

**Automobile Injury Appeal Commission
Province of Saskatchewan**

Citation: *N.S. v. Saskatchewan Government Insurance,*
2004 SKAIA 056
Date: 20041221
File: 055 of 2004

BETWEEN

N.S., Applicant

and

Saskatchewan Government Insurance, Respondent

Appearances:

N.S., for the Applicant
Stephen McLellan, for the Respondent

Before: **Beverly Cleveland, Chair**
Joy Dobko, Commission Member
Peter Bergbusch, 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
November 19, 2003

DECISION

[1] The Appellant, N.S., appeals a decision of Saskatchewan Government Insurance (SGI) dated January 12, 2004 denying her benefits for cranial sacral massage therapy and funding for temporal-mandibular joint (TMJ) correction. A second letter dated May 13, 2004 stated SGI would not fund further massage therapy treatments.

FACTS

[2] The Appellant was injured on August 14, 2003 when the motor vehicle she was driving was struck from behind. EMS attended the scene but she did not go to the hospital and drove her vehicle home. Over the next several hours, the Appellant noticed progressive discomfort in her neck, shoulder, upper arms and left foot.

[3] On August 15, the Appellant attended a walk-in clinic and was diagnosed with a cervical spine WAD II with noted tenderness in the thoracic region as far down as T10. The Appellant also reported headaches and TMJ pain. Over the next two months the Appellant attended for chiropractic, physiotherapy and massage therapy treatments. She experienced some relief from physiotherapy and massage therapy but the most improvement was from craniosacral massage.

[4] On October 23, Regina Sports and Physiotherapy Clinic reported their secondary assessment results. The assessment team recommended in part:

“(t)he primary goal should be to restore her as near as possible to her pre-injury status. Given that she was not entirely symptom free before the accident, it is unlikely that she will be symptom free after treatment. She previously required an orthodontic appliance on a 24-hour basis and had required monthly craniosacral therapy. The need for these will likely continue after treatment. SGI should clarify where they feel the extent of their responsibility lies in this regard. While orthodontic intervention might result in the elimination of her need to wear her appliance on a 24-hour basis, the need for this would not be entirely as a result of this accident...

“She should continue with her current massage therapy. Given her belief system and the strong faith that she has in craniosacral therapy, SGI may wish to consider

whether or not they would be prepared to fund a limited number of 1 hour massage therapy sessions, to allow her to receive the craniosacral therapy that she is convinced that she needs. If this is approved, this should be conditional on her participating in a more comprehensive rehabilitation program and should clearly (be) time limited, for the duration of the program. [The Appellant] has been made aware that this may not be approved, due to the lack of scientific evidence supporting craniosacral therapy at this time and because the insurer may be reluctant to establish a precedent in this regard as a consequence. However, given her strong faith in this, it was believed that such support might well facilitate a more successful resolution of her overall claim....”

[5] The Appellant reported her history of TMJ problems and headaches to SGI but stated these had been under control for many years from to a combination of an orthodontic splint that she wears on a 24 hour basis as well as monthly visits for craniosacral therapy.

[6] On January 30, 2004 the Appellant’s family dentist, Dr. Rusteika, wrote:

“I first saw [the Appellant] on June 2, 1997 as a TMJ referral from Warren Barry, a massage therapist. I made [the Appellant] a lower hard splint to help her with some minor joint troubles and headaches she was having at the time.

“July 24, 1997 I delivered a lower hard splint and instructed her to continue to see Warren Barry for massage therapy. By early 1998 she was still wearing the splint and getting treatment from Warren Barry. I referred her to Dr. Ed Gherasim for an appointment on April 9, 1998.

“Upon Dr. Ed Gherasims’ recommendation [the Appellant] began massage therapy treatment from Jean Sellinger for cranio-sacral massage, in September 1998. [The Appellant] reported to me that the headaches had gone away with the combination of splint therapy and massages. December 1999, [the Appellant’s] splint was broken and I replaced it with a new splint that covered her lower teeth which she could wear all the time. I only saw her for routine dentistry after this, and see reported a very normal headache free life.

