Automobile Injury Appeal Commission

Province of Saskatchewan

Citation: *R.E. v. Saskatchewan Government Insurance*, 2004 SKAIA 053

Date: 20041117

File: 146 of 2003

BETWEEN

R.E., Applicant

and

Saskatchewan Government Insurance, Respondent

Appearances*:*
R.E., Applicant
Darrell Mack, for the Respondent

Before: **Joy Dobko, Chair**
Al Knippel, 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 Prince Albert, Saskatchewan
June 17, 2004

DECISION

[1] This is an appeal by R.E., the Appellant, regarding a decision by SGI dated September 15, 2003 regarding the termination of medical rehabilitation benefits, specifically chiropractic treatment, for injuries suffered to her neck and right shoulder in a motor vehicle accident on June 5, 2002. SGI submits that the shoulder injury complained of by the Appellant existed prior to the motor vehicle accident.

FACTS:

[2] On June 5, 2002, the Appellant was involved in a motor vehicle accident when her vehicle collided with a deer. It is important to review the past medical history and clinical notes for the Appellant to determine if the neck and shoulder injury existed prior to the accident of June 5, 2002.

[3] The Appellant stated that she previously suffered from right elbow bursitis. The Appellant relied upon a Prince Albert Community Clinic note dated September 19, 2003 which appears to be written by Dr. Naidoo. The note states that the Appellant suffered from bursitis in her right elbow in 1998. However, clinical notes produced by Dr. Kaleem show that the Appellant suffered from a painful right elbow in August 1996. Dr. Kaleem diagnosed the Appellant with right tennis elbow. X-rays of the right elbow taken November 22, 1996 are normal. The Appellant commenced physiotherapy treatment for her elbow on November 26, 1996. The physiotherapist makes the following notes:

> Painful elbow since summer – using mouse on computer, clearing files, more than usual. Sudden onset. Now uses arm rest with computer. Acute phase over, but pain has stayed same since summer – was using other hand to eat etc. Feels better with support under elbow. Pain started in shoulder, now in elbow. No problem with grip or dropping things. Has had neck problems in the past – needs “right” pillow. No neck problems at present.
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> On exam – elbow very tender over lat. epicondyle, positive for wrist & finger extension. Elbow full range but sl. Painful on full flexion & full extension.
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> -shoulder – discomfort at end range of all movts – espec X add;
>
> Cervical spine – S.F. to left increased pain on right – rots ¾ both dir – flex ¾ - ext ½
>
> Desk job primarily. No arthritis prior.

> Doesn't' disturb sleep. Shoulder sore in a.m.
> Not necessarily worse by end of day.
> Feels better when supported.
>
> Plan – exs to stab. Shoulder – treat tennis elbow – ice, la??

[4] On April 17, 1997, the Appellant was discharged from physiotherapy as improved. She was advised to continue with a home exercise program. We are unable to conclude the validity of the note provided by Dr. Naidoo on September 19, 2003 as we did not have the entire medical file for the Appellant filed in evidence. We are unsure of whether the Appellant suffered a recurrence of her right elbow bursitis in 1998 or if this is a typographical error on Dr. Naidoo's part. We are satisfied that she suffered right elbow bursitis and shoulder pain in November 1996.

[5] On June 6, 2002, the Appellant attended upon Dr. Naidoo for her injuries suffered in the motor vehicle accident. Dr. Naidoo's clinical notes are "patient states in MVA with deer last night. C/o neck and shoulder pain". Dr. Naidoo referred the Appellant to physiotherapy.

[6] On June 7, 2002, the clinical notes for Fitzpatrick's Physical Therapy Clinic state that the Appellant is suffering from neck pain. The physiotherapist does not feel there is muscle spasm in the cervical spine but rather it is due to degenerative changes. She advised the Appellant to stay away from upper arm usage. On June 14, 2002, the Appellant is again examined by physiotherapist, Bev Fitzpatrick. In a Practitioner's Report prepared by Ms. Fitzpatrick she diagnosed the Appellant to be suffering from a Whiplash Associated Disorder, Grade II. She recommends that the Appellant limit upper arm movement until starting range of motion exercises and muscle spasm is decreased. She expects there to be two week delay to return to usual activities. Ms. Fitzpatrick also suspected some pre-existing degenerative osteoarthritis of the cervical spine. X-rays of the cervical spine taken on August 19, 2002 show degenerative changes to the cervical spine at C4-5, C5-6 and a mild narrowing of the disc space at C6-7.

