

**Automobile Injury Appeal Commission  
Province of Saskatchewan**

**Citation:** *L.A. v. Saskatchewan Government Insurance,*  
2004 SKAIA 031  
**Date:** 20040723  
**File:** 086 of 2003

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**BETWEEN**

**L.A., Applicant**

**and**

**Saskatchewan Government Insurance, Respondent**

**Appearances:**  
**L.A., Applicant**  
**Jocelyn Clement, for the Respondent**

**Before:** **Ann Phillips, Q.C., Chair**  
**Beverly Cleveland, Commission Member**  
**Al Knippel, 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 Regina, Saskatchewan  
January 29, 2004

## DECISION

[1] The Appellant, L.A., appeals a decision of Saskatchewan Government Insurance (SGI) dated June 20, 2003. There were three issues:

- (1) Funding for exercise equipment, specifically a Crossbow resistance trainer.
- (2) Whether funding for Celebrex medication should be indefinite, rather than (as decided by SGI) for a further six months, at which time it would be reviewed.
- (3) Whether funding for lower back treatment in future should be at a level of 50% (as in the decision) or 100% (as urged by the claimant) or should not have been made at all (as in a letter sent January 22, 2004, a week before the hearing).

[2] With respect to the latter two issues, there is new information on the Celebrex question not yet reviewed by SGI's consultants. On funding for future treatments for lower back, it was agreed at the beginning of the hearing that the procedure outlined by SGI in its January 22, 2004 letter would be followed:

“If you have any future problems with your lower back, SGI will require medical documentation and then will have this documentation reviewed by our medical consultants to determine if there will be any ongoing benefits. SGI cannot agree to fund any portion of future treatments when they are unaware of what the future treatments will be.”

## FACTS

[3] The Appellant was injured on December 24, 2001 when he was hit while backing out of his parking space at work. Initially, he was treated with chiropractic and massage therapy, but when this did not help, he was referred for secondary assessment at CBI Physiotherapy in Regina, who identified discogenic lumbar pathology at L4-L5 and confirmed by MRI. It was arranged for him to undergo a lumbar microdiscectomy to eliminate the nerve root compression and left leg sciatica, and this was carried out in Edmonton on August 14, 2002.

[4] His recovery was uneventful and he began physiotherapy at the end of October, 2002 to increase L spine range of motion, strengthen trunk musculature and reduce deconditioning. This

proceeded well, with very favourable comments on his attitude and approach in progress reports. By the end of February, 2003, he had regained full range of motion with some minimal pain at the end of range. Special tests and neurological tests were negative (i.e. normal). It was recommended that he continue on his own with an exercise program, as he was at about 80% of his capacity pre-accident.

[5] In connection with the exercise program, his family physician Dr. le Roux recommended continuance with Celebrex medication and a continuous core strength exercise program, specifically the Bowflex.

[6] In addition, the physiotherapist stated: “[The Appellant] would benefit from resistance training after completion of the conditioning program in Queen City Physio.” The therapist did not recommend specific equipment, but simply suggested he continue with exercises at home. He did think that the Crossbow was excellent equipment, according to the Appellant.

[7] The Appellant described the Crossbow resistance trainer. It is like a Bowflex, and provides a workout for muscles along the spine and abdominal muscles. The Bowflex machine costs approximately \$3,000. While he was waiting for SGI to decide whether or not to share the cost of this equipment, he learned of the Crossbow resistance trainer available from Sears at \$1,051 including tax, so he bought it.

[8] He does the exercises described in the equipment manual, duplicating those he used at Queen City Physiotherapy. He works out three times a week for about 25 minutes, as well as doing stretching for trunk and back muscles. He has not needed to follow a formal program since he obtained the exerciser. His wife is now using the equipment three times a week as well.

[9] For SGI, Ms. Clement argued that while resistance training had been recommended it did not have to be carried out on \$1,000 worth of equipment. Push-ups, sit-ups, use of tubing and dumbbells would achieve the same function.