“August 2003 [the Appellant] was involved in an MVA and when I saw her in September 2003 I thought her pain and joint dysfunction were different and felt she would best be treated by Dr. Ed Gherasim, who specializes in MVA trauma to the TMJ....”

[7] Jean Selinger, registered massage therapist, Advance Therapeutic Massage Clinic Inc. provided an undated letter. Ms. Selinger stated:

“...I have reviewed my treatment notes in her file to find my last mention of headache pain.

“When [the Appellant] first came to see me (June 18/98) she was having headaches daily mainly in the frontal and temporal areas of her head, also she complained of general tension especially in her shoulders, but also upper back and neck.

“The last reference I make in my notes to headache was on Apr. 8, 1999. There is no further reference to headache until Oct. 9/03. After that date I make note that [the Appellant] complained of headaches on Oct. 15/03; Nov. 17/03; Jan. 19/04, and Mar. 3/04...”

[8] The Appellant called Dr. Edward Gherasim to testify at the hearing. Dr. Gherasim has practised dentistry for 36 years and over the past 20 years has treated approximately 1,500 patients for TMJ dysfunction or problems of varying degrees. He described the physical mechanics of the joint and how an insult or injury can cause the joint to be displaced entirely or misaligned. For our benefit, he loosely described the articulation of the jaw joint as being like a point or tip inserted into a donut hole and that when jarred can slip out entirely or be displaced inside the hole.

[9] He also described how tissues such as ligaments, muscles, bone and cartilage uniquely and intimately make up the TMJ area. When the tip or point of the mandible (lower jaw bone) is altered in the cartilage disc (the “donut”) the other tissues that work in synchrony to permit normal articulation are also affected. The displacement or misalignment can be relatively small (e.g. one to two millimetres) but causes significant pain, including headache.

[10] Dr. Gherasim stated his extensive experience is that TMJ dysfunction is never cured but rather controlled. He explained that individuals who have had TMJ problems and are pain free can experience flare-ups from seemingly minor insults such as a low-impact collision. Previously injured muscles sometimes develop memory-like properties or “trigger points”. TMJ flare-ups are caused by muscle contraction or ligament or nerve compression or impingement.

[11] Dr. Gherasim testified that TMJ pain and headache cannot be controlled without craniosacral massage and stated it is an important adjuvant therapy post correction. He explained that craniosacral massage is a highly specialized technique. On February 20, 2004 he stated in part:

“...the old trigger points have been reactivated and possibly created new trigger points. There is need for a concerted effort in controlling all joints and their discs and at the same time have on-going muscle therapy to strengthen muscles and regain range of motion.

“All muscles in their attachments require a good balance throughout the craniosacral complex-manipulation of these areas will aid to balance the body complex.

“There is need to gain these controls as there is no fixed time limit for recovery.”

[12] On May 13, 2004, Louise Ashcroft, SGI’s physical therapy consultant, commented she did not support further massage therapy for the Appellant. She noted in a report to Michelle Sparrowhawk, personal injury representative, the secondary assessment team recommended a time-limited approach to massage treatment and that the Appellant was attending for craniosacral massage therapy on a monthly basis prior to the accident. Ms. Ashcroft concluded that if the Appellant wants to return to her monthly visits to massage therapy as a means of symptom control it would be a personal choice.

[13] On May 20, 2004, Dr. Endsins, SGI’s medical consultant stated:

“I have been asked to review the above file as we have received additional information since my last memo of January 6, 2004. ...Review of this information suggests that the claimant’s motor vehicle accident is a contributing cause to her TMJ. In my memo of January 6, 2004 I indicated that the TMJ was a pre-existing problem. This was supported by the documentation provided. The only question that needs to be determined is whether the motor vehicle accident aggravated the pre-existing TMJ....

“The issue of contention is not that the claimant has TMJ but rather to what degree the motor vehicle accident impacted the pre-existing problem. It is my view that it had limited impact and that the duration of her symptoms that may be attributable to the motor vehicle accident have a defined period....”

[14] In reply to an inquiry by Dr. Endsins, dental surgeon Dr. Kolbinson commented generally he was not aware of any specific reason why the ligaments of the TMJ area would heal any slower than the ligaments of other joints in the body.

