

**Automobile Injury Appeal Commission
Province of Saskatchewan**

Citation: *D.E. v. Saskatchewan Government Insurance,*
2005 SKAIA 014
Date: 20050225
File: 129 of 2003

BETWEEN

D.E., Applicant

and

Saskatchewan Government Insurance, Respondent

Appearances:
Peter V. Abrametz, Applicant
Dale Brown, for the Respondent

Before: **Joy Dobko, Chair**
Beverly Cleveland, Commission Member
Dr. Mukesh Mirchandani, 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
October 28, 2004

DECISION

[1] This is an appeal by D.E., the Appellant, of a decision made by Saskatchewan Government Insurance dated August 11, 2003. The August 11, 2003 decision related to an Application for Review with respect to two earlier decisions made by SGI. As a result, there are two aspects to the appeal:

- a) A decision dated November 4, 2002 in which the Appellant's income replacement benefits were terminated for providing false information.
- b) A decision dated October 11, 2002 and the decision arising out of the Application for Review dated August 11, 2003 which provided a calculation for permanent impairment benefits for the Appellant's injuries.

FACTS:

[2] The Appellant was involved in a motor vehicle accident on October 12, 2001 when she swerved to miss another vehicle and collided with a power pole. The emergency report states that the Appellant suffered a head injury as a result of her head striking the windshield. X-rays taken of the brain, cervical spine, skull and right hand were all normal.

[3] The Appellant completed her Application for Benefits on October 22, 2001. She reported a sore left knee, headaches, pain in her low back, mid back, neck, legs, groin, feet and chest. She also reported numbness in her face.

[4] At the time of the accident, the Appellant was self-employed and operating a janitorial and maid service for six months prior to the accident. She completed her Application for Injury Benefits for Income Replacement or Loss of Studies Benefits on October 22, 2001. She described her duties as scrubbing floors, vacuuming, cleaning bathrooms, ironing, laundry, dusting, moving furniture, washing walls, ceiling and windows. The Appellant claimed her monthly income at the time of the accident was [amount].

[5] On October 16, 2001, Dr. Degelman, optometrist, referred the Appellant to Dr. Patel. Dr. Degelman reported that since the accident, the Appellant reported difficulty with eye movement, tracking and elevation of the right upper eyelid. Dr. Degelman requested that the Appellant be evaluated for muscle damage and possible optic nerve disturbances.

[6] X-rays taken on December 11, 2001 showed no abnormalities in the pelvis and left knee. X-rays of the lumbar spine showed a very slight scoliosis and very minimal disc space narrowing at L4/5 which was not considered to be abnormal for a patient of the Appellant's age.

[7] The Appellant attended a secondary assessment on December 11, 2001. At the assessment, the Appellant reported that she continued to have problems with headaches, vision in her right eye and numbness in both hands bilaterally and in the lower extremities. The team diagnosed the Appellant with myofascial pain syndrome, WAD grade II and LBP II grade II with torque pelvic injury. The team reported that the Appellant's current symptoms indicated that she would have difficulty returning to her job at that time. The team recommended 8-12 weeks of secondary treatment and a five week graduated return to work. If no improvement was seen in four weeks time, then she was to be referred to tertiary treatment.

[8] The Appellant commenced secondary treatment at Second Avenue Physiotherapy Rehabilitation and Fitness Centre ("Second Avenue Physiotherapy") on January 24, 2002. The Intake Assessment Report noted that the Appellant reported 0% recovery from the date of the injury. She reported headaches, neck pain, right eye injury, bilateral arm symptoms, mid spine pain, hip and groin pain, a sore left knee, right leg symptoms and severe pain which was affecting her whole life. The team recorded an element of pain magnification during objective testing.

[9] On January 31, 2002, the Appellant attended upon Dr. Patel, ophthalmologist, for an eye examination. Dr. Patel reported:

...

Management: The findings of today's examination were discussed withy [the Appellant]. It was explained to this patient that her ophthalmic evaluation today is essentially normal. There were a number of inconsistencies in her presentation. Although the initial vision obtained in her right eye was 20/50 -2 with pinhole, on repeat evaluation she did manage to read to the 20/25 line on the eye chart with pinhole. Her complaints of ptosis were unsubstantiated in today's examination.

Although this patient did seem to prefer to keep her right eye partially closed, she demonstrated normal levator function and for brief periods during the examination the palpebral fissure distance was equal and normal in both eyes. We have made arrangements for reevaluation in three to four months time to reevaluate this patient's visual status. Typically traumatic injuries are expected to improve over time rather than worsen.

[10] The Appellant was discharged from Second Avenue Physiotherapy on February 21, 2002. The Discharge Report stated:

DISCHARGE PLAN: [The Appellant] is attending a tertiary assessment on February 25, 26 at the FIT program in Saskatoon. At this time it appears to me that [the Appellant]'s objective status is difficult to accurately assess and diagnose given the high level of symptomology and pain behaviors that are present. [The Appellant] certainly presents with significant fear of re-injury and has ongoing concerns regarding her diagnosis. During the rehab program, we found it significantly difficult to provide appropriate education in regards to hurt vs. harm and a functional reactivation model of treatment as the assessment team's recommendations had indicated a likelihood of requiring tertiary assessment. Most specifically she reported that her chiropractor was significantly concerned that more intensive investigation was warranted. In consultation with Dr. Martisinkew, he reported that he felt further evaluation was warranted and that he felt treatment should be modified to a significantly gentle level given [the Appellant]'s symptomology.

Treatment to date has remained extremely limited. The program being focused primarily on stretching and very gentle light weight with few exercises. Education was a significant proportion of the program, however as noted above, it was difficult to make gain in regards to the clients understanding of her status when she has been advised that further evaluation is warranted and is concerned that more significant underlined pathologies are present.

[11] The Appellant attended FIT for Active Living ("FIT") on February 25 and 26, 2002 for a tertiary assessment. The Appellant reported low back pain, neck and arm pain, leg pain, headaches and right hand pain. The team diagnosed her with chronic pain syndrome. The team recommended that the Appellant receive 8-10 chiropractic treatments until admission to tertiary treatment where she would be involved in a streamed resource program for 12 weeks. The Chiropractic report was as follows:

...
Cervical ranges of motion were moderately reduced in left lateral flexion and left rotation. Pain was reported throughout all cervical planes with self-limiting and guarding noted with active testing.

Thoracic ranges of motion revealed moderately reduced extension related in part to postural dysfunction and mildly reduced bilateral rotation and bilateral/lateral flexion.

Lumbar ranges of motion were all moderately reduced other than extension which was markedly limited. Thoracic and lumbar ranges of motion were all associated with pain reports and pain behavior.

...
Biomechanical examination was severely hampered due to pain behavior, self-limitation, active guarding and inconsistencies. She was markedly irritable to light touch and palpation throughout

the three spinal regions. She does appear to have some areas of joint stiffness with associated muscular tightness throughout the cervical, thoracic, and lumbar/pelvis regions.

...

During the assessment, [the Appellant] was pleasant and would often answer historical questions with her eyes closed. Throughout the examination process, she exhibited pain behaviors, self-limiting and active guarding which handcuffed this examiner's ability of an objective assessment. She has seven out of eight positive non-organic signs.

The medical report of Dr. Bernacki noted:

...

I am unable to come up with a reasonable medical conclusion for her presentation. Her presentation is not consistent with any identifiable medical condition. She has significant symptom magnification and her physical examination was inconsistent.

[12] X-rays taken of the pelvis on March 5, 2002 showed minimal degenerative change at the hip joints. The Appellant attended FIT from April 2, 2002 to June 6, 2002.

[13] On April 26, 2002, SGI wrote to the Appellant and advised her that she had been determined into the employment category of a Cleaner in accordance with the National Occupational Classification. SGI calculated the amount of the bi-weekly income replacement benefit to be \$430.70.

[14] On May 10, 2002, the FIT team reported in their Mid Conference Progress Report that they anticipated that the Appellant would not be at maximum medical improvement at discharge, nor would she be at pre-accident level of function. This would be due in large part to the fact that she would not be able to perform all work related duties but would be independent with home care and personal care tasks.

[15] A permanent impairment evaluation was completed on May 17, 2002 by Dr. Jutras, medical consultant for SGI, with respect to the scarring to the Appellant's right elbow and legs. Dr. Jutras assessed permanent impairment benefits for scarring at 2.9% permanent whole body. His assessment was as follows:

Areas of Evaluation:

Scarring to right elbow

Regulations, Appendix B, Part 2, Division 3, Table 17

Length (cm)	Width (cm)	Surface Area (cm ²)	0.5% per cm ²
2.50	0.20	0.50	0.25%

Permanent Impairment for scarring to right elbow	0.3%
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Scarring to left leg

Regulations, Appendix B, Part 2, Division 3, Table 17

	Length (cm)	Width (cm)	Surface Area (cm ²)	1.0% per cm ²
Knee	2.50	0.20	0.50	0.50%
Shin	3.50	0.30	1.05	<u>1.05%</u>
				1.55%

Permanent Impairment for scarring to left leg	1.6%
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Scarring to right leg

Regulations, Appendix B, Part 2, Division 3, Table 17

	Length (cm)	Width (cm)	Surface Area (cm ²)	1.0% per cm ²
Knee	1.00	0.40	0.40	0.40%
Shin	1.20	0.50	0.60	<u>0.60%</u>
				1.00%

Permanent Impairment for scarring to right leg	1%
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The above-determined benefits are added together for a total of **2.9%**.