[10] The Appellant questioned this assertion on cross-examination, stating that the resistance training she mentioned was not geared towards exercises for the core. Sit-ups, for example, were

not appropriate for his back condition. He felt that his physiotherapy program had been terminated before he thought he was ready. If he had had a few more weeks on the resistance trainer at Queen City Physiotherapy, he felt he would have improved to the point that he could have maintained his condition.

[11] He observed that SGI's adjuster had said that they did not fund a pass to continue at the physiotherapy centre, which was apparently a misunderstanding as this is frequently done if recommended by the caregiver.

## LAW

[12] The basis for the Appellant's claim is section 110(1) of *The Automobile Accident Insurance Act* ("the Act") in force at the time of his injury.<sup>1</sup> It provides:

### **"Rehabilitation**

110(1) In this section, "**rehabilitation**" includes any or all of the following measures, programs and treatments that the insurer considers necessary or advisable to contribute to the rehabilitation of a victim, to lessen the victim's disability caused by an accident and to facilitate the victim's recovery from the accident:

- (a) physical and acquired brain injury programs and treatment;
- (b) occupational and vocational training and programs;
- (c) alterations to a victim's residence;
- (d) modification or purchase of a vehicle for a victim;
- (e) purchase of special equipment for a victim;
- (f) any additional measure, program or treatment prescribed in the regulations.

(2) Subject to the regulations, the insurer may take any measure it considers necessary or advisable to contribute to the rehabilitation of a victim, to lessen a disability resulting from bodily injury and to facilitate the victim's recovery from an accident."

[13] In the Appellant's case, there are no specific applicable regulations in *The Personal Injury Benefits Regulations*<sup>2</sup> that deal with exercise equipment.

[14] However, SGI does purchase exercise equipment in some circumstances.<sup>3</sup>

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<sup>1</sup> That is Part VIII, Personal Injury Benefits, in force in 1995.

<sup>2</sup> c. A-35, Reg. 3 (effective January 1, 1995).

<sup>3</sup> SGI acknowledged this, but the issue was not pursued, so the Commission is not aware of the guidelines, if any.

[15] The Appellant's request was forwarded by his personal injury representative to SGI's medical director Dr. Murray Flotre on March 21, 2003. The request did refer<sup>4</sup> to the recent Practitioner's Report sent to SGI by the Appellant's family physician Dr. le Roux, in which Dr. le Roux wrote, among other things:

"He needs daily core strength exercises...  
Continuous core strength exercise Bowflex recommended...  
Would a Conditioning Program be beneficial? Yes Bowflex."

[16] Shari Mosthaf of SGI stated:

"[The Appellant] has requested funding on the following two items...

1. Will SGI fund celebrex for him, at the dosage of 200 mg?
2. Will SGI fund a bowflex machine for home use for him to continue the gains he has made in his conditioning program?

[The Appellant] also advised that he has recently purchased a treadmill from Sears to keep up with his walking.<sup>5</sup>

[17] She went on:

"Based on the medical information on file, I am writing to ask the following questions...

1. Based on Dr. LeRoux's most recent report, can SGI fund the celebrex for [the Appellant]? If so, for how long do we fund it? Is this something that we fund for a certain period of time and review the situation again in 3 or 6 months in the future?
2. Can SGI consider funding the Bowflex? Is this something that we could fund at 100%, or would we consider a cost share to some degree? If we fund a cost share, what percentage would be appropriate? I have explained to [the Appellant] that he needs to take some responsibility for maintaining his own long term health, which can mean attending a fitness facility at his own expense in order to maintain his level of recovery and to have an overall healthier lifestyle."

[18] She also referred to earlier lower back problems (pre-accident).

[19] Dr. Flotre replied on March 21, 2003:

"...I have some concerns. I believe that it is important to obtain clinical notes from his caregivers (ie: physician, chiropractor and physiotherapist) for a period of 2 years prior to the accident, and up to present times. The collision appears to have been at quite a low speed, which would not

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<sup>4</sup> See paragraph [17] below.

<sup>5</sup> In testimony, the Appellant stated that the treadmill had been bought before the motor vehicle accident.

have been expected to create a lot of problems in the lower back. I would certainly not want SGI to make a long-term commitment regarding the other discs in [the Appellant]’s lower back, as there is a good chance that the problems predated the MVA.

