a treatment plan dated April 3, 2024; and

(b) $2,200.00 for a Neuropsychological Assessment, in a treatment dated April 3, 2024?

iii. Is the applicant entitled to $630.40 for Housekeeping Expenses, submitted on a claim form ("OCF-6") dated February 13, 2024?

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

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?

[3] On June 6, 2025, a Motion Order was made by the Tribunal in response to the applicant's Notice of Motion to amend the issues in dispute. The Tribunal confirmed the applicant's withdrawal of the treatment plan for psychological services dated October 8, 2021; the treatment plan for an attendant care assessment dated April 3, 2024; and the treatment plan for an orthopaedic assessment dated April 5, 2024. In addition, the applicant's request to amend the quantum of the claim for housekeeping expenses from $678.05 to $630.40 was granted. Finally, the Tribunal granted the applicant's request to add a claim

for an award under section 10 of Reg. 664. I therefore have amended the issues in dispute accordingly.

RESULT

[4] I find that the applicant is entitled to $88,942.31 for Home Modifications, proposed in the treatment plan dated August 5, 2021.

[5] I find that the applicant is entitled to the $3,976.16 for physical rehabilitation services, proposed in the treatment plan dated April 3, 2024.

[6] I find that the applicant is entitled to $2,200.00 for a Neuropsychological Assessment, proposed in the treatment plan dated April 3, 2024.

[7] I find that the applicant is not entitled to housekeeping expenses

[8] I find that the applicant is entitled to interest on any overdue payment of benefits.

[9] I find that the respondent is liable to pay an award of $22,235.58.

PROCEDURAL ISSUE

Change of Party Name

[10] By email correspondence dated August 15, 2025, counsel for the respondent wrote to the Tribunal to request an amendment of the name of the respondent from Travelers Insurance Company of Canada (“Travelers”) to the Dominion of Canada General Insurance Company (“Dominion”). In response, by email correspondence dated August 15, 2025, counsel for the applicant advised that it did not consent to the respondent’s request as the “associated LAT and underlying claim documents and evidence correctly identify Travelers as the proper party”.

[11] The applicant in reply submits that the respondent is unilaterally seeking to change its party name despite responding to the Application and participating in the Case Conference without objection. The applicant objects to the change pursuant to Rule 2.16 which defines a party as one entitled to participate who has notified the Tribunal of that intention. She submits that Travelers remains the proper respondent unless and until the Tribunal orders otherwise.

[12] Upon my review of past Tribunal decisions which involve the respondent, I find that the respondent is consistently named as Dominion of Canada General Insurance Company (Travelers). I therefore have amended the name of the

respondent to reflect this change which should satisfy both parties. I find that the applicant has not provided sufficient evidence or submissions that it will suffer any prejudice by this change.

ANALYSIS

Entitlement to Home Modifications

[13] I find that the applicant is entitled to the treatment plan for home modifications.

The Law

[14] Section 16 of the *Schedule* sets out the regulatory framework with respect to entitlement to home modifications. In order to determine if the applicant is entitled to the disputed benefit, pursuant to s. 16(1) of the *Schedule,* the rehabilitation benefit must be considered reasonable and necessary for the purpose of:

(a) Reducing or eliminating the effects of any disability resulting from the impairment; or

(b) To facilitate the person's reintegration into his family, society, and the labour market.

[15] Section 16(3)(i) of the *Schedule* allows for home modifications and home devices to accommodate the needs of the insured person, or the purchase of a new home if it is more reasonable to purchase a new home to accommodate the needs of the insured person than to renovate his or her existing home. This is to be read in conjunction with sections 16(4)(b) and (c), which provide that an insurer is not liable to pay home renovation expenses incurred to provide the insured person with access to areas of the home not needed for ordinary living, or for the purchase of a new home in excess of the value of the renovations that would be required to accommodate the needs of the insured person in the existing home.

Background

[16] The applicant claims entitlement to $88,942.31 for Home Modifications, proposed by Princeton Hills Medical Assessments, in a treatment plan dated August 5, 2021.

[17] At the time of the accident, the applicant resided in a two-storey dwelling with ten porch steps and no main-floor bathroom. The applicant submits that on

December 29, 2020, Amarash Parikshya, occupational therapist, conducted an Occupational Therapy Home Safety Assessment. In Mr. Parikshya's January 5, 2021 report, he documented the applicant's severe lower back pain, ambulatory impairment, weakness, and four post-accident falls. He noted the applicant relied on a rollator, bedside commode and her son for support. He recommended a porch lift, stair lift, and a full bathroom on the main floor. Mr. Parikshya also concluded that the applicant required over $14,000.00 per month in attendant care assistance. These findings were further confirmed by follow-up assessments on July 16, 2021 and August 21, 2022.

[18] On April 16, 2021, a quote for the proposed home safety accessibility renovations in the amount of $88,682.31 was provided by My Next Home Reno. In response, by correspondence dated June 11, 2021, the respondent requested submission of a treatment plan. A treatment plan prepared by Mr. Parikshya was subsequently submitted dated August 5, 2021. By letter dated August 10, 2021, the respondent denied the treatment plan and requested that the applicant attend Insurer Examinations ("IE").

