



Citation: Thompson v. Chubb Insurance Company of Canada, 2026 ONLAT 24-013197/AABS

Licence Appeal Tribunal File Number: 24-013197/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:

Paul Thompson

Applicant

and

Chubb Insurance Company of Canada

Respondent

DECISION

VICE-CHAIR: **Neil Levine**

APPEARANCES:

For the Applicant: Nancy Young, Counsel

For the Respondent: Bogdan Miscevic, Counsel

Court Reporter: Marcia Gardner

HEARD by Videoconference: **September 8 to 11, 2025**

OVERVIEW

[1] Paul Thompson, the applicant, was involved in an automobile accident on February 5, 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, Chubb Insurance Company, 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:

1. Is the applicant entitled to an income replacement benefit in the amount of \$400.00 per week from February 25, 2021 ongoing?
2. Is the applicant entitled to the assessments proposed by Innovative Occupational Therapy Services, as follows:
 - i. \$4,329.94 for occupational therapy services, in a treatment plan/OCF-18 dated November 17, 2020;
 - ii. \$746.20 for assistive devices, in a plan dated December 14, 2020; and
 - iii. \$5,786.10 for occupational therapy services, in a plan dated December 14, 2021?
3. Is the respondent liable to pay an award under s. 10 of Reg. 664 because it unreasonably withheld or delayed payments to the applicant?
4. Is the applicant entitled to interest on any overdue payment of benefits?

[3] At the beginning of the hearing, the applicant withdrew treatment plans in dispute for an OT functional cognitive assessment from Innovative Occupational Therapy Services, and two physiotherapy treatment plans from Physiomed, items 2(iv) and 3 from the case conference report and order of February 27, 2025.

RESULT

[4] The applicant is entitled to Income Replacement Benefits in the amount of \$400.00 per week from February 25, 2021 ongoing.

- [5] The applicant is entitled to \$4,329.94 for occupational therapy services.
- [6] The applicant is entitled to \$746.20 for assistive devices.
- [7] The applicant is entitled to \$5,786.10 for occupational therapy services.
- [8] The applicant is entitled to interest on unpaid benefits and treatment plans.
- [9] The applicant is not entitled to an award.

ANALYSIS

Income Replacement Benefits

- [10] The applicant is entitled to receive an IRB in the amount of \$400.00 per week from February 25, 2021 to February 9, 2022 (pre-104 weeks post-accident).
- [11] The applicant is entitled to receive an IRB in the amount of \$400.00 per week from February 10, 2022 ongoing (post-104 weeks).
- [12] 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.
- [13] 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.

Pre-accident tasks & Education, Training and Experience

- [14] Based on the testimony of the applicant and the submissions received, I have determined that the applicant's essential pre-accident work tasks as a courier driver to be determining a route and driving; and loading/unloading, lifting and carrying packages up to 65 pounds (29 kilograms) in weight. While the functional abilities examination was unreliable due to inconsistencies, it was noted that the job lifting requirements are in the medium to heavy range. The applicant was 51 at the time of the accident. In terms of training and experience, the applicant

completed grade 12 in Jamaica before coming to Canada. He worked as a spare courier driver for eight years at ICS before being hired for full-time work in 2004.

Parties' Positions

- [15] The applicant submits that he meets the eligibility tests for both pre-104 and post-104 income replacement benefits. The applicant further submits that but for the subject accident, he could be working, and that the February 5, 2020 subject accident contributed materially to his inability to work both in the pre-104 week period and in any job in the post-104 week period after the subject accident.
- [16] The respondent argues that the second accident the applicant had on December 12, 2020 was the real cause of his injuries, that the applicant has no impairments that prevent essential work-related tasks, and that neurological, physiological and psychological tests show that the applicant did not have a substantial inability to perform his job or, after 104 weeks, any job. The respondent also relies on surveillance which they say shows that the applicant could walk without assistance, bend and raise his hands after the subject accident.

Pre-104 week Income Replacement Benefit

- [17] As a result of the accident, the applicant has shown that his accident-related impairments have left him with a substantial inability to perform his work-related tasks.
- [18] I find the evidence presented by the applicant to be more persuasive and important with respect to the pre-104 IRB tests. Immediately following the accident, Dr. Dhiraj noted the applicant's musculoskeletal injuries, and the resulting restrictions and inability to return to work. In March of 2020 Dr. Dhiraj filled out an OCF-3 stating that the applicant was unable to do his job.
- [19] In my view, the applicant's family doctor knows the applicant best and has seen him as a patient since 2006 in addition to many visits post-accident. He is well placed to comment on the applicant's condition, and accordingly I place the highest value on his records and testimony.
- [20] By October 2020 – prior to the subsequent non-subject accident – Dr. Dhiraj ordered an MRI given the applicant's persistent pain in his back, spine and legs. He also described the applicant's anxiety and depression which continued past the December 12, 2020 accident that followed the subject accident, and referred the applicant to a pain care clinic. At the pain care clinic the applicant received regular pain injections that he said relieved his pain and enabled him to rest.

