



**Citation: Hersi v. Definity Insurance Company, 2026 ONLAT 25-002421/AABS**

In the matter of an application pursuant to subsection 280(2) of the *Insurance Act*, RSO 1990, c I.8, in relation to statutory accident benefits.

Between:

**Hibaq Hersi**

**Applicant**

and

**Definity Insurance Company**

**Respondent**

**DECISION**

**ADJUDICATOR:**

**Timothy Porter**

**APPEARANCES:**

For the Applicant:

Ryan Naimark, Counsel  
Andrew Steinman, Counsel

For the Respondent:

Stephen Whibbs, Counsel

**HEARD: by Videoconference: December 1-10, 2025.**

## OVERVIEW

[1] Hibaq Hersi, the applicant, was involved in an automobile accident on January 31, 2020, and sought benefits pursuant to the *Statutory Accident Benefits Schedule - Effective September 1, 2010 (including amendments effective June 1, 2016)* (the “*Schedule*”). The applicant was denied benefits by the respondent, Definity Insurance Company, and applied to the Licence Appeal Tribunal - Automobile Accident Benefits Service (the “Tribunal”) for resolution of the dispute.

## ISSUES

- [2] The issues in dispute are:
- i. Is the applicant entitled to an income replacement benefit (“IRB”) in the amount of \$400.00 per week from March 20, 2023, to date and ongoing?
  - ii. Is the applicant entitled to interest on any overdue payment of benefits?
  - iii. Is the respondent liable to pay an award under section 10 of Regulation 664 because it unreasonably withheld or delayed payments to the applicant?
- [3] Resolved Issues: The applicant withdrew issues 1, 3, 4, and 5 as listed in the case conference report and order of June 9, 2025.

## RESULT

- [4] I find that the applicant suffers, on a balance of probabilities, a complete inability to engage in any employment or self-employment for which she is reasonably suited by education, training, or experience from March 20, 2023 to date.
- [5] Interest is due on delayed payments related to the income replacement benefit.
- [6] No award is due.

## ANALYSIS

### ***Post-104 Week Income Replacement Benefit (IRB)***

- [7] I find that the applicant suffers, on a balance of probabilities, a complete inability to engage in any employment or self-employment for which she is reasonably suited by education, training, or experience from March 20, 2023 to date.

- [8] To receive payment for a post-104-week IRB under s. 6 of the *Schedule*, the applicant must demonstrate on a balance of probabilities that they suffer from a complete inability to engage in any employment or self-employment for which they are reasonably suited by education, training, or experience.
- [9] The applicant submits that she suffers a complete inability to engage in any employment or self-employment for which she is reasonably suited by education, training or experience, as a direct result of the subject accident and due to chronic pain, concussion, headaches, anxiety and depression. The applicant relies on the testimony and reports of Dr. Ta, orthopaedic surgeon, Dr. Quinn, psychiatrist, Dr. Farhadi, neurosurgeon and Ms. Jessa, OT.
- [10] The respondent submits that the applicant is no longer eligible for the IRB benefit and relies on the reports and testimony of Dr. Curt West, neuropsychologist, Dr. Jeffrey Mendelsohn, otolaryngologist, Dr. Gilbert Yee, orthopaedic surgeon, Dr. Abdalhakim Mustafa neurologist and the report of Bruno Rositano, vocational rehabilitation specialist.
- [11] The respondent has paid an IRB in the post-104 period. There is no dispute regarding the amount of weekly IRB, only eligibility is in dispute between the parties. The respondent sent correspondence to the applicant on March 2, 2023, informing her that based on s. 44 assessments she was no longer eligible for IRB and the benefit would be discontinued as of March 19, 2023.
- [12] The applicant was focused on building a career as an early childhood educator. The applicant obtained a college diploma in early childhood education in 2015 and began to seek employment in the field; the applicant also, although not required to hold the positions she was interested in, obtained a university degree in the same field in June 2019. The applicant concurrently worked and attended university, which in my mind shows dedication, perseverance, stamina and fortitude. At the request of the respondent, a representative from the applicant's employer testified. Julie Iantorno, human resources advisor testified that the applicant started work on July 18, 2018, and her last day worked was January 30, 2020, and that her hours varied as she was classified as a casual employee who picked up shifts when full-time staff were sick or on vacation. Ms. Iantorno also testified that the applicant was an "excellent" worker and that her most direct supervisor related that the applicant "was one of her best relief workers". On a balance of probabilities, I find the applicant enjoyed her work and was a contributing member of the team.