[19] The respondent advised by letter dated November 8, 2022, that based on the Neurological Assessment completed by Dr. Galit Kleiner; the Orthopaedic Assessment completed by Dr. Randy Rizek; and the Occupational Therapy In-Home Assessment completed by Lyndsey Dennis; that the treatment plan was not reasonable and necessary. It further stated that Dr. Kleiner confirmed that she did not sustain a neurological impairment and Dr. Rizkek confirmed that her burst fracture had healed and there is no significant permanent disability.

Parties' Positions

[20] The applicant submits that causation does not require that the accident be the sole or sufficient cause – only the necessary one. (see: *Sabadash v. State Farm et al.,* 2019 ONSC 1121 (CanLII), paras 31 and 30) (*"Sabadash*")). She argues that the test is whether, but for the accident, she would have required home modifications. She argues that her pre-accident records show no disabling spine condition, no assistive device use, and stable peripheral vascular disease. She further argues that she was independently mobile and had no decline in function prior to the accident.

[21] In contrast, she submits that the post-accident records reflect a rapid and serious deterioration in her condition. The Clinical Notes and Records ("CNRs") of Quinte Health Care confirm two hospital admissions (two days in December 2020 and seven days in October 2024). The EMS reports and community referrals document repeated falls and declining independence. Her family physician, Dr.

Jonathon Herriot, prescribed Pregabalin for spinal pain and then reduced it in 2024. Records from Physiotherapy of Bancroft and Physio North document post-accident mobility impairments related to back pain, leg weakness, poor posture and frequent falls. Orthopaedic Surgeons, Dr. Jeff Yack, Dr. Simon Harris, and vascular specialists at Scarborough Health Network and University Health Network, all attribute the applicant's impairments to her L2 fracture. Dr. Tajedin Getahun, orthopaedic surgeon, in his report, dated February 9, 2024, identified bilateral leg weakness, chronic back pain and walker reliance.

[22] The applicant further relies upon the Statement of her son Todd Shearing which confirms post-accident stair risk, use of mobility aids and need for structural changes to remain safely in the home.

[23] The applicant submits that the respondent failed to schedule a complete IE process in a timely manner. She argues that over 15 months after submission of the treatment plan, the respondent scheduled and rescheduled multiple IEs, including an orthopaedic, occupational therapy, neurological and construction engineering assessment. The applicant submits that no report from the construction engineer was ever produced. The respondent's denial letter dated November 8, 2022, ultimately relied on two virtual IE assessments by Dr. Rizek, orthopaedic surgeon, and Dr. Kleiner, neurologist, and an In-Home Occupational Therapy Assessment prepared by Lindsey Dennis.

[24] The applicant submits that Ms. Dennis completed her In-Home Occupational Therapy Assessment on April 4, 2022, and found that she had chronic pain, low mood, balance impairment and restricted mobility. Ms. Dennis noted that the applicant had previously walked unaided but now relied on a 4-wheeled walker and her son for supervision. During the assessment, Ms. Dennis noted that she had to physically assist the applicant on stairs to prevent a fall. She concluded that the proposed home modifications were functionally reasonable and necessary and that the applicant was unsafe to navigate stairs independently. She did not address causation, citing it as outside her scope.

[25] The applicant submits that Dr. Kleiner in his Neurology IE assessment on September 8, 2022, found no neurological impairments but acknowledged that the applicant had limited walking capacity due to lower back pain and required a walker.

[26] The applicant submits that Dr. Rizek conducted two virtual Orthopaedic IEs on November 19, 2021 and January 15, 2022, and documented limited flexion/extension, reduced lumbar ROM (20-30%), continued back, hip and leg pain, and a slow, supported gait that precluded formal orthopaedic testing. He

recommended a lumbar brace but concluded that modifications were not reasonable and necessary due to fracture healing and lack of long-term sequelae. The applicant submits that Dr. Rizek's opinion is flawed because he did not assess whether the applicant's functional limitations were accident-related, despite acknowledging several of them – including her slow gait, functional limitations, pain and reliance on assistive devices. She further submits that virtual IEs have consistently accorded reduced weight by the Tribunal (see: *Zidan v. Aviva Insurance Company,* 2023 CanLII 40103 (ON LAT), para. 30 and *Lewis v. Co-Operators General Insurance Co.,* 2022 CanLII 106460 (On LAT) at paras. 120 and 131). The applicant submits that the evidentiary value of Dr. Rizek's report is further undermined by the respondent's failure to provide him with complete records. The applicant relies upon the decision in *G.P. v. Wawanesa Mutual Insurance Company,* 2022 CanLII 45306 (ON LAT), para. 40, where the Tribunal found that where an insurer fails to provide the full record or to critically evaluate a flawed IE, the report should be given little weight and may support a special award.

[27] The respondent submits that the applicant has not met her onus of proving that the treatment plan for home modifications is reasonable and necessary. The respondent claims that the applicant's pre-accident medical records indicate that the applicant had a host of longstanding and worsening health problems. A summary of her pre-accident records is provided by the respondent. The respondent then provided a summary of her post-accident records.

