

**Automobile Injury Appeal Commission
Province of Saskatchewan**

Citation: *H.R. v. Saskatchewan Government Insurance,*
2004 SKAIA 049
Date: 20041019
File: 043 of 2004

BETWEEN

H.R., Applicant

and

Saskatchewan Government Insurance, Respondent

Appearances:

H.R., for the Applicant

**Joan Eremko, Dr. A. Endsins, and Ms. S. Heisler-Demyen
for the Respondent**

***Before:* Jeffrey Scott, Chair
Beverly Cleveland, Commission Member
Darleen Topp, 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
September 28, 2004

DECISION

INTRODUCTION

[1] This is an appeal by the Appellant, H.R., of a decision made by Saskatchewan Government Insurance (“SGI”) dated January 16, 2004 to terminate funding for chiropractic and massage therapy and medication costs.

FACTS

[2] The Appellant was injured in a motor vehicle accident on January 2, 1999. Due to the injuries that she suffered in the accident Saskatchewan Government Insurance (“SGI”) provided funding to the Appellant for, amongst other items, periodic massage therapy, chiropractic therapy and medication costs for Amitriptyline.

[3] In a letter dated January 16, 2004 Ms. S. Heisler-Demyen, Personal Injury Adjuster, SGI informed the Appellant that SGI had decided to terminate funding for the massage therapy, the chiropractic therapy, and the Amitriptyline medication costs. In an Application Form dated March 16, 2004 the Appellant appeals SGI’s decision to terminate the funding for the massage therapy, chiropractic therapy, and Amitriptyline.

DISCUSSION OF THE ISSUES

a) **Funding for Amitriptyline:**

[4] At the Hearing and before the Appellant concluded the presentation of her case, Ms. Eremko asked the Commission for an opportunity to consult in private with Dr. A. Endsin, Medical Consultant, SGI and with Ms. Heisler-Demyen. Upon the resumption of the Hearing, Ms. Eremko stated that SGI would immediately reinstate funding to the Appellant, on a 6-month basis, for Amitriptyline. Upon the expiration of 6 months, Ms. Eremko stated that SGI would review whether or not to continue funding for Amitriptyline. Ms. Eremko stated that, upon presentation of receipts, SGI would reimburse the Appellant for her past costs of Amitriptyline.

[5] Before leaving the issue of funding for the Amitriptyline, we would remiss if we did not comment on the initial decision by SGI to terminate funding for the Amitriptyline. In a Memo dated January 6, 2004 addressed to Ms. Heisler-Demyen, Dr. Endsins stated that he was asked to review the file. In his Memo, Dr. Endsins states, in part, as follows:

“Regarding medication use, again from a functional perspective it does not appear that there is any requirement for medication. I am unclear as to why she was given a prescription for Remeron which is an antidepressant. This does not appear to be related to her motor vehicle accident as documented by the psychological report included in the STAR rehab report of November 28, 2002.

Again as it appears that the claimant has reached pre-accident status, as indicated in the STAR rehab report **the funding for medication does not appear to be an SGI issue.** The choice of medications that she is on is between her and her treating physician” (emphasis added).

[6] Then in her letter dated January 16, 2004 addressed to the Appellant, Ms. Heisler-Demyen stated in part as follows:

“Your injury claim file was also reviewed regarding your medications. It is the opinion of our Medical Consultant that, **‘from a functional perspective it does not appear that there is any requirement for medication’.**

For this reason, SGI will no longer pay for any medications on your behalf. SGI will however pay for any medication you may have purchased prior to this letter. If you have any receipts, please forward them for reimbursement” (emphasis added).

[7] At the Hearing, Dr. Endsins was asked by a member of the Commission why he had recommended the termination of the funding for Amitriptyline. In response, Dr. Endsins denied that he recommended the termination of funding for Amitriptyline.

[8] The Commission member then brought to Dr. Endsins’s attention the above noted extracts from his Memo dated January 6, 2004. In response, Dr. Endsins stated that in his Memo he recommended the termination of funding for only Remeron, but that he did not recommend the termination of funding for Amitriptyline.

