Lawson, Kerry, Psychologist

Sopher and Primmum https://www5.fsco.gov.on.ca/AD/5405

Decision Date: 2017-11-09, Adjudicator: David Snider, Regulation: 34/10, Decision: Arbitration, Final Decision, FSCO 5405.

This hearing involved nine days of evidence from the applicant, two of his daughters and a number of expert witnesses for each side. The Applicant called 4 expert witnesses – Dr. Kevin Jones, Dr. Lisa Becker, Dr. Lara Davidson and Dr. Harold Becker. The Insurer called 3 expert witnesses – Dr. Kerry **Lawson**, Dr. Alborz Oshidari and Ms. Laura Youm, O.T. There were allegations by the Insurer that Mr. Sopher had engaged in symptom magnification from early on in his treatment when he was assessed by a neuropsychologist while at West Park until right up into his testimony during the hearing. There were significant problems identified with the testimony of a number of the expert witnesses as well. In the end, however, the Insurer conceded that Mr. Sopher is significantly and seriously impaired at this point in his life – but maintained its theory that a pre-existing back injury contributed greatly to the Applicant's level of impairment.

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I respectfully disagree. I find that, on balance of probabilities, Mr. Sopher suffered injuries in this motor vehicle accident which directly left him with impairments which exceed the 55% WPI level set out in the Guides. I have concluded that the catastrophic impairment assessment carried out at his behest by Omega Medical Associates was accurate in its determination that his overall WPI rating exceeded the 55% threshold by a considerable margin. I found there were real problems with the testimony and expert opinions of two of the Insurer's experts – Dr. A. Oshidari and Dr. K. Lawson – which far outweighed any concerns I may have had with the exact accuracy of the impairment percentages set out in the opinion(s) of the Applicant's experts. As a result, I prefer the evidence of the Applicant's catastrophic impairment team over those of the Insurer. Put simply, I cannot find as a fact that Dr. Oshidari's conclusion that there was a 39% pre-existing impairment is valid. His testimony on this point dissolved entirely under cross-examination. He could not explain why numerous medical opinions, treatments and advice given to Mr. Sopher concerning his pre-existing back pain did not at any time describe or diagnose him with having the DRE category VI level of injury to his spine (at any level) which Dr. Oshidari was relying on for his pre-existing injury diagnosis. The pre-accident medical evidence clearly proved that Mr. Sopher was given strong pain killers and other medications as a consequence of his pre-existing back pain, which serves to demonstrate that Mr. Sopher has, perhaps, a low pain threshold, but the most apparent diagnosis available from those pre-accident medical records clearly sets out that he was suffering from sciatica. Sciatica is not mentioned as a cause of any percentage of Mr. Sopher's WPI in either of the catastrophic impairment assessments and therefore has not been diagnosed as a significant factor in, or component of, Mr. Sopher's present impairments.

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I believe it is appropriate to comment briefly on the evidence given by Dr. Lawson on behalf of the insurer as well. Dr. Lawson performed a dual role on the Insurer's catastrophic impairment assessment team and wrote reports as both a psychologist and a neuropsychologist. I found that Dr. Lawson demonstrated a problematic attitude toward his role as an expert witness in this matter with regard to his testing and report(s). There were many areas of concern with his testimony and I will outline just a few of them here. Firstly, he stated that he had personally trained his daughter, a second or third year university student in an unrelated field, to act as his psychometrist, and that he was confident that she was properly conducting the full range of tests and obtaining valid results. However, he could not disagree with testimony from Mr. Sopher's daughter that when the psychometric testing was being conducted by Dr. Lawson's daughter she was actively engaged in conversation with Mr. Sopher's daughter about entirely irrelevant matters and that Mr. Sopher had to continue with the testing while the two young women were in the room with him having a conversation. This factor alone calls into question any and all results that this particular psychometrist may have obtained with regard to Mr. Sopher. Dr. Lawson was clearly not aware that his psychometrist had engaged in this behaviour, and despite his testimony that he "must have approved" it, it was clear that he knew nothing about what had happened. Further to this, Dr. Lawson did not know, at the time of his testimony, <u>any</u> of the results from the psychometric testing which was carried out and provided completely disorganized raw data in an electronic format to Mr. Sopher's counsel at the hearing. It also became clear, through his testimony, that Dr. Lawson had not given any significant consideration to the Occupational Therapy report that his own team member had provided and that he was unaware of, and devalued in any event, the collateral evidence which was available in that report through the O.T.'s interview with Mr. Sopher's wife.