[28] With respect to the Occupational Therapy Home Safety Assessment report of Mr. Parikshya, the respondent submits that the sole document referenced in his report is a CT scan of the lumbar spine and head dated December 2, 2020. The respondent submits that there is no indication that Mr. Parikshya reviewed any other medical records nor does it appear that he consulted with the applicant's treating orthopaedic surgeon or family physician for any input or opinion. The respondent further submits that the treatment plan in dispute was submitted about seven months after Mr. Parikshya's report was completed in early January 2021.

[29] The respondent submits that it denied the treatment plan by letter dated August 10, 2021, and advised that IEs would be arranged. Initially, the IEs were scheduled to take place in November 2021, but the applicant got sick. The intake for the Orthopaedic IE Assessment was completed by phone on November 29, 2021, but there were difficulties connecting virtually and it needed to be rescheduled. The virtual IE subsequently took place on January 15, 2022. The IE with the contractor was cancelled by the respondent in February 2022 on

the basis that if home modifications were considered reasonable and necessary, the respondent would request a cost breakdown from the vendor who completed the treatment plan. The Occupational Therapy IE with Ms. Dennis took place on April 4, 2022, at the applicant's home. The IE vendor contacted the respondent on May 10, 2022, as the orthopaedic surgeon recommended that a neurology assessment be done to address balance issues. The Occupational Therapy and Orthopaedic reports were to be held so that the assessors could review the IE Neurology Assessment. The Neurological IE Assessment with Dr. Kleiner took place virtually on September 8, 2022. The IE report of all the IE assessors was completed on November 7, 2022.

[30] The respondent submits that Dr. Rizek was asked whether the proposed treatment plan was reasonable and necessary as a result of injuries directly related to the accident and he concluded that it was not reasonable or necessary as the applicant's prognosis was favourable given that her lumbar fracture had healed and would not cause any permanent or long-term sequelae. He also noted multiple pre-existing pathologies and a multitude of comorbidities and maintained that home modifications were not required from an orthopaedic standpoint. Dr. Kleiner concluded that there was no evidence of neurological impairment and deferred to Dr. Rizek regarding the applicability of the treatment plan. Ms. Dennis deferred to Dr. Rizek on causation. The respondent submits that no expert reports were obtained by the applicant from any medical physicians with respect to the issue of housing modifications or challenging the findings of the IE assessors.

Entitlement to Home Modifications

[31] I find that it is well established law that the appropriate test to determine causation in accident benefits cases is the "but for" test, which was confirmed by the Divisional Court in *Sabadash.* To satisfy the test, the applicant must prove on a balance of probabilities that "but for" the accident, she would not have suffered the impairments which form the basis of the claim for accident benefits. The Court in *Sabadash* sets out that the existence of pre-existing medical issues does not negate an insurer's liability, and that the accident need not be the only cause of the impairment but must be a necessary cause.

[32] I find that while the respondent submits that the applicant has a significant pre-accident medical history, the existence of pre-existing medical issues does not negate an insurer's liability. I find that it is accepted by both parties that she suffered a L2 fracture as a result of the subject accident which led to functional impairments post-accident. I therefore find that "but for" the accident, she would

not have suffered an L2 fracture, and the analysis then becomes whether the home modifications are required as a result of the impairments she suffered in the subject accident.

[33] I find that based on the evidence and the submissions of the applicant, that she has proven on a balance of probabilities that the treatment plan for home modifications is reasonable and necessary for the following reasons.

[34] I give significant weight to the reports of Mr. Parikshya who assessed the applicant on three separate occasions following the subject accident. The analysis of whether the treatment plan for home modifications is reasonable and necessary should be made at the time the recommendations were made and the treatment plan in dispute was actually submitted. I find that Mr. Parikshya's reports are contemporaneous to the treatment plan in dispute.

[35] Upon review of the Occupational Therapy Home Safety Assessment report of Mr. Parikshya, which was completed shortly after the accident, I find that he completed his report based on a structured interview with the applicant, objective analytical testing protocols, and direct observation of the applicant's current functional status in order to facilitate the applicant's safe use of her home. While the respondent criticizes the report for only reviewing the CT scan dated December 2, 2020, I find that Mr. Parikshya refers to her post-accident medical treatment and assessments within his report which is consistent with the provided records. I further find that Mr. Parikshya provides specific recommendations for the proposed home modifications with reasons for his recommendations and photographs in support. I find that his report provides a detailed rationale for each of his recommendations.

[36] Mr. Parikshya completed an Attendant Care Assessment Report on July 16, 2021, where the applicant reported that she is physically unable to perform any of her pre-accident self-care activities, housekeeping activities or leisure activities. Mr. Parikshya noted that due to the applicant's repeated falls, deteriorating cognitive functioning and inability to get up by herself after a fall, 24 hours of supervisory care is urgently recommended to prevent serious injury that could even result in death. He notes that the home modifications indicated in his previous Occupational Therapy Home Safety Assessment need to be completed as soon as possible to make her home safer and accessible.

