

**Automobile Injury Appeal Commission  
Province of Saskatchewan**

**Citation:** *I.U. v. Saskatchewan Government  
Insurance, 2003 SKAIA 016*  
**Date:** 20030926  
**File:** 008 of 2003

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**BETWEEN**

**I.U., Applicant**

**and**

**Saskatchewan Government Insurance, Respondent**

**Appearances:**  
**I.U., Applicant**  
**Lynn Henderson and Cindy Roming, 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.**

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Heard at Saskatoon, Saskatchewan  
August 28, 2003

## DECISION

[1] The Appellant, I.U., appeals the decision of Saskatchewan Government Insurance (“SGI”) dated November 6, 2002.<sup>1</sup> The decision confirmed an earlier decision dated July 29, 2002 in which it was stated “approval has been given for SGI to fund a three month course of physiotherapy and then SGI would have met its responsibility with regards to your injury from the above noted motor vehicle accident”.

## FACTS

[2] On July 7, 1997, the Appellant was a passenger in a vehicle that hit a stump covered by tall grass. She went head first into the windshield. Pieces of glass were embedded in her face and head, she had cuts, and chipped two front teeth. She also had back and neck soreness and stiffness and a wrist problem.

[3] Before the accident, she had been doing the indoor work on her parents’ farm. She later worked as a cook in a restaurant for two years (1999-2000), then took training for a year and one-half at [a college] beginning in the fall of 2000 before qualifying as a Licensed Practical Nurse. She has worked at that occupation in [location], [location] and [location].

[4] Although she completed an application for benefits in late November, 1997, she testified she was unaware for some time that she had any entitlement to physiotherapy, massage therapy, etc. until advised by a friend. She had instead obtained physiotherapy under Saskatchewan Health in the various communities where she was working or training: [location], [location], [location] and [location]. She was seen October 21, 1997 by the family physician in [location], who identified pain in right and left rotation, right and left lateral flexion, but did not identify whether this was of the cervical or lumbar spine or both. She diagnosed the condition as whiplash-associated disorder Grade I, neck symptoms no signs and low back pain Grade I, back

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<sup>1</sup> As extended by letter dated December 27, 2002. Following the appeal, on March 24, 2003, SGI reviewed and approved funding for five additional physiotherapy visits, as recommended by the physical therapy consultant, Louise Ashcroft, and the medical consultant, Dr. J. Alexander.

symptoms no signs. She had prescribed Indocid 25 mg. twice a day as needed. The Appellant's Application for Benefits further states:

"Since my accident I have not been able to work because of back & neck problems. I live on a farm with parents and do as much as I can with my problems. I went to the doctor and she said that it wasn't necessary to go to anyone else. She just gave me pain killers and told me to take it easy. She told me not to lift anything heavy. I still have back and neck pain, stiffness and have headaches often."

[5] An evaluation of this information by SGI's medical director, Dr. Flotre, in November, 2001 characterizes it as follows:

"In her November 27, 1997 Application for Benefits [the Appellant] states that she has ongoing neck and back pain, and headaches. A Practitioner's Report filled out by Dr. J. Van Tander a month earlier states that [the Appellant's] problems had essentially resolved, although there were still some minimal findings of pain on some movements of her neck."

[6] The Commission is of the view that while this is a possible inference from the very limited form of the report from the practitioner, it is not the only one. The report is directed to the removal of a small piece of glass in the Appellant's forehead, with a back page devoted to neck and back problems. It is not clear that "Resolved" refers to the neck and back problems as well as the scarring. The neck and back section does not distinguish between cervical and lumbar spine, but does indicate pain on right and left rotation and lateral flexion. The check boxes in the diagnosis section offer the following choices:

"7. Whiplash-associated disorder:

Grade I <input checked="" type="checkbox"/>	Grade II <input type="checkbox"/>	Grade III <input type="checkbox"/>	Grade IV (not relevant here)
Neck Symptoms No signs	Neck Symptoms Musculoskeletal Signs - decreased ROM - point tenderness	Neck Symptoms Neurologic signs - decreased reflexes - decreased sensation - decreased strength	

8. Low back pain:

Grade I <input checked="" type="checkbox"/>	Grade II <input type="checkbox"/>	Grade III <input type="checkbox"/>	Grade IV (not relevant here)
Back Symptoms No Signs	Back Symptoms Musculoskeletal Signs - decreased ROM - point tenderness	Back Symptoms Neurologic signs - decreased reflexes - decreased sensation - decreased strength"	

[7] Dr. Van Tander had checked Grade I for both, and added the further remark: “No debilitating injuries suffered”.

