Khaled, Mohamed Bahaa Family Medicine

Foster v Co-operators General Insurance Company, 2024 CanLII 92070 (ON LAT),
<https://canlii.ca/t/k726m

[29] First, Drs. Sequeira, Warriner, and Cooper, did not address or rebut the conclusion of the s. 44 assessors, Drs. Kiss, Khaled, and Dimitrakoudis, whose opinions persuaded the Tribunal in the Previous Decision. Despite reviewing the reports, none of the assessors addressed the concerns of the applicant being overtreated and that their opinions that the applicant's residual impairments were predominantly psychological at that time. I place little weight on these reports because the assessors did not address the s. 44 reports, nor did they provide any reasons or objective opinion as to why they disagreed with the report, and the recommendations.

[30] Second, none of the assessors, specifically recommended the proposed services. I disagree with the applicant that Dr. Warriner recommended vestibular physiotherapy. Instead, Dr. Warriner recommended that further vestibular and ocular-motor investigations and treatment should be pursued. However, he did not specify which type of treatment was required.

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Jamali v Economical Insurance Company, 2024 CanLII 43434 (ON LAT),
<https://canlii.ca/t/k4mm2

Testimony of Dr. Khaled

[33] Early in the hearing the parties made brief submissions regarding whether the applicant should conduct the examination-in-chief or the cross examination of Dr. Khaled. The applicant argued that because the doctor was an insurer's examination assessor, she should be entitled to conduct the cross examination. The respondent argued that because it was the applicant calling the witness, that the applicant should conduct the examination in chief.

[34] Initially, on day 6 of the hearing, I ordered that the respondent conduct the exam-in-chief and the applicant conduct the cross examination, given that the report was generated as a result of a s. 44 assessment. However, the respondent then indicated that it did not intend to enter the report of Dr. Khaled as evidence and was unsure as to how to proceed given this. The applicant then also indicated that she did not intend to enter the report of Dr. Khaled as evidence and instead intended to question the doctor as an expert regarding the definition of "saccadic" and the proper interpretation of the *AMA Guides 4th Edition* (the "Guides"). This changed the nature of the procedural question facing me.

[35] With the benefit of this additional information, I decided that the Tribunal would not hear from Dr. Khaled. Given that neither party intended to make the doctor's report an exhibit in this hearing, I saw little value to the Tribunal hearing his testimony. The Tribunal had heard extensively from various doctors on the interpretation of the *Guides*. Moreover, securing a definition from a doctor was not a sufficient reason to call him to testify. I invited the applicant to present a definition to the Tribunal and offered to take submissions from the parties if there was disagreement over that definition. The doctor's testimony did not proceed.

[36] Of note, immediately following this decision the applicant reversed her previous statement and made Dr. Khaled's report an exhibit. This did not change my decision.

Kowalzyk v Intact Insurance Company, 2024 CanLII 43459 (ON LAT), <https://canlii.ca/t/k4mm5

iii. Dr. Khaled's opinion

[26] The applicant submits that I erred when I relied on Dr. Khaled's opinion as it contained a misstatement of the test for chronic pain, and but for my reliance on it, his injuries would be found outside the MIG.

[27] In answer to Dr. Khaled's finding that there were no musculoskeletal, neurological, or orthopedic complications identified during the examination, the applicant argues that Dr. Khaled failed to investigate chronic pain during the assessment. He notes that Dr. Khaled considered chronic pain syndrome but did not go through the AMA Guide criteria to determine if he met the criteria or not. As a result, he concludes that the report lacks credibility, and I should not have relied on it. This is an attempt to reargue the case with regard to my weighing of the evidence. I see no error in my consideration of Dr. Khaled's report.

[28] In paragraph 23 and 24 of my decision, I discuss the s. 44 report and findings of Dr. Khaled and note how they differ from those of s. 25 assessor Dr. Zahavi. On page nine of Dr. Khaled's report dated October 14, 2021, he states that the applicant did not display any evidence of chronic pain syndrome or chronic pain disorder and based on the AMA Guides 6th edition, the claimant had not developed the diagnostic criteria for chronic pain syndrome. He listed the six criteria and opined there was no evidence that the applicant displays three of the six criteria necessary to make a diagnosis of chronic pain, nor any evidence that he has chronic pain syndrome as a result of the accident.

[29] I disagree that I made an error. It is the role of the Tribunal to assess and weigh the evidence before it. That the applicant does not agree with my assessment is not grounds for reconsideration. Furthermore, I disagree with the applicant's assessment of the credibility of Dr. Khaled's report. Dr. Khaled has extensive credentials including membership in the Pain Society, is a certified independent medical examiner (CIME), and wrote certification exams for the AMA Guides for the Evaluation of Permanent Impairment (4th and 6th ed.) as per the professional designation section of his s. 44 report.

There is no evidence that Dr. Khaled misstated a test in his report, or that I did not apply the AMA Guide criteria appropriately in my consideration of the issue in dispute.

