

**Automobile Injury Appeal Commission**

**Province of Saskatchewan**

**Citation:** *D.U. v. Saskatchewan Government Insurance*,  
2004 SKAIA 036  
**Date:** 20040827  
**File:** 111 of 2003

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**BETWEEN**

**D.U., Applicant**

**and**

**Saskatchewan Government Insurance, Respondent**

**Appearances:**  
**D.U. and D.I., for the Applicant**  
**Stephen McLellan, for the Respondent**

**Before:** **Jeffrey Scott, Chair**  
**Joy Dobko, 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  
July 7, 2004

## DECISION

### INTRODUCTION

[1] The Appellant, D.U., was injured in a motor vehicle accident on June 1, 2003. Due to the injuries that she suffered in the accident, the Appellant was entitled to a number of benefits pursuant to **The Automobile Accident Insurance Act** (the “Act”).

[2] By an Application Form dated October 7, 2003 the Appellant appeals a decision of Saskatchewan Government Insurance (“SGI”) dated September 17, 2003. In a letter dated September 17, 2003 from Mr. Tim Szabo, Personal Injury Representative, SGI the Appellant was informed that SGI had decided to terminate payment for her medical expenses, treatment costs, and travel and other related expenses. Mr. Szabo stated that the reason for SGI’s decision to terminate the payment of such benefits was due to the Appellant decision to forego her “... recommended Secondary Level Treatment program”.

### **PRELIMINARY MATTERS—PAYMENT FOR LIVING ASSISTANCE BENEFIT AND INCOME REPLACEMENT BENEFIT**

[3] Due to the injuries that the Appellant suffered in the accident, she received for a period of time Living Assistance Benefits and Income Replacement Benefits. In a letter dated September 11, 2003 from Mr. Szabo the Appellant was informed that effective September 12, 2003 the Living Assistance Benefits and Income Replacement Benefits would be terminated. In support of SGI’s decision, Mr. Szabo stated as follows:

“This correspondence is further to our telephone discussion of September 9, 2003. It is my understanding that you have completed rehabilitation to the point that you are substantially able to perform the essential activities of daily living and duties of employment you performed at the time of the accident. This was determined based on medical reporting from STAR Rehab, IRC, and Yorkton Physiotherapy.”

[4] In his letter of September 11, 2003 Mr. Szabo informed the Appellant of her options, including a right of an appeal.

[5] At the Hearing, the Appellant argued that the Living Assistance Benefits and Income Replacement Benefits were terminated while she was still not capable of performing her normal work related duties and duties in and around her home. She acknowledged, however, that for some time now she has been back to her pre-accident self and is able to perform such duties.

[6] Mr. McLellan argued that the Appellant did not appeal SGI's September 11, 2003 decision to terminate the payment of Living Assistance Benefits and Income Replacement Benefits. Further, he argued that the time permitted to appeal that decision has expired. Consequently, Mr. McLellan asserted that the Commission does not have jurisdiction to review SGI's decision.

[7] In item number 5 of the Application Form, the Appellant was asked to provide the date of the insurer's decision that she was appealing. The Appellant inserted the date "September 17, 2003." As noted previously, SGI's decision to terminate the payment of the Appellant's treatment and related costs was by a letter dated September 17, 2003. SGI's decision to terminate Living Assistance Benefits and Income Replacement Benefits was, as noted previously, dated September 11, 2003.

[8] We have, also, reviewed and considered the information that the Appellant inserted under item 4 of the Application Form. On its own the reference in item number 4 to "SGI decision--to go from full benefits to no benefits" may be interpreted to include the September 11, 2003 decision by SGI to terminate Living Assistance Benefits and Income Replacement Benefits.

[9] However, the response in item 4 when read in its entirety:

"SGI decision-to go from full benefits to no benefits-not enough massage treatment-missing a step in Physio Therapy-no compensation for [husband]'s loss of time-other medical problems SGI is overlooking."

along with the reference in item number 5 of the Application Form to the decision dated September 17, 2003 causes us to conclude that the Appellant's appeal does not include an appeal of the termination of Living Assistance Benefits and Income Replacement Benefits.

[10] Consequently, the Commission does not have jurisdiction to hear an appeal from SGI's decision to terminate the payment of Living Assistance Benefits and Income Replacement Benefits, nor can it extend the period for appeal.<sup>1</sup>

## **FACTS**

[11] The Appellant was injured in a motor vehicle accident on June 1, 2002. Due to the injuries suffered in the accident, SGI made arrangements for the Appellant to be assessed by Innovative Rehabilitation Consultants ("IRC"). The initial IRC assessment of the Appellant occurred on June 17, 2003. Arising out of that assessment, arrangements were made for the Appellant to be seen and assessed on July 10, 2003 by the "Spinal Assessment Unit" of S.T.A.R. Rehab ("STAR").