[16] On May 21, 2002, the Appellant saw Dr. Patel for a follow-up appointment. Dr. Patel reported:

Impression and Management: I explained to [the Appellant] that all I can see on examination today is approximately 1 mm of right upper lid ptosis that may be due to levator dissinsertion from a traumatic injury. There is no evidence of optic neuropathy and her visual acuity and visual fields have improved spontaneously. Her complaint of marked right upper lid ptosis was not substantiated on today's examination and seems to be due in most part to frequent unilateral orbicularis spasm. This is often voluntary in nature since it is unilateral and not consistent with benign essential blepharospasm. I don't think Botox injections will help or are necessary. At this stage, I don't think any further investigations are required apart from a repeat examination in a few months. She is convinced that this is related to the motor vehicle accident and worsened by physiotherapy. I am not certain I can concur with her assessment based on clinical examination.

[17] On June 7, 2002, SGI assessed the benefit for the permanent impairment of scarring to the Appellant's right elbow and legs at 2.9% of the maximum of \$138,571.00. The Appellant was paid permanent impairment benefits in the amount of \$\$4,018.56. This assessment of permanent impairment benefits for scarring is not under appeal by the Appellant.

[18] On June 6, 2002, the Appellant was discharged from FIT. The FIT team deemed the Appellant to be at maximum medical improvement; however, noted that she had not returned to pre-accident level of function, as she was not able to meet job demands. They reported that the Appellant had difficulty with lifting and carrying as well as prolonged standing particularly in static positions. She had difficulty with overhead reaching, performing a functional squat and

prolonged walking. They also reported that she would require some assistance with support for heavier yard work, maintenance and cleaning tasks.

[19] On June 20, 2002, Dr. Degelman, optometrist, reported to SGI on behalf of the Appellant. Dr. Degelman reported:

...
It appears that [the Appellant] has had some inconsistent finding concerning a right lid ptosis since the accident. Both Dr. Patel and myself have found that the best VA on the right eye has decreased in comparison to an eye exam prior to the accident. I can not find any ocular cause for the reduced vision on the right eye and the fluctuation of the ptosis is uncertain as well. It is possible that some facial nerve damage from the accident has caused some of the above mentioned symptoms but I can not substantiate this with total certainty.

[20] On June 27, 2002, Dr. Rabuka wrote to SGI and requested that the Appellant's income replacement benefit be reviewed as the Appellant was "unfit to work in any form as her pain in her lower back and facial disruption is significant". SGI responded on July 5, 2002 and stated that it was impossible to increase the amount of the Appellant's calculated income replacement benefit.

[21] On August 1, 2002, Ms. Patty Korolishuk, personal injury representative for SGI, received an anonymous call that the Appellant was working cleaning homes. As a result, Ms. Korolishuk met with the Appellant on August 16, 2002. During that meeting, the Appellant completed a Declaration of Oath for SGI. The Appellant stated in her Oath that she was not working at the time and had not worked since the accident of October 12, 2001. SGI then retained Innovative Rehabilitation Consultants ("IRC) to meet with the Appellant's former employers to determine if the Appellant was working for them.

[22] On September 3, 2002, Dr. Patel reported to SGI regarding the Appellant's right upper lid ptosis. He reported:

...
I told [the Appellant] that she does have about 1-2 mm of right upper lid ptosis probably secondary to the motor vehicle accident. It is difficult to be absolutely certain that this is the cause of her right upper lid ptosis but its onset since after the accident would indicate that is the cause. There is no visual dysfunction as a result of the small amount of ptosis but if she desired to have surgical correction of this, she could see Dr. Conlon and I offered to refer her to him if she wishes.

[23] On September 13, 2002, Ms. Debra Baychek of IRC provided SGI with a report. Ms. Baychek reported that [A], [B], [C] and [D] all reported that the Appellant had not cleaned for them since the accident. [E] was not sure when the Appellant had last cleaned for them but it had been quite some time. [F] did not recognize the Appellant's name. [G] reported that the Appellant was cleaning for her mother until July 2002 and had provided personal care for her mother for three weeks prior to her passing. She also reported that the Appellant was cleaning for [H], [I], A and one other private home since the accident in the fall of 2001.

[24] On October 11, 2002, SGI assessed further benefits for the permanent impairment of scarring to the Appellant's body and ptosis of the right eyelid at 24.8% of the maximum of \$138,571.00. The Appellant was paid additional permanent impairment benefits in the amount of \$30,347.05. Dr. Jutras relied upon a report from Innovative Rehabilitation Consultants and the Manitoba Regulations when he assessed the permanent impairment benefits as follows:

Areas of Evaluation:

Ptosis right eyelid

Manitoba regulations were used, as the present SGI regulations do not deal with this.

Division 2, Subdivision 3 (Cranial Nerves), Oculomotor nerve: Ptosis: Droop but pupil not covered: 0.5%

Permanent Impairment for ptosis if right eyelid	0.5%
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Scarring to right leg

Regulations, Appendix B, Part 2, Division 3, Table 17						
	Length (cm)		Width (cm)	Surface Area (cm ²)		1.0% per cm ²
1	1.50	x	2.00	3.00		3.00%
	1.10	x	0.10	0.11		0.11%
	1.00	x	0.10	0.10		0.10%
2	1.90	x	0.10	0.19		0.19%
4	0.40	x	0.20	0.08		0.08%
5a	3.60	x	1.50	5.40		5.40%
b	2.00	x	1.00	2.00		2.00%
c	0.70	x	0.20	0.14		0.14%
6a	0.90	x	0.40	0.36		0.36%
b	1.20	x	0.30	0.36		0.36%
7a	0.40	x	0.60	0.24		0.24%
b	1.30	x	0.50	0.65		0.65%
Total						12.63%

Permanent Impairment for scarring to right leg	13%
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Scarring to right leg

	Regulations, Appendix B, Part 2, Division 3, Table 17				1.0% per
	Length		Width	Surface Area (cm ²)	cm ²
	(cm)		(cm)		
1b	2.50	x	0.50	1.25	1.25%
c	4.90	x	0.90	4.41	4.41%
d	1.60	x	0.70	1.12	1.12%
e	2.80	x	0.40	1.12	1.12%
f	2.30	x	0.40	0.92	0.92%
g	1.00	x	0.30	0.30	0.30%
h	2.00	x	0.70	1.40	1.40%
4	3.80	x	0.40	1.52	1.52%
Total					12.04%

Permanent Impairment for scarring to right leg	13%
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Scarring to right elbow

The scarring essentially cannot be seen in the photographs. They should be regarded as non conspicuous.

Final List of Permanent Impairments:

Permanent Impairment for Scarring to right leg	13%
Permanent Impairment for Scarring to left leg	13%
Permanent Impairment for ptosis if right eyelid	0.5%

As there are more than 2 items of permanent impairment that exceed 5%, one needs to access the Table of Successive Remainders for those items. Anything 5% or less is simply added, without accessing the table.

13 combined with 13 equals 24%.

This is added to the 0.5% for a total of 24.5%.

[25] On November 4, 2002, Mr. Abrametz, solicitor for the Appellant wrote to SGI and appealed the amount of permanent impairment benefits awarded for scarring to the right elbow. Mr. Abrametz filed an Application for Review for assessment of permanent impairment benefits with respect to the scarring to the right elbow; a Class IV impairment from Table 15 “conspicuous change that holds ones attention and affects more than two anatomical elements”; loss of sight in right eye; restriction of motion in back and hips; lump in right wrist and weakness; numbness in right side of face and a concussion.

[26] On November 4, 2002, SGI wrote to the Appellant and advised that they were terminating her benefits for providing false information regarding the amount of work that she was capable of doing and in fact doing. The letter stated:

It has come to our attention that you have provided false information regarding the amount of work that you are capable of doing and are in fact doing. For instance, [G] was contacted and advised that you did housecleaning for her Mother, [...], once a week until July, 2002 when [her mother] passed away. [H] has advised that you clean her house approximately once a week. You were observed working at [address] in [location] by our Special Investigation Unit.

This being the case, we have no alternative but to terminate any and all benefits which are now or might have become payable as a result of this automobile accident injury claim.

Section 185 of *The Automobile Accident Insurance Act* reads as follows:

“Refusal, reduction, suspension or termination of benefits

185 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:

(a) knowingly provides false or inaccurate information to the insurer;

...

[27] On December 31, 2002, Mr. Abrametz filed a second Application for Review with respect to the termination of the Appellant’s Income Replacement Benefits. Mr. Abrametz indicated that he had additional documentation which was not in the possession of SGI. On January 6, 2003, SGI requested that Mr. Abrametz provide the additional documentation and the file would be forwarded to an Appeals Officer. Mr. Abrametz advised SGI on June 25, 2003 that no further documentation would be forwarded and asked to have the file forwarded to an Appeals Officer.

[28] On July 31, 2003, Dr. Jutras assessed further permanent impairment benefits as follows:

This assessment is a review as the previous permanent impairment assessment has been appealed. There is new information (new photos) contesting the scarring.

Areas of Evaluation:

Taken in turn as listed on the appeal document dated November 1, 2002.

Scarring to right elbow

Upon reviewing the photos to the right elbow, I still have difficulty seeing the scars. There is some slight patchy discoloration, but as I indicated when looking at her previous photos, they are faint and can barely be seen. Scars have to be conspicuous in order to warrant permanent impairment. However, there does appear to be one patch that is relatively more hypopigmented than the surrounding area (measuring 2 cm by 2 cm and best seen on the photograph that I labeled with a star. I think this is giving the benefit of the doubt to the customer in this case).