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Chen v Safety Insurance Company, 2023 CanLII 103782 (ON LAT), <https://canlii.ca/t/k11l9

[16] The respondent submits that the applicant has not produced any evidence to substantiate that his reported symptoms (other than back/rib/flank pain) are causally connected to the accident. Further, the respondent relies on the section 44 paper report by Dr. Khaled, general practitioner ("GP"), dated June 5, 2019, to support its position that the applicant sustained only uncomplicated soft tissue injuries which would have resolved at one year post accident. Lastly, the respondent submits that the applicant's self-reporting with respect to his symptoms from this accident have been ever-changing, and he has failed to provide any evidence to substantiate that his reported symptoms are causally connected to the accident.

[38] The respondent submits that the OCF-18 was not reasonable and necessary because the applicant did not incur any attendant care expenses. The respondent also relies on the section 44 paper reports of Mr. Kaul and Dr. Khaled, dated October 17, 2018.

[39] In determining whether an assessment is reasonable and necessary, it must also be noted that assessments, by their nature, are speculative. The purpose of an assessment is to determine if a condition exists.

[41] I am not persuaded by the paper reports of Mr. Kaul or Dr. Khalid, dated October 17, 2018, where they determined that the applicant's injuries were classified within the MIG, and as such, the OCF-18 for attendant care services was not reasonable and necessary. I place little weight on these reports, because the applicant was removed from the MIG due to his psychological impairments. As such, the test I need to consider is whether the assessment for attendant care needs was reasonable and necessary, when it was submitted on September 17, 2018, which I find it was. Further, while I acknowledge that Mr. Kaul noted that there was a lack of medical evidence to suggest that the applicant has a need for attendant care assistance, he did not speak with the applicant like Ms. Champion to determine his functional status following his return to China.

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Draper v Aviva Insurance Company of Canada, 2023 CanLII 47533 (ON LAT), <https://canlii.ca/t/jxh48

[20] The respondent relies on the s. 44 reports of Dr. Lawson, psychologist, and Dr. Khaled, general practitioner. Dr. Khaled opines that a chronic pain assessment is not reasonable and necessary, as there is no evidence that the applicant sustained a chronic pain disorder as a direct result of the soft tissue injuries sustained in the accident. He also stated that from a functional perspective, she does not meet the criteria of a chronic pain disorder. Dr. Lawson diagnosed the applicant with Major Depressive

Disorder with anxious distress, and indicated that she was vulnerable to developing a Somatic Symptom Disorder and Passenger Phobia.

[21] The applicant takes issue with the qualifications of the respondent's s. 44 assessors. She states that Dr. Khaled's professional career has been in family medicine, and he is unqualified to opine on matters related to chronic pain. She also points to two cases where she argues that Dr. Lawson's opinions were not accepted.

[22] The respondent submits that the applicant failed to give notice that she was challenging the qualifications and reports of the s. 44 assessors 10 days prior to the hearing, pursuant to Rule 10.4 of the *LAT Rules of Practice and Procedure*. I note that the applicant is not seeking to exclude the reports of Dr. Khaled or Dr. Lawson pursuant to Rule 10.4, and instead asks that the Tribunal assign them no weight. In fact, the respondent was also keen to point out issues with Dr. Razvi's report without resorting to Rule 10.4. The parties could have requested relief under Rule 10.4 but did not, so the reports have not been excluded from the evidentiary record.

[23] With respect to Dr. Lawson, the respondent states that the applicant took the first case it relied on out of context, and further failed to provide a correct citation or a copy of the second case, so the context cannot be determined. I agree with the respondent. In the one case cited properly (and thus retrievable), Dr. Lawson's opinion was given less weight based on the facts of the case and the specifics of their report, and not because of overarching issues with them as a practitioner.[2]

[24] The applicant also points out that in *Meady v. Greyhound Canada Transportation Corp.,* 2012 ONSC 657 [*Meady*], Dr. Lawson agreed that the plaintiff in that case exhibited chronic pain syndrome, but preferred to use the term somatoform disorder. The applicant states that Dr. Lawson has drawn a distinction in this case in order to please the respondent, where he did not do so in *Meady*. I do not agree with the applicant. Dr. Lawson states that the applicant is vulnerable to developing Somatic Symptom Disorder, but did not diagnose her with it. It cannot be said that he effectively diagnosed the applicant with chronic pain syndrome.

[25] I do have some difficulties with Dr. Khaled's opinion regarding chronic pain syndrome. He does not appear to have expertise in the area of chronic pain, nor does he complete an analysis pursuant to the *AMA Guides*. While I do not give much weight to his conclusion regarding chronic pain, I find Dr. Khaled's report helpful in that it fills in evidentiary gaps that the applicant has not provided (for example, that she owns a courier company and is working full time).

