Financial Services Commission of Ontario

Commission des services financiers de l'Ontario

FSCO A13-003926

BETWEEN:

JESSICA SILVA ARRUDA

Applicant

and

WESTERN ASSURANCE COMPANY

Insurer

REASONS FOR DECISION

Before: Arbitrator Jeffrey Shapiro

Heard: In person at ADR Chambers on November 3 and 4, 2014 and by written submissions completed on March 18, 2015

Appearances: Mr. Gus Triantafillopoulos and Ms. Kristy L. Kerwin for Ms. Jessica Arruda
Ms. Shea Lewis for Western Assurance Company

Issues:

The Applicant, Ms. Jessica Silva Arruda, was injured in a motor vehicle accident on May 5, 2012 and sought accident benefits from Western Assurance Company ("Western"),[1] payable under the *Schedule*.[2] The parties were unable to resolve their disputes through mediation, and Ms. Arruda, through her representative, applied for arbitration at the Financial Services Commission of Ontario under the *Insurance Act*, R.S.O. 1990, c.I.8, as amended.

[1] The Applicant, Ms. Jessica Arruda, will variously be referred to as "the Applicant" or "Ms. Arruda." The Respondent will variously be referred to as "the Insurer," or "Western."

[2] *The Statutory Accident Benefits Schedule – Effective September 1, 2010*, Ontario Regulation 34/10, as amended.

The issues in this Hearing are:[3]

1. Do the Applicant's injuries fall outside the Minor Injury Guideline ("MIG")?
2. Is the Applicant entitled to an Income Replacement Benefit ("IRB"), as follows:
    a. From May 12, 2012 (i.e. 7 days after the accident) to May 3, 2014 (i.e. the 104-week mark); and
    b. From May 4, 2014 to date and ongoing at the rate of $185.00 per week?
3. If the Applicant is entitled to an IRB up to the 104-week mark, what is the quantum?
4. Is the Applicant entitled to receive Medical/Cost of Examination Benefits, as follows:
    a. $1,331.00 for an Orthopaedic Assessment by Dr. Fred Langer of Jane Yonge Medical Assessments, dated September 14, 2012;[4]
    b. $855.40 for Physiotherapy by Physiotherapy First, per an OCF-18, dated October 3, 2012;
    c. $1,937.64 for a Psychological Assessment by Dr. Judith Pilowsky, dated October 29, 2012;
    d. $855.40 for Physiotherapy by Physiotherapy First, per an OCF-18, dated November 29, 2012; and
    e. $45.00 for an ambulance bill?
5. Is the Applicant owed any interest on any outstanding benefits?
6. Is the Respondent liable to pay the Applicant a Special Award?
7. Is the Respondent required to pay the Applicant's expenses of the Arbitration Hearing?

Result:

1. Ms. Arruda's injuries did fall within the MIG. Ms. Arruda's injuries are no longer in the MIG.
2. Ms. Arruda is entitled to an IRB up to the 104-week mark. She is not entitled to an IRB thereafter.
3. The quantum for Ms. Arruda's pre-104 week IRB is $103.86 per week.

[3] The parties listed the issues in slightly different fashion from each other as well as the pre-hearing letter.
[4] There is a question as to the nature of this issue, as discussed below.

4. Ms. Arruda is entitled to reimbursement for the ambulance fee, but is not entitled to the other four medical benefits claimed.
5. Ms. Arruda is entitled to interest on overdue benefits.
6. Western is liable to pay the Applicant a Special Award.
7. Western is required to pay the Applicant's expenses of the Arbitration Hearing.

EVIDENCE AND ANALYSIS:

Evidence

Only the Applicant was heard by *via voce* testimony. The remainder of the evidence, including all of the medical evidence, was submitted by way of written reports and other documents.[5] The parties made closing oral submissions, followed by written submissions. Following an overview/chronology, I will summarize Ms. Arruda's testimony and the key medical evidence, followed by a discussion of the issues.

Overview/Chronology

Two weeks prior to the motor vehicle accident ("the MVA"), i.e., April 21, 2012, Ms. Arruda gave birth to her daughter, Chloe, at William Osler Health Systems Hospital. During that process, she was given an epidural that left her with back pain. In the year prior to the accident, Ms. Arruda had maintained two part-time jobs, although by the time of the birth, Ms. Arruda was on maternity leave.

By all accounts, in the late evening hours of May 5, 2012, Ms. Arruda was involved in a significant motor vehicle collision. She was a backseat passenger in her boyfriend's vehicle as it passed through an intersection and was "t-boned" with the impact on the driver's side. Ms. Arruda consistently described at the Hearing and to medical providers that her body slammed into the

[5] In terms of substantive evidence, the parties agreed to the submission of a Joint Arbitration Brief ("Exhibit 1"), a Joint Medical Brief ("Exhibit 2"), Supplementary Respondent's Arbitration Brief ("Exhibit 3"), a supplementary Letter from bluepoint Valuations dated November 3, 2014 ("Exhibit 4"), and Adjuster's Log Notes ("Exhibit 6"). Additional exhibits received that are procedural in nature are not listed here.

door and that she struck her head on the window. No evidence was presented to the contrary. No loss of consciousness was reported. She was transported to the hospital where she was examined and released. To date, no x-rays, ultrasounds, or MRIs have been administered.

Ms. Arruda immediately followed up with her long-standing family physician, Dr. Molnar, complaining of hitting her head and back and left shoulder pain, and was referred to, and received, therapy at Physiotherapy First ("PhysioFirst"). Ms. Arruda was treated under the MIG over the next several months until the MIG limit was exhausted.

By way of an OCF-18, dated September 14, 2012, Ms. Arruda sought to receive the Costs of Examination Benefit for an In-Home Assessment Report, dated September 25, 2012, by Jane-Yonge Medical Assessments ("Jane-Yonge").

By way of an OCF-18, dated October 3, 2012, approximately 5 months post-accident, PhysioFirst sought treatment for Ms. Arruda beyond the MIG limits. An additional OCF-18, dated November 29, 2012, followed from PhysioFirst.

By way of an OCF-18, dated October 29, 2012, Ms. Arruda sought a psychological assessment by Dr. Judith Pilowsky. It is unclear what portion of the OCF-18 was actually 'incurred.' The assessment was never conducted, but the OCF-18 contains "additional comments" by Dr. Pilowsky stating that she conducted a telephone interview with Ms. Arruda, and based on Ms. Arruda's symptoms, Ms. Arruda "does not fit the criteria…[for a] Minor Injury according to the SABS…". Thus, she was requesting funding for a full assessment.