Most damaging to his testimony however, was the fact that he utilized a single, brief test result which he said was obtained as a consequence of utilizing the Structured Inventory of Malingering Symptomology (SIMS) test, to decide that Mr. Sopher was not giving valid answers in his testing and was over-reporting his symptoms. Interestingly, though, this specific test, among others, was not even listed in his own list of "Tests Administered" in his report(s). He also had no actual knowledge of the results of Mr. Sopher's testing using this, or any other, measure. He testified, at first, that this test was basically a simple yes or no determinant in terms of whether there was "symptom magnification" occurring. Then, when corrected by reference to the manual which its producers supply for the SIMS test, which clearly did indicate that a specific score was the initial cut-off point, he vaguely indicated that perhaps a score of 13 or 14 was the measure recommended by the SIMS test creators, but that "the literature" suggested a score of 22. However, he had no idea what Mr. Sopher's actual score was. Dr. Lawson stated that he used his clinical judgment to conclude that Mr. Sopher was engaging in symptom magnification based upon the SIMS test. The overwhelming problem with this purported exercise of clinical judgment is that the creator/distributor of the SIMS test states in its descriptive literature that the test is designed to detect potential malingering, rather than symptom magnification, and, even more damaging, that it is designed to be no more than a simple suggestive device which should be followed up with other forms of testing. Rather than assigning any validity to a number of larger, more sophisticated tests which were apparently administered and which did not show any significant scoring invalidity, Dr. Lawson chose instead to jump to the conclusion that he should completely invalidate many findings of significant

impairment(s) to Mr. Sopher's functioning. As a consequence he simply assigned zero values to certain impairment test results and came up, not surprisingly, with very low impairment ratings. I found all of the above to be very disturbing and conclude that Dr. Lawson was not conducting himself properly as an expert assessor of Mr. Sopher but was, instead, actively promoting the Insurer's case and chose to take the first shortcut he could see to conclude that Mr. Sopher was not catastrophically impaired.

Taken together, the expert witnesses provided by the Insurer failed entirely to invalidate the catastrophic impairment report provided by the Applicant's assessors. The only conclusion I can reach is that, given the vagaries of the *AMA Guidelines* and the wide ranges of interpretation and number manipulation that are available to the expert medical witnesses, the Applicant has demonstrated, on balance of probabilities, that the level of his impairment which can be directly attributed to this accident well exceeds the 55% WPI requirement set out in the *Schedule*.

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Hamilton and Aviva Canada https://www5.fsco.gov.on.ca/AD/4120

Decision Date: **2014-02-10**, Adjudicator: **John Wilson**, Regulation: **403/96**, Decision: **Arbitration, Motion, FSCO 4120**

While Aviva has provided some evidence that Lifemark, the assessment agency, proposed a "situational assessment" with an occupational therapist, and later drafted a "rationale" for the inclusion of an occupational therapy assessment in the catastrophic impairment assessment process, there is nothing in the affidavit from Dr. Lawson stating precisely how the existing occupational therapy reports were inadequate, and specifying the nature of the new reports required to fill this void. Rather, he speaks to the generic usefulness of occupational therapy data in making assessments, something that is really not at issue in this motion.

Although the *AMA Guides*[3] emphasize the importance of contextual information about activities of daily living and function, including employment, they do not specify or restrict the manner in which an assessor obtains that information.

The absence of a complete explanation from Dr. Lawson as to why a further Occupational Examination is required is critical from a variety of points of view. Section 45(2)2. of the *Schedule* provides for a neuropsychologist to be able to designate other registered health professionals he or she requires to assist in the assessment. The best evidence of any such requirement would be from Dr. Lawson himself, not from Aviva or the assessment broker.

As noted by counsel for Mrs. Hamilton, there were also significant and recent occupational therapy assessments, at least one created at the behest of the Insurer. All occupational therapy materials that have been generated to date in this matter would appear to provide potentially useful information to the degree that such is within the confines of the scope of practice of an occupational therapist.