[7] The Appellant completed her Application for Injury Benefits on June 14, 2002. She reported pain in her neck upper back and shoulder area by shading these areas in on the diagram found in the Application. The Appellant also reported a pre-existing injury of "repetitive strain injury to arm". She testified that this related to her tennis elbow injury. She also completed an Application for Injury Benefits – For Income Replacement or Loss of Studies Benefits because

her physiotherapist advised her not to work due to her neck injuries. She reported her yearly gross income to be [amount].

[8] On July 19, 2002, Andrea Zary, occupational therapist, completed a worksite evaluation at the Appellant's place of employment. At the time the Appellant was on a Graduated Return to Work Program. Ms. Zary concluded that the client's worksite was well set up and that the majority of the evaluation involved education regarding body mechanics to use to decrease neck flexion and limit upper extremity reach to minimize neck and shoulder strain.

[9] A second Practitioner's Report completed by Ms. Fitzpatrick on September 9, 2002, diagnosed WAD II. In correspondence dated September 20, 2002, Ms. Fitzpatrick reported that the Appellant had plateaued and that any decreased range of motion would be the result of prior degenerative disc disease. The Appellant was also receiving chiropractic treatment from Dr. Broker as of August 9, 2002. On October 30, 2002, Ms. Fitzpatrick advised SGI that no further physiotherapy or chiropractic treatment was recommended. She stated that Dr. Broker's recommendation of a gym program would be of little benefit because lifting would be so limited due to the Appellant's neck problems.

[10] Dr. Broker completed a medical report dated December 5, 2003 outlining his involvement with the Appellant following her motor vehicle accident of June 5, 2002. Dr. Broker also attended and gave oral testimony at the Appeal Hearing. Dr. Broker initially saw the Appellant on August 9, 2002 for limitation on cervical ranges of motion particularly to the left side. Dr. Broker first reported radicular effects into the Appellant's right arm on September 13, 2002, approximately three months after the motor vehicle accident. On October 9, 2002, Dr. Broker completed a Practitioner's Report for SGI. His primary diagnosis was right C5/6 facet syndrome and right levator scapulae syndrome.

[11] It is not clear what happened next, however, the Appellant attended a Secondary Assessment on January 14, 2003. The assessment was requested due to degenerative changes in the cervical spine. The primary diagnosis was WAD II with degenerative disc disease in the cervical spine. The diagnosis of the Secondary Assessment Team is slowly resolving WAD II

secondary to trauma with referred arm pain and chronic right shoulder pathology (acute flare up). The Recommendations for Care were:

Level of Care	Continued primary care for 8 more weeks at an accredited facility. Practitioners should then review client's status. (If improvement has plateaued treatment should discontinue. Client should be followed periodically for the next 2-3 months by the primary practitioner to monitor any changes.) Client's inability to take anti-inflammatories will prolong her recovery. It is the team's opinion that unless inflammation can be reduced recovery will be a gradual slow process.	Primary Practitioner SGI
Medical	Possible use of Glucosamine chodroitin and MSM (due to inability to take anti-inflammatories). Further investigation by an orthopaedic surgeon may be needed if progress is not made in shoulder presentation.	Primary Practitioner
Biomechanical	Query laser or acupuncture to decrease the inflammation in the cervical C5-C6 region. **Shoulder impingement needs to be addressed to prevent frozen shoulder.** (emphasis mine)	Physical Therapist
Conditioning	Program for right shoulder. General stretching and isometric exercise program for the cervical spine. A pulley system of some sort would be help full for client to do active assisted activity at home for her right arm.	
Return to Function	Implement O.T. recommendations IRC	
Psychosocial	Not applicable.	
Education	Client has received considerable education through OT, as well as other practitioners. If she continues to have primary treatment the physical therapist should provide answers to questions as needed.	

The Summary of Opinion stated "WAD II with referred arm pain, slow resolution expected and right shoulder impingement". On January 20, 2003, SGI confirmed the recommendations of the Secondary Assessment and advised the Appellant to follow-up with Dr. Naidoo. There is no indication in the correspondence that SGI denied funding for any of the treatment. On May 6, 2003, SGI followed up with Dr. Broker regarding the Appellant's progress and questioned whether tertiary assessment would be warranted at that time. Dr. Broker responded on June 7, 2003, by way of a Practitioner's Report and diagnosed a frozen right shoulder. Dr. Broker

reported that the Appellant was not at the level necessary to benefit from an active program at a fitness centre but that she may be in 8-12 weeks.