[13] I find that the applicant has established a diagnosis of chronic pain syndrome. Dr. Hien Ta, chronic pain expert, conducted a s.25 assessment of the applicant on June 25, 2023, and diagnoses the applicant with chronic pain syndrome, post concussion syndrome, bi-lateral sacroiliac joint pain, right greater occipital nerve pain, sleep disturbance, sexual dysfunction, and cervicogenic headaches. Dr. Ta opines that since the subject accident the applicant has not been physically or mentally capable of doing the activities of an early childhood educator. Dr. Ta goes further stating the applicant suffers a complete inability to engage in any employment for which she is reasonably suited by training, education, or experience due to the injuries sustained in the subject accident. I am persuaded by the analysis throughout the report of Dr. Ta that the applicant meets the test for chronic pain outlined in the American Medical Association Guides to the Evaluation of Permanent Impairment, sixth edition. Dr. Ta summarizes that the applicant is excessively dependent on healthcare providers and family, suffers secondary physical deconditioning, has withdrawn socially, has failed to restore pre-injury function and has developed psychological sequelae after the initial incident. In my mind the chronic pain syndrome diagnosed by Dr. Ta links directly to his finding that the applicant suffers a complete inability to engage in any employment for which she is reasonably suited.

[14] I agree with Dr. Quinn that the applicant would have difficulty competing in the labour market. Dr. Joan Quinn, psychiatrist undertook a s. 25 assessment of the applicant on June 14, 2023. I provide a high weight to the report and testimony of Dr. Quinn because she clearly articulates the evidence of the applicant's restrictions. For example, Dr. Quinn relates that the applicant is restricted in comparison to her pre-accident life in that she only leaves her residence for medical appointments, which is corroborated by the respondent's extensive surveillance evidence. In addition, Dr. Quinn also describes the ways in which the applicant's impairments would negatively impact her ability to work. Dr. Quinn diagnosed the applicant with major depressive disorder, moderate, generalized anxiety disorder, somatic symptom disorder, with predominant pain, persistent, moderate; posttraumatic stress disorder, agoraphobia, panic disorder and specific phobia, vehicular. Dr. Quinn opines that the subject accident is the cause of the applicant's current presentation, and that the applicant suffers a complete inability to engage in any employment for which she is reasonably suited by training, education, or experience. Dr. Quinn goes further and outlines that the applicant struggles to cope with minor demands and deteriorates emotionally and psychologically when under moderate stressors that are typical in a work environment. Dr. Quinn concludes that the applicant, from a psychological perspective would have difficulty competing in the labour market and has lost her competitive advantage and earning capacity.

- [15] Dr. Farhadi's findings align with the findings of Dr. Ta. Dr. Francis Farhadi, neurosurgeon, assessed the applicant June 2, 2023. Dr. Farhadi diagnoses the applicant with post-concussive syndrome, query mild cognitive impairment, chronic myofascial pain of the cervical spine, chronic myofascial pain of the lumbar spine, benign positional vertigo. Dr. Farhadi opines that the subject accident is the cause of the symptoms the applicant is experiencing and that as a result of these symptoms the applicant has a complete inability to engage in any employment for which she is reasonably suited by training, education, or experience.
- [16] I agree with the applicant's assessors because the assessments by Dr. Ta, Dr. Quinn and Dr. Farhadi paint a clear and convincing picture of an applicant whose functional limitations are explained by their diagnoses of chronic pain or somatic symptom disorder along with other symptoms such as concussion, headaches, anxiety and depression. It is the resulting struggle with pain that negatively impacts the applicant's ability to concentrate, attend, participate, and produce in competitive employment.
- [17] The implication of the respondent's four assessors' findings, that only minor physical injuries exist more than five years post accident, is that the applicant's substantial and continuing pain complaints are not to be trusted. I disagree.
- i. Dr. Gilbert Yee, orthopaedic surgeon conducted a paper review report on February 27, 2023, having previously seen the applicant for a s. 44 assessment for catastrophic impairment. Dr. Yee opines that from an orthopaedic perspective the applicant does not suffer a complete inability to engage in any employment for which she is reasonably suited by education, training or experience. In my mind, Dr. Yee's report is extremely light on analysis; there is a review of documentation and answers to general questions without any of the analysis that would provide confidence that the opinion is based on evidence. In addition, in my mind the incorrect assessor was selected by the respondent; the applicant's claim is based on chronic pain, Dr. Yee testified that he does not assess chronic pain, therefore his opinion carries no weight with regard to the applicant's chronic pain complaints.
  - ii. Dr. Kurt West, neuropsychologist assessed the applicant on September 20 and October 4, 2022, and issued his report February 27, 2023. I provide the testimony and report of Dr. West a diminished weight because he offers an opinion on the capability of the applicant while acknowledging that his test results are invalid. Dr. West opines that the

applicant does not, from a psychological perspective, suffer a complete inability to engage in any employment for which she is reasonably suited by education, training, or experience. This opinion is offered after identifying that he has validity concerns on most if not all tests he administered. Dr. West's written response to most questions of the respondent result in a response of "I am unable to comment due to the aforementioned validity concerns". In my mind, if invalid test results cannot be relied upon to answer the referral questions they cannot be relied upon to make the ultimate assessment that the applicant does not suffer a complete inability.