[37] Upon review of Mr. Parikshya's subsequent Attendant Care Assessment report, dated August 21, 2022, he notes that the recommendations in his Occupational Therapy Home Safety Assessment have still not been implemented due to a lack of funding. He further notes the applicant's condition has not improved since,

and the recommendations need to be implemented as soon as possible to make her home environment safe for living, prevent falls and aid in her safe evacuation during emergencies.

[38] I further agree with the applicant that more weight should be given to an assessment conducted in-person. I agree that an assessor who conducts an in-person assessment is in a better position to observe the applicant than a virtual assessment. Both Dr. Parikshya and Ms. Dennis completed in-person assessments, while Dr. Rizek and Dr. Kleiner completed virtual assessments.

[39] I do not give weight to the report of Dr. Rizek. I find upon review of Dr. Rizek's Orthopaedic IE report, that he conducted two virtual assessments on November 29, 2021 and January 15, 2022. He concluded that the applicant sustained decreased range of motion of the lumbar spine and has not reached maximum medical recovery for the injuries directly related to the subject accident. He further noted that her lumbar fracture is healed. He concludes that the treatment plan is not reasonable and necessary at this time because her prognosis is favourable given her L2 fracture has healed, thus it would not cause any permanent or long-term sequelae. I do not find that Dr. Rizek has properly addressed the question or provided sufficient reasons to support the denial of the treatment plan. He does not discuss the applicant's reported functional limitations or address any of the reasons why the home modifications were recommended in the first place. He notes that the applicant's L2 fracture is healed but does not address any of the applicant's other reported complaints or the findings of Mr. Parkishya or Ms. Dennis of the functional limitations and safety risks experienced by the applicant. He further acknowledges that the applicant has not reached maximum medical recovery but does not provide any further details or consequences of this finding. I further find that while Dr. Rizek was also asked whether the home modifications being recommended are required as a result of the applicant's pre-existing injuries, this is not the issue in dispute. The issue is whether the home modifications are reasonable and necessary as a result of the applicant's accident-related injuries.

[40] I do give weight to the Occupational Therapy IE report of Ms. Dennis, dated April 4, 2022, completed eight months after submission of the treatment plan in dispute. I find that she completed an in-person assessment and provided a summary of the treatment plan recommendations. Ms. Dennis concluded that from a functional perspective the applicant continues to experience persistent pain, impaired balance and reduced mobility tolerances that impact her safety in her home environment and contribute to decreased participation in daily occupations. I find that Ms. Dennis' conclusions support the functional limitations

identified by Mr. Parikshya and the reasons why the home modifications were recommended and submitted on the treatment plan in dispute.

[41] For the reasons outlined above, I find that the applicant has proven on a balance of probabilities that the treatment plan for home modifications is reasonable and necessary.

Medical Benefits

[42] To receive payment for a treatment 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 that the goals of treatment are reasonable, how the goals would be met to a reasonable degree and that the overall costs of achieving them are reasonable.

Entitlement to the Treatment Plan for Physical Rehabilitation

[43] I find that the applicant is entitled to the treatment plan for physical rehabilitation services.

[44] The applicant claims entitlement to $3,976.16 for physical rehabilitation services, proposed by Polyclinic Rehabilitation Institute Inc., in the treatment plan dated April 3, 2024. The treatment plan recommends the following:

Assessment (examination), total body:	$ 200.00
12 sessions of rehabilitation therapy - 45 minutes:	$1,015.32
12 sessions of massage therapy - 45 minutes:	$ 540.00
12 sessions of acupuncture - 30 minutes:	$ 676.92
12 sessions of aqua treatment - 60 minutes:	$1,354.72
Counselling, promoting health and preventing disease:	$ 120.00

[45] The goals of the treatment plan are stated as pain reduction, increase in strength and range of motion, functional restoration to pre-accident level of functioning, chronic pain prevention with strengthening and stretching. The barriers to recovery were identified as limited functional and postural tolerances due to pain in multiple injury sites and psychological issues.

[46] The applicant submits that the subject treatment plan is reasonable and necessary. She relies upon the CNRs of Physio North and Dr. Herriot to support her need for ongoing treatment. She further submits that the CNR of Dr. Herriot dated September 28, 2021, notes decreased mobility after she stopped physiotherapy. The applicant further relies upon the CNRs from Quinte Health

Care when she was admitted to the hospital from October 11 to 18, 2024 due to decreased mobility and deconditioning.

[47] The applicant argues that the proposed modalities in the treatment plan target pain and improve strength and mobility which are recognized goals under s. 15 of the *Schedule,* as confirmed by decisions by the Tribunal. She submits that aqua therapy in particular addresses deconditioning and gait-related impairments resulting from her spinal fracture.

[48] The applicant submits that with respect to the respondent's claim note from April 11, 2024, stating that she has not attended for treatment for six months, the respondent ignored the explanation by Physio North that this lapse was due to worsening health, including a flare up of collagenous colitis; increased care needs; and her move to live with her son in Oshawa.