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Bhullar vs. TD General Insurance Company, 2023 CanLII 34469 (ON LAT), <https://canlii.ca/t/jwwql

[16] Dr. Mohamed Khaled completed an IE assessment of the applicant on October 16, 2018. Dr. Khaled's paper review dated March 2, 2021, is prepared in reference to the treatment plan dated February 3, 2021, for physiotherapy services in the amount of $2,095.25. The applicant stated to

Dr. Khaled that the injuries which she sustained include neck pain, headaches, occasional numbness, burning and tingling in the right arm and hand, in addition lower back and right hip pain. Dr. Khaled's findings are summarized to the effect that the insured developed post-accident mechanical middle and lower back pain, with radiation to the right hip as well as a grade 2 whiplash of the neck with associated headaches. Dr. Khaled confirmed pain and strain of the left elbow and bilateral wrists in examination which he did not opine definitively were accident related.

[17] Dr. Khaled found that the treatment plan for physiotherapy services was not reasonable and necessary, opining in a general manner as opposed to distinguishing the patient's circumstances, stating that prolonged facility-based treatment is rarely recommended for persons, having the applicant's type of injuries. Dr. Khaled does not identify nor explain his opinion in a particular manner regarding which injuries the applicant sustained that would not benefit from rehabilitative treatment. He opines instead in a general manner regarding the outcome of soft tissue injuries in a general population, which is not helpful for the purpose of the Tribunal's assessment of whether the physiotherapy treatment is reasonable and necessary as it pertains to the applicant and the degree of therapeutic benefit which the applicant will experience.

[18] I see three issues concerning Dr. Khaled's findings, firstly that his IE report is a paper review and does not consider a recent physical examination of the applicant, which Dr. Khaled describes as last having occurred on December 15, 2020; secondly, Dr. Khaled's findings are not definitive but equivocal, speculative and generalized respecting the cause and nature of the applicant's injuries, particularly those of the applicant's upper extremities. Finally, as submitted by the applicant, Dr. Khaled's paper review does not consider or comment on clinical notes and records of the applicant's physicians, particularly the report of Dr. Robin Richards dated January 8, 2018.

[19] I do not find Dr. Khaled's report to be helpful in terms of offering persuasive evidence that the treatment plan dated February 3, 2021, is not, reasonable and necessary. In addition, Dr. Khaled quotes the IE assessment of Dr. Darren Milne, Chiropractor, dated February 18, 2021. I note that the IE Chiropractic report of Dr. Darren Milne does not address the treatment plans in dispute. Dr. Milne states that he defers to the diagnosis of a medical practitioner, however, he opines that the applicant's injuries are more consistent with a repetitive strain injury than with accident-related soft tissue musculoskeletal impairment remaining after four years post-accident. I find that both Dr. Khaled and Dr. Milne are not definitive in their expert opinions, and they do not make clear

medical findings on the cause of the applicant's injuries and the cause of her carpal tunnel syndrome. As stated, there is only one IE report addressing the treatment plans in dispute and it is a paper review by Dr. Khaled which fails to consider the relevant clinical notes and records of the applicants' physicians.

[35] The applicant submits that physicians have provided evidence that she benefits from physiotherapy and chiropractic care, particularly Dr. Robin Richards who completed section 25 reports dated January 8, 2018, and on May 9, 2022. The applicant submits that the IE assessment of Dr. Khaled dated March 2, 2021, should be given little evidentiary weight since, as submitted by the

applicant, Dr. Khaled did not review any updated family medical records, rheumatology records, chiropractic treatment records or recent diagnostic imaging of the applicant.

[36] With reference to the paper review by Dr. Khaled, offering an opinion on the disputed treatment plan, I find that the respondent has not provided medical evidence sufficiently responsive to the evidence of the applicant offered in support of the treatment plans. I do not find the paper review by Dr. Khaled has the probative value of the two reports by Dr. Robin Richards considered together with the clinical notes and records of the applicant's physicians for the reasons previously described.

Bonilla-Lopez v BelairDirect Insurance Company, 2023 CanLII 26940 (ON LAT), <https://canlii.ca/t/jwjxv

[18] I do not give significant weight to the Insurer's Examination report provided by the respondent. Dr. Mohamed Khaled, a family physician, saw the applicant on December 17, 2021. Dr Khaled's report was mostly silent on section 18(2) and he was not provided with any documentation from Dr. Kobrossi. I cannot give significant weight to his finding on section 18(2) as he did not have access to evidence that I consider material to forming an opinion.

Ozdemir v. Economical Mutual Insurance Group, 2023 ONSC 685 (CanLII), <https://canlii.ca/t/jv4xl

[2] The trials began on January 23, 2023. Though Ozdemir was represented by lawyers at various stages of these proceedings, he represented himself at the trials. In Ozdemir's evidence in chief, he sought to put into evidence a document entitled "Catastrophic Determination Executive Summary", dated March 17, 2014, which was written by Dr. Mohamed Khaled. The purpose of this document is to "provide an opinion as to the nature of the injuries sustained in the motor vehicle accident (MVA) of November 24, 2009" regarding Ozdemir.