Western denied all of the above treatment plans beyond the MIG limits and sought Independent Examinations ("IEs") with Dynamic Functional, which produced reports, as follows:

1. Two (2) Psychology Evaluation Reports of Dr. Jonathan Siegel (psychologist), respectively dated December 3, 2012, regarding IRB and medical rehabilitation;
2. Physical Demands Description – Light Duty Cleaner Hallmark Housekeeping Services Inc. by Vinita Tandon (OT), dated December 12, 2012;

3. Functional Abilities Evaluation Report of Angela Bertolo (OT), dated December 17, 2012;
4. Two (2) Physiatry Evaluation Reports of Dr. Anna Czok, respectively dated December 20, 2012 regarding IRB and medical rehabilitation;
5. Medical/Rehabilitation – Minor Injury Guideline (MIG) Executive Summary of Dr. S. Dharamshi, dated January 8, 2013.

In the briefest of terms (discussed further below), the IEs found Ms. Arruda to have sustained soft tissue injuries and minor psychological 'difficulties', which (1) did not require further treatment or (2) cause her to "suffer a substantial inability to perform the essential tasks of her pre-accident employment."

During this period, there were various correspondences between the parties regarding the necessary information to calculate Ms. Arruda's IRB, which are addressed below. Thus, although Western lacked the aforesaid information to issue a cheque for an IRB, based on the aforesaid IEs, by letter and OCF-9, dated January 18, 2013, Western terminated the IRB.

Ms. Arruda next saw her family doctor in April of 2013 and then the next significant piece of medical evidence is a February 14, 2014 report of orthopedic surgeon, Dr. Michael West. Dr. West opined that Ms. Arruda has, *inter alia*, Chronic Pain Syndrome and "Post-Traumatic Anxiety and Distress Disorder with Depressive Episodes". He noted that further comment on the latter diagnosis is beyond the scope of his specialty.

There is no evidence before me that the Insurer responded to Dr. West's Report or examination. Conversely, it does not appear that Ms. Arruda sought pre-approval for the Cost of the Examination under the *Schedule* nor is she seeking reimbursement for it. She does, however, rely on it for medical evidence.

While there remains disagreement as to the cause of the delay in payment and the quantum (approximately $6.00 per week); in October 2014, shortly before the Hearing, Western paid the IRB for the period from May 12, 2012 to January 13, 2013.

Position of the Applicant

The Applicant contends that she was involved in a serious accident, causing her largely soft-tissue injuries which are outside of the MIG due to (1) pre-existing back pain related to the epidural procedure two weeks pre-accident, and (2) the subsequent onset of chronic pain and psychological injuries. In support of her position, the Applicant points to her dramatic change in lifestyle from before the accident compared to that after the accident; her inability to perform numerous functional activities; and continuing complaints of pain, dizziness, and headaches. She contends that she is entitled to an IRB as she remains physically unable to complete the demands of her active pre-employment positions, and also meets the post-104 week test as she is virtually unemployable. Additionally, she claims her IRB was not calculated properly and she takes numerous issues with the Insurer's adjusting of the claim.

Position of the Insurer

Regarding medical benefits, the Insurer contends that the Applicant suffered soft-tissue injuries which squarely fall under the MIG, and minor psychological "difficulties" that do not constitute an "impairment" or remove her from the MIG. As for IRBs, the Insurer contends that it properly terminated benefits on January 13, 2013, based on a series of IE Assessments which established that the Applicant no longer met the pre-104 Week Test, or the more stringent post-104 Week Test. The Insurer contends that Ms. Arruda is a 'poor historian' and thus it disputes her account of her medical history or her functional abilities, pointing, for example, to Ms. Arruda's functional abilities displayed in caring for her baby and use of an elliptical machine, among other inconsistencies in her presentation.

Testimony of Ms. Jessica Arruda, the Applicant

As noted, Ms. Arruda was the only witness to testify. She was born on December 6, 1986, making her 26 years old at the time of the accident. She is two credits shy of completing her high school diploma, but has earned three Microsoft Certificates regarding software. She lives in her parents' home, together with her baby daughter, Chloe.

Ms. Arruda testified that prior to the accident (beginning October 2005), she was employed part-time as a cleaner with Hallmark Cleaning Services ("Hallmark"), which was a physically active position requiring active physical labour, including bending, lifting, vacuuming, and scrubbing. She worked 5 hours per day, 5 days a week, earning approximately $15/hour. She was also employed part-time, on a contract basis, as a temporary receptionist and administrative assistant (October 2010-November 2011) through David Aplin and Associates ("David Aplin"). She testified that she earned approximately $10.00/hour ('as best as I can recall').

Ms. Arruda testified that prior to the accident, she had an active lifestyle and regularly attended a GoodLife Fitness gym. She engaged in kickboxing, fishing, boating, hiking, camping, and would use various exercise equipment at the gym.

Ms. Arruda began maternity leave prior to the accident.[6] On April 21, 2012, approximately 2 weeks before the accident, she gave birth to her baby, Chloe. As a result of an epidural procedure, she experienced pain in her back and that pain was present at the time of the accident.

Accident – Ms. Arruda described the accident as occurring at approximately 11:30 p.m. as her car passed through an intersection. The vehicle was struck on the front driver's side, which pushed the car up over the curb and onto the adjacent sidewalk. She testified that she struck the left side of her face and head on the window and the rest of her body was thrown against the door.

After the Accident – Ms. Arruda was taken to the hospital and released with Tylenol for the pain. She had swelling on her leg and bruising on her hip and the next morning, headaches and migraines and aching pains in her back. She required assistance helping to care for Chloe and most household tasks, difficulties which she still experiences. She experiences pain with vacuuming, scrubbing, bending, etc., and so her family still helps her with those tasks.

[6] Based on her EI file, bluepoint Valuations notes that Ms. Arruda's last day of work before maternity leave was December 30, 2011. On January 10, 2012, she applied with Employment and Social Development Canada for Employment Insurance (i.e. maternity and parental benefits).

She began therapy with PhysioFirst several days after the accident, which she felt helped, until the insurance company stopped paying. She states that it is the only treatment she received and that it ended in November 2012. She feels her condition is now getting worse. She only ever took Tylenol and Advil for the pain and currently takes homeopathic medication.