- iii. Dr. Abdalhakim Mustafa, neurologist assessed the applicant November 20, 2023, in a s.44 assessment. Dr. Mustafa diagnoses the applicant with the following injuries as a direct result of the subject accident; concussion with post-concussion syndrome, post-traumatic chronic daily headaches and query mild cognitive impairment. Dr. Mustafa opines that the applicant does not suffer a complete inability to engage in any employment for which she is reasonably suited by education, training or experience. I assign a lesser weight to the report and testimony of Dr. Mustafa because the doctor did not seem to fully understand his role as assessor of employability, testifying that he is not a vocational assessor and cannot comment on ability to work; and while he opines that there is nothing from a neurologic perspective stopping the applicant from working he testified that she would have trouble and may need modifications such as frequent rest breaks and blue light filters in some of the identified alternate roles, which in my mind is outlining, at a minimum, that the applicant is less competitive for employment.
- iv. Dr. Jeffrey Mendelsohn, otolaryngologist, assessed the applicant December 2, 2023. Dr. Mendelsohn undertook a bedside otolaryngologist examination and did not have a specific otolaryngological explanation for the applicant's dizziness. Dr. Mendelsohn testified that the applicant's dizziness was both central, associated with the brain, and peripheral, associated with the inner ear, and recommends vestibular testing. In my mind, Dr. Mendelsohn is recommending more formal otolaryngological testing because his bedside examination is not sensitive or accurate enough; something he acknowledged during testimony. I provide a lesser weight to Dr. Mendelsohn's report because his bedside test was insufficient to provide an accurate opinion on the question of the applicant's injuries or capability with relation to post-104 work.

[18] The quality, utility, and accuracy of the tests administered by Mr. Rositano is unknown, he was not called as a witness and his report is untested. The respondent has proposed three roles in the alternative to the early childhood educator role. Bruno Rositano, vocational rehabilitation specialist, assessed the applicant on September 9, 2022, and issued his report on February 27, 2023. Mr. Rositano did not assess the applicant's physical capabilities to perform proposed roles but maintains that documented medical problems were considered when selecting suitable roles. Mr. Rositano conducted a number of tests to ascertain the applicant's skill level against various aptitudes required for proposed roles. Mr. Rositano proposes three roles that the applicant would be capable of, matching her education, training and experience with her performance on cognitive, perceptual, and psychomotor aptitudes. Mr. Rositano notes that the applicant completed testing in a slow manner and in general obtained scores across the board that categorized her in the labouring or elemental type occupations. Mr. Rositano's testing across the 9 aptitudes shows that the applicant met the occupational aptitudes in 2 areas, exceeded the requirements in 6 aptitudes and scored under the required aptitude in 1 area. The roles of telemarketer, telephone sales agent and telephone solicitor were proposed as roles in the alternative to early childhood educator.

[19] Generally, Tribunal members have defined what constitutes reasonably suitable employment as "employment in a competitive, real-world setting, taking into account employer demands for reasonable hours and productivity. The work should also be comparable in terms of status and wages"; see *Traders General Insurance Company v. Rumball*, 2025 ONCA 656. I agree and apply this principle to this case.

[20] The roles proposed by the respondent are not comparable in terms of status and wages. The roles of telemarketer, telephone sales agent and telephone solicitor do not require post-secondary education whereas the applicant has diplomas and degrees. For example, the average wage of the roles proposed is \$17.00 per hour whereas the applicant had obtained an average wage of \$18.59, almost 10% higher. In addition, I question the suitability of these roles against the applicant's complaints and identified skill level. For example, all three roles exist in a highly competitive, fast paced environment which in general matches remuneration with accomplishment and the applicant has identified a slower pace as an obstacle to employment; the roles require the use of the telephone and the applicant has identified tinnitus as an ongoing symptom; the roles require work with computer screens and the applicant has identified visual issues related to her diagnosed concussion; the roles require a generally sedentary position physically linked to a desk/computer and the applicant has identified requiring

regular movement and repositioning due to pain, this may not be impossible in these positions but may present need for accommodation which would lower her competitive standing.