Regulations, Appendix B, Part 2, Division 3, Table 17

Length (cm)	Width (cm)	Surface Area (cm ²)	0.5% per cm ²
2.00	x	2.00	4.00
			2.00%
Permanent Impairment for scarring to right elbow			2%

Facial Asymmetry

The photograph provided suggests that she is squinting the right eye. The best information indicates a “voluntary blepharospasm”, which would not be compensable.

Loss of sight in one eye

This is not substantiated by the medical information on file. (Examination by two ophthalmologists and one optometrist in 2002).

Range of motion loss in back

Loss of motion in the back is not compensable under SGI regulations.

Range of motion loss in hips

There is no medical substantiation of this concern.

Lump in right wrist and weakness

There is no medical substantiation of this concern.

Numbness in right side of face

There is no medical documentation of any nerve damage in this area. There is a comment by her optometrist and ophthalmologist that she has symptoms of burning and numbness but no documentation of the reason or extent, and no firm diagnosis.

Concussion:

Mechanism of Injury	Hit her head on the windshield. Hematoma above right eye.
Duration of Loss of consciousness	None documented on ER sheet
Duration of Amnesia	None documented on ER sheet
CT scan Changes	No abnormality noted
Glasgow Coma Scale	15/15

Regulations, Appendix B, Part I, Division 2, Subdivision 1, Item 5

Permanent Impairment for Concussion	0.5%
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Today's List of Permanent Impairments:

Scarring to the right elbow	2%
Concussion	0.5%

The above-determined benefits are added together for a total of **2.5%**.

[29] In correspondence dated August 11, 2003, SGI completed an Application for Review and wrote to the Appellant with respect to the calculation of her permanent impairment benefits as per the July 31, 2003 assessment by Dr. Jutras. The decision letter stated:

...

Your file has been returned from our Medical Consultants after review for additional permanent impairment benefits. According to the current medical information, your injury has resulted in an additional 2.2% of the whole body permanent impairment. The maximum amount of benefits for permanent impairment is \$138,571.00. The amount of your benefit is \$3,048.56 which is 2.2% of \$138,571.00. The 2.2% was made up as follows:

Scarring to the right elbow	2%
Less previous assessment	.3% (paid June 7, 2002)
	1.7%
Plus concussion	.5%
Total	2.2%

The Application for Review stated that SGI was unable to deal with the termination of income replacement benefits as the new appeal process had been implemented. **This is the decision letter which the Appellant has appealed, both with respect to the termination of her income replacement benefits and with respect to the denial of permanent impairment benefits for facial asymmetry, restriction in range of motion in the back, loss of sight in right eye, numbness in the right side of the face, restriction in range of motion of the hips and a lump in the right wrist.**

[30] Dr. Rabuka completed a medical report dated January 27, 2004 in which he reported that the Appellant was involved in a motor vehicle accident in which she sustained a head injury with right sided facial numbness, deafness in her right ear and difficulty focusing with her right eye. He also diagnosed her with whiplash, muscle aches, pain in both arms, back and neck and throbbing hands. He was awaiting a CT scan.

[31] On October 27, 2004, Dr. Rabuka provided the following medical report and findings:

This is to certify that [the Appellant] is under my care. She is unable to work at any occupation at this time due to her medical condition. She severely injured her back resulting in a twisted back in an (*sic*) motor vehicle accident and since that time has not recovered to her previous health status. She is still experiencing glass working its way out of her body causing reoccurring infections.

She did go through the FIT program which was of no benefit to her and she is not able to return to work at this time.

[32] A number of witnesses provided viva voce evidence at the appeal hearing.

Testimony of G

[33] G was called by SGI to give evidence at the appeal regarding her knowledge of the housekeeping duties performed by the Appellant for her parents during the period of October 2001 until July 5, 2002. G is the daughter of A.E. and the late, Ms. A. G was employed with [employer] in [location] from November 2001 until June of 2003. Prior to her employment with [employer], G was employed in [location] with [employer two] on a full time basis.

[34] G stated that the Appellant was employed by her parents as a housekeeper and was paid for her services. She believed she started providing the service in 2000 but could not say for sure the exact date. G stated that the Appellant was responsible for looking after the home and doing tasks such as changing bed linens, laundry, washing floors, vacuuming, dusting and regular housework. G stated that her mother was incapacitated for the last six to eight months before she passed away in July 2002 and was not able to do a lot of anything. G testified that her father's work kept him away from home a lot and he was not around much. On the days that her father would have been away overnight, G would sometimes visit her mother in the morning before going to work to make sure that she was okay. On some of these occasions, the Appellant would be there because she had stayed overnight but admitted she was not there to do housekeeping. G stated she visited her mother almost every day, usually in the evenings. G stated that her mother was admitted to the hospital on June 17, 2002 and passed away on July 5, 2002.

[35] G testified that the Appellant was performing cleaning services for her parents from October 2001 to the end of the year and also in 2002 up to the time of her mother's passing. She stated that she personally saw the Appellant doing the housekeeping in the fall of 2001 and in 2002. G stated that the Appellant would generally clean once a week and would come on other occasions just to visit with her mother. G also stated that she would pick up money from the bank for her mother and would see her mother give money to the Appellant when she had completed her housekeeping duties. G testified that generally she saw her mother pay the Appellant after she finished work in the house but sometimes her mother would also lend the Appellant money to go play bingo. G admitted that she was aware that the Appellant owed her parents a large sum of money and that on occasion the Appellant had paid them back some of the money. On one occasion, she picked up \$60 from the Appellant's home.

[36] G was unable to state on which exact dates that the Appellant would have attended to her parents' home to do the housekeeping but that most of the time the Appellant did housekeeping for her parents on Saturdays. It was put to G that in fact the Appellant's regular cleaning day was Tuesdays; however, the Appellant, by way of written document, claimed that prior to her accident she provided regular housekeeping services every Friday for G's mother. G admitted that sometimes the Appellant would clean on Tuesdays but that G only personally saw her cleaning on Saturdays. G stated that she was not aware of anyone else hired to do the cleaning in

her parents' home after the accident. G was not aware of or told that N.U. or L.D. were cleaning the home after the Appellant's accident. G stated that her mother advised her that L.D. would come over and have coffee occasionally and sometimes make her mother a meal, but G stated that her mother never told her that N.U. was doing any cleaning. She stated that H.L. started cleaning the home after her mother passed away and had come in a couple of times to clean prior to her mother's passing because her father had asked her if she could help out. G admitted that the Appellant did not come as often while she was attending FIT in Saskatoon.

[37] G testified that on one occasion in the evening, her mother called her at home to request that she bring \$100 out of her parent's joint bank account to the hospital for the Appellant. This occurred the night before her mother passed away. G stated that she was advised by both her parents that the Appellant was being paid for visiting with her mother during the day, while she was in the hospital.

[38] G admitted that it frustrated her that her mother would have to deal with money that had been lent to the Appellant and had not been returned. She stated that she felt that her mother should not have to deal with that as she was not well. She stated her father was not much and it was left up to her mother to speak with the Appellant about returning the money.

[39] G stated that on one occasion in July 2002, while her mother was in the hospital, she attended to the house and the Appellant was there doing housework. The Appellant was taking laundry out of the dryer and folding it and was making her parents bed. During this visit, G confronted the Appellant about inappropriate conduct between her father and the Appellant, which the Appellant denied. G testified that she learned about her mother's suspicions when her mother was in the hospital. Her mother told her she was worried about something going on between the Appellant and her father. G was frustrated with this because her mother was worrying about something going on instead of thinking about getting herself better.

[40] G admitted that when SGI contacted her she advised them that the Appellant was providing housecleaning services to H, I, A and one other private home. G stated that her mother had advised her that the Appellant was providing housecleaning services for these people. G denied that she made an anonymous call to SGI in July 2002.

[41] G also re-stated that she was aware that the Appellant was cleaning her parents' home because she had seen it, her mother had spoken with her about it and she personally had conversations with the Appellant when she was at her mother's home after the accident.

Testimony of H

[42] H was called by SGI to give evidence at the appeal with respect to her knowledge of the housekeeping duties performed by the Appellant for her during the period of October 2001 until July 5, 2002 at her home at [address] in [location]. The Appellant, by way of written document, claimed that prior to her accident she provided regular housekeeping services every Tuesday for H.

[43] H provided a written statement to SGI on October 4, 2002. H testified that she had provided the statement to two gentlemen and that her signature was on the bottom. She stated that she read the statement on the date that she gave it and everything appeared accurate. H admitted at the appeal, that she must have advised the gentlemen that the Appellant had been in her home cleaning on October 1, 2002, but that this was not the only date, she was there several times. H stated she knew it was in October 2002 and not in August or September 2001 because when the gentlemen came from SGI she counted back to the previous Tuesday when the Appellant had worked for her. To the best of her recollection, she stated that the Appellant came regularly to clean her home, either every Monday or Tuesday, for a month and a half or for two months.

[44] At the appeal, H could not recall when exactly the Appellant was cleaning in her home but she was certain that it was after the accident. H stated that the Appellant had done some cleaning (washing walls, moving furniture) for her prior to the accident, but she had not seen her in a really long time and decided that she would like to have her come and do the cleaning again, so she called her to come back sometime in 2002.

[45] H provided the Appellant with a key for her home and would leave a note for the Appellant stating the things that she wanted cleaned. The Appellant's general duties were to wash up bathrooms, empty the dishwasher and dust, basically housekeeping services. H stated

that the Appellant would not often do the vacuuming or wash the floors because H would do that on the weekends. H testified that she would leave money on the counter for the Appellant on the days that she would perform the housekeeping. She paid the Appellant \$10/hour and depending how long she expected the cleaning to take would determine how much money she would leave.

