

**Automobile Injury Appeal Commission
Province of Saskatchewan**

Citation: *R.L. v. Saskatchewan Government Insurance,*
2004 SKAIA 052
Date: 20041118
File: 018 of 2004

BETWEEN

R.L., Applicant

and

Saskatchewan Government Insurance, Respondent

Appearances:
R.L., Applicant
Stephen McLellan, for the Respondent

Before: **Jeffrey Scott, Chair**
Beverly Cleveland, Commission Member
Tim Brown, 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**
October 13, 2004

DECISION

INTRODUCTION

[1] The Appellant, R.L., appeals a decision made by Saskatchewan Government Insurance (“SGI”) dated November 27, 2003 in which SGI terminated all benefits to the Appellant. It is noted that the Application Form states that the Appellant appeals from a decision of SGI dated November 14, 2003. The hearing proceeded, however, on the understanding that the Appellant is actually appealing from the SGI decision of November 27, 2003.

[2] The issue in this appeal is whether SGI acted reasonably when it terminated benefits under **The Automobile Accident Insurance Act (the “Act”)** to the Appellant.

FACTS:

[3] The Appellant was injured in a motor vehicle accident in Regina, Saskatchewan on June 17, 2001. Due to the injuries that she suffered in the accident the Appellant received benefits under the **Act**.

[4] SGI provided to the Appellant rehabilitation programs at a number of locations: Wascana Rehabilitation Center, Regina, Saskatchewan; NRCS Inc., Calgary, Alberta (at one point the Appellant moved from to Calgary), and; at the time of the termination of benefits, NRCS Inc. at Regina, Saskatchewan (after the Appellant moved back from Calgary).

[5] At all three locations, the Appellant failed to attend a number of her rehabilitation appointments. In response to the missed appointments, a number of letters were sent by SGI to the Appellant reminding her of her obligation to be available and attend the rehabilitation appointments and warning the Appellant that should she fail to keep her appointments SGI may terminate benefits to her.

[6] One of those letters is a letter from Cory Hameluck, Personal Injury Representative, SGI addressed to the Appellant dated November 18, 2003. In her letter Ms. Hameluck states, in part, as follows:

“As per our telephone conversation today, this letter is written to you to confirm your guarantee to fully cooperate from hereon.

...

It is your responsibility to keep regular contact with Ms. Jo Anne Mueller at NRCS so she can monitor your rehabilitation plan and referrals to any specialists. You must also notify SGI if you should change your address and phone number.

...

Should I be informed that you are non-compliant with Ms. Mueller, or not attending the gym, all of your benefits will be terminated effective immediately.”

[7] On November 24, 2003 the Appellant had a rehabilitation appointment with Jo Anne Mueller of NRCS Inc., Regina. The Appellant did not keep her appointment. The Appellant stated that she was not able to attend the appointment since she did not have a vehicle and had no alternative means to get to the appointment.

[8] In the letter dated November 27, 2003, which is the subject of this appeal, Ms. Hameluck specifically referred to the missed appointment with Ms. Mueller on November 24, 2003 and informed the Appellant that SGI was terminating her benefits under the **Act**. Ms. Hameluck relied upon Section 185 (f) and (g) of the **Act** in support of her decision. Section 185 (f) and (g) provides as follows:

“The insurer may refuse to pay a benefit to a person or may reduce the amount of a benefit or suspend or terminate the benefit, where the person:

(f) without valid reason, prevents or delays recovery by his or her activities;

(g) without valid reason, does not follow or participate in a rehabilitation program made available by the insurer.”

LAW AND ANALYSIS

[9] 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 **Act** that the Court of Queen’s Bench previously has under section 198 (3) of the **Act** then in force to:

set aside, confirm or vary the insurer’s decision; or

make any decision that the insurer is authorized to make pursuant to this Part.