[8] Dr. Flotre also refers to two recent practitioners’ letters, those of Dr. A. le Roux and Dr. H. Henstock.

[9] Dr. le Roux’s report of October 16, 2001 relates only to his observations since he assumed her care on October 3, 2000. He stated:

“[The Appellant’s] current complaint is that of neck and back pain. It is still present, worse on certain occasions and seems to be related to soft tissue in origin. She does have episodes where she has tightness in the back and neck causing her discomfort with episodes of headache.”

[10] He was careful to note that he had not seen her before the accident and so obviously could not verify the presence of muscle tenderness beforehand. He recommended continued massage therapy, physiotherapy, work out, with occasional use of anti-inflammatory muscle relaxants in severe cases. He concluded “seeing she was asymptomatic prior to the accident and now has symptoms following the accident [that] the road traffic accident was the cause of these problems with her neck and back.”

[11] Dr. Henstock’s report of October 26, 2001 stated:<sup>2</sup>

1. Current Complaints: Chronic muscle spasms in her neck.
2. Finding was that she has spasms in her trapezius with mild restriction of movement.
3. Most probably work related & tension as possible causes.
4. Prior to accident: Apparently healthy; we have no records.
5. None specific.
6. Anti-inflammatory Rx & muscle relaxants.
7. Cannot link clinical findings to a previous history of whiplash 4 years ago.”

[12] The Appellant said that she could not understand why Dr. Henstock had written the letter in this way. She had gone to him and he had told her: “SGI should provide physio”. At this point she had been undergoing treatment through Saskatchewan Health. She had tried to arrange this through his wife, a physiotherapist, but they had then left the country. She could not understand why he would say that her condition was work related, since both at college in

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<sup>2</sup> a letter sent by SGI’s injury representative to Dr. Henstock.

[location] where she took her LPN training and in her employment, she has benefitted from “no lift policies”, where patients are lifted by machine or sling lifts.

[13] On December 10, 2001, SGI referred her for an interdisciplinary assessment in [location], just after she completed her LPN course. It wanted to see if her ongoing problems were related to the accident, and to provide recommendations on management. They found:

“4. Musculoskeletal Examination

Cervical range of motion – left and right rotation – mildly restricted with associated tension along the left sterno-cleido mastoid muscle; forward flexion, extension and left and right lateral flexion were within normal limits. Cervical compression tests and shoulder shrug were unremarkable. Neurological testing was unremarkable. Muscle strength testing of the upper extremity was (sic) strong bilaterally. Palpable soft tissue tenderness was noted along the trapezii, anterior scalenes and sterno-cleidomastoid more-so on the left. Vertebral artery testing did not produce dizziness or nystagmus. Palpable joint fixation were noted at C3 – C7 bilaterally as well as T1 – T7 more-so on the left.”

[14] They concluded:

“8. Recommendations

The assessment team cannot find a direct relationship between the injury that [the Appellant] sustained and her current symptoms. A significant amount of time has elapsed before she decided to seek care as well as that she had been working casually after her motor vehicle injury. She does exhibit cervical and thoracic mechanical joint dysfunction for which she may need to seek biomechanical care. The assessment team at this time is not recommending any structured treatment plan.”

[15] She was provided with permanent impairment benefits for facial scarring and dental damages of 7%.<sup>3</sup>

[16] In March, 2002, she was seen by an orthopaedic surgeon, Dr. Narang, who diagnosed chronic cervical strain, fasciitis of the left trapezius, and observed she was “tender along the left anterior trapezius, extending over the supraspinatus region and along the medial side of the left scapula.” Spinal posture, movements of the cervical spine and left shoulder, strength, and range of motion were all satisfactory. There was no evidence of rotator cuff tear, or weakness in the joints. He advised on isometric exercises, and recommended physiotherapy to learn these

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<sup>3</sup> SGI recently determined that the 7% was a calculation error, and reduced it to 5%.

exercises. “The pain in the neck would appear to be as a result of chronic strain to the neck and with her type of work, bending and lifting, working as an LPN, probably aggravated too.”