[12] On June 24, 2003, Dr. Mierau, medical consultant for SGI reviewed the Appellant's medical file. He concluded upon review of the chart that the right shoulder was not injured in the motor vehicle accident. Dr. Mierau concluded that the first mention of frozen shoulder was on June 17, 2003 by the chiropractor and that the Appellant had a restriction relative to the right shoulder that pre-dated the motor vehicle accident. He further reported the initial diagnosis by the physiotherapist on June 14, 2002 diagnosed a WAD II without mention of a shoulder condition.

[13] On July 8, 2003, the Appellant attended upon Ms. Fitzpatrick for review. Ms. Fitzpatrick's clinical notes are as follows:

> Seen today for review. Her neck range of motion remains the same as of Oct. 30,02. Her main complaint is that she developed a frozen shoulder Dec/02**. The only correlation between this Frozen shoulder and her MVA is that she may have stopped elevating her arms as it may irritate her cervical spine.** There were no symptoms of arm injury June 7,02. It appears strictly a resolving frozen shoulder and doesn't appear to have any nerve reference from her cervical spine. Nerve conduction studies could be done to rule this out but your physio consultant could advise. She has continued to see the chiropractor 2X week for her C-spine and shoulder. Her range is 75% for abd, flexion and 50% for internal rotation. Movement of this degree would enable her to safely go to a gym program although lifting weights could irritate the degenerative changes in her C-spine. I had said previously a gym program for this lady would have limited value and especially now when its her shoulder not neck that is giving her the problem. We reviewed the extensive list of exs she was doing and brought them down to a manageable "core" base of exs. for home use. (**emphasis mine)**

[14] On August 27, 2003, Dr. Naidoo advised SGI that she had reviewed the file of the Appellant and had found no information about a painful elbow. There is a Prince Albert Community Clinic note filed and dated September 17, 2003 which states that Dr. Naidoo found a second file for the Appellant which confirmed that the Appellant suffered from right bursitis in her right elbow in 1998. There is another Prince Albert Community Clinic note filed dated May 4, 2004 which states that Dr. Naidoo has reviewed both files for the Appellant and Dr. Naidoo reports "there is no mention of a shoulder or neck problem". We know this is not entirely accurate because clinical notes were produced at the Appeal Hearing showing that the Appellant had suffered a sore shoulder and elbow and admitted to prior neck problems in November 1996 when she received treatment for her tennis elbow.

[15] On September 15, 2003, SGI terminated rehabilitation benefits for the Appellant. The basis for the termination was that the right shoulder problem pre-existed the motor vehicle accident of June 5, 2002.

[16] On October 7, 2003, Dr. Mierau reviewed the information provided by Dr. Naidoo regarding the right elbow bursitis and concluded that it did not change his opinion regarding causation of the right shoulder injury. On October 21, 2003, SGI advised the Appellant that their medical consultant had reviewed the medical information of Dr. Naidoo, however, their decision regarding termination of benefits as of September 15, 2003 did not change.

[17] On December 16, 2003, Dr. Mierau completed a third review of the Appellant's file. He reported:

> Anterior or lateral right shoulder symptoms were not documented in the application for benefits dated shortly after the MVA. A 'repetative(sic) strain injury to the right arm' that was being treated at the time of the MVA.
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> A bursitis of the right elbow in 1998 was documented by the family doctor.
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> Repetative(sic) strain injury to the right upper limb was documented by the IRC consultant on July 19, 2002.
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> On October 9, 2002, the chiropractor documented a neck condition, not a right shoulder condition.
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> On October 30, 2002, the physical therapist documented that more treatment would not be of any benefit.
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> The customer had a stiff right shoulder at the secondary assessment on January 14, 2003. The secondary assessment team termed the right shoulder problem a chronic right shoulder problem (acute flair-up). Radicular pain into the right arm is easily distinguished from a frozen shoulder. Dr. Broker identified the possibility of an insidious onset to a frozen shoulder on page one, paragraph 4 of his letter of December 5, 2003. However, disagree with his notion regarding that insidious onset of frozen shoulder is the exception. Rather, insidious onset (onset without apparent cause) is the most common presentation of a frozen shoulder.
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> **Opinion:**
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> The first mention of right shoulder stiffness (acute flair-up of a chronic condition) was on January 14, 2003 at the secondary assessment (6 months after the MVA). A condition of the shoulder was not mentioned by a health provider or the customer before that date. A frozen shoulder is not a result of the MVA of June 2002.