[3] Ozdemir sought to rely on this report to support his claim that he was catastrophically impaired from the accident. Ozdemir wanted to rely on the words of Dr. Khaled's opinion as being true. The defendants objected to the admission of this report. They argued that Ozdemir wants to use Dr. Khaled's statement for the truth of its contents without presenting Dr. Khaled for cross-examination, making it inadmissible hearsay evidence. Following a mid-trial hearing on the admissibility of the report, I endorsed an order that it was inadmissible. These are my reasons.

II. Factual Background

[4] In July 2021, Ozdemir served an "Exhibit Book", containing Dr. Khaled's report. In November 2022, the defendants notified Ozdemir that they objected to him filing this report unless he called Dr. Khaled to testify at trial (the defendants explained that the delay was because there were two pre-trial conferences in the interim). In December 2022, Ozdemir, who, at that time was being represented

under a limited scope retainer by James Cooper, a lawyer, served a brief entitled "Factum" that enclosed the report. The defendants notified Ozdemir and Mr. Cooper that they objected to the filing of this brief because the information in the brief is inadmissible.

[5] The defendants say that Ozdemir didn't serve a formal notice of intent under the *Evidence Act*, RSO 1990, c E.23. Ozdemir has made clear, both at trial, at the trial management conference immediately before the trial, and at various pretrial conferences, that he doesn't intend to call Dr. Khaled as a witness at trial.

III. The Parties' Positions

[6] The defendants argued that there are three reasons why this report shouldn't be admitted into evidence. First, Ozdemir didn't comply with section 52 of the *Evidence Act* in that he didn't serve a notice of intent. Second, Dr. Khaled hasn't been, and won't be, presented for cross-examination. Third, Dr. Khaled's report doesn't comply with rule 53.03 of the *Rules of Civil Procedure*, which requires an expert's report to contain certain specified information. They also argued that an adjournment, so Ozdemir can summons Dr. Khaled mid-trial, would be improper (relying on *Mujagic v Kamps*, 2014 ONSC 5504 (Div Ct), at para 18).

[7] Ozdemir argued that trial fairness warrants admitting the report. He is self-represented. The accident underlying this proceeding allegedly caused him psychological distress and pain. He said that he can't, because of his condition, organize himself to present Dr. Khaled for cross-examination. He argued that this lawsuit is about showing how injured he is, which he can't do without this report, putting him in an impossible position. Ozdemir didn't ask for an adjournment of the trial.

V. Disposition

[12] I am sympathetic to Ozdemir's arguments. The law of evidence is difficult even for lawyers, never mind self-represented litigants facing the types of personal challenges described by Ozdemir. The report is, in his view, critical to the success of his case.

[13] But I'm bound by our court's precedents. Once the defendants objected, I'm required to refuse to admit Dr. Khaled's report for the truth of its contents unless he is presented for cross-examination by Ozdemir. He's not being presented for cross-examination. On this basis, the hearsay content of Dr. Khaled's opinion is not admissible for any purpose. The *Principles*, and my accompanying obligations to Ozdemir as a self-represented litigant, don't and can't override the law of evidence.

[14] As a result, I endorse an order that the Catastrophic Determination Executive Summary, dated March 17, 2014, written by Dr. Khaled, is inadmissible.

[15] Given my disposition, I need not decide whether the failure to serve a notice of intent or the failure to comply with rule 53.03 are also grounds to deny the admissibility of the report.

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Imeri v Liberty Insurance, 2022 CanLII 20125 (ON LAT), <https://canlii.ca/t/jn700

[148] Dr. Mohamed Khaled, General Practitioner, felt that the driving assessment was not necessary and you can look to the history on the file. He opined that once a diagnosis is made, a driving assessment is not required and opined that this is not part of a CAT assessment. He opined that the psychologist considers the diagnosis and a diagnosis can be made without a specific assessment.

[149] I do not agree. In this case, the applicant was a truck driver and driving was a significant activity of daily living. Other than indicating that he has conducted hundreds of CAT assessment and has not seen a OT conduct a driving phobia test as part of the assessment, Dr. Khaled's report and evidence does not support a finding that the assessment is not reasonable and necessary. In chief, Dr. Khaled indicated that the driving phobia assessment is not relevant to mental behavioural issues. In his report Dr. Khaled simply states that "there is no indication for an occupational therapist to make a driving assessment. This is not part of any catastrophic impairment analysis".[52]

[150] I find that the OT driving/phobia CAT assessment is reasonable and necessary given the applicant's well-documented DSM-5 diagnosis and its impact on his activities and level of functioning especially when it comes to driving. Part of the applicant's noted diagnosis was as a result of his vehicular anxiety which also contributed to his inability to continue working. This was a significant activity of the applicant's daily living prior to the accident.