[21] I turn to the assessment by Ms. Farhana Jessa, occupational therapist (“OT”) who developed tests specifically related to the aptitudes and skills required to successfully work in the roles proposed by Mr. Rositano. The applicant underwent a s. 25, two-day situational assessment with Farhana Jessa, OT on May 30 and 31, 2023. I place a very high weight on the report and testimony of Farhana Jessa because of her detailed preparation for the situational assessment, development of activities that aligned with the functional roles outline in the functional abilities evaluation and for the alternate proposed roles for the applicant and finally, the clear communication of Ms. Jessa along with her open, non-defensive testimony give me confidence in the approach and her observations of the applicant. For example, I draw particular attention to Section 1, part 1, table 1 of the assessor’s report, the symptom and activity behaviour table. The table demonstrates that the applicant was assessed for 4 hours and 17 minutes and took 1 hour and 32 minutes of breaks over that time which is more than 35% percent of the observation time. Ms. Jessa outlined that she looks to the functional abilities evaluation and proposed alternate roles, corresponds the proposed roles with the National Occupation Classification system, which outlines employment roles in Canada, the associated duties as well as the aptitudes, interests and functions required in the role. Ms. Jessa takes the duties, aptitudes, interests and functions and corresponds these to assessment tasks to align measurement of performance against the job demands of the proposed roles.

[22] In my mind Ms. Jessa’s tests are more defined and demonstrative of the occupational skills required and the observations more voracious than those of Mr. Rositano. Ms. Jessa developed tests to explore the applicant’s abilities in the areas of visual discrimination, verbal sequencing, visual motor coordination, numerical perception, fine motor coordination, manual dexterity, form perception, spatial perception, alternating attention, and developed work simulations; the applicants performance was then graded as to their appropriateness in the workplace on a 5 point scale with ‘1’ representing work behaviours that are completely unacceptable and ‘5’ representing work behaviours which are assessed as completely acceptable in competitive employment. In the areas of decision making, following directions and two step instructions, communication, attention span, flexibility, ability to work independently and reaction to repetitive work the applicant was assessed as a ‘2’ or mostly unacceptable for competitive employment; almost 45% of the categories were scored as Mostly unacceptable,

11% as completely unacceptable and 27% barely acceptable. In summary Ms. Jessa relates that the applicant had a work rate well below the competitive level and that she required gradually increased supervision as the assessment progressed.

- [23] I find that the applicant has demonstrated, on a balance of probabilities, that she suffers from a complete inability to engage in any employment or self-employment for which she is reasonably suited by education, training, or experience from March 20, 2023, to date.

### ***Interest***

- [24] Interest applies on the payment of post-104 IRBs from March 20, 2023, to date, pursuant to s. 51 of the *Schedule*.

### ***Award***

- [25] The applicant sought an award under s. 10 of Reg. 664. Under s. 10, the Tribunal may grant an award of up to 50 per cent of the total benefits payable if it finds that an insurer unreasonably withheld or delayed the payment of benefits.
- [26] The applicant submits that the respondent's treatment of the applicant merits a s.10 award of 50% plus interest as they have been excessive and immoderate. The applicant points to the respondent's termination of IRB and how they went about it; selecting a biased assessor in Dr. West, a problematic assessor in Mr. Rositano and an orthopaedic assessor that doesn't assess chronic pain, central to the applicant's claim, who conducted a paper review. The applicant also points to excessive surveillance that was not provided to assessors to comment on.
- [27] The respondent submits that it is well settled that they are entitled to select the assessors that conduct insurer's examinations as well as conduct surveillance and that their handling of the claim was well within the letter and spirit of the *Schedule*.
- [28] I see no evidence of the respondent behaving in a manner which could be characterized as unyielding, unreasonable or vexatious.
- [29] The number of insurer's examinations appears driven largely by the benefit entitlement claims of the applicant and therefore I do not see evidence of behaviour that is excessive.

[30] Finally, to the question of immoderate; the surveillance of the applicant and the switching of insurer's assessors between entitlement questions has been raised as immoderate behaviour. The surveillance provided a great deal of fodder for the applicant's submissions and examination of witnesses, showed very little and seemed to corroborate the reports of the applicant, it was more surveillance conducted than I have seen in more detailed and lengthy disputes which causes me some pause, however, it is well settled that the insurer may conduct surveillance and I do not see sufficient evidence that the amount of surveillance conducted is immoderate. The applicant's suggestion that the insurer switched assessors to obtain an opinion that they were seeking is suggested but not proven. The respondent chose to switch assessors between a series conducted in 2022 to this series completed in 2023; however, it is well settled that the respondent may select assessors of their choosing. I have not been pointed to any other specific evidence that, on a balance of probabilities, I would see as immoderate.

[31] No award is due

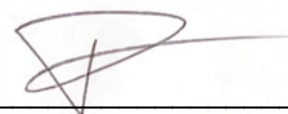
#### **ORDER**

[32] The applicant suffers, on a balance of probabilities, a complete inability to engage in any employment or self-employment for which she is reasonably suited by education, training or experience from March 20, 2023 until the date of this decision.

[33] Interest is due on delayed payments related to the income replacement benefit.

[34] No award is due.

**Released: March 5, 2026**



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**Timothy Porter  
Adjudicator**