

**Automobile Injury Appeal Commission
Province of Saskatchewan**

Citation: *T.R. v. Saskatchewan Government Insurance*,
2003 SKAIA 002
Date: 20030717
File: 001 of 2003

BETWEEN

T.R., Applicant

and

Saskatchewan Government Insurance, Respondent

Appearances:
T.R. and T.O., For the Applicant
John Schmidt and Lynn Henderson, For the Respondent

Before: **Ann Phillips, Q.C., Chair**
Beverley Cleveland, Commission Member
Mukesh Mirchandani, Commission Member

**THIS DECISION HAS BEEN EDITED TO PROTECT THE PERSONAL AND HEALTH
INFORMATION OF INDIVIDUALS BY REMOVING PERSONAL IDENTIFIERS AND
OTHER IDENTIFYING INFORMATION.**

Heard at Saskatoon, Saskatchewan
June 17, 2003

DECISION

[1] T.R., the Appellant, appeals a decision of Saskatchewan Government Insurance (SGI) dated January 27, 2003.¹ This decision terminated all benefits to which she was entitled under Part VIII of *The Automobile Accident Insurance Act* (“the Act”) because she had advised SGI on July 25, 2002 that she would not attend the recommended tertiary treatment program at FIT for Active Living in Saskatoon.

[2] The legal foundation of SGI’s decision is section 183 of the *Act*:

“The insurer may refuse to pay a benefit to a person or may reduce the amount of a benefit or suspend or terminate the benefit, where the person...

- (e) without valid reason refuses, does not follow or is not available for treatment recommended by a practitioner and the insurer...
- (f) without valid reason prevents or delays recovery by his or her activities;
- (g) without valid reason does not follow or participate in a rehabilitation program made available by the insurer;”

[3] The issue before the Commission is whether, under section 193(7) of the *Act*, it should set aside SGI’s decision, confirm it, vary it or make any decision that SGI is authorized to make under Part VIII of the *Act*.

[4] The benefits that the Appellant wished to continue were payments for treatments from Jeff Brousseau, a Saskatoon physiotherapist.

[5] The onus is on SGI to show that benefits are no longer payable: *Donen v. SGI*, (1998) (Barclay, J.) [1998] TWL QB98224.

¹ Strictly speaking, the Appellant had appealed a decision dated October 8, 2002 which had proceeded to mediation (unsuccessful) in November. She had been advised of her right to appeal to this Commission and did so January 6, 2003. SGI’s October 8, 2002 letter in fact contained no “decision”, stating ... “as there is no evidence that you have declined tertiary treatment and no decision to terminate your benefits, this is not an issue that can be considered at this time.” However, both parties proceeded on the basis that the issue between them was SGI’s refusal to continue to fund physiotherapy treatments by Jeff Brousseau and the Appellant’s refusal to comply with its requirement that she go on to a tertiary treatment program as recommended on May 17, 2002.

FACTS

[6] The Appellant was injured in a rear-end accident November 30, 2001. Before the accident, she had serious injuries in 1972 and 1974: pelvic fracture with four months in hospital; T6 and T7 compression fractures which kept her in a wheelchair for several months. She had shoulder surgery in 1999. While these injuries caused her pain before the accident, the level of symptoms was stable and manageable. The accident increased pain in all previously injured areas, and produced anger, frustration and depression.

[7] Initially, the Appellant was treated at Armstrong's Physiotherapy Clinic about three times a week from January 20 to May 1, 2002 (42 sessions in all). She had chosen Armstrong's from a list of SGI approved physiotherapy clinics on the grounds of convenience of location. She testified that before the November, 2001 accident, she had put herself on a waiting list for treatment by Jeff Brousseau, another Saskatoon physiotherapist not on SGI's list, in connection with earlier recurring problems in her back resulting from the injuries in the 1970's. She discussed this plan with her treating physiotherapist at Armstrong's, Randall Cyrenne, who she said endorsed her choice of Brousseau. Cyrenne provided SGI with a Progress Report dated March 11, 2002, which indicated she was making good progress. She reached the top of the waiting list with Brousseau April 23. However, she continued to see Cyrenne for a few appointments after this.