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Bhullar v TD Insurance Meloche Monnex, 2020 CanLII 94801 (ON LAT), <https://canlii.ca/t/jbwxk

[22] I also do not agree with TD that I should give less weight to Dr. Basile's recommendations or diagnoses on the basis that Dr. Basile did not conclude that Bhullar's neck and shoulder injuries were caused by the accident. Even the insurer's examiner, Dr. Mohamed Khaled, general physician, diagnosed Bhullar with grade 2 whiplash of the neck as a result of the accident in both his August 14, 2017 and November 16, 2018 Insurer's Independent Medical Examination reports. Additionally, there is no other evidence before me that supports TD's suggestion that Bhullar's neck and shoulder injuries are *not* accident related.

[23] In support of the two disputed treatment plans, Bhullar also submitted a January 8, 2018 letter by Dr. Robin Richards, orthopaedic surgeon, and asked that I place more weight upon it than on Dr. Khaled's Insurer's Independent Medical Examination reports dated August 14, 2017 and November 16, 2018. Despite Dr. Richard's letter not being in existence at the time that the September 21, 2017 treatment plan was submitted to TD, Dr. Richard's January 8, 2018 letter does not recommend any specific treatment. Dr. Richards confirms that the treatment received by Bhullar to date, which included chiropractic treatment, massage therapy, acupuncture and laser therapy, had been appropriate for Bhullar's medical diagnosis. However, the only statement by Dr. Richards regarding future treatment recommendations is that Bhullar, "will require ongoing treatment to control her symptoms for the

foreseeable future." Dr. Richards provides no discussion or details about the type or frequency of treatment that Bhullar required at the time of his letter.

[24] While the burden never shifts to TD to disprove Bhullar's entitlement to the disputed OCF-18, I give little weight to Dr. Khaled's opinion as set out in his August 14, 2017 Insurer's Independent Medical Examination report in determining the reasonableness and necessity of the September 21, 2017 treatment plan. Dr. Khaled's report noted that the purposes of his assessment were to determine the applicability of the Minor Injury Guideline ("MIG")[10] and also to opine on the reasonableness and necessity of the September 21, 2017 OCF-18. In opining that the MIG applied to Bhullar's physical injuries, Dr. Khaled stated that the query as to the reasonableness and necessity of the proposed OCF-18 was "not applicable" as Bhullar's physical injuries would have fallen under the treatment protocols recommended by the MIG. Dr. Khaled provided no other reasons or any discussion regarding the reasonableness and necessity of the September 21, 2017 treatment plan.

[33] As I stated above, the burden never shifts to TD to disprove Bhullar's entitlement to the disputed OCF-18. However, for completeness, I also give little weight to Dr. Khaled's opinion in his November 16, 2018 Insurer's Independent Medical Examination report[13] in determining the reasonableness and necessity of the June 11, 2018 OCF-18. In this report, Dr. Khaled opined that the June 11, 2018 OCF-18 was not reasonable and necessary because, "the insured has had appropriate and adequate facility-based soft tissue rehabilitation therapy."[14] The only comments in Dr. Khaled's report, however, regarding Bhullar's treatment since the accident was that her treatment consisted of massage, acupuncture, chiropractic treatment, stretching and exercise.[15] It is unclear from his report what, if any, additional information Dr. Khaled had in arriving at his opinion regarding Bhullar's treatment as Dr. Khaled only noted "Clinical Notes and Records" with no identifying source in the schedule of documents as reviewed as part of his assessment. No other treatment records were listed in his schedule of documents.

AJ v The Guarantee Company of North America, 2020 CanLII 34447 (ON LAT), <https://canlii.ca/t/j7t1x

[41] Guarantee's denial of the treatment plan was based on a report[4] of General Physician, Dr. Khaled, who opined that A.J.'s injuries could be treated within the Minor Injury Guideline and that the treatment was not reasonable and necessary.

[47] I put less weight on Dr. Khaled's report, as it focused on the concern that the treatment does not provide significant or prolonged symptomatic relief or functional restoration. The report failed to address whether the proposed treatment plan, which includes therapy services and frequency, coincides with the injuries sustained in the car accident, whether the treatment goals coincides with the proposed treatment and likelihood of success in relation to cost. All of these are factors that assist in determining whether a treatment plan is reasonable and necessary.

[48] Accordingly, I find A.J. has satisfied her onus to persuade me that the treatment plan is reasonable and necessary.