She felt she had depression, anxiety, and low self-esteem as a result of the accident. Currently, she drives when she has to, but has anxiety doing so. She claims memory loss and a decreased ability to concentrate. She felt she could not return to her pre-accident employment because of the pushing, pulling, bending and lifting. She mentioned she still has numbness and tingling in her fingers.

On cross-examination, Ms. Arruda was presented with several of her statements recorded in the medical reports by both her treating physicians and Independent Medical Examinations. For the most part, she did not deny the statements, though on occasion, denied them or explained apparent inconsistencies.

For example, during direct testimony, she was clear that she tried to continue her workout activities at her regular gym, i.e. GoodLife Fitness, but wasn't able to use the exercise equipment or do much at all and discontinued the membership. However, on cross-examination she admitted telling the IE psychologist, Dr. Siegel, that she was then currently a member of GoodLife Fitness – the examination being seven months post-accident – and that she uses the elliptical machine twice a week for approximately 45 minutes. She did not deny the accuracy of that statement, but did explain that she would have to take breaks during those 45 minutes, which she did not prior to the accident.

She claims she can't remember if she told her family doctor about her psychological complaints.

She testified that she drove 40 minutes to the Hearing alone from Brampton and was able to do so without incident. While she described having received much help from her family in caring for her baby since the accident, she did admit that she can pick her up and care for her when her parents are not present.

There was no testimony or evidence presented that she attempted to secure employment post-accident or had given much thought towards future career plans or possibilities.

Medical Evidence – Overview

As noted above, all the medical and rehabilitation evidence was introduced in written form. The Insurer produced seven IE reports from five practitioners, while the Applicant produced one report generated more than a year after the last treatment plan in dispute and further relies on various records and Ontario Claim Forms ("OCF"). Below, regarding each record, I summarize the pertinent points. First, an overview of the time-frame is important. In summary:

- The accident occurred in May of 2012;
- The Applicant was treated within the MIG until July 27, 2012;
- The OCF-18s for disputed treatment were submitted in September, October, and November of 2012;
- The series of Independent Examinations ("IE") occurred in December of 2012;
- There is a single family doctor visit in 2013 mentioning the MVA;
- In February 2014, the Applicant underwent an assessment by Dr. West, who opined a new diagnosis of Chronic Pain Syndrome. Dr. West's assessment, however, is not associated with a contemporaneous OCF-18. Likewise, Dr. West also does not comment on prior treatment, the denied OCF-18s from 2012, or the Insurer's IEs.

William Osler Health System[7]

Hospital Records from April 21, 2012 to June 5, 2012 were produced. The birth records, including an April 21, 2012 Operative Report, document the Applicant was administered an epidural. The parties did not call my attention to, nor did I see, any reference to unusual lingering back pain from the epidural. Regarding the accident, the Ambulance Call Report indicates 'left sided pain[,] including neck shoulder back & legs,' and appear to note no bruising, trauma or swelling, but pain

[7] Joint Medical Brief, Tab 1.a.

on movement. The Emergency Room records are illegible, but the Triage Record notes "Complaint: Upper extremity pain…lower extremity pain," and "Additional Relevant Information:…complain of pain to her left shoulder and neck back and left leg," with pain noted as a "5/10."

Dr. G.B. Molnar (Applicant's family doctor)[8]

Dr. Molnar's records consisted of (1) clinical notes and records ("CNRs") from October 23, 2010 to June 15, 2012 and then from April 12, 2013 to June 26, 2014, and (2) a "Summary of Pre-accident Medical History dated December 6, 2012." While largely illegible, I find the CNRs showing four MVA related office visits: May 8, 2012, June 15, 2012, April 24, 2013, and June 26, 2014, all noting pain.

The December 6, 2012 summary is a questionnaire completed by Dr. Molnar, which appears to have been presented to him by Ms. Arruda's counsel. Dr. Molnar states the last visit was June 15, 2012. Of importance, it describes "5) List of pre-MVA Medical Conditions & Dates reported:…NIL other than delivering baby 21/3/12" and "6) post-MVA Medical Conditions & Dates reported; [sic] Back + left shoulder pain-June 15/12[.]" Dr. Molnar states it is "uncertain" if the injuries "affected her ability to return to work," and that the injuries sustained have not "affected any of his/her pre-accident normal life activities."[9]

Contained in the records is a June 3, 2013 Consultation Report form Osler Health Centre regarding an unrelated procedure. It notes that other than the unrelated condition, "Her health is otherwise good."

Jasdeep Dhir (physiotherapist) of Physiotherapy First[10]

[8] Joint Medical Brief, Tab 2.a-c.
[9] Joint Medical Brief, Tab 2.b. at question 7, subparts 4 and 5.
[10] Joint Medical Brief, Tab 3.a-i.

No formal report was submitted by Ms. Arruda's main treatment provider, Jasdeep Dhir (physiotherapist) of Physiotherapy First, but CNRs from May 7, 2012 to November 26, 2012 were provided along with various OCFs from May 11, 2012 to November 26, 2012.[11] Of note:

- The OCF-23, Part 5, lists 'radiculopathy, cervical region;' Part 6(b) provides no known pre-existing conditions that could affect recovery; and Part 7 provides a 'positive psych screen' could be a barrier to recovery.
- The May 11, 2012 OCF-3, Part 6, lists a substantial inability to conduct caregiving and housekeeping activities, but the employment related test is "N/A," with anticipated disability at 9-12 weeks. Various strains, sprains, dislocations and related injuries are listed to lumbar and cervical spine, neck, shoulder, upper arm, pelvic region, and knee.
- A July 25, 2015 OCF-18, Part 4, lists the injuries as within the MIG; Part 7 states no pre- or post-accident developments that could affect response to treatment; and Part 9 denies any barriers to recovery.
- An OCF-24 MIG Discharge was dated August 7, 2012.
- An October 3, 2012 OCF-18 first sought treatment outside of the MIG. Again, Part 7 provides no pre- or post-accident condition which could affect her response to treatment. Of particular importance, Part 8 provides activity limitations listed as, "Pain with prolonged sitting and standing, Pain with bending and twisting, Patient unable to do any lifting and resisted [sic] movement, difficult sleeping." Various check boxes are listed in Part 9, with the following notation, "Patient has completed the MIG, but will require [sic] treatment plan that is all active to allow patient to reach maximal recovery and become independent with a home program."
- The OCF-3 and OCF-18, dated November 26, 2012, both contain notations that "patient still reporting pain the neck with numbness in both hands,...Also pain in the low back. Patient also has intermittent headaches, reports overall improvement 50%, still requires ongoing treatment."