[8] In May 2002, she was evaluated by a Multidisciplinary Assessment Team comprising M. Opdahl, M.D.; K. Fenrich, DC; B. Mackie, PT; J. Arnold, Ph.D psychologist; F. Hogg, OT and G. Clark, DC, Chair. They produced a 19 page report dated May 17, 2002. The Appellant, in the meantime, continued treatment with Brousseau, whom she felt had made an immediate difference: she reported she had recovered to 60% to 70% of her normal pre-MVA status, and expressed great confidence in him.

[9] The secondary assessment made detailed recommendations which will be quoted extensively as it forms the basis for SGI's decision to require her to attend for tertiary care.

Bottom Line

Problems Related to Injury

- Mechanical pain/dysfunction of all three spinal regions – mild

- High level of perceived disability, symptom behavior, and inconsistent effort are present.
- [The Appellant] reached a sedentary to light material handling level with testing, however, did not reach objective end points. It is therefore difficult to determine accurately her disability for house and yard, recreation and activities of daily living.
- She has extensive fear of re-injury, depression, suicidal ideation, anger and frustration. Some of this is related to injury and some to the perception of poor management by the insurer. Pain management and mood management are critical.

Problems Likely Related to Injury

- Exacerbation of pre-existing left shoulder and upper back discomfort.
- Development of depression related to ongoing pain and decreased function.

Problems Unrelated to Injury

- Asthma – presently under good control.
- History of bulimia/chronic pain syndrome which had been managed to some degree before the present accident.
- Multiple previous operations for endometriosis.
- Previous severe injuries in 1972 and 1974 resulting in disability for physical and psychosocial reasons.
- Chronic left shoulder pain requiring excision of the distal clavicle in 1999.

Safety Issues

- There are no concerns regarding cardiorespiratory contraindications to active rehabilitation as her asthma appears to be under good control. This requires monitoring however.

Opinions and Recommendations

- Medical: [The Appellant] continues to have significant myofascial pain that may benefit from a low dose tricyclic anti-depressant such as Nortriptyline 10 to 50 mg at h.s. If she could tolerate the side effects, this may be beneficial for pain levels and improve her poor sleep. Unfortunately, she was not able to tolerate Celexa due to side effects. She did state in the past she was able to take Prozac for approximately six months and other than very dry mouth she was able to tolerate the medication. If ongoing depression is occurring, Prozac could be considered as an alternative to Celexa. She needs further reassurance that there are no sinister underlying features in her current presentation. She did express concern as to whether an MRI obtained out of province would be a good idea and reassurance was given this would not be helpful. Dr. Large continues to monitor her other medical conditions including asthma, hypothyroidism and menopause.
- Biomechanical: [The Appellant] should undergo a short course of biomechanical restoration to the impaired areas of the thoracic, cervical and lumbar spine. It should be noted this should not be the mainstay of the rehabilitation program as the findings are very mild.
- Conditioning:
Regional Conditioning Required: Yes
Global Strength Conditioning Required: Yes
Functional Conditioning Required: Yes
- Return to Function: [The Appellant] should be encouraged to return to her pre-injury activities on a gradual scale.
- Psychological: She should be seen multiple times per week by a sympathetic and understanding psychologist, who needs to cultivate trust in the first instance then help guide her toward understanding of possible and reasonable outcomes both in terms of symptom

resolution and insurer responsibility. All caregivers will need to be sensitive to her concerns and be prepared to sensitively answer questions and address concerns. The psychologist will need to consult to other team members frequently.