[18] Darrell Mack provided evidence on behalf of SGI. He advised that Dr. Broker contacted SGI on September 17, 2003 indicating that the Appellant was physically ready to enter into a conditioning program.

LAW AND ANALYSIS:

[19] SGI submits that the shoulder injury complained of by the Appellant existed prior to the motor vehicle accident. The Appellant submits that the frozen shoulder resulted from the motor vehicle accident. SGI terminated all benefits as of September 15, 2003 for treatment to the Appellant's neck and to her shoulder, although the correspondence only refers to the shoulder condition. The Appellant submits that she is still receiving treatments to her neck and that SGI provided no basis for termination of those benefits and has not paid for those benefits.

[20] The issue before this Commission is whether the frozen shoulder suffered by the Appellant is related or caused by the motor vehicle accident. The onus of proving on a balance of probabilities that her frozen right shoulder was caused or exacerbated by the June 5, 2002 motor vehicle accident is on the Appellant. Causation is established where the claimant proves to the civil standard on a balance of probabilities that the motor vehicle accident caused or contributed to the injury. Causation must be established on the balance of probabilities, taking into account all the evidence: factual and statistical.[1] With respect to the treatment of the Appellant's cervical condition, we are of the opinion that it is appropriate, and consistent with *The Automobile Accident Insurance Act*[2] and Part VIII benefits, to require SGI to rehabilitate the victim of an automobile accident to the pre-accident level and not beyond.

[21] The Commission's jurisdiction to review a decision of SGI is set out in section 193(7) of the *Automobile Accident Insurance Act* (the "*Act*"). The Appeal Commission may:

(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.

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[1] *Lindberg v. Saskatchewan Government Insurance* (2004), 2004 SKQB 155, 11 C.C.L.I. (4th) 251.
[2] R.S.S. 1978, c. A-35.

[22] The Commission determined in *R.C.*[3] that its discretion under section 193(7) must be exercised in a judicial manner. The discretion will be exercised in favour of the Applicant only if it is demonstrated that the decision of SGI was wrong in law; or based on erroneous assumptions; or at the very least, the decision was unreasonable.[4]

Shoulder Injury

[23] The diagnosis by SGI of a pre-existing shoulder condition rests entirely upon the self-reporting of the Appellant. In her Application for Benefits, the Appellant reported a "repetitive strain injury to her arm". The Secondary Assessment Team document past medical history to include a "repetitive strain injury of her right upper extremity **(not functionally limiting)**. It is not clear where this information comes from and there was no one available at the Appeal Hearing to provide evidence with respect to this point. The Appellant testified that she classified her right arm bursitis as a "repetitive strain injury to her arm" but that no medical physician had actually diagnosed her with that problem. The Appellant also stated that prior to the accident she was able to care for her grandchildren and that as a result of the accident, she is no longer able to lift them because of her neck and shoulder pain. The Appellant described the pain she experienced in her right elbow in 1996 as a throbbing which affected her whole arm. She stated her fingertips would tingle. She does admit that she made ergonomic changes to her work place about four to five years ago but stated that they were made prior to her elbow bursitis. During the Appeal Hearing, clinical notes from Dr. Naidoo's office were made available which showed the elbow injury to have occurred in 1996 rather than 1998. There was no other medical evidence presented at the Appeal Hearing to suggest that the elbow bursitis, shoulder condition or "repetitive strain injury to [the Appellant's] arm" was symptomatic or functionally limiting in the three years preceding the motor vehicle accident.