[11] Physiotherapy First's records consisted of Treatment Confirmation Form (OCF-23), dated May 11, 2012; Disability Certificates (OCF-3s), dated May 11, 2012, May 24, 2012, and July 25, 2012; Treatment Plan (OCF-18), dated July 25, 2012, with a Minor Injury Treatment Discharge (OCF-24), dated July 27, 2012; Treatment Plan (OCF-18), dated October 3, 2012; Disability Certificate, dated November 26, 2012; and Treatment Plan, dated November 26, 2012.

Jane-Yonge – In-Home Assessment Report, dated September 25, 2012, by Lyudmyla Listar (RN) of Jane-Yonge Medical Assessments Inc.[12]

The assessment report states that the purpose of the assessment is to verify the demands of daily living. The assessment proceeds to recommend 14.5 hours of Home Care [i.e. Housekeeping] Assistance and 17.5 hours of Child Care Assistance. However, it does not appear that either of those benefits are available under the policy.

Regarding Child Care Assistance (p. 3), the report states, "The client reported that following her motor vehicle accident; [sic] she is no longer able to participate in the caregiver tasks due to her related injuries. The client reports that her mother and mother in-law are currently assisting her with those tasks." The report notes, however, that she is independent with diaper changes, dressing and feeding her daughter.

The report states that Ms. Arruda reports headaches "described as intermittent…occurs a few times per month…" and dizziness "occurs daily."

Regarding assessment of the Applicant's activities, rather than "capable w/restrictions," she is assessed as "Unable" to visit friends with the comment, "Ms. Arruda reported that painful symptoms deter her from visiting her friends." Physically she can lift 15 lbs., and carry for "short distance only," but she is assessed as "unable" for "Food preparation," with the explanation that she can prepare light meals, but not heavy cooking.

OCF-18, dated October 29, 2012, $1,927.64 for Psychological Assessment by Dr. Judith Pilowsky[13]

[12] Joint Medical Brief, Tab 4.c. In the Pre-Hearing letter, and some of the parties' submissions, this item is listed as an Orthopedic Assessment by Dr. Fred Langer of Jane Yonge, yet it is an In-Home Assessment by Lyudmyla Listar. The two invoices that are attached to the report contain further inconsistencies. For instance, Jane-Yonge Invoice No. 11952 is for Psych Med Legal Assessment & Report Provided by Dr. B. Kershner in the amount of $1,131.00, not $1,331.00, while Invoice No. 11103 is for an OCF-18 In Home Assessment provided by Lyudmyla Listar, in the amount of $200.00, also not the $1,331.00.

[13] Joint Medical Brief, Tab 5.

Again, no formal report was submitted, but this OCF-18 contains some limited "Additional Comments", explaining that licensed Clinical and Rehabilitation Psychologist, Dr. J. Pilowsky, conducted a telephone interview with Ms. Arruda on October 29, 2012 and found the Applicant to be suffering from "psychological distress" and "symptoms" that are not considered within the MIG. Thus, Dr. Pilowsky completed the OCF-18 requesting to conduct an "assessment to ascertain whether or not psychological intervention would help this patient manage the psychological sequelae elicited by the accident." Another OCF-18 of the same date, but not in issue, states similar comments.

Psychology Evaluation Report of Dr. Jonathan Siegel (psychologist), dated December 3, 2012, regarding IRB[14]

Dr. Siegel conducted a full IE psychological assessment of Ms. Arruda. He opines that, "Ms. Arruda has mild psychological adjustment difficulties associated with the subject motor vehicle accident of May 5, 2012. However, there does not appear to be any significant psychological impairment that would warrant a DSM-IV-TR Axis 1 diagnosis." He further states that she does not suffer a substantial psychological inability to do either pre-accident job.

The report records several important statements made by the Applicant. The accident occurred at 10:00 p.m. (est). Ms. Arruda "Attends Good Life [sic] Fitness twice per week, for approximately 45 minutes each time. She states that she works out on the elliptical machine…," and self-rates her "physical/functional ability to be approximately forty percent relative to pre-accident status and this is because of ongoing problems with pain." She states her physiotherapist told her she can't return as a cleaner, but Dr. Siegel doesn't state if she was told she can't return to the another position.

She "Earned certificates in Microsoft Excel and PowerPoint," worked for seven (7) years at Hallmark, and she thinks she might have kidney stones. She "drives on a daily basis", and "She is

[14] Joint Medical Brief, Tab 6.a.

not reporting any problems with driving or any significant anxiety, but she did note that she tends to be more nervous as a passenger…"

Ms. Arruda reports headaches with a frequency of approximately two times per week "if that". Although she describes her pain as 8/10, Dr. Siegel found no observable pain. She still goes to movies, shopping, the gym, stating "I still do everything," and she conducts her personal care independently. She "thinks her memory is satisfactory." During the 3 hour exam, she presented as normal, healthy, no observed discomfort and "…did not exhibit any pain behaviors."

Dr. Siegel did find her to be in the "Mild" range for depressive symptomatology, "…in addition to feelings of upset with ongoing problems with pain, which reportedly limit her from being able to carry out all the physical activity that she was carrying out prior to the accident, including cooking and cleaning." He noted she "worries about whether her pain will end."

Psychology Evaluation Report of Dr. Jonathan Siegel (psychologist), dated December 3, 2012, regarding Medical Rehabilitation[15]

This is essentially the same as Dr. Siegel's first report, but offers opinions focused on Medical Rehabilitation. Dr. Siegel opines that Dr. Pilowsky's two OCF-18s are not reasonable and necessary. He provides the same conclusion that "… Ms. Arruda's psychological systems are not of a magnitude to warrant a DSM-IV-TR Axis I diagnosis," but adds that, "In my opinion, Ms. Arruda does not specifically require psychological treatment regarding the subject motor vehicle accident of May 5, 2012. Her family physician will be able to provide supportive encouragement and assist Ms. Arruda in learning to adopt self-management strategies for functional recovery." Thus, he does not conclude that Ms. Arruda is fully recovered, but states that her issues are within the MIG.

Physical Demands Description – Light Duty Cleaner Hallmark Housekeeping Services Inc. by Vinita Tandon (OT), dated December 12, 2012[16]

[15] Joint Medical Brief, Tab 6.b.

Essentially, this Report finds that Ms. Arruda's pre-accident cleaner position falls in to the "Medium Strength Category," which for "the most part" involves lifting between 10kg and 20kg.

