

**Automobile Injury Appeal Commission**

**Province of Saskatchewan**

**Citation:** *A.C. v. Saskatchewan Government Insurance,*  
2005 SKAIA 012

**Date:** 20050223

**File:** 151 of 2003

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**BETWEEN**

**A.C., Applicant**

**and**

**Saskatchewan Government Insurance, Respondent**

**Appearances:**

**A.C., for the Applicant**

**Darrell Mack, for the Respondent**

**Before:** **Beverly Cleveland, Chair**  
**Joy Dobko, 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.**

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Heard at Saskatoon, Saskatchewan  
July 20, 2004

## DECISION

[1] A.C., the Appellant, appeals a decision of Saskatchewan Government Insurance (SGI) dated September 29, 2003 and states he has not been fully compensated for his time lost from work while attending treatment.

### FACTS

[2] The Appellant was injured on September 7, 2002 in Saskatoon, SK when the motor vehicle he was operating was struck on the passenger side while he was making a left hand turn. He sustained injuries to his neck, knee, hands and feet for which he received treatment.

[3] The Appellant commenced secondary treatment at Daniels Kimber Physiotherapy Clinic on April 22, 2003. He was discharged from the secondary program on August 1, 2003 and on August 25, 2003 he again began primary level physiotherapy. He was treated biomechanically until September 10, 2003 and then resumed his supervised exercise program at a primary level and participated in an exercise program until October 14, 2003 when he was discharged from Daniels Kimber Physiotherapy Clinic with a home exercise program.

[4] A functional abilities evaluation was carried out by Bourassa & Associates Rehabilitation Center. On September 3, 2003, the assessment team commented in their report:

“...We feel he has had excellent care at a secondary level to date. We think no more than 6 biomechanical appointments, and an extension of his regional conditioning for up to 6 weeks at a frequency of 2 to 3 times a week, coupled with further intensive education regarding the non-harmful nature of his symptoms will be all that is required to finalize the rehabilitation requirements of this file. We would recommend all of his rehabilitation needs be taken care of outside of his existing work hours whenever possible.”

[5] On September 16, 2003, Dr. D. Mierau, medical consultant for SGI, advised Carole Taylor, personal injury representative, as follows:

“The customer met job demands according to the FAE conducted by the assessment team. Funding for time loss from work, disability for ADL’s, functional conditioning or other secondary treatment interventions is not indicated and is not (sic) longer the responsibility of SGI.

I recommend SGI fund the assessment team’s recommendation for 6 weeks of primary care (3X per week outside of work hours) for this customer. This funding should be made

available from September 22, 2003 to October 31, 2003. As of October 31, 2003, SGI will have met its responsibility for this customer.”

[6] The Appellant works very long hours at two jobs – full time as a nurse’s aid at [the hospital] (9:00 am -5:30 pm) and part time 25 hours/week as a [clerk] at [employer two] (usually 6:00 pm -11 pm). He testified that he missed 61.25 hours from work and had used all his accumulated sick leave credits from employer two by September 2003. This is the essence of his appeal.

[7] A file note made by Ms. Taylor dated October 16, 2003 reads in part:

“[The Appellant] presented me with the expense form. The form consisted of travel expenses and income loss for missed time from work to attend appointments. [The Appellant] also presented me with a form indicating that he is minus 61 hours from his employer for work missed. I asked [the Appellant] to explain why he missed the work. He struggled for words but told me that after he had his appointment at Daniels Kimber he was too sore and didn’t feel good enough to go to work. I told [the Appellant] that I was very sorry but the direction I received in writing from our medical consultant stated that there was medical substantiation in the file to indicate “The customer met job demands according to the functional abilities evaluation by the assessment team. Funding for time loss from work, disability for activities of daily living, functional conditioning or other secondary treatment interventions is not indicted and is no longer the responsibility of SGI.” ...He accepted it but said that now if he is away for sick leave he doesn’t get paid at all because he has to pay back this time to his employer....”

[8] Mr. Mack stated he is unsure how the 61.25 hours was accumulated as he was able to reconcile the days the Appellant attended for treatment or medical appointments that required time off work with the expense claims submitted and paid by SGI.

[9] Mr. Mack asked the Appellant if it was possible that he used his sick leave benefits from employer two at the same time he was paid by SGI for time off work to attended treatment. The Appellant did not specifically answer the question but replied that sometimes he didn’t go back to work and other times he couldn’t complete his shift because he was too sore. the Appellant provided a note from his family doctor dated December 23, 2003 in support of his comments. It reads “This is to confirm that [the Appellant] needed to have rest after his treatments.”