In this case, it is the obligation of the neuropsychologist assessing catastrophic impairment to consult, collate and incorporate that situational information before reaching a definite conclusion as to impairment.

In his affidavit Dr. Lawson addresses in a generic manner what he sees as the shortcomings of treating occupational therapists and does not address the other potential sources of occupational therapy information. Nor does he refer to any best practices or standards of practice to bolster his assertion that only a separate and distinct O.T. assessment can have any value in a catastrophic assessment.

I note that Dr. Lawson lists, at the end of his report, all the medical documents he reviewed in making his report. He lists in excess of 31 documents that appear to have been authored by various O.T.s up to February 22, 2011. He does not, however, appear to list the Occupational Therapy In-Home report issued by Teresa Broers, an O.T. who did an in-home assessment on behalf of Aviva on October 23, 2009 (although he does list however the OCF-18 penned by Ms. Broers).

More importantly, the report actually issued by Dr. Lawson is internally inconsistent with regard to the need for further assessments. While he reported that he could not provide an opinion with regard to the four domains outlined in the *AMA Guides* due to the absence of assessments by an occupational therapist, he also claimed that no further "clinical information or diagnostic testing is required in order to confirm my diagnosis." While this apparent contradiction may have an explanation, none was given by Dr. Lawson in his affidavit.

While this could well have been an oversight, such would be surprising given the Insurer's records produced, which note the same contradiction and others, speaking of the need to direct Dr. Lawson to address the issue of the O.T. assessments in his report.

Essentially, given the numerous occupational therapy documents, including assessments, that fill a timeline approaching the Insurer's request for a further occupational therapy examination, I am not convinced that, without a more complete explanation from Dr. Lawson as to their specific utility, Aviva has discharged its burden of proving the reasonableness of further assessments.

M.M. and Aviva Canada https://www5.fsco.gov.on.ca/AD/4095
Decision Date: **2013-12-19**, Adjudicator: **Jessica Kowalski**, Regulation: **403/96**, Decision: **Arbitration, Supplementary Decision, FSCO 4095**.

As part of Work Able's 2006 assessment, psychologist Dr. Kerry Lawson examined Ms. M and conducted the psychological evaluation component of the insurer examination specific to the determination of catastrophic impairment.

Dr. Lawson wrote that Ms. M's results for pain intensity, "when her degree of symptom over reporting is taken into account, indicate that [she] is likely experiencing a level of pain intensity and related symptomatology commensurate with that experienced by individuals who are coping with a chronic pain syndrome."

Dr. Lawson noted that a review of the file documentation revealed a number of occasions in which Ms. M consulted with medical practitioners regarding various physical ailments and concluded that, "As such, it would appear that this person's current pain syndrome represents an exacerbation of the pre-accident condition."

Dr. Lawson opined that "it does not appear Ms. M was experiencing her present degree of emotional distress, pain intensity, and related symptomatology in the year prior to the subject MVA. As such, it is my view that these aspects of her current clinical presentation remain materially related to the accident in question."

Dr. Lawson concluded that Ms. M suffered a mild impairment (Class 2) with respect to Activities of Daily Living and Concentration, and a mild-to-moderate degree of dysfunction with respect to Adaptation to Work Environments and Social Functioning (Class 2-3). This, he wrote, corresponds to an impairment rating of 20% under criterion (f) of subsection 2(1.1) of the *Schedule*.

Dr. Blitzer testified that he felt 20% was an adequate value for mental and behavioural disorders and adopted Dr. Lawson's rating.

I find that there are some gaps in Dr. Lawson's report.

It is true that Ms. M's medical records show multiple pre-accident physician visits. In 1997 she had neck pain that required a CT scan, and was reporting a history of migraines that was repeating itself in 1999. Although Ms. M testified that she started using narcotics like oxycocet and oxycontin after the accident, her medical records show she used them before the accident.

It is unclear from the report what Dr. Lawson felt "the pre-accident condition" was. Dr. Lawson noted that Ms. M exaggerated her pain symptoms but that the accident is what led to her current pain symptoms and chronic pain syndrome.

The preponderance of Ms. M's evidence is that the accident caused the discectomy which caused a chronic pain condition.