Functional Abilities Evaluation Report of Angela Bertolo (OT), dated December 17, 2012[17]

This report records Ms. Arruda as stating "that she is able to perform her personal care tasks independently." However, she has not resumed all of her housekeeping and caregiving tasks, secondary to her current symptoms...." It notes that Ms. Arruda did not seem in any observable pain, and during various tests she "…displayed self-limited effort…" and "[si]gns of exertion or biomechanical strain were also not evident during the strength testing." Her position at the temporary agency involved answering the telephone, photocopying, and operating software programs. Questionnaires dealing with *perceived* disability produced scores of "moderate disability."

Physiatry Evaluation Report of Dr. Anna Czok, dated December 20, 2012, regarding IRB[18]

Dr. Czok conducted a full IE physiatry assessment of Ms. Arruda. She opines that the accident related diagnoses are: "1. Resolving soft tissue trauma; lumbar sprain. 2. Possible contusion left acromioclavicular joint."

She notes Ms. Arruda reports overall improvement "by 60%," and that she is "[i]ndependent with regards to personal care related tasks and some of the housework. She is able to provide care to her infant daughter." On examination, Dr. Czok noted, "Significant tenderness of the left quadratus lumborum muscle," and in summary, "She continues to report some residual symptoms." In terms of an IRB, Dr. Czok opines "from a physiatric perspective, [Ms. Arruda] does not suffer a substantial inability to perform the essential tasks of pre-accident employment."

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[16] Joint Medical Brief, Tab 6.c.
[17] Joint Medical Brief, Tab 6.d.
[18] Joint Medical Brief, Tab 6.e.

Physiatry Evaluation Report of Dr. Anna Czok, dated December 20, 2012, regarding Medical Rehabilitation[19]

This is essentially the same as Dr. Czok's first report, but offers opinions focused on Medical Rehabilitation. Dr. Czok notes "The reported complaints correlate with the objective findings," and she concurs with the diagnosis in the file of lumbar strain and shoulder strain, and that the injuries fall within the MIG.

Medical/Rehabilitation – Minor Injury Guideline (MIG) Executive Summary of Dr. S. Dharamshi, dated January 8, 2013[20]

This brief paper review report basically states that Ms. Arruda's injuries are within the MIG.

Dr. Michael West (orthopaedic surgeon) Report, dated February 14, 2014[21]

Dr. West conducted a full orthopaedic assessment of Ms. Arruda on February 12, 2014, for "insurance purposes only". He diagnoses Ms. Arruda with, *inter alia*, "Chronic Pain Syndrome" and "Post-Traumatic Anxiety and Distress Disorder with Depressive Episodes". He noted that further comment on the latter diagnosis is beyond the scope of his specialty.

In terms of history, Ms. Arruda reported the accident occurred between 9 – 10 p.m., and that she was in a state of shock. In terms of current symptoms, she reported low back and neck pain as a 7 out of 10, increasing to 9 out of 10 with pushing and pulling; headaches and dizziness; insomnia, fatigue, and feelings of stress.

On physical exam, she didn't appear in acute physical distress, but spasms in the lumbosacral spine and cervical spine were noted. She tested positive "for overreaction" and in fact, on

[19] Joint Medical Brief, Tab 6.f.
[20] Joint Medical Brief, Tab 6.g.
[21] Joint Medical Brief, Tab 8.

Waddell's Signs, "Five out of five tested positive. This indicates an adverse psychological and emotional response to injury…signs of a chronic pain syndrome with central sensitization."

Dr. West opines that Ms. Arruda cannot return to office work due to prolonged sitting or her cleaning position due to repetitive bending, lifting, carrying, pushing, or pulling. He notes future vocational retraining or modified duties, "would be of value for this woman."

He also states that she can't perform much of her pre-accident housekeeping and other activities, although he denies that she requires the services of an aide or attendant, as "Currently, Ms. Arruda is independent with respect to her day-to-day self-care and personal hygiene."

I note the report appears prepared for a tort matter as it discusses a "verbal threshold." In discussing that standard, he comments she has become isolated, but does not mention the effect of Ms. Arruda's baby and caregiving activities on her life.

Discussion and Analysis

Overall, I partially accept Ms. Arruda's testimony regarding ongoing complaints of pain, and find it *generally* consistent with medical findings, but given a number of inconsistencies, I do not accept her testimony on all points or the full extent of her claimed disability. For instance, in a relatively brief time frame, Ms. Listar records her as unable to visit friends while Dr. Siegel's report recorded her acknowledging that she goes to the movies, shopping, the gym - "I still do everything." I was troubled by her direct testimony that she doesn't use the gym much at all, but again, Dr. Siegel's report correctly recorded her as using the elliptical for 45 minutes a visit, albeit with breaks in the middle. Similarly, her account of the time when the accident occurred floated from 9-10 p.m. to close to midnight as contained in the various assessments and other records. While the records of her family doctor, Dr. Molnar, do record the Applicant as reporting some pain, his records understate her complaints and lack of functional abilities, and I find no record that he referred her to any treatment for her alleged headaches or psychological injuries.

MIG

In *Lo-Papa and Certas Direct*, FSCO A12-005538 (May 14, 2014), Arbitrator Arbus recently set forth a relevant overview of the law concerning the Minor Injury Guideline, as follows:

> It is clear that the onus of proof is with the Applicant to establish that the injury falls outside the Minor Injury Guideline (and therefore is not subject to the Minor Injury Guideline Cap of $3,500). In the Appeal decision of *Scarlett v. Belair*, Director's Delegate Evans stated clearly that, "the burden of proof always rests on the insured of proving that he or she fits within the scope of the coverage."
>
> Director's Delegate Evans stated:
>
> "The law, briefly, provides that
>
> > a minor injury means one or more of a sprain, strain, whiplash associated disorder, contusion, abrasion, laceration or subluxation and includes any clinically associated sequelae to such an injury [*Schedule*, s. 3(1)]
> >
> > an insured who sustains an impairment that is predominantly a minor injury can receive no more than $3,500 towards medical and rehabilitation expenses (including assessments) [*Schedule*, s. 18(1)]
> >
> > an exception for pre-existing conditions may apply based on "compelling evidence" [*Schedule*, s. 18(2)]"

First, the Applicant contends that her pre-existing back condition, caused by an epidural in connection with the delivery of her daughter two weeks prior to the accident, takes her out of the MIG. Given a lack of medical opinion supporting this claim, and certainly a lack of "compelling evidence", I find that the Applicant failed to meet her burden on those allegations of a pre-existing condition. In fact, many of the medical records such as Dr. Molnar's December 6, 2012 report; the

OCF-23 and the OCF-18, dated July 25, 2012, submitted by Jasdeep Dhir contain notations stating the opposite.