[12] The "Spinal Assessment Unit" of STAR prepared a "Multi-Disciplinary Secondary Assessment Report"—the "STAR Report". Included in its Report, were a number of specific treatment recommendations.

[13] The STAR Report was then sent to Mr. Szabo. In a letter addressed to the Appellant dated August 13, 2003 Mr. Szabo acknowledge receiving the STAR Report. Further, he acknowledged that the STAR assessment team made a number of treatment recommendations.

[14] Mr. Szabo informed the Appellant that SGI would fund the cost of the recommended treatment. He then went on to ask the Appellant to contact Yorkton Physiotherapy, Yorkton, Saskatchewan to begin the secondary level treatment program.

[15] On September 4, 2003 the Appellant started the secondary level treatment program at Yorkton Physiotherapy. However, according to a letter from Mr. Szabo addressed to the Appellant dated September 12, 2003 the Appellant then subsequently missed 3 appointments with Yorkton Physiotherapy—September 10, 11, 12, 2003.

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<sup>1</sup> **Mintzler v. Saskatchewan Government Insurance**, 2001 SKCA 54

[16] On September 15, 2003 the Appellant telephoned Mr. Ken Redl, Manager, Yorkton Physiotherapy. In a later telephone message on September 15, 2003 that Mr. Redl left with Mr. Szabo, Mr. Redl stated that the Appellant informed him that “she was opting out of the program.”

[17] Then by a letter dated September 17, 2003, Mr. Szabo informed the Appellant that due to her decision to “... forego [her] recommended Secondary Level treatment program” SGI was terminating any benefits that she might be entitled to pursuant to the **Act**. Mr. Szabo cited section 183 (e) and (g) of the **Act** in support of his decision.

[18] Following SGI’s decision to terminate the payment of treatment and other related benefits, the Appellant on her own initiative and with the assistance of her family physician, Dr. Jasper Burger, Yorkton, Saskatchewan sought out treatment for the injuries suffered in the accident. In a letter addressed to SGI dated October 9, 2003 Dr. Jasper stated, for example, that he had referred the Appellant to a “... psychologist, Vivian Murphy, who will try to work on the psychological reasons that might be involved”.

[19] On that point, it is noted that the STAR assessment team including Glenn Pancyr, Registered Doctoral Psychologist did recommend that it was important for the Appellant to receive “pain management counselling throughout” and that “Twenty or 30 sessions of psychotherapy would be recommended.” At the Hearing, the Appellant testified that she saw Ms. Murphy on two occasions.

[20] The Appellant, also, sought out and received treatment from Heather Pozniak, Registered Massage Therapist, Yorkton, Saskatchewan; treatment from Mr. Collin McMaster, Registered Massage Therapist, Regina, Saskatchewan. Mr. McMaster, in turn, referred the Appellant to Daysha Shuya, physiotherapist, University of Regina Physiotherapy Centre, Regina, Saskatchewan. The Appellant then received treatment from Ms. Shuya.

**DISCUSSION AND FINDINGS WITH RESPECT TO TREATMENT RELATED EXPENSES AND COMPENSATION TO THE APPELLANT’S HUSBAND**

[21] In a letter addressed to Mr. Szabo dated September 23, 2003 the Appellant’s husband itemized his claim for meals and compensation for his time when he accompanied and drove his wife to a number of treatment related appointments. Further, at the Hearing the Appellant’s husband filed a document that identified the costs that were incurred for a number of additional treatment related appointments.

[22] At the Hearing, Mr. McLellan stated that SGI is prepared to pay in full the claimed treatment costs in the amount of \$1215.00. Further, at the Hearing Mr. McLellan stated that SGI is prepared to pay the meal costs, identified in the Appellant’s husband’s letter dated September 23, 2003, in the amount of \$80.00.

[23] Had Mr. McLellan not agreed to pay for the Appellant’s treatment costs, we would have determined that SGI should pay for those costs. We are of the view that the treatment program that was offered to the Appellant was not the treatment program that was recommended by S.T.A.R.

[24] Specifically, the treatment program actually offered to the Appellant did not provide amongst other items the recommended “considerable education (hurt versus harm, reassurance, home exercises, etc.)” and “pain management counseling throughout” the S.T.A.R. report.

[25] Further, and significantly, the Appellant was not offered the “twenty or 30 sessions of psychotherapy” that was recommended by Glenn Pancyr, Ph.D., Registered Doctoral Psychologist who was a member of the S.T.A.R. assessment team. As noted previously, the Appellant sought out on her own (with the assistance of her family physician) the provision of psychotherapy.

[26] Given that the treatment plan that was offered to her did not conform to the recommended treatment plan, it is not surprising that the Appellant decided to not proceed with the actual treatment program that was provided to her.