[46] H admitted that she knew the Appellant had been in an accident and was receiving money from SGI but stated that the Appellant told her that it wasn't very much or was not enough. H stated that she never questioned that statement but said she felt sorry for the Appellant because she was hurting and suffering and she did not want to say "no, I don't need you and get someone else".

[47] H admitted that the only time she actually saw the Appellant in her house after the accident was when the Appellant came with her sister but could not recall the exact date that this occurred. On most occasions, the Appellant would clean the home while she was at work.

[48] H stated that she terminated her housekeeping relationship with the Appellant immediately following the meeting with SGI. She stated she told the Appellant "I guess you better not come over anymore".

Testimony of Patty Korolischuk

[49] Ms. Korolischuk is an employee of SGI for 30 years and was the Personal Injury Representative II handling the Appellant's file. The first step in the administration of the Appellant's claim is to complete both the Application for Benefits and Application for Benefits for Income Replacement. Ms. Korolischuk testified that this was done by the Appellant. Because the Appellant had only been self-employed as a housekeeper for a short period of time prior to the accident, Ms. Korolischuk referred to a document which the Appellant provided to her which specified who she was providing housekeeping services for at the time of the accident. Ms. Korolischuk stated that this document was used to calculate the income replacement benefit that would be paid to the Appellant. The Appellant was paid income replacement benefits from October 20, 2001 to October 11, 2002 when her benefits were terminated.

[50] Ms. Korolischuk met with the Appellant every two weeks. Ms. Korolischuk testified that the Appellant had made it known that she was not happy with the amount of the income replacement benefit. Ms. Korolischuk stated that the Appellant never advised her that she was doing cleaning or that she was having someone doing the cleaning for her. Ms. Korolischuk further stated that the Appellant never shared any thoughts with her about returning to work. Ms. Korolischuk also testified that she had a discussion with the Appellant about hiring a replacement worker and that her employers were not comfortable with having anyone else doing the cleaning.

[51] With respect to the calculation of permanent impairment benefits, Ms. Korolischuk advised that for scarring they wait six months to allow the scars to heal up completely and then the scars are photographed and measured and the file is sent to a medical consultant for assessment. Once the assessment is complete a cheque is issued to the claimant.

[52] Ms. Korolischuk stated that it was her practice when making injury notes to go into the computer, open up the claim, go into "Injury note" and put in a note. She reported that she often made her notes while sitting with the Appellant in her office. Ms. Korolischuk stated that once the notes are entered they can only be changed on that specific date and then after that they can not be revised. Ms. Korolischuk made an injury note dated August 1, 2002 regarding an anonymous call she had received that the Appellant had been working, cleaning a business in town in the mornings between five and six o'clock to about 8 o'clock and that she also does private homes. Following the telephone call, Ms. Korolischuk talked to her supervisor about involving surveillance and a decision was made to speak with the Appellant first to ask her if she had been working.

[53] Ms. Korolischuk completed another injury note on August 16, 2002 with respect to a meeting that she had with the Appellant. Ms. Korolischuk believes she asked the Appellant whether she had been working and the Appellant advised Ms. Korolischuk that she had not been working. Ms. Korolischuk then asked the Appellant to complete a Declaration of Oath during this visit because she had given her an opportunity to tell her if she had been working and Ms. Korolischuk knew an investigation was going to go ahead. Ms. Korolischuk stated her normal practice is to have the claimant read the Declaration and ask them to add or take anything out and

then she asks them to swear that the information is correct. Ms. Korolischuk is a Commissioner for Oaths and testified that the Appellant swore the information was correct.

[54] Ms. Korolischuk gave further evidence that if the Appellant had admitted that she was working then her benefit would have been reduced by 75% of what she was making.

[55] Following the August 16, 2002 meeting with the Appellant, Ms. Korolischuk retained the services of Innovative Rehabilitation Services (“IRC”) to meet with the Appellant’s former employers to determine if she was working. Ms. Korolischuk also retained the Special Investigations Unit in Regina (“SIU”) to conduct surveillance.

[56] Ms. Korolischuk had a meeting with the Appellant on October 11, 2002 and prepared an injury note regarding the details of that meeting. Ms. Korolischuk testified that she must have put it to the Appellant “Sorry, we know your working” because she would be breaking it to her because they are friends. She then stated that’s how she would have come up with her note “[the Appellant] in today, admitted she is working”. She does not recall whether they discussed what type of work the Appellant was doing. As a result, Ms. Korolischuk prepared a decision letter which terminated the Appellant’s income replacement benefits. Ms. Korolischuk stated she relied on the inconsistencies in medical information (noted by Second Avenue, the eye doctors, and the FIT assessment); the anonymous phone call and the information from IRC and SIU surveillance (specifically the statement of H and I and the verbal report from SIU that they saw the Appellant working) to arrive at making her decision to terminate benefits. Ms. Korolischuk also testified that she had a conversation with the Appellant from which Ms. Korolischuk had understood that the Appellant was aware she was being followed and “that she had lost them”.

[57] Ms. Korolischuk testified about a conversation she had with SIU regarding their investigation of the Appellant. Ms. Korolischuk testified that the SIU reported to her that they had chased the Appellant around a bit, had lost her in traffic, interviewed the people where she was at and did see her actually inside a house cleaning.

[58] Ms. Korolischuk was questioned regarding the six individuals who provided information to IRC about the Appellant. Ms. Korolischuk stated that it was not significant that six out of the

seven denied that she had worked since the accident because “the significance was that she was working”. Ms. Korolischuk reiterated that the anonymous call, the written statements given by people, SIU saying she was working and the Appellant admitting she was working held more weight than seven people saying she wasn’t working.

[59] It is important to note that Mr. Abrametz suggested that SGI was told that the Appellant was working for all of these people. The evidence shows that IRC was instructed to contact the Appellant’s employers prior to the accident and determine if she had worked after the accident. There is no evidence that SGI was advised in the anonymous call that the Appellant was working for all those individuals contacted by IRC. The evidence of Ms. Morrison was that the Appellant was working for H, I, A and G’s parents until July 2002.

[60] Ms. Korolischuk verified that the termination of benefits related to all benefits except permanent impairment benefits. Ms. Korolischuk stated that when a claimant is receiving an income replacement benefit, they are expected to disclose if they are working while receiving the income replacement benefit.

[61] Ms. Korolischuk admitted that she was aware that when the Appellant was discharged from the FIT program in June 2002 she was unable to work and as far as she was aware that nothing had changed in regard to the Appellant’s health between her discharge and the date of the Appellant’s termination of benefits.

Testimony of the Appellant

[62] The Appellant is the claimant in these proceedings. Prior to her motor vehicle accident, she stated that she worked at [a welding company] for 20 years painting logging trailers. In between 1998 and 2001 she was selling eyeglass cleaner for approximately a year. The Appellant reported that she had carpal tunnel surgery thumb during that time also but could not recall the date. She was receiving Social Assistance also during that time.

[63] The Appellant testified that as a result of the accident she is deaf in her right ear, her eye is “buggered up” and her back is twisted. She says her legs ache from sitting, her neck and arms

hurt and her feet and hands go to sleep. She says that since the accident she is unable to bend and unable to raise her arms above her head. She denied suffering any fractures or dislocation in her back as a result of the accident. Immediately following the accident, she was unable to get out of bed and slept on a mattress on the floor for over a year. During that time, her sisters and family would do her home care.

[64] She stated that she can see out of her right eye but that she has a hard time seeing far distances. She reported being deaf in her right ear, like a really loud ringing noise in her ear. She states that she has not had anyone check her hearing, or can't remember if she has seen anyone or has been referred to anyone. She stated she has seen so many doctors she can not recall if she has seen one about her hearing but does state that Dr. Rabuka is aware of it. She reported difficulties with her right ear prior to the accident but she was able to hear out of it. The Appellant stated that she has not reported her vision loss in her right eye and hearing loss in her right ear to SGI for purposes of her Operator's Permit because she did not know she had to. She questioned what her hearing would have to do with her driving and when told that she was supposed to report anything that is different from previous years she responded "Oh, well".

[65] The Appellant testified that her right side of her face was injured in the accident. The Appellant referred to a photograph and stated that the whole right side of her face is drooped and feels like it has freezing in it, her lip droops, she is deaf in her right ear and her face jumps sometimes. She reported this as arose from the accident. She stated that people ask her all the time why her eye is the way that it is. She reported that her family says she looks like a "hush puppy".

[66] The Appellant also stated that she was sent home in June 2002 from the FIT program early because they could not help her anymore because they did not know what was wrong with her back. She stated the weights hurt her back and legs and when they stretched her arms and neck, her right eye would go shut. She also stated that one of the therapists advised her that her hips were out and there was a difference in the length of her hips. The Appellant reported that at discharge from FIT she was still having difficulty with her back and her feet hurt to walk.

[67] The Appellant stated that prior to the accident she was self-employed doing housework which entailed washing walls, scrubbing floors, vacuuming, dusting, moving furniture and cleaning eavestroughs. The Appellant stated that she cleaned approximately 10 homes prior to the accident. She provided the information regarding her cleaning to Ms. Korolischuk very early on in her claim. She reported that this was just a projection of her monthly cleaning income for people she was actually working for at the time of the accident. She stated that SGI used this and an income tax form to calculate her income replacement benefit. The Appellant admitted that she did not feel the income replacement benefit was adequate because she was making [amount] prior to the accident and she was only receiving \$400 every two weeks from SGI. The Appellant claimed that she was not paid for the [amount] in odd jobs that she would acquire every week because they were not regular jobs. Her regular cleaning earned her [amount] gross per month. The Appellant stated that she did not have receipts for the odd jobs that she did or for her regular clients because they just paid her cash.