Second, by all accounts, this injury presented itself as a common soft-tissue injury during the first 5 months for which the Applicant sought, and received treatment under the MIG. I find that regarding the time period during which the disputed treatment plans were submitted – i.e. 5-7 months post-accident – the Applicant did not meet her burden of showing that the injury was not "predominately a minor injury", or otherwise out of the MIG. In this regard, I accept the full assessments and formal reports by Drs. Czok and Siegel, which opined the injury to be minor, over the opinion expressed by Dr. Pilowsky in the "additional comments" based on a limited telephone interview. Again, Ms. Arruda's long-time family doctor, Dr. Molnar, did not refer Ms. Arruda to any specialists, treatment, or diagnostic testing for Ms. Arruda's complaints – only physical therapy. I do not find that the Applicant was fully recovered at that time, i.e., 5-7 months post-accident, but only that she has not established her injuries are other than "Minor Injuries."

Third, while I have some question as to the full extent of her pain, I find that Ms. Arruda's injuries did not resolve and that 20 months post-accident, she was diagnosed by Dr. West with chronic pain syndrome. Of importance, I note Dr. West doesn't comment on prior treatment plans or denials occurring more than a year earlier, but states his then current diagnosis of Ms. Arruda.

Citing *Cowans and Motors Insurance Company* (FSCO A09-003237, October 15, 2010) for the well-established principle that an Insurer has an ongoing duty to assess and reassess a claim as new information is available, the Applicant contends that Western was obligated, but failed to consider Dr. West's report and new diagnosis. I accept the Applicant's argument, in that I have nothing before me to indicate that Western considered that report or submitted it to medical review. Moreover, I do not accept that Western could properly rely on its prior IEs by Dr. Czok and Dr. Siegel, that the Applicant's injuries remain in the MIG because both IEs occurred a year prior, and at that time, neither opined that Ms. Arruda was fully healed or even pain-free. To the contrary, both Dr. Czok and Dr. Siegel found her to be experiencing some pain or difficulties, though each found her then under the MIG. In fact, in Western's submission to me, Western does not mention Dr. West's report or even Ms. Arruda's arguments that Western has an ongoing duty

to reassess a file as new information is received. Likewise, Western does not offer any response to the Applicant's argument that Chronic Pain Syndrome removes an Applicant from the MIG, and Western's silence appears to concede the point.[22]

Dr. West is a Certified Specialist in Orthopaedic Surgery. Given that Western did not respond to Dr. West's report, the report is uncontroverted that as of February 2014, Ms. Arruda has a new diagnosis of Chronic Pain, which in my view, falls outside of the MIG. I accept his report to that extent.

I find the fact that his assessment and report comes over a year after the disputed treatment plans and IEs to have two implications. First, Dr. West did not offer his opinion on the prior denied treatment plans, the Insurer's denial of them, or the Insurer's position that as of December 2012, the Applicant was properly treated within the MIG. Second, I do not find his diagnosis to be inconsistent with Dr. Czok's IE from 2012. Rather, Dr. Czok is commenting on the Applicant's condition in December of 2012, concluding it as resolving. Dr. West is commenting on her condition in February 2014, concluding that it did not resolve, but became chronic.

Dr. West's report is not associated with a denied treatment plan. Thus, I do not comment on any aspect of his report regarding proposed or implied future treatment.

Income Replacement Benefit (IRB)

In the year prior to the accident, Ms. Arruda held two jobs: her main occupation was a cleaner with Hallmark, and her second job was doing temporary office work for David Aplin and Associates.

Following the accident, Ms. Arruda applied for and received approval for an Income Replacement Benefit, with the quantum to be determined.[23] Before the benefit was actually paid, Western

[22] I note Arbitrator Feldman recently commented in *Basson and Royal & Sunalliance Insurance Company of Canada* (FSCO A13-005199, May 7, 2015), "With respect to the second argument (chronic pain), it is arguable that certain types of chronic pain that develop from what originally appeared to be a minor injury might take a person out of the MIG."

terminated the eligibility for the benefit by letter and OCF-9, dated January 18, 2013. The termination was based on Dr. Czok's physiatry report, dated December 20, 2012; Dr. Siegel's psychiatrist report, dated December 3, 2012; a Functional Abilities Evaluation, dated December 17, 2012; and a Physical Demands Report, dated December 12, 2012.[24] After receipt of the Applicant's income tax returns for 2012 and 2013 and review by a retained accounting firm, shortly before the Hearing, Western paid for the period from May 12, 2012 to January 13, 2013.

Section 6 of the *Schedule* provides the test for entitlement to an Income Replacement Benefit during the first 104 weeks post-accident (excluding the first 7 days), as follows:

> "6. (1) … an income replacement benefit is payable for the period in which the insured person suffers a substantial inability to perform the essential tasks of his or her employment or self-employment. O. Reg. 34/10, s. 6 (1)." (Emphasis added.)

Section 6 of the *Schedule* provides a more stringent set for entitlement to an Income Replacement Benefit after the first 104 weeks post-accident, as follows:

> "6. (2) (b) … after the first 104 weeks of disability, unless, as a result of the accident, the insured person is suffering a complete inability to engage in any employment or self-employment for which he or she is reasonably suited by education, training or experience. O. Reg. 34/10, s. 6 (2)." (Emphasis added.)

Although the Insurer's Functional Abilities Evaluation and Physical Demands Report set forth the Applicant's job duties in greater detail, there is not much dispute that the cleaning position was a physically active position requiring frequent bending, squatting, pushing, pulling, and lifting between 10 and 20 kilograms. It is referred to as a "medium duty job."

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[23] To be clear, by letter, dated June 1, 2012, Western asked Ms. Arruda to elect either Caregiver Benefits or IRBs, and after not receiving a response, by a July 10, 2012 Explanation of Benefits, Western acknowledged eligibility for the IRB, but requested an OCF-2 (Employer's Confirmation Form) seeking information to calculate the benefit.

[24] Joint Arbitration Brief, Tab 8A-149.

The office position is a "light duty job" involving answering phones and using basic office machines such as computers. It is not strenuous.

Is Ms. Arruda Entitled to an IRB up to 104 Weeks Post-Accident?