[27] There remains three items. Those three items are:

- a) mileage claim for a number of treatment related appointments in Regina;
- b) meal costs claim for a number of treatment related appointments in Regina;
- c) compensation to the Appellant's husband for the time that he took in accompanying and driving the Appellant to treatment related appointments.

[28] With respect to the mileage claim in the total amount of \$1790.56, a total of 18 round trips are claimed. Four of those trips are from the Appellant's residence to Yorkton for massage treatment and the remaining 14 trips are from the Appellant's residence to Regina for massage and physiotherapy.

[29] Mr. McLellan stated at the hearing that SGI is prepared to pay for 18 return trips based on the return mileage from the Appellant's residence to and from Yorkton (100 kilometers for each round trip) at a rate of 31cents per kilometer. That amounts to a total of \$558.00.

[30] In support of his position on mileage and in a letter dated August 9, 2004 addressed to the Commission and filed with the Commission office, Mr. McLellan relies upon s.47 (1) of **The Personal Injury Benefits Regulations** (the "**Regulations**"). Section 47(1) states:

"If the insured incurs an expense for travel or lodging to receive care at a distance of more than 100 kilometers from the insured's residence when the care is available within 100 kilometers of the insured's residence, the insurer shall pay only the expenses for travel, meals or lodging that would have been incurred by the insured if the care had been received within the 100 kilometer radius."

[31] No evidence was tendered to prove that, other than of course the services provided by Yorkton Physiotherapy, no other massage therapy and physiotherapy services were available within a 100-kilometer radius of the Appellant's residence. Consequently, we agree with the position taken by Mr. McLellan concerning the payment of mileage.

[32] The Appellant claimed meal costs that were incurred as a result of treatment sessions that took place in Regina. Those meal costs in the amount of \$140.00 were identified in a document

filed by the Appellant's husband during the Hearing. Had those treatments taken place within a 100 kilometer radius of the Appellant's home it is reasonable to assume that she would have incurred some meal costs. However, given the shorter travel distance it is also reasonable to conclude that the Appellant would likely have had fewer meals away from her residence and consequently would have had lower meal costs. We conclude that additional meal costs in the amount of \$70.00 is reasonable.

[33] With respect to compensation to the Appellant's husband for the time he took in accompanying and driving the Appellant to appointments, by a letter addressed to Mr. Szabo dated September 23, 2003 the Appellant's husband itemized the dates that he drove the Appellant for treatment related appointments. Mr. Szabo in a letter dated October 6, 2003 informed the Appellant that SGI was not prepared to compensate the Appellant's husband for the time that he took to drive the Appellant to treatment related appointments. In support of SGI's position Mr. Szabo stated as follows:

“In response to [the Appellant's husband's] letter and messages, please be advised of the following: SGI does not 'owe' your husband expenses/income loss as per his submission. A claim was submitted for you and your injuries as a result of this accident. As a claimant, it was explained and outlined to you that it was your responsibility to mitigate costs associated with your claim. On numerous occasions you and [your husband] were advised of our policy regarding accompanying expenses, in particular, the need for [your husband] to drive/attend medical appointments with you. SGI will not consider any expenses as per [your husband's] submission as it was not medically necessary for him to drive or accompany you to your appointments (alternate means of transportation such as the bus was available). Regardless of this, your husband's submission of 'lost wages' or 'income loss' is not reasonable, but more importantly, is not actual.”

[34] At the Hearing Mr. McLellan took the position that the Appellant's husband did not prove any actual lost earnings. Consequently, Mr. McLellan was not prepared to pay any compensation to the Appellant's husband.

[35] In fairness to Mr. McLellan, however, as a result of an exchange with members of the Commission concerning this issue Mr. McLellan did agree to undertake to determine whether the **Act** or the **Regulations** contains provisions that are relevant to a non-claimant's ability to claim for lost of income.

[36] In a letter to the Commission (filed at the Commission office) dated August 9, 2004 Mr. McLellan referred to section 160 of the **Act** that states as follows:

“If, in the opinion of the insurer, a person is required to accompany an insured because of an insured’s physical or mental condition or age so that the insured can receive medical or paramedical care, the person accompanying the insured is entitled to be reimbursed for lost earnings, transportation and lodging costs and other associated prescribed expenses.”

[37] Further, in his letter Mr. McLellan stated:

“At the hearing, I took the position that [the Appellant’s husband] was unable to demonstrate any lost earnings; however, this position is not consistent with SGI’s policy regarding the operation of this section. In fact, if it was necessary for [the Appellant’s husband] to accompany his wife to her medical appointments, then SGI will do an IRB type calculation to determine an hourly wage based on a 40-hour work week based on either the actual YEI or the income from the appendix.”