[68] The Appellant, by way of written document, claimed that prior to her accident she provided regular housekeeping services every Friday for G's mother and every Tuesday for H. The Appellant stated that she has not worked for anyone doing housework from the date of the accident until the date of the appeal. The Appellant denied working for G's mother on Saturdays at any time before or after the accident. She stated that all she ever did was help G's mother eat her lunch and wash her face and hair.

[69] The Appellant stated that she regularly cleaned for H for four weeks prior to her accident for a full day each week. She was unable to recall what day it was but it might have been Tuesdays. She stated that she might have got her projection wrong when she made it up because even though she made it right after the accident she may have had a concussion or might not have been thinking right. She stated that she can not remember anymore because it was four years ago.

[70] The Appellant also reported a discussion with Ms. Korolischuk about having replacement labour to perform her housekeeping but when she contacted her clients approximately seven or eight months after the accident they were not receptive to the idea of having someone else do the work. The Appellant then went on to testify that she then spoke with her sister about doing the

work for her in order to maintain some of her clients so she would have something to go back to when she got better. It is not clear why the Appellant would have asked her sister to do the work when her clients did not want someone else doing the work. The Appellant then reported that her sister, N, did come and do a few jobs for her a few times.

[71] The Appellant testified that H contacted her about coming in to her home to do housecleaning; she believed it was in August but could have been September, 2002. The Appellant admitted that she did not tell H that her sister would be doing the work because she had lost all of her other clients for that reason. The Appellant admitted that H gave her a key to her house and that their relationship was built on trust. The Appellant stated that she did not think it was important to advise H that her sister was doing the cleaning because of how well the Appellant knew her sister. She stated this despite the fact that she admitted that she had lost all her other clients for this very reason.

[72] The Appellant stated that she did advise H that she was in an accident and that SGI was not paying her very much money but did not tell her that she personally would not be doing the work and that her sister would be doing it because she did not think H would let her come in if it was not her personally doing the work. The Appellant does not recall H calling her and advising the Appellant that she “should not come to the house anymore” because SGI had contacted her. The Appellant could not recall when her sister stopped doing the work for her but did report that her sister did not want to do the work on an ongoing weekly basis and said that her sister only agreed to come and do the odd job for the Appellant.

[73] The Appellant admitted that on one occasion H saw her at her home with her sister and that H indicated it was alright for her to be there. The Appellant stated that her sister always came with her to H’s and did the housecleaning or that her sister would go on her own and do the cleaning. The Appellant also admitted that she never advised Ms. Korolishuck of SGI in their October 11, 2002 meeting that her sister was doing work for her.

[74] The Appellant also reported that she took her sister with her to I’s home but she can not remember the exact date. She does admit it was after the accident. She stated that her sister came and cleaned the windows. The Appellant reported that she stood on the inside and pointed

to streaks while her sister cleaned the outside. The Appellant stated that she had done some work for I prior to her accident and that he contacted her and asked her to do some work after the accident. She reported that she advised I that she could not do the work and asked whether she could bring her sister with her. The Appellant stated that, prior to the accident, I was not a regular client but that he would often call for spring cleaning or to have windows washed, usually every week he would call and want something done. She thought she had included him on her summary of income provided to Ms. Korolishuk but after reviewing the summary admitted she had not.

[75] The Appellant provided very confusing testimony over whether she had a key to I's or not. She stated that I gave her a key very early on when she started her business and then stated that when she came to do the windows after the accident she did not use her key to get access because I did not give her a key right off the start. She stated that when she started doing his house he did not give her a key and he said he would leave a key in the mailbox and she could just keep the key. When asked if she continued to go to I's after the termination in October 2002, the Appellant stated "Only if I was asked to come and do some work. Then I would take my sister to come along with me, but no". When asked, the Appellant could not recall the last time that she attended at I's for cleaning.

[76] The Appellant denied that she had her business up and running again in October 2002 and said that her sister didn't want to do anything for anyone anymore so at the time of the appeal she wasn't doing anything for anyone because she could not find someone to do the work. She denied that her business shut down because SGI found out.

[77] The Appellant reported that she was friends with Mr. D.A. She stated that Mr. D.A. registered the vehicle for her because she didn't have the money to register it but she owned the vehicle. When she had the accident, he bought her another vehicle and she paid him back when she got her settlement from SGI. She stated that he got the property damage settlement from SGI and used it to replace the vehicle so she would have something to drive until she got her money.

[78] The Appellant stated that she was very close friends with G's mother. At the time of her accident, G's mother was still able to walk and move but when the Appellant returned from FIT,

G's mother was totally disabled. The Appellant reported that G would come out and make meals and cook for her mother. The Appellant also reported that G's father was around quite a bit during that time because G's mother was so disabled. The Appellant did admit to staying overnight if G's father was not home.

[79] The Appellant admitted that she regularly borrowed money from G's mother. She reported paying G's mother \$3500 when she received her settlement from SGI of \$30,000. This is inconsistent with later testimony in which, the Appellant stated that she paid G's mother out of the first money she got from SGI (the \$4,018.56 paid in June 2002) and then she borrowed money again from G's mother after that and she paid Mr. D.A. out of the \$30,000 settlement from SGI. She stated that she still owed G's father \$750 and told him she would pay him when she could afford it.

[80] The Appellant reported that she received \$100 from G's mother on July 4, 2002. The Appellant testified that G's mother sent G to go and get \$100 from the drawer in her desk in G's mother's hospital room. G's mother gave the Appellant the money and told the Appellant "to go play bingo", which she did. She stated that G's mother passed away on July 4, 2002 at 10:30 pm.

[81] The Appellant testified with respect to the altercation between herself and G in July 2002. The Appellant stated that she had gone to see G's mother and told her that she was going out to the house to pick up her clock radio, hair dryer and some other things she had left there after staying overnight with G's mother. The Appellant stated that G showed up at the house and accused her of having an affair with her father. The Appellant denied that she was or ever did have an affair with G's father and further stated that she has hardly seen him since G's mother passed away.

[82] The Appellant reported that her medical condition at the time of the appeal had not changed. She still has glass coming out of her ears, her back is twisted and she is unable to stand straight or straighten her back.

[83] The Appellant admitted to signing a Statutory Declaration but stated that it was during a conversation with Ms. Koroslischuk on October 11,, 2002. The Appellant stated that Ms. Korolischuk said “We know your working” and the Appellant reported that she denied working and said she would sign a Declaration and said the only thing she had done was go to the hospital to see an old friend, sit with her, feed her and wash her hair and if that’s working then I guess I’m working.

Evidence of the Appellant’s sister

[84] N is the sister of the Appellant. The Appellant’s sister reported going to H’s and I’s to clean their homes so the Appellant could retain them as clients. The Appellant’s sister reported going to H’s and vacuuming, dusting, doing laundry and basic housekeeping. At the I home, she reported cleaning windows and that kind of stuff, getting it ready for spring. She stated that she did this work for the Appellant for four to five weeks.

[85] The Appellant’s sister first reported having the key to H’s and then stated that her sister had the key and would go with her to H’s and let her in. The Appellant’s sister reported that the Appellant was with her at all times when she attended H’s and I’s. The Appellant’s sister stated that she stopped cleaning both residences because she did not want to do it anymore. The Appellant paid her \$10/hour to clean.

[86] The Appellant’s sister was unable to give any dates of when she cleaned the homes but reported that it must have been the springtime because she was doing spring cleaning at I’s and she was doing both homes at the same time. She reported that she did the cleaning in the middle of the week. She stated that she met H on one occasion, but had not met I.

[87] The Appellant’s sister stated she had open heart surgery about four or five years prior to the appeal and was currently on disability and had been on Canada Pension Plan Permanent Disability since that time. Prior to her surgery, she was a waitress and a cook. The Appellant’s sister admitted that she was on disability at the time that she was working for the Appellant.

Evidence of G's Father

[88] G's father testified that he has known the Appellant for 30 years. G's father reported that the Appellant was working at [store] in approximately May 2001 and that he had approached her about coming to do some yard and housework because his wife had rheumatoid arthritis and was not able to do the housework on her own.

[89] G's father stated that after her accident, the Appellant was no longer able to do the housekeeping. He stated that she sometimes came over on the weekends for coffee and to visit but she was never working. G's father was unable to recall dates but stated that R.V., I.R., C.L. and sometimes the Appellant's sister came with the Appellant to perform housekeeping duties after October 12, 2001.

[90] From October 2001 to July 2002, G's father was employed with [company]. He reported being home on weekends and sometimes gone overnight during the week.

[91] G's father recalled that the Appellant would often come over on Saturday mornings for coffee while she was attending FIT and he could tell how much pain she was in from attending FIT. He reported she wasn't fit to clean house because of her back. He reported that he knew all about back pain because he had been through that himself. G's father reported that the Appellant would come over often to pick up his wife and they would go to bingo together. G's father also admitted that the Appellant spent many overnights with his wife when he was out of town or wasn't home.

[92] G's father testified as to the altercation between the Appellant and his daughter in early July 2002. G's father stated that the Appellant had come over one evening to pick up the clock radio she had left from staying overnight with his wife. G's father stated that the Appellant and him and stayed up until one in the morning visiting and watching T.V. and that his daughter had become very upset over it. He also stated that the Appellant came over the next morning for coffee and was putting the dishes in the dishwasher and he was outside cutting grass when G showed up at the house.