It is likely there will be some controversy regarding “buying in” to the rehab model, and this may require discussion with the client, her husband/family, insurer and possibly her lawyer prior to the program’s formal commencement. It is suggested rehab be offered as a way of improving things, with the need for additional discussions regarding adjudication issues to remain among the client, her representatives and insurer following a demonstration of maximal functional improvement. The rapport between the client and program cannot be over-emphasized in this regard.

- Client Education: [The Appellant] should be familiar with the stages of tissue healing as well as the appropriate treatment for her particular stage of 5 months post injury. Further education needs to be provided to [the Appellant] particularly as it relates to a chronic pain syndrome, the principles of active rehabilitation and hurt versus harm issues. Further reassurance that there is not a sinister underlying cause for her neck pain may be useful. Self-management techniques need to be covered to allow the client to tolerate probable symptoms in the future without necessarily relying on practitioner applied methods.
- Issues Requiring Input of Insurer: The assessment team is concerned this client has had a chronic pain syndrome for approximately 30 years and the recent MVA has aggravated her symptomatology. It is likely this client will continue to have long term discomfort even after her rehabilitation program. If there is ongoing pain after an appropriate treatment program, the insurer will need to adjudicate on the level of responsibility involved related to her most recent MVA. The treatment team may require assistance from the insurer to understand the level of responsibility the insurer is willing to take.

Level of Care Required

- Tertiary.
- Practitioner responsible: Dr. B. Large
- Time frames for treatment: 8 to 12 weeks.
- Comments: Ideally this client would benefit from daily multi-hour a day treatment that will need to be very gradually progressed in terms of the biomechanical care and conditioning components. Psychological services are imperative in order to maximize this client. The treatment team needs to be cognizant of the psychological recommendations of this report.”

[10] On May 17, 2002, Patricia Schwartz of SGI, the Appellant’s second personal injury representative, summarized the treatment plan contemplated for her as follows:

“Tertiary care for 8 to 12 weeks including the following components:

- i) Biomechanical restoration to the impaired areas of the thoracic, cervical and lumbar spine;
- ii) Conditioning; regional, global strength and functional conditioning;
- iii) Return to function;
- iv) Psychological.

Your treatment plan as outlined above, will be fully funded by SGI. Please meet with your Designated Primary Practitioner² to discuss your future treatment program as soon as possible.

² Dr. Barbara Large.

Please note that given the above recommendations of the Secondary Team SGI will no longer be in a position to fund further treatments with J. Brousseau.” (emphasis added)

[11] This prompted the Appellant into a course of action that eventually saw her obtain reports from three physicians endorsing her continuing treatment with Jeff Brousseau. (She continued to be treated by Brousseau, at her own expense.) The first was a June 2 letter from her family physician, Dr. Large, which was forwarded by SGI to Dr. Howlett for review. It stated:

“[The Appellant] has asked me to contact you regarding her physiotherapy program. She tells me that she has previously participated in an intensive exercise program which she found ineffective. She feels that previous programs very similar to what was suggested at her Secondary Assessment have actually caused her more, rather than less, pain. She has been improving significantly since she began seeing Jeff Brousseau for ongoing physio and would like to continue getting her physio via Jeff. If you require further information, please contact me.”

[12] Dr. Howlett’s letter of June 11, 2002 stated:

“I would like to preface my comments with the observation that the current disability that is claimed by the customer seems to be markedly out of proportion to the severity of the motor vehicle accident. There is evidence of a pre-existing chronic pain syndrome and part of this is ongoing depression which is being experienced by the customer.

I would tend to endorse the recommendations of the Secondary Assessment Team. This customer has failed at primary physiotherapy at one occasion already. When the customer was being attended by Mr. Randall Cyrenne at Armstrong’s physical Therapy, he noted that the customer was doing extremely well and was having lots of “good days”. Suddenly and unexpectedly (sic), the customer discontinued primary physiotherapy at the Armstrong’s clinic and took a different direction with another physiotherapist.