[49] The applicant submits that the respondent's denial relied on stale and flawed IEs, mischaracterized their findings, disregarded post-denial deterioration, and failed to reassess the treatment plan in light of her worsening condition. With respect to the IE Orthopaedic Assessment report of Dr. Fathi Abuzgaya, dated June 19, 2024, the applicant submits that Dr. Abuzgaya recorded 70% lumbar restriction but nonetheless opined that she had reached maximum recovery and would derive "no functional value" from the treatment plan. The applicant submits that Dr. Abuzgaya failed to assess gait, overlooked her scoliosis, relied on an inaccurate history and ignored both her documented improvement with treatment and referrals by Dr. Herriot.

[50] The respondent submits that the treatment plan in dispute is not reasonable and necessary. It initially denied the subject treatment plan by letter dated April 11, 2024, and advised the applicant that an IE would be scheduled.

[51] By letter dated June 19, 2024, the respondent advised the applicant that based on the IE Orthopaedic Assessment report completed by Dr. Abuzgaya, dated June 19, 2024, the treatment plan dated April 3, 2024 was denied. A copy of this report was attached to its letter. The respondent submits that Dr. Abuzgaya concluded that the treatment regime had been appropriate, the applicant had reached maximum medical recovery as a result of the accident, and the treatment plan was not reasonable and necessary for treatment of the applicant's accident-related injuries.

[52] The respondent submits that it approved various treatment plans for physical rehabilitation provided by Physio North which is located in Bancroft near the applicant's home. The most recent treatment plan was approved in full on July

17, 2023. The respondent argues that the applicant's last appointment at Physio North was on August 3, 2023 and the approved treatment plan was not fully incurred.

[53] I find that the applicant is entitled to the treatment plan in dispute for the following reasons.

[54] I do not give weight to the respondent's argument that there was a six-month lapse in treatment and that the approved treatment from PhysioNorth has not been fully incurred as a reason for denial of this treatment plan. I find that the Adjuster's Note, dated April 11, 2024, includes an email from PhysioNorth which notes that the applicant has not been seen at the clinic since August 3, 2023, as she was experiencing significant health issues which limited her ability to participate in physiotherapy at that time. I accept this as evidence that the applicant did not incur the approved treatment from Physio North due to her health issues and not because she did not require the treatment. I further find that it was reasonable for the applicant to seek treatment at Polyclinic which is closer to her son's house where she resided at the time of submission of the treatment plan.

[55] I find that the applicant has proved that the proposed treatment is reasonable and necessary based on the report of Dr. Getahun, dated February 9, 2024. Dr. Getahun diagnosed her with a myofascial strain of the thoracic spine and an L2 burst fracture with retropulsion and 35% height loss and focal kyphosis as a result. He notes that this has resulted in an element of spinal stenosis resulting in bilateral leg weakness necessitating routine use of a walker. Dr. Getahun recommended physiotherapy focusing on range of motion and strengthening of her cervical and lumbar spine. I therefore find that the recommendations of Dr. Getahun are addressed in the treatment plan in dispute where the goals are pain reduction, increase in strength and range of motion, and functional restoration to pre-accident level of functioning.

[56] Upon review of the denial letter from the respondent dated June 19, 2024, I find that the respondent notes that Dr. Abuzgaya confirmed that the applicant has reduced range of motion of the lumbar spine but that he is of the opinion that she has reached maximum medical recovery from her accident-related injuries. It notes that Dr. Abuzgaya outlined a pre-existing history of degenerative disc disease of her lumbar spine and osteoporosis and confirmed that these conditions may have initially been exacerbated by this accident and contribute to her current presentation but have not prevented her from reaching maximal medical recovery. Dr. Abuzgaya further believes that the treatment plan is not

reasonable and necessary as the treatment is mostly passive in nature and is of no clinical or functional value. I do not give weight to the report of Dr. Abuzgaya. I find that the medical evidence does not support that the applicant has reached maximum medical recovery and instead supports the ongoing provision of physical rehabilitation.

[57] For the reasons outlined above, I find that the applicant has proven on a balance of probabilities that the treatment plan for physical rehabilitation dated April 3, 2024, is reasonable and necessary.

Entitlement to the Treatment Plan for a Neuropsychological Assessment

[58] I find that the applicant is entitled to the treatment plan for a Neuropsychological Assessment.

[59] The applicant claims entitlement to $2,200.00 for a Neuropsychological Assessment, proposed by Dr. Valdmir Levitin, chiropractor, of Polyclinic Rehabilitation Institute Inc., in the treatment plan dated April 3, 2024. The goals of the treatment plan are an "assessment of neurocognitive and emotional function to examine cognitive/emotional functioning and to provide recommendations for treatment".

[60] In the context of an assessment, while the applicant does not need to prove the condition exists, she must prove with persuasive evidence that there is some accident-related condition that warrants investigation via the proposed assessment.