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D.Y. v Aviva General Insurance Company, 2020 CanLII 30363 (ON LAT), <https://canlii.ca/t/j6nkh

[33] In December 2018, Novo Medical Services submitted to the respondent a request for a detailed and comprehensive CAT assessment. Dr. Khaled, asked by the insurer to comment on the reasonableness and necessity of a comprehensive assessment, agreed that a CAT assessment by a physician, a psychiatrist, an occupational therapist and a neurologist were necessary and reasonable, and that the fee for completing a catastrophic impairment assessment should also be paid. I find that Dr. Khaled's view implicitly contradicts his position in earlier reports. He appears to have come to the view that the applicant has injuries which are more serious than he reported earlier

[43] Spinetec has advocated this treatment consistently since their first correspondence with the insurer. The reports indicate that the applicant began attending for chiropractic and physiotherapy services shortly after the accident. The applicant is reported as stating that they do alleviate her pain in the short term, although the pain returns with repetitive physical activity and anxiety. The insurer bases its refusal to approve this treatment on the opinions of two physicians, Dr. Kopyto and Dr. Khaled Both acknowledge that the applicant has pain but recommend no treatment. Dr. Khaled's later report and recommendations imply that he has changed his opinion and recognizes the applicant's condition as serious and in need of further assessment. The insurer also relies on reports by two occupational therapists who note that they see no impairment in her range of motion, but neither of these considers the applicant's pain nor her mental and emotional distress. They are for that reason not convincing. In my view, treatment that relieves her pain will improve her quality of life and decrease her mental and emotional distress. The treatment is necessary for this reason and considering the benefits it will provide, the cost is in my view reasonable.

[51] The comprehensive CAT assessment proposed by the applicant includes a FAE. Dr. Khaled's recommendation to the insurer regarding what parts of the CAT assessment should be approved does not include the FAE testing. I am concerned that the OT assessment Dr. Khaled does recommend may not consider the applicant's abilities over a prolonged period of time, such as an hour, nor her abilities when carrying out repetitive actions. (Neither of the occupational therapists used by the insurer, Mr. Sharma and Mr. Adam did so.) Therefore, I believe that this evaluation is necessary to make an accurate assessment of the applicant's limitations. The amount the insurer is liable to pay is however limited to $2,000 by virtue of s. 25(5) of the Act.

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C.A. v Aviva Insurance Company, 2019 CanLII 119767 (ON LAT), <https://canlii.ca/t/j45hk

[18] Aviva terminated C.A.'s weekly IRBs on September 15, 2016. Aviva relied upon the September 14, 2016 IE Executive Summary by Dr. Mohamed Khaled,[5] general practitioner, in which

Dr. Khaled opined that C.A. did not suffer a substantial inability to perform the essential tasks of her pre-accident employment as a direct result of the accident. I, however, place little weight on Dr. Khaled's opinion for the following reasons.

[19] Dr. Khaled's Executive Summary relied upon eight s. 44 IE assessments including a Work Demands Analysis by Therese Oldfield, occupational therapist, dated August 10, 2016 and a Functional Abilities Evaluation by Steve Brown, physiotherapist, and Ms. Oldfield dated July 26, 2016. In her Work Demands Analysis, Ms. Oldfield identified C.A.'s pre-accident employment as a "Home Support Worker/Personal Caregiver" which was classified as "medium work." Dr. Khaled explained that "medium work" is identified as exerting up to 50 pounds of force occasionally and/or 20 pounds of force frequently, and/or 10 pounds of force constantly to push, pull or otherwise move objects.[6]

[20] Despite reporting that C.A. provided inconsistent efforts during the Functional Abilities Evaluation, Mr. Brown and Ms. Oldfield noted in their Functional Abilities Evaluation that C.A.'s demonstrated abilities were consistent with a "light physical demand level." "Light physical demand level" is defined as exerting up to 20 pounds of force occasionally and/or up to 10 pounds of force frequently, and/or a negligible amount of force constantly to move objects.[7] Mr. Brown and Ms. Oldfield opined that the outcomes of their evaluation may not be an accurate reflection of C.A.'s current functional abilities because C.A.'s fear of pain limited her performance.[8]

[21] Despite the Work Demands Analysis identifying C.A.'s pre-accident employment as "medium work," and C.A.'s abilities only been found to be consistent with a "light physical demand level," Dr. Khaled still opined that C.A. did not suffer a complete inability to perform the essential tasks of her pre-accident employment as a direct result of the accident. When Dr. Khaled was given the opportunity to explain his position in cross-examination, Dr. Khaled failed to address this inconsistent finding and agreed that if someone is only capable of doing light work, that they could not perform medium work.