I am respectful of the customer’s family physician’s opinion, but the reported significant improvement of the customer since attending with Mr. Brousseau is not particularly reassuring, given the previous experience at Armstrong’s Physiotherapy.

We rely on multi-disciplinary assessment teams to give us an objective appraisal of the customer’s situation. I think the secondary assessment was fair and very sensitive to the needs of this individual. I would suggest that the customer be offered tertiary-level rehabilitation as prescribed. All involved must remember that the motor vehicle accident of November 2001 most likely plays a very small part in this customer’s overall condition. The emphasis should be rehabilitation to achieve pre-accident level of function and symptomatology. The input of her family physician may be required to determine this element.”

[13] At about this time, the Appellant was assigned to yet another personal injury representative, Meladee Erlandson. The lack of continuity did not work well for this customer. There was miscommunication over funding massage treatments and physiotherapy treatments

and how each of these fit into the treatment plan. Ms. Erlandson did agree to fund physiotherapy treatments with Brousseau up to June 20, 2002.

[14] The Appellant began an internal appeal process with three objects in mind: to challenge the plan for resisted exercise in the tertiary program, to postpone this program, and to continue physiotherapy treatments with Brousseau.

[15] The Appellant also provided SGI with a letter from Robert Bosch, a registered massage therapist who had treated her on three occasions beginning May 25, 2002. He concluded that she had hypermobility of the upper cervical spine, especially surrounding the OA joint. He observed “at this time [the Appellant] does not respond to weight training or vigorous exercise”, but did not state the basis for this conclusion.

[16] She also went for an MRI of her cervical spine in Calgary.³ This showed a mild posterior disc bulge at C4/5, which does not impinge on the adjacent spinal cord or cause central canal stenosis, as well as mild loss of the normal cervical lordotic curve. The study was otherwise normal.

[17] On August 27, 2002, Dr. Howlett reviewed the MRI report, Jeff Brousseau’s report of July 23, 2002 (which also pointed to a problem with resisted exercises) and the Bosch report. Dr. Howlett stated:

“The MRI was normal. There is no indication of a neural cause for this customer’s symptoms.

The Secondary Assessment Team identified many areas that needed to be assessed with this customer. These areas include biomechanical restoration, conditioning, psychological support, as well as client education. I appreciate that she has had subjective improvement, as noted by her physiotherapist, but given there are many issues to be addressed, the customer is best served in a tertiary environment.

After reviewing the new medical information, in my professional opinion, there is no reason why the customer should not proceed to a tertiary level care.”

[18] SGI advised the Appellant August 29, 2002 of the review by the medical consultant, stating that:

“the direction we take on an issue is provided by the guidance of our medical consultants.

³ SGI subsequently funded this.

Therefore, in light of the foregoing, we will be contacting “FIT for Active Living” to advise them of the same, and they in turn will be in touch advising you of the appointment dates and times for your Tertiary Assessment.”

[19] The letter also warned of the consequences of refusal to attend the tertiary level program including termination of benefits, and noted the importance of regular attendance and full participation.

[20] The Appellant requested a copy of the medical consultant’s opinion⁴ and applied to SGI for an internal review of the decision.

[21] The review, set out in the October 8, 2002 letter mentioned earlier, summarized the facts, reports and correspondence. It did not really deal with her complaint that her physiotherapy treatments by Jeff Brousseau should be covered. She had stated:

“Since being treated on April 23, 2002, by Jeff Brousseau my pain has been lowered and I feel his treatments should be covered since nothing else (other physio, exercise therapy, acupuncture) has really worked to get at what soft tissue damage remains... My inquiry into using Jeff Brousseau was answered with an automatic refusal to (sic) reason given is that he is not on secondary list for SGI’s physiotherapists. Since my first physiotherapist told me that Jeff Brousseau is the best in our city, why would I go anywhere else? I have only one neck! He has been able to do work on the hyoid bone and deep muscles in the occipital region that no one else is qualified/will attempt and is slowly making progress to work on the vertebra and muscles which are compressed and tight.”