[21] After the applicant's subsequent December 2020 accident, Dr. Dhiraj noted new and more serious symptoms including cervical and thoracolumbar spine muscle spasms and potential PTSD, anxiety and depression. The applicant received injections to manage his pain and a new MRI was ordered on the applicant's right shoulder; the MRI indicated partial thickness tears of his rotator cuff tendons.

[22] Dr. Dhiraj asserted in his testimony that the applicant showed no improvement over the past few years and was not in a position to return to employment. He said it was not possible to identify one accident as the cause of the applicant's issues, noting that the subsequent accident exacerbated the effects of the first one and that the symptoms and illnesses were cumulative.

[23] Dr. Dhiraj's opinion of the applicant's injuries and inability to work is corroborated by chiropractor Dr. Chanh Lu, who met the applicant after the accident and noted the applicant's injuries including neck and back and leg issues, with pain that persisted prior to the second non-subject accident whereupon it worsened.

[24] The applicant's treating occupational therapist, Ms. Tina Chana, examined the applicant in a virtual assessment for an OT functional therapy report dated November 18, 2020. She, too, gave compelling and credible testimony. She noted most importantly that at the time of her departure in August 2022 (she went on maternity leave) the applicant was struggling, needed reminders to complete routine tasks and was unable to complete tasks on his own, needed help, and was not conveying all of his symptoms to his treatment providers like his general practitioner. She saw difficulties with the applicant's range of motion, his cognitive abilities, continued physical and emotional problems and difficulties with sleep. She did not believe he could go back to work.

[25] In contrast to Ms. Chana's testimony, Mr. Jeff Ford, who provided an occupational therapy assessment for the respondent in March of 2021, did not believe the applicant required attendant care assistance (which is not at issue in this hearing) but did report that the applicant was unable to stoop and bend at the waist to reach his feet, and was unable to squat or kneel. These activities are of course essential for the applicant's job as a courier driver.

[26] The sum of both the respondent's occupational therapist's testimony and the applicant's occupational therapist's testimony convince me that the applicant was not capable of performing his employment duties from the date of his accident, February 5, 2021 to February 25, 2022.

[27] It is well established law that the appropriate test to determine causation in accident benefit cases is the "but for" test, which was confirmed by the Divisional

Court in *Sabadash v. State Farm et al.*, 2019 ONSC 1121 (CanLII). To satisfy this 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 for her application for CAT status. The court in *Sabadash* sets out that the existence of pre-existing medical issues does not negate an insurer’s liability. Further, that the accident need not be the only cause of the impairment but a necessary cause. As per my reasons below, despite the subsequent accident in December 2020 contributing to the applicant’s impairments, I find that the subject accident was a necessary cause of the applicant’s impairments, injuries, and resulting functional limitations which forms the basis for his application for entitlement to an IRB.

- [28] I reject the respondent’s argument that the video surveillance showed that the applicant was able to move without a cane and therefore was able bodied and able to work. The overall impression of the applicant is that of a man whose capacity for work – any kind of work – was significantly diminished as a result of the first accident and then exacerbated by the second accident.
- [29] It is not possible to say which accident caused what impairment, but on a balance of probabilities I find the first accident was a necessary cause of the applicant’s initial and ongoing functional impairments, which were exacerbated by the second accident.
- [30] I did find that the respondent’s examining physiatrist, Dr. Seyed-Hossein Hosseini to be a compelling expert witness. This report was submitted as evidence and I give weight to this report and testimony because it is thorough. However, most importantly, this expert noted more than once that the applicant suffered from symptoms which were exacerbated by the subsequent (second) accident. Again, this confirms that the first accident (the subject accident that is the reason for this dispute) was a necessary cause of the applicant’s difficulties and injuries.
- [31] Surveillance was presented by the respondent from December 8, 9, 13, 22 and 23 of 2020 and January 6 and 7, 2021 in addition to March 1, 2 and 6, 2022. This surveillance is not persuasive and if anything shows that the applicant for the most part uses a cane for mobility. The respondent submitted that the video surveillance footage of the applicant showed that the applicant could stand and ambulate without a cane and showed minimal balance issues. I accept the applicant’s assertions that this video is a snapshot in time, and in some of the footage we actually see the applicant with a cane all the time. I believe this video

surveillance is inconclusive, in that it does not show an ability or inability to perform his job or any other job.