[38] Mr. McLellan then went on to state in his letter:

“For your convenience, SGI document 346 is a handwritten letter from [the Appellant’s husband] outlining his expenses and SGI document 348 is SGI’s denial letter on the basis that it was not medically necessary for [the Appellant’s husband] to accompany his wife to her appointments.

If the commission finds that [the Appellant’s husband] was required to accompany his wife to her appointments, I would request that the commission direct [the Appellant’s husband] to contact his PIR so that the appropriate income information can be obtained, and an appropriate calculation performed.”

[39] The Application Form does not make specific reference to SGI’s letter dated October 6, 2003—the letter informing the Appellant that SGI was not prepared to compensate the Appellant’s husband for the time that he took to drive the Appellant for treatment related visits. However, in item number 4 of the Application Form there is a specific reference to applying for an appeal due to “... no compensation for [the Appellant’s husband]’s loss of time”.

[40] Mr. McLellan did not advance the position that an appeal was not taken concerning SGI’s decision to not pay the Appellant’s husband compensation for the time that he took to accompany and drive the Appellant to treatment related appointments. We are, therefore, assuming that we do have jurisdiction to hear and determine the reasonableness of SGI’s decision to not pay compensation to the Appellant’s husband for this item.

[41] In his letter dated September 23, 2003 the Appellant's husband provides a date for each occasion that he drove the Appellant to treatment related appointments and the number of travel hours for each of those appointments. Upon a review of the documents filed for the appeal, we are of the opinion that there is sufficient evidence to support the assertion that due to the Appellant's medical condition it was reasonable for the Appellant's husband to accompany and drive his wife to those identified treatment appointments.

[42] Specifically, we refer to the S.T.A.R. report. The S.T.A.R. report was based upon an assessment of the Appellant that occurred on July 10, 2003. Under the heading "**Physical Examination**" within the S.T.A.R. report it is stated:

"Examining the neck, she will not move it more than about 10 degrees in any direction, citing increasing pain."

[43] Further, and significantly, under the heading "**Recommendations**" and the sub-heading "**Return to work plan**" it is stated:

"Her job at [employer] is not physically demanding but she feels she cannot drive. She should certainly be encouraged to move her neck more and should not be expected to have reduced range of motion which would preclude driving past the next four weeks..."

[44] We, also, note that on July 31, 2003 the Appellant underwent a MRI examination in Regina. On the MRI Consultation report and under the heading "Clinical History" is it stated:

"Previous MVA. Now has severe neck pain."

[45] Then under the heading "Interpretation" it is stated:

"Unusual appearance of the right vertebral artery which may relate to sluggish flow. Given the history of recent trauma, dissection cannot be excluded. Suggest evaluation with Doppler ultrasound to assess flow in this vessel. Otherwise, no significant abnormality is identified."

[46] The recommended Doppler Ultrasound examination occurred on August 26, 2003. The Appellant's husband accompanied his wife to Regina for that Ultrasound examination.

[47] Given all of the above we conclude that due to the Appellant's medical condition it was reasonable for the Appellant's husband to accompany his wife to the treatment appointments identified in the Appellant's husband's letter dated September 23, 2003. Given our finding and Mr. McLellan's previously mentioned letter addressed to the Commission dated August 9, 2004, we are assuming that SGI will contact the Appellant's husband "so that income information can be obtained and an appropriate calculation performed". After that exercise is complete, we are assuming that SGI will pay compensation to the Appellant's husband for the time that he accompanied and drove his wife to treatment related appointments.

## CONCLUSION

[48] SGI will pay to the Appellant the following treatment related expenses:

- a) treatment costs in the amount of \$1215.00;
- b) total meal costs in the amount of \$150.00 (\$80.00 + \$70.00)
- c) mileage costs in the amount of \$558.00

[49] Further, we have determined that due to the Appellant's physical condition arising out of the motor vehicle accident the Appellant's husband was required to accompany and drive the Appellant to the treatment appointments identified in the Appellant's husband's letter dated September 23, 2003. Consequently, as outlined in Mr. McLellan's August 9, 2004 letter to the Commission, we expect that SGI will calculate and then pay to the Appellant's husband a sum of money to compensate him for his time.

[50] Further, pursuant to s. 191(9) of the **Act** SGI will pay pre-judgement interest on the amounts referred to in paragraphs 48 and 49.

[51] Finally, for the most part, the Appellant is successful in her appeal. The Appellant is entitled to payment of her costs including reasonable travel and meal expenses for her and her husband when they attended the appeal hearing and the application fee for the appeal.

**Dated** at Regina, Saskatchewan, on August 27, 2004.

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Jeffrey Scott, Chair

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Joy Dobko, Commission Member

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Al Knippel, Commission Member