[93] G's father stated that he and his daughter were very close until a couple of weeks before his mother went into the hospital. At that time he and his daughter had a disagreement because he wanted to hire a private nurse for his wife and G questioned why he could not do those things for his wife. He also admitted that he has been estranged from his daughter G since sometime after the funeral. He believes it has to do with some controversy over the Will but he is not sure. He admitted that she hardly speaks to him. He did admit to contacting his daughter a few days before the appeal to ask her if she was going to appear and also ask her "what really have you got to say or not say or whatever".

[94] G's father stated that his wife passed away on July 4, 2002. He stated that his daughter did not regularly visit with her mother prior to her going into the hospital. He stated that she would come once or twice a week because she had a dog at home that she would sooner be with and he stated that his wife was jealous of the dog. However, he did admit that G and his wife were very close throughout their life.

[95] G's father admitted to giving a voluntary statement to SGI on December 10, 2002. He stated that he gave the statement because the Appellant had advised him what G had said and that she had been cut off her benefits. He stated that the Appellant asked him to speak with Ms. Korolischuk at SGI and tell her side of the story.

[96] G's father admitted that his wife would lend the Appellant money. He estimated that the Appellant owed his wife about \$1500.00 when she passed away and stated he has not received anything since her death. He advised that he told the Appellant that he would be happy with \$750.00 as a repayment. He denied that he and his wife paid the Appellant for sitting and visiting his wife while she was ill. G's father admitted that he was upset about the loans to the Appellant because his wife was a little generous that way but because she was ill and it made her feel good to have the company, he was not going to worry about the money. G's father admitted that he did not know everything his wife did when it came to money because she didn't always tell him everything like that.

[97] G's father testified that his wife paid some of her friends to help clean out her mother's house when she passed away in 2001 but that the Appellant was not one of them because she had

already been in the accident. He stated that the Appellant was there but did not do any of the work. He also stated that C.T. did lots of the work but he couldn't say if the Appellant did or did not do any of the work because he wasn't there much.

LAW AND ANALYSIS

[98] 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 Automobile Accident Insurance Act* (the "Act") that the Court of Queen's Bench previously had 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".

[99] The discretion to make decisions must be exercised in a judicial manner. The discretion can only be exercised in favour of the Appellant if it is determined that the decisions of SGI were 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

[100] The issues are as follows:

- a) Did the Appellant provide false or inaccurate information to SGI with respect to her ability to work which would justify a termination of her income replacement benefits?

- b) Is the Appellant entitled to additional permanent impairment benefits for a Class IV Impairment under Table 15 of Appendix B; loss of range of motion in her back and hips; loss of sight in her right eye, numbness in the right side of her face and a lump in her right wrist?

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

Termination of Income Replacement Benefits

[101] Where SGI terminates benefits pursuant to Section 185 of the *Act*, the onus of proof is on SGI to establish on a balance of probabilities that it was justified in terminating benefits.³ Section 185(a) allows the insurer to terminate benefits where the person to whom the benefit is paid, knowingly provides false or inaccurate information to the insurer. The decision by this Commission as to whether SGI has met their onus of proof in terminating benefits is not taken lightly. We are aware that a decision by this Commission to uphold SGI's termination of benefits could have a significant impact on the claimant who alleges they are entitled to ongoing benefits.

[102] SGI submitted that the Appellant's benefits were terminated for providing false information about the amount of work she was capable of doing and was in fact doing in the fall of 2002.

[103] The determination by this Commission of whether or not the Appellant knowingly provided false or inaccurate information to the insurer is not entirely but is largely determined by the viva voce evidence presented at the appeal hearing and the credibility of the parties.

[104] We have carefully assessed the viva voce evidence provided by all witnesses and made our findings of credibility based upon our assessment. G testified that the Appellant continued to provide housekeeping services to her mother until her death in July 2002. She stated that she personally saw the Appellant performing housekeeping services and also saw her mother pay the Appellant for those services. G was very close to her mother and visited her often in the fall of 2001 and spring of 2002. This was confirmed by the Appellant but denied by her father, which we find somewhat confusing except to say that her father's work took him away from home and he may not have been aware of how much time his daughter was spending with her mother. G stated that her mother had told her that the Appellant was doing the housecleaning and that she had saw the Appellant performing housekeeping on Saturdays and had conversations with the Appellant while she was at her mother's home doing the cleaning. The evidence is undisputed that G was very close to her mother and we believe that she was aware that the Appellant was

³ *Miller v. Saskatchewan Government Insurance*, [2001] SJ No. 418, 2001 SKQB 335 at paragraph 11.

performing some housekeeping services for her mother after October 2001 until her death in July 2002. The Appellant's sister was living in Prince Albert from November 2001 until June 2003.

[105] We find the evidence of G to be more consistent and to be preferred over the evidence provided by the Appellant. There are several inconsistencies in the evidence of the Appellant which lead us to believe that the evidence that she gave is unreliable.

[106] The Appellant stated that her sister cleaned H's and I's homes for her, a claim which is supported by her sister. G's father stated that the Appellant's sister also attended with the Appellant to clean his home after October 2001 but this was not reported by either the Appellant or the Appellant's sister, which raises some doubts in our minds about the evidence provided by all of these individuals. There were other inconsistencies in the evidence provided by G's father such as the July 2002 altercation between his daughter and the Appellant. G's father stated that the Appellant came out the evening before to pick up the clock radio and was only having coffee on the Saturday morning. The Appellant reported that she had gone out that morning to pick up the clock radio. G's father reported that his work did not take him away from home much but that the Appellant stayed overnight with his wife on many occasions while he was away from home. It is our opinion, that G's father's evidence is of little assistance to the Appellant. We also find that G's father admitted that he was not always aware of what money his wife was paying to whom and therefore we find it entirely possible that his wife was paying the Appellant for housecleaning services without any knowledge on the part of him.

[107] The Appellant also stated that her sister would sometimes clean the H home on her own and the Appellant would not attend. The Appellant's sister, in her testimony, stated that the Appellant always accompanied her to the H home. The Appellant admitted that the relationship that she had with H was one of trust but did not tell her that her sister would be doing the cleaning because she had lost other clients for that very reason. The Appellant did tell H that she was receiving money from SGI but that it was not enough and still did not advise H that her sister would be doing the cleaning because she could not. Nor did the Appellant disclose to SGI or Ms. Korolischuk that her sister was doing the cleaning for her when confronted in August 2002 and again in October 2002, despite the fact that she admitted and knew SGI would pay for her to have replacement labour to run her housecleaning business. The Appellant also stated that

her sister only wanted to do the odd job for her, but her sister stated that she worked for the Appellant for four or five weeks. In our opinion, the Appellant knowingly received income replacement benefits, reported that she was receiving them to H but failed to disclose to SGI the exact nature of her medical condition. The Appellant completed an Application for Injury Benefits for Income Replacement Benefits which she signed and agreed “to let my Personal Injury Representative know right away if anything changes that may affect my claim, including any return to work or income earned from employment”. There is a positive duty on the Appellant to report changes to SGI, not only because of the document that she signed, but also a statutory duty under Section 175 of the *Act*.

[108] Another inconsistency in the evidence provided was the Appellant’s sister stated that she cleaned both the H’s and I’s homes at the same time so it must have been the spring because she remembered doing the spring cleaning for I. The Appellant reported that she started working for the I’s and H’s in August or September 2002. The Appellant reported that her sister came to the I’s to wash windows but when the Appellant was questioned further about I, she could not remember when she had last cleaned their home but if they asked her to come and clean it, her sister always came with her to do the work. The Appellant’s sister only reported washing windows at the I’s for spring cleaning but also stated that she had cleaned their home for four to five weeks.

[109] We also find it extremely disconcerting that the Appellant’s sister was able to assist the Appellant with the housekeeping duties at I’s and H’s because the Appellant was unable to perform these duties, yet, at the same time admitted that she herself was claiming Canada Pension Plan Disability at that time that she was cleaning for the Appellant. This coupled with the inconsistencies in her evidence and the inconsistent evidence provided by the Appellant, lead us to find little credibility in the evidence provided by both the Appellant’s sister and the Appellant with regard to the relationship they had regarding the Appellant’s sister’s assistance with the Appellant’s cleaning business.

[110] We find the evidence of Ms. Korolischuk to be preferred over that provided by the Appellant with regard to conversations which took place between them. Ms. Korolischuk provided testimony that she writes her injury notes contemporaneously with her meeting with her

clients. The Appellant's explanation regarding "her admission of working" and completion of the Statutory Declaration as taking place in October 2002 does not accord with the date of the Statutory Declaration which is August 2002. We find it particularly critical that the issue which Ms. Korolischuk pointed out was not that the Appellant was not working for six of the seven individuals interviewed by IRC, but that fact that she was working for some individuals. We also take note of the fact that Ms. Korolischuk referred to the Appellant as a "friend" and that she was trying to break it to her that they had caught her working and tried to give her every opportunity to admit that she was working. We find that Ms. Korolischuk's evidence is to be preferred over the Appellant's. Both individuals stated that the Appellant never disclosed that her sister was doing the work for her and the Appellant provided no explanation as to why she would not have advised Ms. Korolischuk of that when meeting with her either in August 2002 and October 2002, particularly when she had been advised of her right to employ a replacement worker. If that were the case, it would have seemed like a very simple response when Ms. Korolischuk advised the Appellant that SGI knew she was working. The Appellant's only explanation was that she was visiting an old friend in the hospital.