[61] The applicant submits that she requires a Neuropsychological Assessment to evaluate her cognitive and emotional functioning and to provide treatment recommendations. She claims that the respondent's denial of this treatment plan failed to address her reported loss of consciousness within a week of the accident for which she underwent a CT Scan. She submits that the records from Quinte Health Care and a subsequent MRI, link her cognitive complaints to the accident, and the reports of Dr. Oleg Veselskiy document her memory decline in 2023. She notes in the Attendant Care Assessment Report, prepared by Mr. Parikshya, dated August 20, 2022, that her Montreal Cognitive Assessment (MoCA) score is recorded as 16/30 which indicates that her cognitive dysfunction has deteriorated since her initial assessment. She further submits that Dr. Gerald Young in his December 9, 2021 Psychological Assessment report confirms she suffers from cognitive impairments and recommended psychological treatment.

[62] The applicant relies upon the Tribunal decisions in *Z.K. v. Allstate Insurance Company Canada,* 2020 CanLII 106429 (ON LAT) *and Norris v. Aviva Insurance Company of Canada,* 2024 CanLII 88889 (ON LAT), where it was held that neuropsychological assessments are payable under s. 25(1) of the *Schedule* where there is credible evidence of post-accident decline, even in the absence of a diagnosed brain trauma. The applicant further relies upon the Tribunal decision in *G.T. v. Unifund Assurance Company,* 2017 CanLII 81567 (ON LAT), at paras. 27 to 29*,* where it was found that an OHIP-based denial was unreasonable where the insurer failed to show such care was timely or sufficient.

[63] The respondent submits that the treatment plan is not reasonable and necessary. By correspondence dated April 11, 2024, the respondent denied the treatment plan for various medical and other reasons including that the applicant did not sustain a head injury as a result of the accident; the CT Scan of the brain dated December 2, 2020 showed no trauma; and based on the geriatric assessment of Dr. Veselskiy which included a cognitive evaluation. The respondent further denied the treatment plan as the applicant is under the care of an OHIP-funded specialist who can complete or refer her to necessary specialists if any for cognitive complaints.

[64] The respondent submits that the treatment plan does not refer to any head/brain, neurological or neurocognitive impairments at Part 6 and it also does not provide any specific reasons in support of a neuropsychological assessment. The respondent further submits that the chiropractor who signed the treatment plan lacks the expertise to comment on neuropsychological issues and did not conduct any examination of the applicant prior to submitting the treatment plan. It relies upon the Tribunal decision in *Mohammad v. Dominion,* 2023 CanLII 137 (ON LAT).

[65] I find that the applicant has provided persuasive evidence to establish that she suffers an accident-related condition that warrants investigation via the proposed Neuropsychological Assessment.

[66] I find that the treatment plan in dispute specifically lists that the goal of the treatment plan is to examine the applicant's cognitive and emotional functioning and to provide recommendations for treatment. I therefore do not accept the respondent's submission that the treatment plan does not provide any specific reasons in support of the Neuropsychological Assessment.

[67] While I agree with the respondent that the treatment plan was prepared by a chiropractor, I find that he has identified that the applicant suffers physical, emotional and cognitive difficulties which are impacting the applicant's ability to

perform her activities of daily living. I find that his recommendation for this assessment is for a Neuropsychologist, who is qualified to make a diagnosis of the applicant's cognitive limitations, to determine the impact of the applicant's impairments on her functional limitations.

[68] I find that the report of Dr. Young supports that the applicant suffers a psychiatric impairment. I find that the report of Mr. Parikshya supports that the applicant's cognitive dysfunction has deteriorated and ongoing monitoring is recommended. I find that this conclusion is further supported by Dr. Veselskiy's report dated January 30, 2023, where he opines that the applicant suffers from a mild cognitive impairment with significant anxiety and possibly low mood. I therefore conclude that the applicant has established that there is a reasonable possibility that her psychiatric and cognitive complaints affect her functional abilities and therefore a Neuropsychological Assessment is warranted.

[69] Pursuant to s. 47(2) of the *Schedule,* the onus is on the respondent to advance submissions and evidence that establishes that an insurer plan or any other plan was reasonably available to fund the disputed treatment plan. I do not find that the respondent has provided sufficient evidence that a Neuropsychological Assessment could have been funded by OHIP through Dr. Veselskiy or a referral. I find that while the applicant was under the care of Dr. Veselskiy, an OHIP doctor, he specifically indicates in his report that he is not able to help the applicant at this time. I therefore find it reasonable for the applicant to investigate her cognitive and psychological impairments through a s. 25 assessment.

[70] For the reasons outlined above, I find that the applicant has proven on a balance of probabilities that the treatment plan for a Neuropsychological Assessment is reasonable and necessary.

Entitlement to Housekeeping Benefits

[71] I find that the applicant is not entitled to housekeeping expenses.

[72] Section 23(1) of the *Schedule* provides that an insurer shall pay up to $100.00 per week for reasonable and necessary additional expenses incurred by or on behalf of an insured person as a result of an accident for housekeeping and home maintenance services if, as a result of the accident, the insured person sustains an impairment that results in a substantial inability to perform the housekeeping and home maintenance services that he or she normally performed before the accident.