- [32] Peter Ramos, a kinesiologist retained by the respondent and performed Functional Abilities Evaluation (FAE) to address IRB, stated that the results of the FAE were unreliable because the applicant lacked a consistency of effort on some tests. In my view this makes most of his report inconclusive and accordingly I do not assign it very much weight.
- [33] While psychologist Dr. Karp is a more reliable witness than psychiatrist Dr. Aladetoyinbo in terms of the applicant's psychological condition, I did not find either psychological report to be important in determining whether the applicant met either the pre- or post-104 week IRB tests. Dr. Aladetoyinbo, the applicant's psychological examiner, was a less credible witness than the other witnesses, and I placed less weight on his testimony and psychological report. This is because there were inconsistencies and errors in Dr. Aladetoyinbo's report and testimony, including errors in dates and discrepancies in documents reviewed. Dr. Jeffrey Karp, who performed a psychology insurer's examination, was a more believable witness and noted an inconsistency of results on the part of the applicant.

Post-104 Week Income Replacement Benefit

- [34] To be eligible for benefits in the post-104 week period, 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.
- [35] I find that the applicant meets this standard because as noted earlier he is substantially unable to do any work and continues to experience the effects of the December 2020 subject accident in addition to the exacerbation of these impairments from the subsequent February 2021 (non-subject) accident.
- [36] For example, as recently as December 23, 2024, Dr. Dhiraj's CNRs and testimony noted the applicant's persistent pain and limited range of motion as a result of that pain. The doctor testified that the applicant suffered from pain and a disability and was not in a position to return to any employment.
- [37] Clinical notes and records and testimony from Dr. Dhiraj in addition to chiropractor Dr. Chanh Lu, both of whom saw the applicant after the first and second (non-subject) accidents, noted that there was improvement after the first accident but the second accident made the applicant's pain and issues worse.

Dr. Lu noted in testimony and CNRs that the applicant received pain injections as often as once per week from February 2021 through December 2022. In the opinion of Dr. Lu the applicant had an increased range of motion and less pain in notes associated with a treatment plan in July 2023 but was still not able to return to any work because he could not bend on a sustained basis.

- [38] The applicant's training and experience is limited. As noted earlier, he completed grade 12 in Jamaica before coming to Canada and worked as a part-time spare driver at ICS before becoming a full-time driver. It is not likely that he would be able to do any other job based on his limited training and experience.
- [39] On a balance of probabilities, it is not likely that the applicant would be able to return to any employment or self-employment for which he is suited based on his education, training and experience given that he often (but not always) uses a cane to ambulate and required assistance from a PSW. There has also been evidence and testimony presented that the applicant had trouble using a computer and completing basic tasks and activities of daily living. The applicant continued to experience shoulder and neck pain, and headaches in 2022 and 2023, as corroborated by CNRs from Dr. Chanh Lu from February 2022 to July 2023. Dr. Lu said that the applicant improved but was not able to perform job related duties like standing, lifting boxes or sitting for long periods of time. In testimony, the applicant said that he relied on chronic pain injections to take away the pain and only felt relief when he received these injections. This pain was described to Dr. Dhiraj as eight out of ten.
- [40] These difficulties and injuries have been corroborated by records and testimony from the applicant's own family doctor in addition to an occupational therapist. For example, while the video evidence may show him moving without his cane on occasion, it is not analogous to lifting packages for an entire workday, bending, and using a 38 pound hand truck to move boxes. In fact, I find given the evidence that the applicant would be unable to perform any job related to his skill and experience based on the severity of his injuries as correlated by the testimony of the witnesses and the applicant's treating physician, chiropractor and OT.

Conclusions

- [41] Given that there were two accidents, the subject accident and a subsequent accident, it is impossible to medically or legally determine which accident resulted in the injuries and problems that have incapacitated the applicant, but on a balance of probabilities the first accident contributed significantly to the applicant's difficulties and injuries.

- [42] To repeat, to be eligible for benefits in the post-104 week period, 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. The applicant in this case has a grade 12 education and has no aptitude for desk or computer work, and has worked for almost all of his career in Canada as a courier driver. It is unlikely that he would be able to drive for long periods of time nor is he able to lift boxes. This would limit potential alternative employment opportunities for him.
- [43] Cognitively and behaviourally, the applicant has had problems with attention, concentration, and reliable reports and testimony by his occupational therapist have shown that he has difficulties reading, focusing and remembering things.
- [44] On a balance of probabilities, I find the applicant has a complete inability to engage in any employment or self employment, and therefore is entitled to an income replacement benefit in the post-104 week period.

