

**Automobile Injury Appeal Commission
Province of Saskatchewan**

Citation: *D.M. v. Saskatchewan Government Insurance,*
2004 SKAIA 032
Date: 20040803
File: 085 of 2003

BETWEEN

D.M., Applicant

and

Saskatchewan Government Insurance, Respondent

Appearances:
D.M., 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.**

Heard at Regina, Saskatchewan
January 29, 2004

DECISION

[1] The Appellant, D.M., appeals a decision of Saskatchewan Government Insurance (SGI) dated June 19, 2003. The decision adopted a recommendation by SGI's physical therapy consultant that funding for massage therapy be provided on a decreasing basis for the next four months, after which SGI's responsibility would end. The cut off date was October 19, 2003. The decision letter left open the possibility of funding for acupuncture and for education on chronic pain symptom management. The problem is that the Appellant lives in [town], where access to these services is difficult. In addition, her location causes her problems in accessing the massage therapy treatments, which are the subject of the decision.

FACTS

[2] The Appellant has made an excellent recovery from a serious motor vehicle accident on July 14, 1999, in which she suffered multiple injuries including a pelvic fracture and a closed head injury.

[3] The former contributed to left hip pain in April, 2000. (She has received permanent impairment benefits for her hip.) The closed head injury was followed by neck ache and paresthesia in both arms four months post-accident. After six months she was experiencing occasional headaches, occasional ringing in the left ear, poor reading ability, concentration and short term memory.

[4] The headaches continued and worsened. She began massage therapy. By April, 2001, in addition to the headaches, she was experiencing two kinds of spells that resulted in the referral to neurologist Dr. Davidson. He arranged for an EEG, which was normal, but thought she also ought to have a sleep-deprived EEG to rule out a possible complex seizure disorder.¹ She declined the sleep-deprived EEG. She returned to work as a school secretary in November, 1999.

¹ As opposed to an anxiety attack.

[5] She was referred to physiatrist Dr. Fink at Wascana Rehabilitation Centre concerning the neck muscle tension headaches in the fall of 2001. At that point, she was experiencing two to three headaches a week, preceded by neck pain and stiffness. The issue was whether they were due to fatigue from the brain injury or triggered by muscle tension.

[6] Dr. Fink diagnosed a myofascial syndrome. He suggested low dose Amitriptyline, but the Appellant preferred not to use medication. Another possibility for more consistent long term relief was acupuncture. As there was no acupuncturist in the Appellant's area this would require her to come into Regina. An alternative was further information and training on management of chronic pain. He was not aware if this would be available in her home community, and it was not.

[7] At any rate, massage therapy was available in [town] and the Appellant availed herself of that form of relief, at least until the therapist ceased to be registered with one of the two provincial massage therapist associations. After that, she attended a variety of massage therapy practitioners, receiving 77 treatments between April, 2000 and April, 2003.

[8] From the reports filed (and two were not contacted), it is difficult to assess who was providing what care. The Appellant testified that she saw a massage therapist about once a month, usually when her headaches (now once or twice a week) built up to an intolerable level. After massage, the headaches usually subside either that day or the next, and she has about a week and one-half before they return again.²

[9] With respect to the quality or effectiveness of the treatments, Louise Ashcroft, SGI's physical therapy consultant, wrote:

"In reviewing these reports, it is clear that the claimant is attending massage therapy for symptomatic relief of headaches, neck muscle tension, lower back and upper leg discomfort and general relaxation. She is attending many practitioners on a sporadic basis, which would make any specific treatment goals difficult to monitor or achieve. She does have a pre-MVA history of headaches (report from Dr. P. Davidson), and I am not sure if the claimant attended massage therapy for those headache symptoms or not.

² From the reports, she sees a practitioner in [town] once or twice a month, but for her hips, legs and low back primarily, and has been attending in Regina about 14 times, two on a single treatment basis.