[15] Dr. Gherasim was asked to comment on Dr. Kolbinson's above statement. He replied that generally ligaments insert bone on bone and therefore have a blood supply to support healing or scarring. In the TMJ area however the insertion is from bone to cartilage and healing or scarring is reduced because cartilage does not have a blood supply compared with bone tissue.

[16] The Appellant was on maternity leave at the date of the accident. She is a certified professional accountant. The Appellant testified that for the past four years she has been headache free until the August 2003 motor vehicle accident. Shortly after the collision she experienced daily headaches, intermittent jaw pain and muscle tension. She was adamant the headaches and jaw pain were a direct result of the accident.

[17] The Appellant believes SGI's medical consultants are biased against TMJ as is a portion of the medical community generally. She reported having similar headaches and TMJ pain previously that successfully resolved by 1999. Based on her past experience that she communicated to SGI many times, the Appellant stated she doesn't understand why TMJ and craniosacral massage treatments would not be considered in the first instance. She noted SGI was willing to try regular massage, chiropractic treatment, physiotherapy and secondary treatment (exercise conditioning) – all of which were ineffective but dismissed the highly effective TMJ/craniosacral massage treatments. She said she felt trapped in the middle of a dispute between SGI who did not support TMJ treatment and her care givers who did and it unfairly affected her.

[18] Despite being denied benefits for TMJ and craniosacral massage therapy, the Appellant sought treatment from Dr. Gherasim and Ms. Selinger on her own. She testified Dr. Gherasim has adjusted her existing splint incrementally and that combined

with the one hour craniosacral massage therapy she was at her pre-accident status as of June 30, 2004.

[19] At the outset of his argument, Mr. McLellan stated SGI's position was it would not fund the TMJ and on-going treatment because the Appellant had pre-existing TMJ problems. However after hearing the Appellant's evidence that she was at her pre-accident status for TMJ on June 30, 2004, he agreed that SGI would pay the cost of her craniosacral massage therapy and her attendances with Dr. Gherasim to June 30, 2004. He also acknowledged SGI will reimburse the Appellant's costs according to the Act and Regulation in place at the date of the accident.

[20] The Appellant was not represented by a lawyer and the Commission recognizes the time and effort she took to prepare her appeal that included calling an expert witness. She very ably represented herself and was well prepared and organized. Counsel could not have done a better job.

[21] We are also impressed by Mr. McLellan's decision in the case and welcome his comments that better communication is needed between SGI and claimants so that appeals like this one do not end up before this Commission in the future.

CONCLUSION

[22] Pursuant to s. 112 of the *Automobile Accident Insurance Act*¹, SGI is ordered to:

1. reimburse the Appellant for all attendances with Dr. Gherasim for TMJ correction from February 12 to June 30, 2004;
2. reimburse the Appellant for craniosacral massage treatments by Jean Selinger (or other massage therapist) for accident related headaches from February 12 to June 30, 2004;

¹ c. A-35 RSS 1978 as amended; the "new" Act

3. reimburse the Appellant for the previously unpaid portion (additional ½ hour) of massage treatments from August 14, 2003 to February 11, 2004;
4. reimburse the Appellant for mileage and/or meals at the prescribed rates while attending the above treatments and not previously paid.

[23] If not otherwise provided for under the Act, SCI is directed to reimburse the Appellant for her child's day care costs for the period February 12 – June 30, 2004 while attending treatments outlined above as an *ex gratia* payment pursuant to s. 206.

[24] Pursuant to s. 169 of the Act, SGI is ordered to:

1. reimburse the Appellant for the cost of Dr. Gherasim's report;
2. reimburse the Appellant for the cost of Ms. Selinger's report.

[25] Pursuant to s. 193(11) of the Act and s. 96 of the respective *Personal Injury Benefit Regulations*, SGI is ordered to pay to a maximum of \$2,500:

1. the reasonable cost of Dr. Gherasim's attendance at the appeal hearing;
2. reimbursement for transportation and meal(s) related to the appeal hearing;
3. reimbursement of the \$75 filing fee for the appeal.

DATED at Regina, Saskatchewan on December 21, 2004.

Beverly Cleveland, Chair

Joy Dobko, Commission Member

Peter Bergbusch, Commission Member