Treatment Plans

- [45] The applicant is entitled to the treatment plans.
- [46] 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.
- [47] Ms. Chana, the occupational therapist and author of the OT report noted that these treatment plans were for occupational therapy services to help the applicant improve his range of motion and mobility. The applicant's occupational therapist requested the devices to help with safety at home due to his reduced tolerance for daily tasks and his limited range of motion.
- [48] The respondent's occupational therapist expert, Mr. Ford, said in testimony and in his OT assessment report of the applicant that the lack of goals for these treatment plans meant that they were not reasonable or necessary.
- [49] However, during testimony, the applicant pointed the witness to a series of SMART (specific, measurable, achievable, relevant and time-bound) goals provided by the applicant's occupational therapist in a letter to the respondent

dated August 4, 2021. In testimony, the respondent's witness said that he was not aware of this letter.

- [50] The letter cites medical evidence for the specific physical and cognitive injuries, issues and challenges that the applicant has, and notes how the treatment plans are reasonable and address these challenges by providing goals and an explanation. These goals include provision of equipment (assistive devices), assessment and increase of activity tolerances, relaxation strategies, sleep hygiene, and a functional cognitive assessment. The letter also lists reasonable, meaningful and measurable goals for the programs and interventions.

Treatment plan for \$4,329.94 for occupational therapy services

- [51] The goals of this plan were to address functionality, a return to activities of daily living and pre-accident activities. The services include training, motor and living skills, appropriate travel time, planning, preparation and services, and programming supplies.
- [52] Based on the applicant's letter of August 4, 2021, the treatment plan addresses physical, cognitive, psycho-emotional perspectives, and notes the specific problems that the applicant experiences. It then addresses these issues in a reasonable manner and outlines the treatment modalities which include an assessment of further device needs, treatments to increase activity tolerances, treatments and coping mechanisms to relax, improved sleep hygiene, cognitive testing and further support.
- [53] It is well documented in the applicant's treating providers' CNRs that the applicant suffers from sleep issues, fatigue and pain that affects his activities and relaxation. Therefore, I see this treatment plan as reasonable and necessary.

Treatment plan for \$756.20 for assistive devices

- [54] These devices are listed on in the OT letter referred to above, (p. 1600 of the Applicant's Document Brief). This is a comprehensive list and explains in detail the rationale for each device. This list includes bedrails to assist with transfers, devices to help with self care activities, cleaning and kitchen tasks, a lift chair, grab bars, and a sleep system.
- [55] Given the documented difficulties the applicant faces with activities of daily living as a result of his pain and injuries, I find this treatment plan to be reasonable and necessary. The letter notes that these devices will help to modify tasks, reduce pain and improve his well being.

Treatment plan for \$5,786.10 for occupational therapy services

[56] This treatment plan is for training, motor and living skills. Its goals are to maximize functional restoration and address barriers impeding normal daily function, and address barriers impeding normal daily function. These are all based on the OT report's identification of the applicant's injuries and limitations. I see these goals as reasonable and necessary, based on the occupational therapist's report and the applicant's identified medical and functional limitations.

Interest

[57] Interest applies on the payment of the overdue benefits pursuant to s. 51 of the *Schedule*.

Award

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

[59] Section 10 of Reg. 664 sets out that to be eligible for an award the respondent must have unreasonably withheld or delayed payments. In addition, the landmark Financial Services Commission of Ontario case *Plowright v. Wellington Insurance Company* case (FSCO A-003985, October 29, 1993) held that the definition of unreasonable was as follows: "Unreasonable behaviour by an insurer in withholding or delaying payments can be seen as behaviour which was excessive, imprudent, stubborn, inflexible, unyielding or immoderate." This is the standard that I adopt for the purposes of the adjudication and evaluation of this case.

[60] The applicant argued that the delays in benefits to the applicant were unreasonable, and that the respondent was obligated to adjust the applicant's file as new information became available but did not.

[61] The respondent submitted that denials for the benefits at issue were issued years ago, and multidisciplinary assessments administered by the respondent were conducted that showed the applicant was not entitled to the benefits. The respondent submits the denials were made in good faith and therefore an award is not justified. The respondent also submitted that one of the reasons for the reasonable delay in benefits was that a tolling agreement between the parties was made.

[62] I did not receive any evidence from the applicant that showed me that any actions or denials on the part of the respondent were excessive, imprudent, stubborn, inflexible, unyielding or immoderate. The respondent's denials were made based on medical opinions and reports, which is permissible even if I find these decisions to be incorrect. Accordingly, I find that the applicant is not entitled to an award.

ORDER

[63] I order that:

- i. The applicant is entitled to receive an income replacement benefit in the amount of \$400.00 per week from February 25, 2021 ongoing.
- ii. The applicant is entitled to the treatment plans claimed.
- iii. The applicant is entitled to interest on the unpaid overdue IRB payments and treatment plans.
- iv. The applicant is not entitled to an award.

Released: January 12, 2026



Neil Levine
Vice-Chair