[10] The Appellant acknowledged that possibly some of the 61.25 hours are for things other than motor vehicle related injuries, e.g. he was off work from December 18-24, 2002 due to acute laryngitis.

[11] In response to SGI's request for details about the hours missed from work, T.L., at employer two replied:

“This letter is in response to your request regarding [the Appellant's] claim for hours lost due to his physiotherapy treatments. Since [the Appellant's] accident he has lost his accumulated sick credits and used up all his holidays to accommodate his treatments. He requested and was given an extra forty hours (40) of sick leave credits in order not to lose wage on times when he needed to go to the clinic. They were days were he was not able to perform his regular duties due to pain incurred after each treatments and some days will come in to work but not able to finish the shift.

“The amount of hours in question is the hours that he owes as a result of taking to (sic) much time off from work....”

[12] Unfortunately T.L.'s reply did not provide any dates and was of no help to SGI in determining when the sick leave deficit had accrued. It was offered that we adjourn the hearing to allow the Appellant a chance to get his sick leave details from employer two but he said that he just wanted to get on with the appeal.

[13] Mr. Mack concluded there was no evidence that the Appellant had lost any time from work over and above the time he has already claimed for and that SGI has paid. He submitted that if the Appellant received income benefits from SGI while attending treatment and at the same time used his sick leave credits from employer two, his decision whether to pay them back is an employee/employer arrangement and has nothing to do with SGI.

## LAW AND ANALYSIS

[14] Section 143(1) of the *Automobile Accident Insurance Act*<sup>1</sup> (the Act) provides:

**143(1)** An insured is entitled to an income replacement benefit if, as a result of the accident, the insured is unavailable for work as a result of attending a medical appointment or treatment program authorized by the insurer.

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<sup>1</sup> RSS 1978, c. A-35, as amended

[15] The Appellant attended rehabilitation treatment for the period April 2003 to October 2003 at Daniels Kimber Physiotherapy Clinic and for a functional evaluation at Bourassa & Associates in August 2003. The Appellant was paid an income replacement benefits for the time away from his work place while attending treatment in accordance with s. 143(1). Mr. Mack submitted documentary evidence that all expense claims were paid and reconciled with dates and times confirmed by the treating agencies.

[16] The Appellant submitted a screen print from the human resources branch at employer two that showed he had a negative 61.25 hours in his sick leave bank. A letter of explanation from employer two simply indicated that he has used more sick leave than he had accrued. The Appellant was unable to provide details of why and when he had used the sick leave benefits and declined the opportunity to ask his employer for confirmation of the dates he missed work.

[17] There was evidence that the Appellant sometimes did not return to work or was unable to complete his shift after treatment because of pain and stiffness and it is likely at least part of this time makes up the 61.25 hours deficit in his sick leave bank. We are not required to answer if the Appellant was entitled to an income replacement benefit for this time loss from work (other than to attend treatment or medical appointments) but note the functional abilities evaluation showed the Appellant was able to perform the duties of his job by the date of the assessment on August 22, 2003.

[18] Our jurisdiction to review a decision of SGI is set out in section 193(7) of 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.

[19] The Commission determined in *R.C.*<sup>2</sup> that our discretion under section 193(7) must be exercised in a judicial manner. That discretion will be exercised in favour of the applicant if it is

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<sup>2</sup> *R.C. v. Saskatchewan Government Insurance* 2003 SKAIA 1

determined the decision of SGI was wrong in law, based on erroneous assumptions or at the very least, the decision was unreasonable.<sup>3</sup>

[20] We agree with the submissions made by Mr. Mack. There was no evidence that the Appellant is owed 61.25 hours for time off work while attending treatment. We accept that all expense claims submitted have been properly paid.

## CONCLUSION

[21] SGI decision is reasonable, accurately made on the facts of the case and in accordance with the *Act*. Its decision dated September 29, 2003 is upheld and the appeal is dismissed.

**Dated** at Regina, Saskatchewan, on February 23, 2005.

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Beverly Cleveland, Chair

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Joy Dobko, Commission Member

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Darleen Topp, Commission Member

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<sup>3</sup> *Belchamber v. Saskatchewan Government Insurance*, [1997] TWL QB 97557; *Donen v. Saskatchewan Government Insurance*, [1998] TWL QB 98224; *Collis v. Saskatchewan Government Insurance*, [1998] TWL QB 98113