Dr. Fink had suggested perhaps a trial of acupuncture or some education regarding management of chronic pain symptoms. I think it is reasonable to try these although it sounds as if it would be difficult to arrange in her community.

This claimant appears to be at maximal medical improvement. The treatment she is receiving appears to be maintenance in nature. I feel SGI's responsibility for funding massage should be ending or at least there should be a withdrawal of treatment to assess self-management abilities and ability to maintain her current level of function. She was to deliver a baby in May. I would suggest SGI fund a further period of decreasing frequency of massage treatment over the next 4 months, after which SGI's responsibility should end."

[10] The Appellant challenged a number of aspects of this report. In the first place, she had never attended massage therapy prior to the accident. She felt that Dr. Davidson's report had been misinterpreted as describing a "pre-MVA history of headaches". Dr. Davidson's description is open to a variety of interpretations: "Actually she had a rather rare history of intermittent twice a day headaches of generalized type before she ever had the accident over the years in teenage years and would last about an hour or two and would respond to Tylenol and so forth." The Appellant denied that she was having headaches twice a day during her teen years but agreed that they were occasional and lasted about an hour or two and did respond to Tylenol.

[11] She acknowledged that she had been treated by several therapists over the past years, mainly due to location. The massage therapist she had been seeing in [town] was no longer registered. She said she was never told by SGI that she had to be treated by one regular therapist alone.

[12] With respect to the recommendations for acupuncture and chronic pain management education, she confirmed that the closest location for acupuncture was Regina and said she had never been offered the opportunity for pain management education. Following the decision letter, her family physician, Dr. Lim, in [town], had written a note: "This is to confirm that [the Appellant] has *back pain* and will benefit from massage therapy" (emphasis added). She believes that he is referring to her upper back, since the pain in her neck and shoulders is chronic.

[13] Since July, 2003, she has been attending a registered massage therapist in [town], which is 58 kms. return from her home. She has been reimbursed \$26.75 out of the \$40 per hour that she pays, plus her mileage. She has been prescribed exercises, which she described to the

Commission. She does these daily in the morning. They help to a certain degree and she exercises more as her headaches get worse.

[14] She acknowledged that there was a physiotherapist in her town once a week and she attended her once in 2000. She cannot remember very much about this therapist, and said she had returned to Cheryl Blahut, physiotherapist with the Acquired Brain Injury Outreach Unit, who provided her exercises for balance problems resulting from her brain injury.

[15] On behalf of SGI, Dr. John Alport testified, as Louise Ashcroft, the physical therapy consultant, was unavailable. Dr. Alport has been medical director at SGI for six months and a medical consultant to them for four to five years. He graduated from the University of Saskatchewan in medicine in 1978 and was a family practitioner for 20 years in Regina, also doing occupational health and insurance medical work. He has taken courses in independent medical examinations in Tennessee and Chicago and has studied the rehabilitation model which SGI follows in its PIPP³ program. He explained that the model has developed guidelines on best practices, on appropriate treatments for automobile injuries to the neck and back, based on a major international study done by the Quebec Task Force. Treatments are grouped as “Proven”, “May be Effective”, “Not Effective”. In doing so, they considered the levels of evidence that a treatment was proven or not effective. For example, there is good evidence that bed rest is not effective for whiplash and also good evidence that active rehabilitation is. There is no evidence, he said, that massage helps cure whiplash or that it makes someone get better faster. However, massage therapy is funded by SGI. It is his understanding that the massage therapy associations were involved in the decision by SGI to approve and fund their treatment. Generally, SGI approves five treatments with the possibility of extension. His own view is that persons receiving massage therapy would do better going to the “Y” in the long run.

[16] When asked by Ms. Clement about the 82 massage treatments funded for the Appellant by SGI, he admitted that at times there was a place for massage therapy and he would approve it. In this case the reports from her massage therapists do not suggest they have a particular goal in

³ Personal Injury Protection Plan.

mind. If the therapy was needed to maintain a level unachievable if treatment was not provided, he might be more inclined to recommend treatment.