[10] 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 benefits due to failure to attend rehabilitation appointments) 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

[11] In this case, we are all of the view that SGI's decision to terminate benefits to the Appellant was reasonable. In coming to that conclusion, we have reviewed and considered:

- a) the Wascana Rehabilitation Center file materials and the repeated references to M the Appellant failing to attend rehabilitation appointments;
- b) the telephone conversations between the Wascana Rehabilitation Centre personnel and Ms. Hameluck concerning the Appellant's missed rehabilitation appointments;
- c) the telephone conversations between Ms. Hameluck and the Appellant and meetings that Ms. Hameluck had with the Appellant concerning the Appellant's missed rehabilitation appointments at the Wascana Rehabilitation Centre;
- d) the letters from Ms. Hameluck addressed to the Appellant informing her of her obligation to attend the Wascana Rehabilitation program and warning her that if she failed to attend the program benefits under the **Act** could be terminated;
- e) the NRCS Inc. Calgary office file materials and the references to the Appellant failing to attend rehabilitation appointments;
- f) the letters from Ms. Hameluck addressed to the Appellant and meetings that Ms. Hameluck had with the Appellant informing her of her obligation to attend the NRCS Inc, Calgary rehabilitation program and informing her that her failure to attend such appointments could result in SGI terminating benefits;

¹ Belchamber v. Saskatchewan Government Insurance [1997] TWL QB97557; Donan v. Saskatchewan Government

- g) upon the Appellant's moving back from Calgary, the letters from Ms. Hameluck addressed to the Appellant and telephone conversations between Ms. Hameluck and the Appellant informing the Appellant of her obligation to be available and attend rehabilitation appointments and that her failure to regularly attend rehabilitation could result in SGI terminating benefits to her;
- h) upon the Appellant's return from Calgary, the meetings that Ms. Hameluck had with the Appellant reminding her of her obligation to attend rehabilitation appointments and that should she fail to attend the rehabilitation appointments SGI might terminate benefits;
- i) the NRCS Inc Regina office file materials and the reference to the Appellant failing to attend a rehabilitation appointment;
- j) Ms. Hameluck's letter dated November 18, 2003 addressed to the Appellant.

[12] In coming to our conclusion we have, also, considered the Appellant's assertion that she did not actually receive the November 18, 2003 letter from Ms. Hameluck. Further, we have considered the Appellant's assertion that the signature on the "Advice of Receipt" document, which purportedly shows the Appellant's signature evidencing receipt of the November 18, 2003 letter, is not her signature.

[13] The Appellant asserts that the signature on the Advice of Receipt is not her signature. She asserts that she always signs her name as ["A"]. The signature on the Advice of Receipt document is ["B"]. In cross-examination, Mr. McLellan brought to the Appellant's attention the Wascana Rehabilitation Centre "Record of Attendance- Out-Patient" document. Mr. McLellan asked the Appellant whether the signatures on that document are her signatures. The Appellant acknowledged that they are her signatures. The signatures are ["B"]. However, the Appellant then went on to state during cross-examination that whenever she was required to sign a **SGI** document she signed ["B"].

Insurance [1998] TWL QB98224; Collis v. Saskatchewan Government Insurance [1998] TWL QB98113

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

[14] Leaving aside the issue of whether or not the Appellant actually received the letter of November 18, 2003, we note that the letter references a telephone conversation that Ms. Hameluck had with the Appellant on November 18, 2003. At the Hearing, the Appellant acknowledged having a telephone conversation with Ms. Hameluck on November 18, 2003. Further, at the Hearing the Appellant acknowledged that as a result of the telephone conversation she knew there would be consequences if she failed to keep her rehabilitation appointments.

[15] Considering all of the documents filed for the Hearing (and the documents filed by the Appellant a number of days after the Hearing) and the testimony offered at the Hearing we are satisfied that:

- a) Ms. Hameluck informed the Appellant of her obligation to regularly attend rehabilitation appointments;
- b) Ms. Hameluck informed the Appellant that benefits might be terminated if she failed to regularly attend rehabilitation appointments;
- c) and that the Appellant was aware of her obligation to attend rehabilitation appointments and knew that benefits might be terminated should she fail to regularly attend the rehabilitation appointments.

[16] Consequently, we are all in agreement that SGI acted reasonably in terminating benefits to the Appellant pursuant to section 185(g) of the **Act**. Given our conclusion considering the application of section 185 (g) of the **Act** to this matter, we do not need to determine the applicability of section 185(f) of the **Act**.

CONCLUSION

SGI's decision to terminate benefits to the Appellant is reasonable. Consequently, SGI's decision to terminate benefits to the Appellant is upheld.

At the Hearing, the Appellant asked for a copy of her exercise program from the SGI file. Mr. McLellan agreed to have the exercise program copied and then sent to the Appellant. We are assuming that Mr. McLellan will proceed to do so.

Dated at Regina, Saskatchewan, on November 18, 2004.

Jeffrey Scott, Chair

Beverly Cleveland, Commission Member

Tim Brown, Commission Member