[17] Reviewing these reports in May, 2002, SGI’s consultant, Dr. J.F. Alexander, stated:

“This letter is in response to your request for information concerning SGI responsibility. There are conflicting suggestions. One practitioner indicates perhaps some of the difficulties are more work-related, and another suggests that perhaps because of history there is a direct relation to the MVA of the symptoms. Since this could be somewhat difficult to make a decision, and the orthopaedic surgeon suggests both are indicated, it may be a consideration to have the file reviewed by Louise Ashcroft to determine if focused therapy of the scapulo-thoracic, upper thoracic, and lower cervical region for a four month period would be a contribution to providing successful rehabilitation. Another possibility would be to consider a tertiary assessment because of the time frame involved.

If scapulo-thoracic dysfunction is at the root of the situation, as there were relatively significant trauma, it probably disrupted soft tissue in the thoracic area, the above considerations are what come first to mind.”

[18] The Appellant’s case has not been helped by the reports from her physicians. Drs. Henstock and Narang attribute the neck problems to her work as an LPN, and the bending and lifting that must be done. In light of the Appellant’s evidence, the Commission thought that Dr. Henstock had no basis for concluding that the Appellant’s symptoms were work related or attributable to tension. The interpretation difficulties arising from Dr. Van Tander’s completion of the form have been discussed. Dr. le Roux’s conclusion of “asymptomatic before, symptomatic after, therefore caused by the accident” is too dependent on unproven facts.

[19] In January, 2003, x-rays showed C6-7 disc height narrowing, osteophytic spurring, and segmented hypomobility. Her chiropractor, Dr. Atkinson, thought that the amount of degeneration and hypomobility was consistent with a hyperextension injury that occurred five to seven years ago.

[20] We are not satisfied that the Appellant was ever rehabilitated to her maximum medical improvement. Dr. Alexander’s May 2, 2002 letter made specific recommendations for treatment: “have the file reviewed by Louise Ashcroft to determine if focused therapy of the scapulo-thoracic, upper thoracic, and lower cervical region for a four month period”. Ms. Ashcroft, the physical therapy consultant, agreed that she would “likely benefit from some focused therapy for her difficulties”. These recommendations were narrowed down to “a three

month course of physiotherapy”, after which SGI would have met its responsibility with respect to her injury. The only record of treatment after that time is a proposal in late January, 2003 by a physiotherapist in [location] for five treatments (30 minutes each, once a week) in addition to his initial assessment and treatment). It may be that treatment was in fact provided in accordance with the consultants’ recommendations in 2002, but the file does not indicate this.

[21] We recognize that attending for the treatment recommended can be difficult for persons like the Appellant who live far from major medical centres, and difficult for SGI as funder of the treatment. The Appellant’s proposal to take a cash settlement to fund private physio and massage therapy when needed<sup>4</sup> is not one we would endorse, even if it were possible under *The Automobile Accident Insurance Act*, as it does not achieve the goal of rehabilitation to maximum medical improvement.

## CONCLUSION

[22] SGI’s decision of November 6, 2002 rejecting funding for all further medical rehabilitation is set aside. We direct SGI to propose a treatment plan consistent with Dr. Alexander’s recommendations in his May 2, 2002 report.

[23] Pursuant to our authority under section 193(11) of the new *Act*, we award costs under section 96(1) of *The Personal Injury Benefits Regulations* up to a maximum amount of \$2,500 for the Appellant’s reasonable expenses incurred from the date of filing her appeal to the date of the decision including the filing fee, travel expenses to the hearing and return, meal, and the loss of one day’s wages, upon submission of reasonable proof.<sup>5</sup>

**Dated** at Regina, Saskatchewan, on September 26, 2003.

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Ann Phillips, Q.C., Chair

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<sup>4</sup> Letter of August 16, 2002.

<sup>5</sup> The Appellant provided the Commission with details of her expenses by fax September 11, 2003. These are for SGI to review.

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Beverley Cleveland, Commission Member

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Mukesh Mirchandani, M.D., Commission Member