[73] Section 28(2) of the *Schedule* provides that every insurer shall offer optional benefits including an optional caregiver, housekeeping and home maintenance benefit.

[74] The applicant claims entitlement to $630.40 for housekeeping expenses, submitted on an OCF-6, dated February 13, 2024. The applicant submits that she requires housekeeping assistance due to her functional impairments arising from the accident. She submits that the respondent's denial of her OCF-6 contravenes s. 32 of the *Schedule* because it does not clearly explain her available benefits. The applicant further submits that s. 232(5.2) of the *Insurance Act* mandates that, upon request, the insurer must produce a copy of the standard policy, including her optional benefits under s. 227. As the respondent claimed that a copy of her policy could not be located, she is entitled to payment of the housekeeping expenses in the OCF-6. She argues that in the absence of a consistent-documented-supported position, she should not be expected to accept that coverage is excluded.

[75] The respondent submits that the applicant did not purchase the optional housekeeping and home maintenance benefit under her policy and therefore she is not entitled to the housekeeping expenses claimed in the OCF-6. By letter dated February 14, 2024, the respondent denied the claimed expenses. The letter explains that it is unable to pay these expenses as the applicant has no coverage for the benefit. It states that her policy does not include optional housekeeping and home maintenance benefits, and she has not been deemed to suffer a catastrophic impairment as a result of the accident.

[76] I find that the applicant is not entitled to housekeeping benefits as she does not meet the eligibility criteria pursuant to s. 23(1) of the *Schedule.* I find that there is no evidence that the applicant suffered a catastrophic impairment as defined by the *Schedule* and to date she has not made a claim to be determined to have a catastrophic impairment by submitting an OCF-19. In addition, I find that the applicant did not purchase optional housekeeping and home maintenance benefits, and she is therefore not entitled to claim these benefits.

[77] I find upon review of the respondent's letter, dated February 14, 2024, that the respondent was clear in its denial letter that the reason for denial of the OCF-6 is that she did not have the appropriate coverage. Therefore, there was no contravention of s. 32 of the *Schedule.*

[78] While the respondent argues that it requested a copy of the applicant's policy and the respondent did not provide a copy, I find that by email dated February 26, 2024, the respondent advised the applicant that she had increased

Medical/Rehabilitation Benefits and Attendant Care Benefits of $1,000,000.00 and optional Catastrophic Impairment Endorsement of $1,000,000.00. It advises that there are no other optional accident benefit coverages purchased on this policy. I find that there is no indication that the applicant did not accept the information provided in this email or that she further requested a copy of the policy. Upon review of the Case Conference Report and Order ("CCRO"), a copy of the policy is not requested by the applicant. In addition, I find that the applicant has not submitted any evidence to support that optional benefits for housekeeping were purchased to counter the information relied upon by the respondent.

[79] For the reasons outlined above, I find that the applicant has not proven on a balance of probabilities that she is entitled to the OCF-6 for housekeeping benefits.

Interest

[80] 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 in dispute, interest is owing pursuant to s. 51 of the *Schedule*.

Award

[81] I find that the applicant is entitled to an award in the amount of 25% for the respondent's handling of her claim for the treatment plan for home modifications.

[82] 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.

[83] The applicant submits that she is entitled to an award based on the denial of the treatment plan for home modifications, dated August 5, 2021, on the basis that the respondent unreasonably withheld and delayed payment of this benefit. The applicant submits that the respondent delayed the IE process for over 15 months despite internal acknowledgment that in-person assessments were required. The respondent then based its denial on flawed and incomplete IE reports, including virtual assessments that lacked validity for assessing her balance and mobility. The respondent further submits that the respondent withheld over 70 relevant records from its own orthopaedic assessor, Dr. Rizek, while misrepresenting key clinical findings, including fall risk and mobility deterioration. The respondent also misstated the legal test by improperly requiring that impairments be "directly related" to the accident, contrary to the *Schedule.* The applicant also submits that the denial of the treatment plan contradicted the

respondent's approval of other benefits for the same impairments and failed to reassess the treatment plan despite clear deterioration of her condition.

[84] The applicant further submits that the respondent breached multiple production orders, requiring two motions be brought to compel disclosure of the adjuster's notes and section 44 files. The applicant argues that after partial disclosure following a motion, the respondent asserted improper privilege claims over 13 entries in the adjuster claims notes, which prompted a second motion. The applicant further submits that it obtained a report from a Registered Nurse that it never disclosed to the applicant.

[85] The respondent submits that there is no basis in fact or in law for an award. It argues that it did not cause delays in completing the IE assessments and its IEs were scheduled in accordance with the *Schedule.* The respondent submits that despite having been provided with the IE reports in November 2022, the applicant chose to wait until two years until November 2024 to file her Application with the Tribunal. The respondent submits that Dr. Rizek's IE report was based on a detailed review of pre- and post-accident medical records and did not contain a misstated legal test. The respondent states that it had an internal nurse report prepared by way of paper review in May 2021 which is not an IE under the *Schedule* and that the contents of this report are contained in the adjuster's log notes provided.