[24] Dr. Broker provided a medical report and testified at the Appeal Hearing on behalf of the Appellant. Dr. Broker testified that the Appellant had shoulder symptoms following the motor vehicle accident and prior to the development of the frozen shoulder in June 2003. Dr. Broker stated that he first recorded radicular effects into the Appellant's right arm on September 13,

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[3] *R.C. v. Saskatchewan Government Insurance* 2003 SKAIA 1

2002. His primary diagnosis on October 9, 2002 was right C5/6 facet syndrome and right levator scapulae syndrome. He also stated that the Secondary Assessment performed on January 14, 2003 diagnosed right shoulder impingement and stated the need to address such to prevent a frozen shoulder. We further note that Dr. Naidoo's clinical notes mention neck and shoulder pain in her initial visit following the motor vehicle accident. We place considerable weight upon the findings and recommendations from the Secondary Assessment. The Secondary Assessment Team clearly emphasized the need to address the shoulder impingement to prevent a frozen shoulder. Ms. Fitzpatrick, the physiotherapist, reported on July 8, 2003 that the only correlation between the frozen shoulder and the motor vehicle accident may be that the Appellant stopped elevating her arm because it irritated her cervical spine. On June 14, 2002, Ms. Fitzpatrick in fact recommended the Appellant limit upper arm movement. Ms. Andrea Zary noted that her workplace was specifically designed to limit upper arm usage. Finally, it was strongly recommended by the Secondary Assessment Team that the Appellant enter into a conditioning program for her right shoulder. We are unable to conclude that this recommendation was ever carried out. Dr. Broker recommended a gym program in October 2002, however, Ms. Fitzpatrick disagreed with this recommendation because in her opinion any lifting by the Appellant would be of limited benefit because of the problems with her neck.

[25] Dr. Broker testified that a frozen shoulder may occur spontaneously, however the vast majority of frozen shoulders develop due to exertionary cause or secondary to trauma. He relies on his past clinical experience when giving this opinion. He further stated that the anatomy of the shoulder is dependant on the continuity of the spine. Dr. Broker acknowledged that there was prior shoulder symptamology but did not agree that a sore shoulder six years previous to the motor vehicle accident would be considered a chronic condition nor is it documentation of a repetitive shoulder injury which pre-existed the motor vehicle accident.

[26] Therefore, we find a clear paper trail from the time of the motor vehicle accident documenting a sore shoulder and medical recommendations to limit upper arm usage by the physiotherapist. The physiotherapist further states. There is medical evidence which definitely states that a frozen shoulder will result unless a conditioning program is implemented to address

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[4] *Belchamber v. Saskatchewan Government Insurance,* [1997] TWL QB 97557; *Donen v. Saskatchewan Government Insurance,* [1998] TWL QB 98224; *Collis v.*

the right shoulder impingement. We find the decision of SGI dated September 15, 2003 that the shoulder injury was not caused by the motor vehicle accident to be based upon the erroneous assumption that the Appellant had a pre-existing shoulder injury. The only medical evidence of a pre-existing injury to the shoulder was in November 1996 and it was in fact diagnosed as right elbow bursitis. The Secondary Assessment warned of the development of a frozen shoulder and in our opinion, the failure to implement all those recommendations resulted in the Appellant's frozen shoulder. Further, there is no suggestion in the Summary of Opinion by the Secondary Assessment Team that the shoulder impingement is not causally related to the motor vehicle accident. We accept Dr. Broker's medical opinion that the documentation of a shoulder injury six years prior to the motor vehicle accident does not support a finding of a chronic shoulder injury.

Neck Injury

[27] SGI's decision to terminate benefits did not clearly address the Appellant's cervical treatment although all benefits were terminated. It was clearly an issue on appeal and therefore, we have concluded that we have jurisdiction to review the decision of SGI to terminate all benefits, including treatments to the cervical spine. It is not clear however, what medical evidence SGI relied upon in terminating treatment to the cervical spine.

[28] The physiotherapist, Ms. Fitzpatrick, and Dr. Broker both document degenerative changes to the cervical spine. Dr. Broker refers to the Appellant sustaining a whiplash associated disorder to a moderately osteoarthritic cervical spine. The Secondary Assessment completed in January 2003 recommends that primary care continue for 8 more weeks and then the Appellant's status should be reviewed by her practitioners. If the Appellant's condition has plateaued then treatment should be discontinued. They further note that recovery will be prolonged due to the fact that the Appellant is unable to take anti-inflammatories. SGI continues to provide medical rehabilitation benefits until September 2003. In May, 2003, SGI questioned whether the Appellant should be referred for a tertiary assessment. Dr. Broker responded in June 2003 stating that she would be unable to attend a tertiary program. In July 2003, Ms. Fitzpatrick,