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18-002597 v Aviva General Insurance Company, 2019 CanLII 43907 (ON LAT),
<https://canlii.ca/t/j0cc6

(vi) Aviva's denial of the gym equipment in its February 28, 2018 correspondence to E.D. was not supported by any evidence. Dr. Khaled did not determine in his February 23, 2018 report that the proposed gym equipment was not reasonable and necessary, as stated by Aviva. Rather, Dr. Khaled refers to facility-based soft tissue rehabilitation therapy not being reasonable and necessary and does not speak to the proposed gym equipment despite acknowledging twice in his report that the disputed portion of the treatment plan was the gym equipment;[6]

(vii) Dr. Khalid's report acknowledges that E.D. has range of motion reduction due to pain and concludes, "further symptomatic relief can be achieved with independent, self-directed, home or

community-based active rehabilitation."[7] I agree with E.D. that Dr. Khaled's report supports a home based exercise program; and

(viii) Aviva obtained a June 4, 2018 clarification report from Dr. Khaled in which he acknowledges that E.D. is experiencing "residual pain," but concludes that the gym equipment is not reasonable and necessary because he failed to identify any ongoing accident-related symptoms. I find these statements of Dr. Khaled to be extremely contradictory. If E.D. is experiencing "residual" pain, meaning pain still remaining, it is illogical to me that Dr. Khaled opines that there is no ongoing accident-related symptoms. I place little, if any, weight on Dr. Khaled's clarification report because it is clear that Dr. Khaled was aware that the disputed portion of the treatment plan was the proposed gym equipment when he prepared his original report and he could have addressed it at the time but, for whatever reason, he did not.

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Optimum Insurance Company Inc. v. Melinda Muhi, 2019 ONFSCDRS 1 (CanLII), <https://canlii.ca/t/jqb2s

Fifth, the Appellant argued the Arbitrator should have also accepted the evidence of another of its experts, Dr. Khaled. This is another example of the Appellant seeking to re-try the case. The Arbitrator's assessment of Dr. Khaled's evidence is at pages 35-38. In this section, she reasoned why she discounted evidence from Dr. Khaled, whom she found "… was an advocate for a strict compliance with the wording of the *Guides* but failed to apply the same rigor to the work of his own team."[22] She found he "… gave Optimum the outcome it wanted." She was "… satisfied on the evidence he [Dr. Khaled] deliberately closed his eyes to relevant information he should have taken into account."[23]

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17-005125 v Aviva Insurance Canada, 2018 CanLII 140993 (ON LAT), <https://canlii.ca/t/j067d

7] The applicant submits that the respondent did not provide a proper denial as required in s. 38 of the *Schedule* and therefore, the assessment should be funded pursuant to s. 38(11). I find that the respondent's notice was deficient because:

i. It misstated the opinion of Dr. Khaled, a general practitioner who conducted an insurance examination on the applicant and drafted a report dated June 17, 2016. The respondent relied on the opinion of Dr. Khaled to deny the treatment plan. In the denial letter, the respondent stated that Dr. Khaled did not find the treatment plan reasonable and necessary. However, Dr. Khaled stated that the applicant's injuries are treatable within the MIG; and

ii. The respondent failed to re-assess the treatment plan after the applicant was removed from the MIG.

[10] The second denial letter, dated June 20, 2016, was provided after the applicant had attended a s.44 insurance examination with Dr. Khaled. The denial letter addresses entitlement to the disputed treatment plan and another one not included in this claim. In the denial, the respondent states that the assessor reviewed the treatment plans and determined the treatments recommended are not reasonable and necessary from the injuries sustained in the motor vehicle accident. The letter is silent as to whether the applicant's injuries are subject to the MIG.

Reason(s) for denial

[11] On page 11 of his June 17, 2016 report, Dr. Khaled answers "Yes." to question 3 in response to whether the applicant's injuries are predominantly minor and treatable under the MIG. In his answer to question 3, Dr. Khaled also provides the definition of minor injury, his interpretation of whether it applies to the applicant and his assessment of whether the applicant suffers from a pre-existing condition. Dr. Khaled goes on to state that "The insured's injuries and their treatment are subject to The Minor Injury Guidelines."

[12] Question 4 inquires whether the treatment plan is reasonable and necessary. Dr.

Khaled's answer is "Not applicable. As noted above, the insured's injuries are sprains and strains only without evidence of significant neurological orthopedic complications. These are to be considered minor injuries as per the Guidelines." I did not find that Dr. Khaled used the words "reasonable" or "necessary" anywhere in his report.

[13] I find that the respondent relied on the application of the MIG when denying the treatment plan and not whether the treatment plan was reasonable and necessary. By stating "not applicable", Dr. Khaled in fact declined to assess whether the treatment plan was reasonable and necessary.

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M. M. v. Optimum Insurance Company Inc., 2018 ONFSCDRS 83 (CanLII), <https://canlii.ca/t/jqb16>