If Ms. M's pain is rateable as a mental and behavioural disorder in accordance with the *Guides*, 4th edition, I am not persuaded by Dr. Lawson's report that Ms. M's chronic pain condition was itself caused by the accident. It appears that Dr. Lawson did not consider, among other things, that:

· Ms. M went from light work before the accident to heavy work after the accident

· Ms. M did not report any back symptoms for more than a year after the accident

· Ms. M had a normal lumbar x-ray on January 10, 2011, following her first documented complaint of low back pain 13 months after the accident

· there were references to an accident after January 10, 2001 and before August 8, 2001, at which time Ms. M had a second lumbar x-ray which, at that point, showed some pathology.

Dr. Lawson also did not distinguish between Ms. M's migraines before and after the accident. Although Ms. M described herself as in perfect health before the accident, her medical records disclose she had a history of headaches, migraines and neck pain for which she sought treatment at various hospital emergency rooms and used narcotics to treat her pain.

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Hill and Jevco https://www5.fsco.gov.on.ca/AD/3978
Decision Date: **2013-04-30**, Adjudicator: **Fred Sampliner**, Regulation: **403/96**, Decision: **Arbitration, Final Decision, appeal rendered, FSCO 3978**.

The psychological/vocational tests were administered by Dr. Kerry Lawson. He recommended Mr. Hill's suitability for general office positions, retail sales and telemarketing, ranging in pay between $20,000 and $30,000. The weakness in Dr. Lawson's report is his failure to consider Mr. Hill's 4-year pre-accident computer sales experience and personal interest in computers or specifically address Mr. Hill's motivation for hands-on technical work. Otherwise, I accept Dr. Lawson's recommended jobs because his pre-accident experience and pay scale directly relate to them.

Mr. C. and Coachman – 2 https://www5.fsco.gov.on.ca/AD/2293

Decision Date: **2011-10-21**, Adjudicator: **Miller, Joyce**, Regulation: **403/96**, Decision: **Arbitration, Preliminary Issue, appeal rendered, FSCO 2293**

Unlike the reports of Dr. Wilkins and Dr. **Lawson**, who provided catastrophic impairment reports on behalf of Coachman and whose testimony will be dealt with below, Dr. Rosenblat, in his report, addressed in detail Mr. C.'s level of functioning. As well, unlike Dr. Wilkins and Dr. **Lawson**, Dr. Rosenblat explained in detail all of the factors he considered when determining Mr. C.'s level of impairment under the four domains of functioning as outlined in the *Guides*.

Again, unlike Dr. Wilkins and Dr. **Lawson**, as part of his assessment Dr. Rosenblat also interviewed Mrs. C. I find that the information Dr. Rosenblat received from Mr. and Mrs. C. is consistent with their testimony at the hearing and consistent with the evidence and testimony provided at the hearing by Mr. C.'s treatment providers, Stephane Sefter, Rosemary Whyte, Paula Hilborn and Wayne Fisher.

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Coachman did not call any witnesses to defend its case. Mr. C., however, summoned for cross-examination Dr. Wilkins and Dr. **Lawson** in respect of their catastrophic impairment assessment reports that were prepared on behalf of Coachman.

I give very little weight to Dr. Wilkins' and Dr. **Lawson**'s reports and their testimony wherein they conclude that Mr. C. is not catastrophically impaired as a result of his car accident. Both came across as poor examples of an expert witness. They both clearly appeared to be strong advocates for Coachman.

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(b) *Dr. Kerry **Lawson**'s Testimony*

Dr. **Lawson**, a psychologist, conducted a catastrophic impairment assessment on behalf of Coachman on August 4, 2009.

Like Dr. Wilkins, I find that Dr. **Lawson** was a poor example of an expert witness. I agree with Mr. C.'s submissions where he states: Dr. **Lawson**'s demeanour when testifying, was argumentative, evasive, confusing and demonstrated a lack of understanding of his role as an expert to assist the Tribunal in reaching its decision on the complex issue of whether Mr. C. is catastrophically impaired.

Unlike Dr. Wilkins, Dr. **Lawson** did provide a diagnosis in his report. In his report dated September 1, 2009, Dr. **Lawson** diagnosed Mr. C. with an adjustment disorder associated with depressed mood; anxiety; chronic pain disorder associated with a general medical condition and psychological factors. He also provided a differential diagnosis of major depressive disorder associated with anxiety.