[22] The letter did deal with massage therapy treatments for a pre-existing hip condition at Armstrong’s Physiotherapy Clinic⁵ and gave a rationale for declining to cover massage therapy treatments (which it faxed to the Appellant and “Dr. Jeff Brousseau”):⁶

“SGI has, in consultation with various health care professionals and under the advice and recommendation of SGI’s Medical Advisor, Dr. Flotre, developed a treatment protocol. This protocol outlines for the Injury Representative recommended treatments, procedures and time lines to ensure that the customer’s injuries are being properly attended. Significantly, in developing this protocol, SGI has been advised by the health care profession that long term reliance upon passive treatment is not recommended. Although it is recognized that these type of treatments can provide individuals with short term relief from accident related complaints, they are of minimal benefit for a long term recovery. Instead, individuals are encouraged to pursue a more active treatment regime. Therefore, we agree with the decision to cover only 14 massage treatments at \$25.00 for one half hour.”

⁴ SGI provided this

⁵ The resolution of these issues in the letter, while perhaps not satisfactory to the Appellant, are not within the scope of the Commission’s review on this hearing.

⁶ From the context, there is definitely confusion between the physiotherapy and the massage treatments.

[23] The letter went on to say:

“As there is no evidence that you have declined tertiary treatment⁷ and no decision to terminate your benefits, this is not an issue that can be considered at this time.”

[24] Following this letter, the Appellant continued to attend Jeff Brousseau for physiotherapy, at her own expense. She also saw Dr. Large on again in August 20, 2002, Dr. R.C. Anderson (whom she testified was a specialist in internal medicine) on September 3, 2002 and October 7, 2002, and Dr. Farhad Pirouzmand, a neurosurgeon, on November 6, 2002. Dr. Anderson’s letter of March 19, 2003 said that he had been consulted on pain management for her injury. He referred to the slow but steady improvement in her general range of motion that she felt she had made by attending Jeff Brousseau. He noted:

“We discussed the problem of exacerbation of pain in shoulder girdle musculature and the chronic pain of whiplash. She was advised in the use of analgesics, stress management, the mechanics of lifting, vacuuming, sitting and standing over long periods, as well as the concerns involved in repetitive motion activities. She was advised to wear a soft collar especially when driving during exacerbation of pain...

Medically I feel this lady should continue with physical therapy over the long term and that her rehabilitation may well be prolonged.”

[25] Dr. Pirouzmand’s letter of November 6, 2002 reported her as having stated that she had started:

“another course of physiotherapy in April which has significantly helped to return her pain from a scale of 10/10 to about 1-2/10. Currently she still has some limitation of her daily function due to chronic annoying baseline neck pain which sometimes increases and resulted in ascending bi-occipital and bifrontal headaches. She also had limited forward flexion of her neck. Sudden and quick turning of her neck reproduces her pain. She only takes up to two Tylenol per day for her pain...

On her examination, she does not seem to be in a lot of pain. Her cervical range of motion is fairly good although she is cautious and slow during these maneuvers. She has some mild subjective neck pain with no spasm. Her Spurling’s sign is negative...

The report of her latest cervical spine MRI confirms mild loss of normal cervical lordosis around the C4-5 region with mild posterior disc bulge at this level. Otherwise, there is no evidence of mechanical instability including the result of previous dynamic cervical spine x-ray.

This young patient has presented with chronic neck pain after a whiplash associated injury to her neck about one year ago. Fortunately, her symptoms have improved recently with aggressive

⁷ Although in fact she had on July 25, 2002.

physiotherapy. I have gone over the cervical spine MRI with the patient and explained most of the above findings to the best of my abilities. It is very difficult to correlate the MRI findings with her symptoms although I think most of her symptoms are related to the soft tissue injury at the time of the accident. I think the main stay of treatment for her should be continuous long term physiotherapy and rehabilitation with aim towards returning to her previous level of functioning. Overall, considering the recent improvement in her symptoms, I think she has a good chance to continue to maintain and hopefully improve her level of functioning with recommended therapy. At this point, there is no need for any invasive intervention including operation for her symptoms. The patient seems to be satisfied with my explanation.”