[9] Mrs. Heisler-Demyen then interjected and stated that she had interpreted the above noted extracts from Dr. Endsins’s Memo to mean that Dr. Endsins recommended that funding for all medications including Amitriptyline be terminated. She went on to acknowledge that her

interpretation of Dr. Endsins's Memo was not correct. Alternatively Ms. Heisler-Demyen stated that, perhaps, Dr. Endsins had misinterpreted her request to review the continued funding of Amitriptyline.

[10] The decision by SGI to terminate funding for Amitriptyline resulted in the Appellant using her own funds to purchase Amitriptyline. Further, the decision by SGI to terminate funding for the purchase of Amitriptyline is one of the reasons why the Appellant commenced this appeal.

[11] It is regrettable that an internal SGI communication error occurred. It is expected that a valuable lesson will be learned from this case--the necessity for clear communication between SGI's Personal Injury Representatives and SGI's Medical Consultants. Further, it is regrettable that the communication error was not identified by SGI in advance of the appeal hearing date and, at that time, corrected by immediately reinstating to the Appellant the funding for Amitriptyline.

b) Funding for Chiropractor and Massage Therapy

[12] Due to the injuries that the Appellant suffered in the motor vehicle accident she has been receiving chiropractic and massage therapy treatments. For a number of years, SGI provided funding to the Appellant for the chiropractic and massage therapy treatments. After SGI decided to terminate the funding for chiropractic and massage therapy treatments, the Appellant continued with such treatments and paid for the treatment costs.

[13] S.T.A.R. Rehab assessed the Appellant on November 28, 2002. Arising out of that assessment, including a psychosocial component, a report was prepared by S.T.A.R. Rehab. Under the heading of **Recommendations** in the report there is the following:

“1. No further investigations or therapy are recommended.

2. She continues to have massage and chiropractic. Such passive measures in themselves are not harmful but as is typically the case, she finds no lasting or accumulative value from these therapies. Typically passive therapy is most effective soon after an injury and when used in conjunction with an active rehab program.

She has been involved in active rehab program and should be aware of the importance of an ongoing self-directed exercise program. No further formal intervention seems warranted.”

[14] After receiving the S.T.A.R. report, Dr. Endsins reviewed SGI’s file on the Appellant. In a file note dated January 8, 2003 Dr. Endsins stated, in part, as follows:

“New information received today included a multi-disciplinary secondary assessment report done at STAR Rehabilitation. The opinion of the therapy team appears to be summarized as follows:

- a) The initial injuries, including rib fractures have healed.
- b) Her primary issues now appear to be ones of persistent pain. There does not appear to be any impairment in terms of function.
- c) It appears from the report that the assessment team’s recommendation is that no further investigations or therapy are required. This includes massage or chiropractic treatments.

Therefore, it is my opinion that SGI’s responsibility for ongoing therapeutic measures has ended.

As no permanent impairment is anticipated the use of passive modalities, chiropractic and massage as a maintenance or preventative measure is not required.”

[15] In January 2004 Dr. Endsins again reviewed SGI’s file on the Appellant. In a file note dated January 6, 2004 Dr. Endsins stated, in part, as follows:

“I have been asked to review the above file with regards to additional information we have received since the previous memo of January 8, 2003. The additional information includes concern on the part of the claimant regarding the STAR rehab assessment report and inconsistencies she notes.

These inconsistencies are the claimant’s subjective comments regarding the content of the report. On review of these comments there is no additional information that would change my opinion of the report of January 8, 2003. The bottom line is that there does not appear to be any structural or anatomical abnormalities that are persistent that should cause continuing functional impairment. It appears from the STSR report of November 28, 2002 that functional (sic) that claimant had reached pre-accident status. The only issue, as stated in my memo of January 8, 2003, appears to be one of ongoing pain and the claimant’s perceived need for ongoing chiropractic and other passive modalities.

It is interesting to note the Clinical Guidelines for Chiropractic Practice in Canada, 1993 suggests that the maximum therapeutic benefit for chiropractic treatment is usually achieved within sixteen weeks and continued treatment past that time is no longer aimed at restorative care. As, according to the STAR rehab report the claimant has achieved return to normal function physically there

is not reason to continue to support passive treatment modalities for either maintenance or prevention. The claimant is free to use these treatment modalities on her own if she so chooses but this cost would be hers.”