[86] The respondent submits that it did not breach production orders for the adjuster's log notes and s. 44 files as alleged by the applicant. It states that the adjuster's log notes redacted for reserves and privilege and redaction keys with the basis for the redaction were sent to the applicant's counsel by email on March 27, 2024, in accordance with the CCRO and re-sent on July 10, 2025. In response to the applicant's motion filed on July 15, 2025, the respondent's counsel emailed the applicant's counsel on July 24, 2025, providing 23 pages of log notes with most of the redactions removed and advising that the IE assessor's records had been requested in March 2025 with follow-up letters between April and July 2025. Respondent's counsel obtained and sent the records of Dr. Rizek and Bay Medical & Health Services to the applicant's counsel on August 5, 2025.

[87] I find that the respondent unreasonably delayed assessing the treatment plan for home modifications. I agree with the applicant that the respondent failed to schedule a complete IE process in a timely manner which unduly prejudiced the applicant. I find that the treatment plan itself was based on the assessment of Mr. Parikshya who completed his assessment on December 29, 2020 and provided his report on January 5, 2021. The initial quote for the home

modifications was submitted on April 16, 2021, but the respondent did not request that a treatment plan be provided until June 11, 2021. The treatment plan was then submitted on August 5, 2021. By letter dated August 10, 2021, the respondent denied the treatment plan and advised that it would be scheduling IE assessments. It then took fifteen months for the respondent to assess the applicant and provide its final denial letter on November 8, 2022. I find that this was an unreasonable delay in the circumstances.

[88] I further find that while the initial Orthopaedic IE assessment was completed by Dr. Rizek on November 19, 2021, a second Orthopaedic IE assessment was completed on January 15, 2022, and the OT In-Home Assessment was completed by Ms. Dennis on April 4, 2022, the final IE report was not completed until November 7, 2022. While the respondent submits that this was because a Neurological IE was requested to be completed by Dr. Rizek, there is no explanation as to why the assessment company waited until May 2022 to request this assessment when Dr. Rizek completed his assessment on January 15, 2022. In addition, the respondent has not provided an explanation as to why it then took until September 2022 to schedule a Neurological Assessment. The IE report then took another two months to prepare. I find the delays patently unreasonable and caused undue prejudice to the applicant.

[89] With respect to the quantum of the s. 10 award, neither party has referred to the factors to consider. I rely upon the decision in *Persofsky v. Liberty Mutual Insurance Co.,* 2003 ONFSCDRS 9 (CanLII), which has been widely accepted by the Tribunal on the factors and criteria to consider for an award. This is a case where the Director's Delegate stated that the amount of the special award should be considered within the context of the *Insurance Act,* but according to the principles of: rationality and proportionality. Rationality refers to the need to relate the particular facts of the case to the underlying purposes of the legislation. In other words, what amount is large enough to further the goals of punishment and deterrence but no larger than is needed to serve that purpose? Proportionality refers to the need to ensure that the consequences imposed on the insurer are rationally related to the misconduct at issue. The award should be proportionate to the following six factors:

i. The blameworthiness of the insurer's conduct;

ii. The vulnerability of the insured person;

iii. The harm or potential harm directed at the insured person;

iv. The need for deterrence;

v. The advantage wrongfully gained by the insurer from the misconduct; and

vi. Take into account any other penalties or sanctions that have been or likely will be imposed on the insurer due to its misconduct.

[90] The applicant seeks a 50 percent award for the respondent's handling of this treatment plan. A 50 percent award is reserved for the most egregious conduct on the part of the insurer and is not warranted in this case. I find that the respondent's conduct should not attract the maximum award. I find that based on the amount of time which transpired from when the treatment plan was submitted to when the respondent provided its denial, and the unreasonable basis for the respondent's delay; the vulnerability of the applicant; the harm suffered by the applicant by not receiving the home modifications; and the need for deterrence to prevent insurers from unreasonably delaying the assessment of treatment plans, I award the applicant 25% of the amount of the treatment plan. Therefore, the amount of the award in respect to the treatment plan is $22,235.58.

[91] For the reasons outlined above, I find that the applicant has proved on a balance of probabilities that she is entitled to an award in the total amount of $22,235.58.

ORDER

[92] For the reasons outlined above, I find:

i. The applicant is entitled to $88,942.31 for Home Modifications, proposed in the treatment plan dated August 5, 2021;

ii. The applicant is entitled to the $3,976.16 for physical rehabilitation services, proposed in the treatment plan dated April 3, 2024;

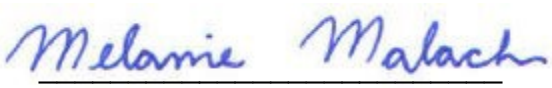
iii. The applicant is entitled to $2,200.00 for a Neuropsychological Assessment, proposed in the treatment plan dated April 3, 2024;

iv. The applicant is not entitled to housekeeping expenses;

v. The applicant is entitled to interest on any overdue payment of benefits; and

vi. The respondent is liable to pay an award of $22,235.58.

Released: April 20, 2026



Melanie Malach
Adjudicator