[111] The Appellant also reported that she had not advised SGI about the loss of vision in her right eye and deafness in her right ear because she did not think it was important in terms of her ability to hold her Operator's Permit. When she was advised that she needed to disclose this information she replied "Oh well". We find this particularly troubling and this response coupled with the many inconsistencies in her evidence regarding her ability to work and the inconsistencies noted by many medical practitioners leave us with serious reservations about the credibility of the Appellant when it comes to her positive duties of reporting changes that may affect her entitlement to benefits.

[112] The relationship between an insured and insurer is one built on trust and good faith. Both the insurer and the insured have a positive duty to act in good faith within the insurance relationship. We find that the Appellant was provided with several opportunities to advise SGI that she was trying to rebuild her business, that she was working and/or that her sister was doing work for her. We find instead that the Appellant did not act in good faith in disclosing to SGI exactly her work position. We find that in fact, the Appellant was performing some housekeeping duties for some of her former clients. We accept that her sister may have attended

on a few occasions to assist with some of the duties because of the evidence of H, however, we find that the Appellant was performing some housekeeping for her clients in October of 2002 when her benefits were terminated.

[113] The fact that several of her former employers advised SGI that she had not worked for them since the accident has been considered. The Appellant's evidence was that she contacted them seven or eight month's after her accident and they did not want someone else doing the cleaning. Due to the inconsistencies in the evidence provided by the Appellant, we do not find the fact that she had not worked for some of these individuals since the accident to be a turning point because the fact is that she was working for H's and I's and had not disclosed that relationship to SGI. The test is not that she had returned to work for all of her former employers, the test is whether she had knowingly provided false and misleading information about her employment to her insurer and we find that she did. If the Appellant's sister had been doing all of her housecleaning, the Appellant had plenty of opportunity to disclose this information to SGI and she failed to do that. She has indicated that she violated a trust relationship with H and does not believe in the importance of reporting her medical condition to SGI which may have an impact on her ability to operate a motor vehicle. We find all of these admissions to weigh heavily in my findings of credibility. We have serious reservations over the reliability of the evidence provided by the Appellant.

[114] All of these findings lead us to believe that the Appellant knowingly provided false information to her insurer with respect to her ability to work. Accordingly, the decision of SGI which terminated the Appellant's income replacement benefits is upheld.

Entitlement to Permanent Impairment Benefits

[115] The basis upon which SGI provides permanent impairment benefits is set out in section 153 of *The Automobile Accident Insurance Act* in force at the time of the Appellant's accident in 2001 (the "old Act"). In this Division:⁴

⁴ Division 6 Permanent Impairment Benefits.

“**permanent impairment**” includes a permanent anatomical or physiological deficit, a permanent disfigurement, a permanent acquired brain injury or any other permanent impairment prescribed in the regulations.

154 Subject to this Division and the regulations, a victim who suffers a permanent impairment because of an accident is entitled to a lump sum benefit for the permanent impairment.

156(1) The insurer shall evaluate a victim’s permanent impairment as a percentage that is determined on the basis of the prescribed schedule of permanent impairments.

(2) If a victim’s permanent impairment is not listed on the prescribed schedule of permanent impairments, the insurer shall determine a percentage for the permanent impairment using the prescribed schedule as a guide.

[116] The relevant section of the *Personal Injury Benefits Regulations* in force at the time of the Appellant’s accident which applied to permanent impairments reads:

“36. Compensation for permanent impairments is to be determined on the basis of Appendix B.”

[117] Appendix B is the Schedule of Permanent Impairments divided into an anatomical and physiological deficits (Part 1) and Disfigurement (Part 2). The *Act* does not define “permanent impairment” beyond the reference in s. 153 to a “permanent anatomical or physiological deficit”. The *PIBR* are also silent other than saying compensation shall be determined based on Appendix B.

[118] Mr. Abrametz, legal counsel for the Appellant, submitted that the Appellant is entitled to a permanent impairment benefit for a Class IV Impairment and for restriction in range of motion of her back. Mr. Abrametz submitted that the calculation of permanent impairment benefits dated July 31, 2003 should be reviewed by this Commission with respect to SGI’s denial of benefits for facial asymmetry and loss of range of motion in the back.

[119] In her Application for Appeal, the Appellant also submitted that she was entitled to permanent impairment benefits for loss of sight in her right eye, loss of range of motion of the hips, numbness in right side of face, and a lump in her right wrist. Mr. Abrametz did not raise these items in his Brief to the Appeal Commission or in argument; however, we have dealt with each briefly as they were part of the original appeal application.

Class IV Impairment

[120] Mr. Abrametz submitted that the Appellant is entitled to permanent impairment benefits for Class IV Impairment in accordance with Appendix B, Part 2, Division 2, Disfigurement of the Face, Table 15 which states:

1. For the purposes of assessing disfigurement of the face, reference is made to each of the following anatomical elements:
 - (a) the forehead;
 - (b) the orbits;
 - (c) the eyelids;
 - (d) the visible part of the ocular globes;
 - (e) the cheeks;
 - (f) the nose;
 - (g) the lips;
 - (h) the ears;
 - (i) the chin.
2. The extent of disfigurement affecting the face must first be assessed overall in terms of the physiognomy, in order to determine the class of impairment.
3. For classes 1 to 4, within the class of impairment of the physiognomy determined, the percentage of disfigurement is fixed in relation to the changes in the form and symmetry of the scarring, without exceeding the maximum percentage of disfigurement prescribed for that class, according to Table 15.

Where there are both scarring and changes in the form and symmetry, the percentages of the two are totalled up to the maximum percentage prescribed for the class.

...

TABLE 15
[Item 3 in Division 2]
EVALUATION OF PHYSIOGNOMY IMPAIRMENTS

Class of physiognomy impairments	Changes in the form and symmetry	Cicatricial Impairment	Max. Disfig.
Class 1 No impairment	Inconspicuous change	Inconspicuous Impairment	---
Class 2 Very minor impairment	Very minor change	Conspicuous Impairment 1% per cm ²	3%
Class 3 Minor impairment	Conspicuous change and: (a) affecting one anatomical element: 3% (b) affecting two anatomical elements: 4%	Conspicuous Impairment and: (a) flat scar: 1% per cm ² (b) faulty scar: 2% per cm ²	

	(c) affecting more than two anatomical elements: 7%	7%
Class 4 Moderate impairment	Conspicuous change that holds one's attention and: (a) affecting one anatomical element: 10% (b) affecting two anatomical elements: 12% (c) affecting more than two anatomical elements: 15%	Conspicuous Impairment and: (a) flat scar: 1% per cm ² (b) faulty scar: 3% per cm ² 15%

[121] Mr. Abrametz submitted that the Appellant is entitled to a Class IV Impairment because her right side of her face and her lip droops and the appearance of her eye spoiled her face and this should be classified as conspicuous change which holds ones attention and affects more than two anatomical elements. Mr. Abrametz submitted that this is a question of fact.

[122] Mr. Dale Brown, solicitor for SGI, submitted that the issue before the Commission is whether or not Part 2 “Disfigurement”, Division 2 “Disfigurement of the Face” and Table 15 Class IV is applicable only to the permanent impairment benefits for scarring or whether one should apply the “changes in form and symmetry” column under Table 15 to facial changes other than scarring.

[123] Although the 2002 Regulations are not applicable in this case due to the date of the Appellant’s accident, we are provided with some guidance with respect to what definition should be applied to “changes in form and symmetry”. The applicable provisions of Appendix B of *The Personal Injury Benefits Regulations* in Division 12 – Skin, include a definition for “alteration in form and symmetry”. The definition states:

...refers to a skin disfigurement that results in a change in tissue bulk, consistency, length, pigmentation, or texture. It does not refer to the presence of a scar.

The provisions of the new Regulations and Table 12.1 appear to be similar in structure to Table 15, but use the headings “alteration in Form and Symmetry” and “Scarring” rather than “Changes in Form and Symmetry” and “Cicatricial Impairment” used in the old Regulations. It is clear that both sets of Regulations relate to Facial Disfigurement, which is the claim being

made by the Appellant and therefore we find it appropriate to use the 2002 Regulations for guidance.

[124] In our opinion, the Appellant's entitlement to facial disfigurement is dependent on a finding of "skin disfigurement which results in change in tissue bulk, consistency, length, pigmentation or texture". We do not find the test to be solely based upon physical appearance as claimed by the Appellant. There must be some objective evidence which supports a "skin disfigurement" as described above. Obviously, Class IV suggests some element of "physical appearance" is relevant because of the requirement to "hold one's attention" but we do not find that to be the sole determinative of whether there is a facial disfigurement under the heading of Changes in Form and Symmetry.

[125] The medical evidence with respect to the Appellant's right eye was that "she is squinting the right eye" or may be due to a "voluntary blepharospasm". There is no evidence that the appearance of the Appellant's right eye is caused involuntarily. There must be changes to the skin surrounding the orbits and eyelids in terms of surface, texture, tissue bulk and consistency. These changes must relate to the prescribed anatomical elements for facial disfigurement. There is no medical evidence or an objective diagnosis by any of her medical practitioners before us which supports that the right side of the Appellant's face and her right lip have suffered changes in the skin on her cheeks and her lips which represents skin disfigurement in terms of surface, texture, tissue bulk and consistency. There is no medical evidence of nerve damage to the right side of her face which causes it to droop.

[126] It is our opinion that a skin disfigurement or facial disfigurement will contain some assessment of changes in physical appearance otherwise the phrase "conspicuous change which hold one's attention" would have no meaning. However, we find that the "conspicuous change that hold's one attention" must relate to changes in skin surface, texture, tissue bulk and consistency. We are unable to find any medical evidence before us to make a finding that the Appellant has suffered a facial disfigurement to her right eye, right lip and right side of her face which resulted in changes to the skin surface, texture, tissue bulk and consistency.