For now I would agree to fund the Celebrex, although I would wonder if it is being used as an anti-inflammatory (and for what condition) or simply an analgesic. I would suggest that we not agree to fund purchase of a treadmill or Bowflex machine at this time.”

[20] After the pre-accident information was obtained, Dr. Arnold Endsins, a SGI consultant, replied that, after a review of the files, he had concluded that the Appellant had pre-existing back problems, although the motor vehicle accident may have exacerbated the pre-existing symptoms and provoked further degeneration of one of his discs which may have resulted in the need for the surgery. He thought that at best, SGI had only a 50% responsibility for ongoing treatment, although he was unable to determine the degree to which the pre-existing symptoms impacted his current state.

“Regarding the funding the purchase of exercise equipment such as treadmill and crossbow, my recommendation is that SGI not support these purchases. It is my opinion that it is reasonable to fund ongoing therapeutic modalities and treatment through physical therapy and conditioning.”

[21] Dr. Endsins did not testify, and the Commission did not have the benefit of his thinking as to why physiotherapy and conditioning was an acceptable expense but the outlay of capital to permit the Appellant to carry out these activities at home on a continuing basis was not.

[22] Dr. Endsins did not refer to the funding of the Celebrex in his letter.

[23] On behalf of SGI, Ms. Clement argued that the old *Act* and *The Personal Injury Benefits Regulations* do not specify the purchase of exercise equipment.<sup>6</sup> Therefore, it was not unreasonable or erroneous of SGI to turn down his request for exercise equipment.

[24] The Commission has, on the one hand, Dr. le Roux’s positive recommendation and on the other hand, Dr. Flotre’s suggestion against funding “at this time” and Dr. Endsins’s recommendation against the purchase. We heard the Appellant’s testimony that he did not feel he was ready for discharge from physiotherapy at the end of February, confirmed by SGI’s file note dated February 20. The physiotherapy report of February 25 states “Should continue

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<sup>6</sup> Section 110(2), however, is broad enough to *include* exercise equipment, unless prohibited by regulation.

exercise program at home” and adds “[The Appellant] would benefit from resistance training after completion of the conditioning program in Queen City Physio”. The Practitioner’s Report of the following day notes that he has plateaued, with another recommendation for the conditioning program. The Conditioning Discharge Summary provides relatively little information other than “some pain especially with weather changes... Code 1 Discharged without restrictions – Return to work.”

[25] We are of the view that there was credible evidence that the Appellant was discharged from physiotherapy prematurely, and without a gym pass which would have enabled him to carry on with the conditioning on the Bowflex machine at Queen’s City Physiotherapy. There was evidence that the exercise provided by the Crossbow (or Bowflex) has increased his function, specifically in the core or trunk area in a way which would have been difficult to duplicate without such equipment.

[26] Since SGI’s medical consultant was prepared to recommend continued treatment, since he probably should have been offered a gym pass and since his condition did deteriorate during the six weeks before he obtained the Crossbow equipment, at which point his function was improved, we believe that SGI’s decision was erroneous, in that we are unable to see any logic behind the decision and the facts in this case, to such an extent that the decision is unreasonable.

[27] If the Appellant had continued with physiotherapy at \$35 a treatment, twice a week for six weeks, the cost to SGI would have been \$420. The gym pass, we understand, would have cost \$100. Given that the Crossbow machine is used by the Appellant and his wife, and since there is definitely a component of its use beyond the aspect of regaining function, we direct SGI to contribute the sum of \$450 toward the funding of the Crossbow exercise machine.

[28] As stated above, new documentation has been received by SGI with respect to the Celebrex medication decision and both SGI and the Appellant accept that the issue of funding for lower back treatment will not be pursued at this time.

[29] The Appellant is entitled to his costs of the application, including the application fee.

**Dated** at Regina, Saskatchewan, on July 23, 2004.

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Ann Phillips, Q.C., Chair

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Beverly Cleveland, Commission Member

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Al Knippel, Commission Member