In the alternative I find that the Applicant has met the onus for establishing a WPI of 55% or more. I find that the appropriate ratings for the Applicant's impairments are provided by Dr. Gallimore in his report under Option 1. I acknowledge that the more usual format for assessing catastrophic impairment is that followed by Optimum and not the process followed by the Applicant. I note however that the process followed is not prohibited by the *Guides* and there is evidence from the Optimum witnesses that "a knowledgeable person" such as Dr. Gallimore can take the diagnoses and provide appropriate and accurate ratings. The main area of dispute is the Mental Behavioural. The Applicant has been the subject of extensive assessment and the Applicant's evidence as to her emotional and psychological challenges and the impact on her functions (now two plus years post-accident) are credible. In my view Dr. Gallimore's report, although brief and lacking the listing of supporting documents, addresses the process of analysis contemplated in Chapter 2 of the *Guides*. Dr. Khaled attacked the approach taken by Dr. Gallimore because he did not get the ratings from the individual specialists who conducted the

assessments of the Applicant. Dr. Gallimore relied on the report of Dr. Catre who assessed the Applicant specifically for musculoskeletal issues as well as the reports of the specialists in neurology, chronic pain, etc. and other reports that had been generated on referral by the family doctor in his treatment of the Applicant or by counsel for the Applicant in addressing disputes concerning entitlement to accident benefits claims. The record of such assessments and examinations is voluminous and I note that not all the medical and health care professionals who have opined on the Applicant's issues testified in this Hearing, though 13 of them did.

I do not accept the ratings arrived at by Dr. Khaled for Optimum. He was an advocate for strict compliance with the wording of the *Guides* but failed to apply the same rigor to the work of his own team. Dr. Khaled insisted that the proper and only credible way to arrive at the ratings was to have the ratings done by the medical professionals who examined the Applicant for the purpose of the CAT determination. Dr. Adam and Dr. Zakzanis testified that they could take a diagnosis from another expert and provide a valid rating under the *Guides* without seeing the patient. Further, as noted above, the *Guides* specifically provide in Section 2.2, that "any knowledgeable person can compare the clinical findings with the *Guides*' criteria and determine whether or not the impairment estimates reflect those criteria." Dr. Gallimore is experienced and qualified to more than satisfy the requirement of a knowledgeable person to determine the appropriate ratings based on the clinical findings and reports of the experts who in fact assessed the Applicant.

In my view, Dr. Khaled gave Optimum the outcome it wanted. I am satisfied on the evidence that he deliberately closed his eyes to relevant information that he should have taken into account. The *Guides* are specific that the history of medical treatment of the patient is an essential element in the assessment and rating. Dr. Khaled included Dr. Robinson's reports in his review of the records but when there is a specific issue related to the diagnosis of Mental and Behavioural Disorder requiring ongoing treatment, Dr. Khaled simply ignores the evidence and relies solely on Dr. Hope's refusal to accept the test results as valid. In cross-examination Dr. Khaled indicated that he focused on the assessments that were done for the CAT determination. He gave little if any weight to the past history.

I find that his handling of the evidence as to the Applicant's mental behavioural impairments ignored the evidence of Dr. Robinson and Dr. Mills as well as that of the Occupational Therapist Ms. Javasky. In his testimony Dr. Khaled used every opportunity to advocate for his approach to the interpretation of the *Guides* which I find is not supported by the *Guides* themselves.

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16-000536 v Co-operators General Insurance Company, 2016 CanLII 93133 (ON LAT),
<https://canlii.ca/t/gwr28

[8] Co-Operators indirectly challenges the necessity of the medical benefits. It raises a causation issue, submitting that the applicant has failed to prove that she suffers from an impairment as a result of the accident that necessitates the disputed treatment. In support of this submission, Co-Operators relies on the October 14, 2015 report of Dr. Khaled. The report concludes that, from a physical perspective,

the applicant has sustained uncomplicated soft tissue injuries warranting no further facility based treatment.

[9] I disagree with this submission. I am satisfied on a balance of probabilities the accidents caused a physical impairment which necessitates the six disputed treatment plans for medical benefits. On my review of the two MRI reports dated December 12, 2007 and April 26, 2014, and Dr. Fletcher's clinical notes and Progress Note dated February 26, 2015, I find that the applicant suffers a chronic impairment to her thoracic spine. The clinical notes and records of Cobblestone Medicine and Rehabilitation Centre show that the injury which causes this impairment predates the applicant's first motor vehicle accident in 2013, albeit in a lessor form. The injury substantially healed by the time of the first accident. However, the first accident exacerbated the injury, creating an impairment. That impairment was further aggravated by the second accident. This is evidenced in the clinical notes and records of Cobblestone Medicine and Rehab Centre, Dr. Fletcher's Prognosis Note dated December 26, 2015, and Dr. Khaled's most recent addendum to his 2015 report, which is dated June 8, 2016. Dr. Khaled's June 8, 2016 addendum is the most recent medical comment on the applicant's physical condition. In it Dr. Khaled notes that the applicant has some ongoing accident related pains; however, not at the level of chronic pain syndrome.

[14] Dr. Khaled's position that the applicant requires no further facility based treatment for her physical pain is rejected. Care which relieves physical pain, and therefore improves function, is a legitimate medical and rehabilitative goal in the applicant's case. It appears that Dr. Khaled is of a different view or did not turn his mind to this treatment goal when he authored his report and addenda. Because of this, I am in disagreement with Dr. Khaled and believe that further facility based treatment is reasonable for the applicant.

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