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Saskatchewan Government Insurance, [1998] TWL QB 98113.

physiotherapist, reviewed the Appellant and found that her range of motion of her cervical spine was the same as when she had discharged her in October 2002. We did not have Ms. Fitzpatrick's range of motion measurements before us at the Appeal Hearing. Dr. Broker testified that the Appellant's range of motion of her cervical spine at the time of the Appeal Hearing was: Full Flexion (with pain at end ranges); Extension 30° of normal; Lateral Bending 70° right, 50° left; and Rotation 90° right and 70° left with a pulling sensation on the right. We are unable to determine if the range of motion measurements for the Appellant's cervical spine completed by Dr. Broker are the same as those range of motion measurements completed by the Secondary Assessment Team in January 2003 which would suggest that the Appellant had plateaued in the treatment of her cervical spine. Further, the medical reports of Dr. Mierau do not respond to termination of the cervical spine treatments.

[29] Therefore, we are unable to determine whether the Appellant's neck condition had plateaued at the time of the Appeal Hearing such that treatment should be discontinued as recommended by the Secondary Assessment Team. We are cognizant of the fact that there is a pre-existing neck condition and that SGI is only responsible to return the Appellant to the position that she was in prior to the motor vehicle accident. Therefore, it is our recommendation that SGI and Dr. Broker review the range of motion measurements of the Appellant's cervical spine at the time of the Appeal Hearing to determine if her neck range of motion has improved since the January 14, 2003 Secondary Assessment. If such is the case then, SGI shall be responsible for treatment costs to the cervical spine. If in fact, the Appellant's cervical position had plateaued at the time of the Appeal Hearing, then we are in agreement that the Appellant's ongoing problems relate to the pre-existing degenerative changes in her cervical spine and are not the responsibility of SGI. We are unable to rely upon the finding of Ms. Fitzpatrick in July 2003 that the Appellant had plateaued due to the absence of any objective range of motion measurements completed by Ms. Fitzpatrick and provided to the members of this Commission which support that the Appellant's condition had not improved from the date of the Secondary Assessment. We want to be clear that we are not in agreement with indefinite treatment to the cervical spine. The recommendations of the Secondary Assessment Team were to discontinue treatment once the Appellant's neck condition had plateaued and we are in agreement with this

recommendation. If at the time of the Appeal Hearing, the Appellant's condition had plateaued then SGI shall not be responsible for ongoing medical treatment to the cervical spine.

CONCLUSION:

[30] We find the decision of SGI dated September 15, 2003 that the shoulder injury was not caused by the motor vehicle accident to be based upon the erroneous assumption that the Appellant had a pre-existing shoulder injury. We do not find medical evidence to support this assumption or conclusion by SGI. Therefore, SGI's decision of September 15, 2003 that the shoulder injury originated prior to the motor vehicle accident is set aside. SGI is directed to pay for all treatment costs relating to the shoulder injury.

[31] It is our recommendation that SGI and Dr. Broker review the range of motion measurements of the Appellant's cervical spine at the time of the Appeal Hearing to determine if her neck range of motion had improved since the January 14, 2003 Secondary Assessment. If such is the case then, SGI shall be responsible for treatment costs to the cervical spine. If in fact, the Appellant's cervical position had plateaued at the time of the Appeal Hearing, then we are in agreement that the Appellant's ongoing problems relate to the pre-existing degenerative changes in her cervical spine and are not the responsibility of SGI. The recommendations of the Secondary Assessment Team were to discontinue treatment once the Appellant's neck condition had plateaued and we are in agreement with this recommendation. If at the time of the Appeal Hearing, the Appellant's condition had plateaued then SGI shall not be responsible for ongoing medical treatment to the cervical spine. Therefore, SGI's decision of September 15, 2003 that they had fulfilled its obligation for all treatment costs for accident related injuries, specifically relating to the cervical spine, should be reviewed in light of the above findings by the Appeals Commission.

Costs

[32] Pursuant to section 193(11) of *The Automobile Accident Insurance Act* that came into force on January 1, 2003, and section 96(1) of the new *Personal Injury Benefits Regulations,* the Appellant is entitled to her costs of the application, meals and the cost of any expert reports.

Dated at Saskatoon, Saskatchewan, on November 17, 2004.

Joy Dobko, Chair

Al Knippel, Commission Member

Darleen Topp, Commission Member