In a short report, Dr. **Lawson**, without providing much information, rationale or analysis, concluded that Mr. C. was not catastrophically impaired. I give little weight to his conclusion.

The *Guides*, at page 293, state:

Taking a standardized test requires concentration, persistence and pacing; thus observing individuals during the testing process may provide useful information. The description of test results should include the objective findings, a description of what occurred during the testing and the test results.

As well, at page 294, the *Guides* points out that when evaluating fitness for work, consideration must be given to the fact that while a person may score well on a test, this may not be a reflection of the person's ability to function in a setting more like the working world.

Although Dr. **Lawson** testified that the test results determined a significant part of his diagnosis and conclusion, he stated that he did not observe Mr. C. during testing pursuant to the *Guides.* He stated that his personal observations were not as important to him as the test results. Dr.**Lawson** also testified that he gave no consideration to the fact that Mr. C. is Turkish and that the tests were answered with the assistance of an interpreter. He stated that test participants were held to the Canadian norm, and not to the norms of their culture.

I find that in failing to follow the *Guides* to observe and record a description of Mr. C.'s "concentration, persistence and pacing" during the testing, I cannot give much weight to Dr. **Lawson**'s conclusions regarding Mr. C.'s functionality when they are solely based on the test results.

Like Dr. Wilkins' report, I find Dr. **Lawson**'s report to be superficial and biased in favour of Coachman. For example, in his report, Dr. **Lawson** notes: "Mr. C. stated he was hospitalized ***within the past two weeks*** as a result of depression and suicidal ideation."... "He reiterated he has experienced suicidal ideation at times and has threatened to hurt himself and family members." (It should be noted at the

time of his assessment with Dr. **Lawson**, Mr. C. had not yet been hospitalized for overdosing on his medication.) [Emphasis added]

In light of this information, Dr. **Lawson** ignored the significance of Mr. C.'s very recent suicidal/homicidal mental state in relation to Mr. C.'s ability to function in any of the four domains noted in the *Guides*. I find this to be an important omission, especially since in his conclusion Dr.**Lawson** states that "Mr. C.'s accident occurred two years prior to his evaluation. As such, his psychological status is considered stable at this time."

Another significant omission in Dr. **Lawson**'s report is his failure to comment on or consider the occupational assessment by Ms. Perreras. Dr. **Lawson** was on the same team as Ms. Perreras, who were carrying out a catastrophic impairment assessment on behalf of Coachman. Nevertheless, Dr. **Lawson**, without any explanation, ignored this very relevant assessment regarding Mr. C.'s capacity to function.

Although Dr. **Lawson** found that Mr. C. was not catastrophically impaired, he completely failed to substantiate his conclusions regarding the four areas of function pursuant to the *Guides*. He did not provide any supporting evidence or rationale for his conclusions. He merely stated that in his view Mr. C.'s impairment in the domains of concentration, persistence and pace and activities of daily living was "mild." In the domains of social functioning and adaptation, hefound Mr. C. to be "moderately" impaired.

Like Dr. Wilkins, I find that Dr. **Lawson** ignored consistent, credible medical evidence, which could lead to a finding that Mr. C. suffered a "marked" impairment in one or more domains and accordingly was catastrophically impaired. Accordingly, I give very little weight to Dr.**Lawson**'s conclusion that Mr. C. is not catastrophically impaired.

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For the reasons stated above, I gave little or no weight to the catastrophic impairment assessments by Drs. Wilkins and **Lawson**. Both assessors ignored relevant, credible information when coming to their conclusions. Not only did Dr. Wilkins not assess Mr. C. for a catastrophic impairment, nor did she provide any diagnosis in her short three-page report, [See note 15 below] but she completely failed to comment on obvious, relevant and material information in Dr. Rosenblat's catastrophic impairment assessment report, although she purported to have reviewed his report.

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Note 15: At the hearing, Dr. Wilkins stated that her diagnosis of Mr. C. was that he was a malingerer. As noted above, I gave very little weight if any to this diagnosis.

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In the case of Dr. **Lawson**, he not only narrowly relied on his test results in a manner that was contrary to the *Guides*, but provided no rationale, whatsoever, as to how he arrived at his ratings. His ratings were completely arbitrary and provided no foundation for his conclusions.