I find that after the motor vehicle accident in question, Ms. Arruda was unable to do her pre-accident employment as a cleaner, due to accident-related injuries. I accept her testimony to the extent that the physical demands of that position were too strenuous for her. While she may be able to perform each of the job duties of the position in isolation, in consideration of the medical reports on both sides, and her testimony as a whole, I am convinced on the balance of probabilities that she suffered "a substantial inability to perform the essential tasks" of her cleaning job on an ongoing basis, with its physical demands. I'm not convinced that the Insurer established that she was able to return to that position. While I generally accept Dr. Czok's physiatry reports set forth above, I accept the Applicant's critique that the IE Functional Abilities Evaluation, which Dr. Czok utilizes, places Ms. Arruda's functional strength in the "Limited" strength category, while the Physical Demands Description placed the job in a "Medium" category. Thus, in sum, Ms. Arruda met her burden of proof, and absent further medical advice through the two-year mark, she is entitled to IRBs for that period.

Is Ms. Arruda Entitled to an IRB from 104 Weeks Post-Accident and Ongoing?

Regarding IRB post-104 weeks, I find that Ms. Arruda has not met her burden of proof. For purposes of the *pre*-104 week test, I can accept that her 45 minutes on an elliptical machine was taken with breaks and did not involve lifting or pushing and pulling a vacuum cleaner. However, it certainly shows an ability to be active for extended periods of time and is a far cry from "suffering a complete inability to engage in any employment or self-employment for which he or she is reasonably suited by education, training or experience." In fact, while she may not currently be an appropriate candidate for a physically demanding job, there is substantial other evidence that she does have significant functional abilities. She is generally able to lift, hold, and carry her baby. By all accounts, she is independent in her self-care and drives nearly every day. It would certainly appear that she could perform her second pre-employment position as an "office temp."

For argument's sake, even if I were to fully accept her testimony regarding dizziness, headaches, and forgetfulness, which I do not,[25] her description of these symptoms was not of the severity that would render her unsuitable for office work. Thus, she does not meet her burden.

In closing written submissions, Ms. Arruda correctly argued well established principles that the post-104 week test does not require a showing of un-employability. Rather, the relevant test is an inability to do employment for which she was reasonably suited by education, training, or experience. FSCO jurisprudence has established that suitability is a question of fact in each case and it must be viewed fairly and realistically in the context of the Applicant's education and employment background. Thus, alternative employment must be appropriate in nature, status, or remuneration.[26]

What I disagree with is Ms. Arruda's application of that jurisprudence to her situation. I disagree that "Ms. Arruda is not employable" or that "Ms. Arruda is completely unable to engage in any employment for which she is reasonably suited…"[27]

For example, such suitability arguments were properly applied in the *Cowans and Motors Insurance Company* (FSCO A09-003237, October 15, 2010), cited by the Applicant. Mr. Cowans was an immigrant with limited education, reading and English skills, who was employed for approximately 10 years as fork lift operator where he enjoyed access to extensive overtime. I find that Ms. Arruda's situation is different. She is a young person who occupied two entry-level positions. She has completed some certificate programs involving Microsoft software. She has no language barriers, and can appear and conduct herself professionally. While she may not be ready to be lifting medium or heavy objects on a repeated basis or do a physically demanding job, I heard little credible evidence that she could not perform the duties of her previous office position. As I have noted throughout, she does display functional abilities.

[25] As noted above, Dr. Molnar did not refer her to treatment for these symptoms.
[26] E.g. *Caruso and Guarantee Company of North America*, [1996] O.I.C.D. No. 71.
[27] Submissions of the Applicant, Jessica Arruda, at para. 85.

I also gave some weight to the fact that Ms. Arruda seems to have made no meaningful attempt whatsoever to look for employment and thus mitigate her damages. Indeed, I heard little, if any, evidence that she has thought about future career possibilities.

Quantum of IRBs

There is a discrepancy of approximately $6.00 per week regarding the quantum of IRBs that the Applicant seeks versus that paid by Western. Western retained the services of Williams & Partners, who authored an October 14, 2014 report, quantifying the Applicant's IRB at $97.72 per week, calculated from May 6, 2012 (one week post-accident) to January 18, 2013 (the date the Insurer terminated her benefit). The Applicant retained bluepoint Valuations, who authored an October 29, 2014 report, quantifying the IRB at $103.86 per week.[28] bluepoint attributes the discrepancy to Williams' failing to include the Applicant's earnings from Hallmark in 2012, and using Ms. Arruda's net earnings from David Aplin rather than her gross earnings. Western appears to concede this point in its submission. I accept the calculations of bluepoint Valuations over that of Williams & Partners.

Is Ms. Arruda entitled to Medical/Rehabilitation/Cost of Examination Benefits Claimed?

Issue 4.a: $1,331.00 for an Orthopaedic Assessment by Dr. Fred Langer of Jane-Yonge Medical Assessment, dated September 14, 2012

As noted above, this issue is variously listed as an Orthopaedic Assessment and/or an In-Home Assessment, while it is in fact an In-Home Assessment. The In-Home recommends 14.5 hours of Housekeeping and 17.5 hours of Caregiving services despite the fact that such benefits are only available for a catastrophic impairment, and there isn't a plausible contention that the Applicant could not do her self-care needs. Indeed, Dr. West and other medical records report that "Ms. Arruda is independent with respect to her day-to-day self-care and personal hygiene."[29]

[28] Under the *Schedule*, if Ms. Arruda was entitled to IRBs post-104, the quantum would increase to $185/week.

[29] Joint Medical Brief, Tab 8 (West Report, P. 15).

Accordingly, I find this OCF-18 properly denied as not reasonable and necessary on several independent grounds. First, it generally seeks non-available benefits, i.e., Housekeeping and Caregiver Benefits. To the limited extent it seeks an available benefit, I find that the Applicant did not need self-care assistance. Finally, at the time this treatment plan was submitted and denied, the injuries/impairments were within the MIG.

Issue 4.b and d: $855.40 for physiotherapy by Physiotherapy First dated October 3, 2012 and $855.40 for physiotherapy by Physiotherapy First, dated November 29, 2012

In consideration of Dr. Czok's report and the evidence, I find the Applicant did not meet her burden of establishing these treatment plans as medically reasonable or necessary. Additionally, at the time these OCF-18s where submitted and denied, I find the injuries/impairments were within the MIG.

