

Rely on psychological experts to determine auto insurance tort threshold and CAT Impairment determination

Objectives

- To provide more efficient and cost-effective access to the right expert for evidence-based differential diagnostic opinions for Tort and Catastrophic Impairment determination;
- To reduce the number of expert assessments required for Tort and Catastrophic Impairment determination;
- To reduce system costs and burden associated with unnecessary, duplicative examinations conducted by physician examiners in order to comply with the current regulations;
- To remove the excessive regulatory burden experienced by accident victims with impairments due to mental and behavioural disorders
 - created by the requirement that a physician “adduce evidence” regarding the Tort Threshold even when a psychologist is the right expert;
 - created by the requirement that a physician be relied upon to “conduct assessments” and “certify applications” for Catastrophic Impairment Determination even when the psychologist is the right expert;

All of these objectives can be met by returning to a reliance on psychologists for expert opinions on impairments due to mental and behavioural disorders for Tort and Catastrophic Impairment determination without the additional requirement of a physician.

Issue

Auto Insurance costs and premiums have been high due to a number of factors. The focus of the changes made by previous governments was on reducing accident benefits and creating administrative barriers to care, catastrophic impairment determination, and compensation in Tort. This is seen clearly with respect to changes that impacted accident victims with impairments due to mental disorders.

Psychologists have effective, evidence-based, diagnostic methodologies for providing accurate differential diagnosis and rating of impairments for individuals with mental disorders. However, both the current Tort threshold and the regulations for Catastrophic Impairment determination require the use of a physician in addition to a psychologist when the expertise of a psychologist alone will suffice. The physician requirement creates obstacles for injured persons with mental disorders and adds unnecessary costs to the system.

Tort Threshold

Psychologists' expertise is routinely accepted in courts at all levels. Auto insurance became an exception in 2003 when the Liberal government altered the Tort verbal threshold definition for serious and permanent impairment to require a physician to “adduce evidence” even if a psychologist with appropriate expertise was available to give evidence. Thus accident victims could no longer rely solely on expert opinion from psychologists. (see section 4.1 from The Ontario Regulation 381/03 made under the Insurance Act).

Catastrophic Impairment Determination

Accident victims relied on Psychologists' expertise in the diagnosis of serious mental disorders to confirm level of impairment and complete applications for Catastrophic Impairment determination from 1996 to 2010. This authority was removed by the Liberal government with no reason or basis. Only Neuropsychologists retained the ability to complete applications for accident victims with only brain injuries. In contrast, all physicians, regardless of specialty, remain legally able to complete catastrophic impairment applications for patients with mental and behavioural disorders. The requirement of a physician means that, for the injured person, the health professional with the most knowledge and expertise regarding their impairment may not be allowed to complete their application. This requirement creates additional costs in terms of requiring physician participation in the process even when it is not needed. (see Section 3.1(1) of the SABS providing the criteria for Catastrophic Impairment determination).

A Balanced Approach

Permitting reliance on a psychologist for Tort or Catastrophic Impairment determination for insured persons with mental disorders will provide improved access to diagnostic evaluations, differential diagnoses, and opinions of psychologists who are health experts with the appropriate training, methodology and expertise to correctly identify and rate impairments caused by mental disorders resulting from MVAs. At the same time, elimination of the requirement to engage a physician in these processes will reduce the number of experts involved and reduce costs associated with their involvement when it is duplicative and unnecessary.

Conclusion

The Ontario Psychological Association is committed to working with the Government to reduce auto insurance costs while creating more efficient, cost-effective access to expert, evidence-based differential diagnostic assessments and ratings for Tort and Catastrophic Impairment determination. We would be happy to provide more detailed information and analysis.

Appendix

Section 4.1 from The Ontario Regulation 381/03 made under the Insurance Act, Amending O. Reg. 461/96 provides a three page definition of permanent serious impairment of an important physical, mental or psychological function and sets the requirement for physician evidence. Section 4.1 states,

- (1) A person shall, in addition to any other evidence, adduce the evidence set out in this section to support the person's claim that he or she has sustained permanent serious impairment of an important physical, mental or psychological function for the purposes of section 267.5 of the Act.*
- (2) The person shall adduce evidence of one or more physicians, in accordance with this section, that explains,...*
- (3) The evidence of the physician,*
 - (a) shall be adduced by a physician who is trained for and experienced in the assessment or treatment of the type of impairment that is alleged; and*
 - (b) shall be based on medical evidence, in accordance with generally accepted guidelines or standards of the practice of medicine.*
- (4) The evidence of the physician shall include a conclusion that the impairment is directly or indirectly sustained as the result of the use or operation of an automobile.*
- (5) In addition to the evidence of the physician, the person shall adduce evidence that corroborates the change in the function that is alleged to be a permanent serious impairment of an important physical, mental or psychological function.*

Section 3.1(1) of the SABS provide the criteria for Catastrophic Impairment determination,

- (1) For the purposes of this Regulation, an impairment is a catastrophic impairment if an insured person sustains the impairment in an accident that occurs on or after June 1, 2016 and the impairment results in any of the following:...*
- (8) Subject to subsections (3) and (5), an impairment that, in accordance with the American Medical Association's Guides to the Evaluation of Permanent Impairment, 4th edition, 1993 results in a class 4 impairment (marked impairment) in three or more areas of function that precludes useful functioning or a class 5 impairment (extreme impairment) in one or more areas of function that precludes useful functioning, due to mental or behavioural disorder. O. Reg. 251/15, s. 3; O. Reg. 116/16, s. 1.*

The requirement that a physician conduct the examination (except when the impairment is only a brain injury is in Section 45,

- (1) An insured person who sustains an impairment as a result of an accident may apply to the insurer for a determination of whether the impairment is a catastrophic impairment. O. Reg. 34/10, s. 45 (1).*
- (2) The following rules apply with respect to an application under subsection (1):*
 - 1. An assessment or examination in connection with a determination of catastrophic impairment shall be conducted only by a physician but the physician may be assisted by such other regulated health professionals as he or she may reasonably require.*
 - 2. Despite paragraph 1, if the impairment is a traumatic brain impairment only, the assessment or examination may be conducted by a neuropsychologist who may be assisted by such other regulated health professionals as he or she may reasonably require.*