[16] The Commission can review the legal correctness of SGI’s decision. In reviewing a decision of SGI, the Commission has the same jurisdiction under section 193(7) of the *The Automobile Accident Insurance Act* that the Court of Queen’s Bench previously had under section 198 (3) of the *Act* then in force to:

- (a) set aside, confirm or vary the insurer’s decision; or
- (b) make any decision that the insurer is authorized to make pursuant to this Part.

[17] The discretion to make decisions must be exercised in a judicial manner. The discretion can only be exercised in favour of the applicant if it is demonstrated that the decision of SGI (i.e. terminate funding for massage therapy and chiropractic treatments) was erroneous, or based on erroneous assumptions, or at the very least, the decision was unreasonable.¹ The Commission will exercise its discretion in the same way.²

[18] In this case, we are all of the view that SGI’s decision to decline funding for massage and chiropractic treatments was reasonable. In coming to that conclusion we have considered:

- a) the length of time that has elapsed since the motor vehicle accident;
- b) the current frequency of massage and chiropractic treatments. At the Hearing, the Appellant stated that in 2004 she had, to date, two chiropractic treatments and until recently one massage therapy treatments every three weeks (now trying one every four weeks);
- c) the testimony provided at the Hearing; and
- d) the documents filed by the Appellant and SGI for the appeal.

¹ **Belchamber v. Saskatchewan Government Insurance** [1997] TWL QB97557; **Donan v. Saskatchewan Government Insurance** [1998] TWL QB98224; **Collis v. Saskatchewan Government Insurance**, [1998] TWL QB98113

² **R.C. v. Saskatchewan Government Insurance**, 2003 SKAIA 001

[19] With respect to the documents filed for the appeal we have, in particular, reviewed and considered a letter filed by the Appellant from Garth LaPlante, D.C., Regina East Chiropractic Office dated September 15, 2004. In his letter, Dr. LaPlante states, in part, as follows:

“[The Appellant] continues to experience the residual effects of the accident despite being through an intensive rehabilitation program. She is able to self manage her symptoms with exercise and stretching. However, when this fails to provide relief she utilizes massage therapy and the occasional chiropractic adjustment. In my view this is the same as taking medication on a p.r.n. basis”.

[20] We note that Dr. LaPlante does not actually offer an opinion on whether or not the Appellant requires intermittent ongoing chiropractic adjustments and massage therapy.

c) Funding for Referral to a Chronic Pain Specialist

[21] The accident occurred more than 5 years ago. At the Hearing, Ms. Eremko and Dr. Endsinn acknowledged that the Appellant continues to experience pain from the motor vehicle accident. SGI has decided to reinstate funding to the Appellant for Amitriptyline. Amitriptyline will manage the pain.

[22] A member of the Commission asked Dr. Endsinn whether it would be reasonable, given her continued pain, for the Appellant to be referred and assessed by a Medical Doctor with a specialty in chronic pain. Dr. Endsinn replied that such a referral might be reasonable.

[23] We direct that SGI offer funding for the Appellant to be assessed by a Medical Doctor with a specialty or interest in the assessment, management, and treatment of chronic pain. Dr. Endsinn stated at the Hearing that a chronic pain clinic recently opened in Saskatoon.

CONCLUSIONS

[24] SGI will immediately reinstate to the Appellant the funding for Amitriptyline. Upon the expiration of 6 months SGI will reassess the reasonableness of whether or not to continue the funding for Amitriptyline. Upon presentation of receipts, SGI will reimburse the Appellant for her past Amitriptyline expenses.

[25] SGI's decision to terminate the funding for chiropractor and massage treatments is reasonable. Consequently, SGI's decision to terminate funding for chiropractor and massage treatments is upheld.

[26] SGI shall offer funding for the Appellant to be assessed by a medical doctor with a specialty or interest in the assessment, treatment and management of patients with chronic pain.

[27] Since the Appellant has had some success with her appeal the Appellant shall be reimbursed for her application fee. Further, SGI shall pay the Appellant her return mileage from her residence to Regina for her attendance at the appeal hearing.

Dated at Regina, Saskatchewan, on October 19, 2004.

Jeffrey Scott, Chair

Beverly Cleveland, Commission Member

Darleen Topp, Commission Member