[26] On January 14, 2003, Jeff Brousseau wrote that when he first saw her in April, 2002:

“She was receiving physical therapy and any attempt at exercise would result in significant flaring. She started treatment at this clinic and for approximately the first three or four months would achieve symptomatic relief for close to a week but then her symptoms would recur. This has gradually improved to the point that she states she is generally feeling better and we have initiated a series of neuromuscular control exercises in order to de-facilitate tight musculature that is responsible for increased symptoms, faulty biomechanics, and decreased function. Her symptoms still flare when she performs excessive activity for her present functional ability. However, she is noting that her level of function and ability to perform activities has been increasing over time without the flare-ups that she was experiencing previously.

Since she is gaining neuromuscular control, we are gradually increasing the aggressiveness of her exercises in order to have a further increase on function. We will continue until we reach a point where we have optimized function.”⁸

[27] A new report from Dr. Large dated February 27, 2003⁹ arose from a request by the Appellant to clarify the earlier letter to SGI. Dr. Large stated that she had seen the Appellant on May 27 and August 20, 2002 and February 27, 2003. Much of her letter concerned the dispute with SGI. She concluded:

“subjectively, [the Appellant] appears to be improving albeit slowly with the therapy she is receiving from Jeff Brousseau. Given this improvement, it would seem reasonable to me for her to continue with her current form of therapy.”

[28] Jeff Brousseau testified by telephone. From initial efforts to recover her posture, leading to improvement in motion and pain, he was working to recover soft tissue and joint range of motion. He will be proceeding to global strengthening, which she needs now, but was not ready for earlier, and gentle exercises. Although he is qualified in spinal manipulation, he is not providing it to her, nor does he intend to: it is not appropriate in her case. He has been treating her about once a week from late April, 2002 till January-February, 2003, then twice a week to

⁸ This was filed by the Appellant, and referred to in the hearing, but was not formally made an exhibit.

⁹ This was filed by the Appellant, and referred to in the hearing, but was not formally made an exhibit.

the end of May (with better results), and since then has been treating her about three times every two weeks. He said that although physiotherapy treatment programs are “time driven” in the sense that benefits tend to maximize after a certain time, there are some people (1½% of the population) who are outside the bell curve of two standard deviations from normal.

[29] The Appellant testified as to the reasons why she rejected tertiary treatment. She was advised that the FIT program had one individual with Part A qualifications, and no one with Part B qualifications. The individual with Part A did none of the hand-on work herself. She contrasted this unfavourably with Brousseau’s qualifications, both Part A and Part B training. However, Brousseau himself testified that the Part A and Part B training relates to manipulative therapy, and he performs none of this on the Appellant, as he does not believe it appropriate in her case.

[30] She also referred to the brutality “of her secondary assessment program” and the prospect of more of the same in the tertiary plan. She referred to the experience of a neighbour who had had, she said, increased problems as a result of the tertiary program.

[31] From her testimony, it appears that the Appellant accepts that returning to her pre-accident level of functioning is all that can be achieved, does not expect the chronic pain syndrome experienced for about 30 years will go away, and is taking responsibility for home exercise under Brousseau’s direction.

DISCUSSION

[32] To sum up, there was medical report evidence from three physicians, all subsequent to SGI’s decision on the physiotherapy, that her treatment by Brousseau was effective in improving symptoms and functioning, and should be continued. Dr. Large’s earlier letter of June 2, 2002, had been considered by SGI, but had perhaps been discounted because it was written not long after the Appellant began treatment with Brousseau. It is clear from these reports, from the Appellant’s testimony, and from the testimony of Jeff Brousseau that progress is being made.