[17] Dr. Alport commented that chiropractic treatment is funded by SGI based on a division between “supportive” and “maintenance” treatment. The former is required to achieve a level of function. Maintenance treatment, at best, is preventative, preventing a recurrence of symptoms.

[18] Since the Appellant is working and apparently able to function as a secretary, her condition would not require supportive treatment, but only maintenance. Her headaches are apparently relieved temporarily by massage. Headaches caused by stress and tension can be relieved by massage therapy, but also by Tylenol.

[19] The kind of massage therapy that he tends to approve involves early treatment two or three times for a week, so that while muscles are being aggressively strengthened in other treatment the patient can tolerate the effects.

[20] He was asked to comment on Ms. Ashcroft’s updated opinion of October 8, 2003. At this point, Dr. Lim’s letter referred to in paragraph [12] had been received. Ms. Ashcroft commented that this one line letter “does not provide a fully reasoned account” to support ongoing massage therapy. She went on:

“It is my understanding that at this point in the recovery process, the optimal treatment plan is self management of residual chronic pain symptoms (pacing, self-applied stretches and trigger point releases, etc.). Passive treatment has not been shown to be very effective in the treatment of chronic pain problems.

In this case, massage therapy has resulted in only temporary benefit. There has not been any information presented recently to suggest that there is functional decline without treatment. It remains my opinion that this treatment is now maintenance in nature.

It may be beneficial if the family Dr. could investigate some options for the claimant to have some pain management education if he and the claimant agree such intervention would be appropriate.”

[21] When questioned by the Appellant, Dr. Alport acknowledged that massage therapy helps relieve symptoms and sometimes eliminates them. He acknowledged that it does apparently help her headaches. He pointed out that it did not make any change in her level of function.

[22] When asked why SGI paid for massage therapy if it was “no good” he said that he couldn’t say it was useless. While there is not evidence that it is effective, people expect or insist on it (e.g. athletes). However, he would be against supporting massage therapy for life, and stated that even massage therapists don’t support the case for long term massage therapy.

[23] Jocelyn Clement for SGI reviewed the documentation on file. She observed that an October, 1999 medical report (post-accident) made no mention of headaches, but pointed out that the Appellant had not yet returned to work. Relaxation massage therapy had been recommended by neurosurgeon Dr. Buwembo and physical therapist Cheryl Blahut. She reviewed the course of massage therapy, including Dr. Fink’s notation that it was providing temporary relief only.

[24] She stated that SGI does not have a massage therapist consultant, since normally the only decision is whether to extend five treatments. In this case the Appellant had received 82 massage therapy treatments.

LAW

[25] Section 110 of *The Automobile Accident Insurance Act* in force at the time of the Appellant’s accident⁴ 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.”

⁴ The Part VIII, Personal Injury Benefits provisions that came into force January 1, 1995.

[26] Ms. Clement drew our attention to the words “to lessen the victim’s disability caused by an accident”, arguing that the headaches and muscle tension could not be said to be a “disability caused by an accident”. We agree. There is no evidence upon which we can rely to conclude that if she does not have treatment, there will be a decline in her ability to function.

[27] We have concluded that SGI’s decision to terminate funding for massage therapy was not an error in law, or based on an erroneous assumption, or unreasonable.⁵ We do note that the Appellant said that pain management education was available in her community. It is our understanding that she and SGI were to discuss further what steps might be taken to implement that.

[28] The application is dismissed. SGI’s decision is upheld.

Dated at Regina, Saskatchewan, on August 3, 2004.

Ann Phillips, Q.C., Chair

Beverly Cleveland, Commission Member

Al Knippel, Commission Member

⁵ Having said that SGI’s decision was not “unreasonable”, we do note a possible inconsistency in its position that acupuncture, also a passive modality, would be acceptable. Also medication (low dose Amitriptyline) was recommended in 2001, also a passive modality providing short term relief.