Issue 4.c: $1,937.64 for a Psychological Assessment by Dr. Judith Pilowsky, dated October 29, 2012

I find the Applicant did not meet her burden of establishing these treatment plans as medically reasonable or necessary. I except the full assessment and report of Dr. Siegel over Dr. Pilowsky's limited telephone assessment. Additionally, as above, at the time these OCF-18s were submitted and denied, I find the injuries/impairments were within the MIG.

Issue 4.e.: $45.00 for an ambulance bill

There is no dispute that this bill is reasonable and necessary. The dispute arises because at the time this bill was presented to Western, only $7.00 remained available in the MIG. I agree with the Applicant's submission that Western should have issued a cheque for that amount to the Applicant. Moreover, based on my finding that Dr. West's report removes Ms. Arruda from the MIG, the balance of the bill is payable.

Special Award

Preliminary Issue: Respondent moved to dismiss Applicant's claim for a Special Award

Result: Motion denied

At the time of the Hearing, the Respondent moved to dismiss the Applicant's claim for a Special Award on the basis that particulars had not been provided. After each counsel was given an opportunity to address the issue, it was agreed that the adjustor log notes, though requested in the Applicant's Application for Arbitration, had not been provided until October 31, 2014 in the mid-afternoon, which was the Friday before the Monday Hearing. The Applicant contended that she was not previously requested to supply particulars and, in any event, she contends it is customary practice that particulars are only provided upon receipt of the adjustor's notes. Thus, it would be unfair that the adjustor's notes were not provided until last minute and then used as a basis to dismiss the claim.

I found it was clear that the Special Award was identified as an issue in the Pre-Hearing Letter approximately one year earlier, and that the Respondent had not brought the issue of particulars before the Pre-Hearing Arbitrator well in advance of the Hearing.

I denied the motion with the condition that at the close of the evidence on the central issues, if the Applicant believed there was some prejudice, the issue could be raised and I would consider a means to cure that prejudice such as allowing an additional witness to be called on the Special Award issue at an adjourned Hearing. The issue of prejudice was not raised.

Issue: Applicant sought to call Ms. Theresa Cordero, a representative of Western who is identified in the log notes, and alternatively, to call Ms. Antoinette Johnsen, a representative of Respondent, at the hearing

Result: Motion denied

Neither witness was identified by the Applicant in the Pre-Hearing letter; nor 30 days prior to the Hearing as set forth by Rule 32 in the *Dispute Resolution Practice Code* ("*DRPC*"); nor in the Applicant's October 10, 2014 letter identifying witnesses the Applicant intends to call or cross-examine at the Hearing. Thus, the Applicant was given three opportunities to give notice that she sought to cross-examine a representative of Western but did not do so under the Rules, instead raising this issue at the last moment. Although not marked as an Exhibit, both counsel indicated a series of letters and phone calls exchanged between them in the weeks leading up to the Hearing and a request for such witness was not made. In regard to the Applicant's claim that she could not have identified Ms. Cordero in particular as she did not receive the log notes until the eve of Hearing, such argument is not persuasive as the Applicant didn't identify any representative of Western as a witness, and in any event, the Applicant could have but did not bring a motion well in advance of the Hearing to secure tardy production. In my view, a matter that could and should have been addressed months before cannot properly be brought on the day of Hearing.

Special Award

Section 282(10) of the *Insurance Act* provides that if the Arbitrator finds that an Insurer has unreasonably withheld or delayed payments, the Arbitrator "shall" award a lump sum as a Special Award.

The Applicant argued in its submissions that Western had all the needed Tax Returns to calculate the IRB, but delayed two months in doing so. In response, Western's submission at paragraphs 15(k) and 55 asserts that the "Applicant's counsel provided the Respondent with the Applicant's income tax returns…in or around October 2014," and then it issued the cheque for $3,601.96 "in or around the end of October 2014, shortly before the arbitration hearing commenced." In reply, the Applicant states the Insurer's time frame is incorrect. Rather, the Applicant sent the tax returns on August 8, 2014 and Western received them by August 15, 2014 (as per the "received" stamp on the letter),[30] thus creating an unreasonable two-month delay in payment.

[30] See Joint Arbitration Brief, Tab 8, p. 254 (Correspondence dated August 8, 2014).

I agree with the Applicant that as the letter bears a received stamped, dated August 15, 2014, Western's submission to me that it was received "in or around October 2014" is incorrect.[31] It appears that Western received its accounting report from Williams & Partners in or around October 14, 2014. What is not clear is why it took a month to calculate the IRB and another week or two to issue the cheque. I find an unreasonable delay occurred but certainly a limited delay. Considering the six (6) factors set-forth in *Cowans*, I believe only a modest award is appropriate. Accordingly, the Insurer shall pay a Special Award equal to 10% of the delayed $3,601.96 IRB payment, i.e., $362.00.

EXPENSES:

The parties made no submissions on expenses. They are encouraged to resolve this issue. If they are unable to do so, they may schedule an Expense Hearing before me, according to the provisions of Rule 79 of the *Dispute Resolution Practice Code.*

July 7, 2015

Jeffrey Shapiro
Arbitrator

Date

[31] I note that Respondent's submission made other similar factual misstatements. For example, paragraph 37 of Respondent's submissions states Ms. Arruda's delivery of her child occurred "a few months" prior to the accident, when in fact, it was April 21, 2012 – only two weeks prior.

Financial Services Commission of Ontario

Commission des services financiers de l'Ontario

Ontario

FSCO A13-003926

BETWEEN:

JESSICA SILVA ARRUDA

Applicant

and

WESTERN ASSURANCE COMPANY

Insurer

ARBITRATION ORDER

Under section 282 of the *Insurance Act*, R.S.O. 1990, c.I.8, as amended, it is ordered that:

1. Ms. Arruda's injuries did fall within the MIG. Ms. Arruda's injuries are no longer in the MIG.
2. Ms. Arruda is entitled to an IRB up to the 104 week mark; she is not entitled to an IRB thereafter.
3. The quantum for Ms. Arruda's pre-104 week IRB is $103.86 per week.
4. Ms. Arruda is entitled to reimbursement for the Ambulance Fee, but is not entitled for the other four medical benefits claimed, i.e., Issues 4a-d.
5. Ms. Arruda is entitled to interest on overdue benefits.
6. Western is liable to pay the Applicant a Special Award in the amount of $362.00.
7. If the parties are unable to resolve the issue of expenses, they may schedule an expense hearing before me, according to the provisions of Rule 79 of the *Dispute Resolution Practice Code*.

July 7, 2015

Jeffrey Shapiro
Arbitrator

Date