[33] Against this is: SGI's treatment protocol, referred to in the October 8, 2002 letter, but of which there was no evidence before us, with "recommended treatments, procedures and time lines" for SGI's injury representatives.

[34] Dr. Howlett's reports of June and August, 2002. The former refers to her "failure at primary physiotherapy", which the Appellant disputes. We found her explanation, that she had pre-arranged treatment with Brousseau, a fact which was not available to Dr. Howlett, credible. Dr. Howlett's concern that she would fail again was not realized.

[35] In the Commission's opinion, SGI's decision (and the Commission stresses that there is evidence before us that SGI did not have in October, 2002 that the treatment is continuing to be effective) has also not taken into account how well the physiotherapy treatment provided by Brousseau fits into the recommendations made in the secondary assessment. In particular, the Appellant trusts him and is "buying in" to his rehabilitation model; she is taking his advice and apparently following his recommendations on exercise. He has provided regional conditioning and is moving on to global strength conditioning, all of which were recommended in the secondary assessment.

[36] After this appeal was launched, SGI again reviewed the file and allowed payment for physiotherapy treatments up to the letter date of January 27, 2003, while terminating other benefits for failure to attend tertiary treatment.

[37] In the Commission's opinion, the Appellant's stated reasons for rejecting the tertiary program are insufficient. The treatment plan as outlined in the secondary assessment report seems to us reasonable in her circumstances. We note its recommendations for biomechanical restoration, conditioning (regional, global strength, and functional), psychological treatment by a person she can trust, "buying in" to the rehab model, and management of her chronic pain syndrome. We agree that her active participation is much preferable to passive acceptance of treatment. However, given the "no-alternative" choice between the particular physiotherapy treatment with Brousseau and the tertiary program, which is what we think happened, we cannot say her refusal was "without valid reason".

SUMMARY

[38] The Commission has found that SGI was clearly wrong in insisting on its tertiary program to the exclusion of the physiotherapy, and that the Appellant did not have a valid reason for rejecting the tertiary program except for the fact that an unacceptable choice was placed before her.

[39] At this stage, it seems unlikely to the Commission that without Brousseau's participation or involvement, she would derive any benefit from the tertiary program. We recommend to the parties that they jointly consider, in conjunction with Jeff Brousseau, a tertiary program in which Brousseau is involved. We do not know if this is feasible. However, we do not propose to order SGI to pay for physiotherapy for an indefinite period, especially if the Appellant continues to reject the tertiary program. If so, she will have to choose between participation in the program, or personally paying for physiotherapy (and other benefits to which she may be entitled).

[40] Our decision is:

[41] SGI's decision of January 27, 2003, terminating benefits for failure to attend the tertiary program is set aside. Its decision to pay for physiotherapy treatments up to that date is upheld, and extended to the date of the hearing, June 17, 2003. (amount to \$1,280.)

COSTS

[42] The Appellant is entitled to her costs of this hearing to a maximum of \$2,500, including the application fee, travel expenses to and from the hearing at 0.3503 cents per kilometre, the reasonable expense (if any) of having Jeff Brousseau testify by telephone, and the expense (if any) incurred by her in procuring the reports of Jeff Brousseau of January 14, 2003, Dr. Large of February, 2003 and Dr. Anderson of March, 2003,¹⁰ to a maximum of \$286 per report. Dr. Pirouzmand's report of November, 2002 to Dr. Large, having been obtained before the appeal was launched, will not be included.

¹⁰ Section 169 of the *Act* and section 76(1) of the *Personal Injury Benefit Regulations*.

Dated at Regina, Saskatchewan, on July 17, 2003.

Ann Phillips, Q.C., Chair

Beverley Cleveland, Commission Member

Mukesh Mirchandani, M.D., Commission Member