[127] We also note that the Appellant received a permanent impairment award for ptosis of the right eyelid, which is a drooping of the right eyelid, in accordance with Dr. Patel's measurements.

Loss of Range of Motion in the Back

[128] With respect to the loss of range of motion of the back, Mr. Abrametz relied upon Section 156(2) of *The Automobile Accident Insurance Act* which states as follows:

156(1) The insurer shall evaluate a victim's permanent impairment as a percentage that is determined on the basis of the prescribed schedule of permanent impairments.

(2) If a victim's permanent impairment is not listed on the prescribed schedule of permanent impairments, the insurer shall determine a percentage for the permanent impairment using the prescribed schedule as a guide.

[129] Mr. Abrametz submitted that it is not enough to state that it is not compensable under the Regulations, SGI has a positive duty to use Appendix B as a guide where the victim's permanent impairment is not listed on the prescribed schedule.

[130] Mr. Brown submitted that the *Regulations* do not provide permanent impairment benefits for the loss of range of motion of the back as claimed by the Appellant because these are soft tissue injuries and are not compensable by SGI pursuant to the provisions of the legislation. Mr. Brown submitted the legislation specifically does not provide permanent impairment benefits for loss of range of motion of the spine and back where it does provide for loss of range of motion permanent impairment benefits for the hips, shoulder, hands and wrists.

[131] Mr. Brown submitted that the Commission should seek guidance from the 2002 Regulations when considering whether loss of range of motion of the back should be compensated under permanent impairment benefits. Specifically he referred to Subdivision 3: Spine:

As with the rating of musculoskeletal impairments, the clinician rating spinal impairments may consider the degree of tissue disruption as well as the alteration in function associated with a particular injury. However, unlike the appendicular musculoskeletal system, there is less reliance on range of motion assessment as a barometer of function. This is due to the fact that inter-segmental motion is difficult to evaluate clinically. Therefore, the impairments listed are an estimate both of the degree of tissue disruption as well as the alteration in function, expressed as a

single value. In addition, spinal range of motion has been shown to vary both with respect to time of day and direction of motion (e.g. from flexion to extension vs. from extension to flexion). When range of motion assessment is utilized in the evaluation of spinal instability, radiographic criteria will be used.

[132] We are in agreement with Mr. Abrametz that the *Act* requires SGI to use the prescribed schedule as a guide if the impairment is not listed. SGI has a statutory duty under s. 156 of the regulations to determine a percentage for the permanent impairment *using the prescribed schedule as a guide if the permanent impairment is not listed in Appendix B*. However, SGI must first make a finding of permanent impairment before exercising their duty under section 156. Section 156(2) of the Act is intended to operate where an objectively identifiable condition results in an impairment, other than those listed in Appendix B.

[133] The issue to be determined before us is first whether or not there is a permanent anatomical or physiological deficit which has resulted in a permanent restriction in the range of motion of the Appellant's back. Mr. Abrametz relied upon the Secondary Assessment of December 11, 2001 which provided objective findings of loss of range of motion of the lumbar spine. These are not findings of permanent restriction. Mr. Abrametz referred to the Intake Assessment Report of Second Avenue Physiotherapy dated January 24, 2002 which noted significant restrictions in low back movements. The report also referred to significant inconsistencies in the assessment of the Appellant's injuries. There are no findings of permanent restriction in range of motion of the back in this report as the Appellant is scheduled to enter a secondary treatment program. Mr. Abrametz also referred to the FIT Initial Assessment Report where there is reference to X-rays of the lumbar spine which showed a "slight scoliosis in the lumbar spine convex to the left". There was also reference to marked limitation in extension of the lumbar spine and moderate restriction for other movements. The team noted that biomechanical examination was extremely hampered due to self-limitation, active guarding and inconsistencies. The medical practitioners reported that these behaviors handcuffed the ability to obtain an objective assessment. Dr. Bernacki noted that she showed significant symptom magnification and her physical examination was inconsistent. It is our opinion, that restrictions in range of motion of the back noted at the FIT Initial Assessment Report are not indicative of permanent restrictions in range of motion of the back.

[134] The FIT Discharge Report of June 2002 deemed the Appellant to be a maximum medical improvement. The team’s findings with respect to the lumbar spine are “maximally reduced extension and rotation and moderately reduced flexion and side flexion. The team noted that “the client’s range has been variable depending upon the preceding activity. Her range was measured following a trip from Prince Albert and likely indicated the client at her least mobile”. Dr. Rabuka reported that she had a twisted back but provided no objective findings of restricted range of motion of the back.

[135] The term “permanent impairment” must be given the ordinary meanings ascribed in dictionaries. *The Shorter Oxford English Dictionary* (Oxford: Clarendon Press, 1973) ascribes the following usages to the words “permanent” and “impairment”:

Permanent ... 1. Lasting or designed to last indefinitely without change; enduring; persistent: opp. to temporary.

Impair, v. ...1. *trans.* To make worse, less valuable, or weaker; to lessen injuriously; to damage, injure. 2. To grow or become worse, to suffer injury or loss; to deteriorate...

Impairment, the action of impairing; the being impaired; deterioration....

[136] We are unable to conclude on the medical evidence before us that the restriction in range of motion of the Appellant’s back is a permanent condition. We note that this is a condition which will vary with the time of day and the activities being participated in. Several medical practitioners noted that the Appellant’s symptom magnification made it difficult to obtain an objective assessment. There is not an objectively measurable condition nor is it radiologically identifiable. Therefore, we are unable to conclude there is a permanent, unchanging, loss of function which is measurable and demonstrable. The decision of SGI in not awarding permanent impairment benefits for loss of range of motion of the Appellant’s back is upheld based upon a review of the medical evidence presented to the Commission.

[137] We have reviewed the Personal Injury Benefits Regulations Schedule of Permanent Impairments in Appendix B⁵ and note that loss of range of motion has been included as part of the percentage listed for a particular condition of the lumbar spine. It does not address restriction of motion of the lumbar spine alone as a separate category. SGI submitted that loss of range of

⁵ Chapter A-35, Reg 3, Part I, Division I, Subdivision 3, Spine, Item 20.

motion of the lumbar spine is to be determined in accordance with Subdivision 3, Spine, Item 20 of the Regulations and therefore Section 156 would have no application. We do not interpret Section 156 to be that restrictive of a provision. It is our opinion that there may be a factual situation where permanent loss of range of motion of the lumbar spine is not specifically provided for in Subdivision 3, Spine, Item 20 of Appendix B and therefore may be compensable under Section 156, however, we do not find that to be the factual case in the Appellant's appeal.

Loss of Sight in the Right Eye

[138] With respect to loss of sight in the right eye, the neuro-ophthalmic evaluation of Dr. Patel dated January 31, 2002 and his further report of May 21, 2002 and Dr. Degelman's report of June 20, 2002 do not support loss of sight in one eye. An award for permanent impairment as it relates to loss of sight in the right eye is not supported by the medical evidence before us. We are unable to conclude that the decision of SGI which does not award a permanent impairment benefit for loss of sight in the right eye is an error in law, based on erroneous assumptions or unreasonable and accordingly the decision of SGI is upheld.

Loss of Range of Motion in the Hips

[139] With respect to loss of range of motion in the hips, Dr. Bernacki reported in the FIT Initial Assessment that he was able to obtain full range of motion of her hips to flexion, extension, internal and external rotation. An award for permanent impairment as it relates to loss of motion in the hips is not supported by the medical evidence before us and was abandoned by Mr. Abrametz at the appeal hearing. We are unable to conclude that the decision of SGI which does not award a permanent impairment benefit for loss of motion in the hips is an error in law, based on erroneous assumptions or unreasonable and accordingly the decision of SGI is upheld.

Numbness to the Right Side of the Face

[140] With respect to the claim for numbness to the right side of the face, Dr. Rabuka reported with respect to the facial numbness that "all investigations so far have not found cause for symptoms". We are unable to find any medical evidence before us to support a permanent

impairment benefit for this alleged injury. We are unable to conclude that the decision of SGI which does not award a permanent impairment benefit for numbness to the right side of the face is an error in law, based on erroneous assumptions or unreasonable and accordingly the decision of SGI is upheld.

Lump in the Right Wrist

[141] With respect to the lump in the Appellant's right wrist, we note that an X-ray taken of the right hand on October 12, 2001 noted a "slight deformity of distal radius probably relates to an old injury, and this is somewhat corroborated by a separated old ulnar styloid fragment". The Appellant also reported in her Application for Benefits a Workers' Compensation claim for a broken wrist in 1997 (does not state which hand) and several surgeries for tendonitis in both hands. We are unable to find any medical evidence before us to support a permanent impairment benefit caused by the accident for a lump in the Appellant's right wrist. We are unable to conclude that the decision of SGI which does not award a permanent impairment benefit for a lump in the right wrist is an error in law, based on erroneous assumptions or unreasonable and accordingly the decision of SGI is upheld.

[142] Although we have not made an additional award for permanent impairment benefits we do note that on October 11, 2002, the Appellant was paid a permanent impairment benefit of 24.8% whole body in the amount of \$30,347.05. We note the calculation completed by Dr. Jutras was 24.5% whole body permanent impairment which would have resulted in payment of \$29,931.34 taking into account the previous payment of \$4018.56 on June 7, 2002. Accordingly, we find the Appellant was overpaid \$415.71. If there are any additional payments for permanent impairment benefits they should take into account this overpayment.

CONCLUSION

[143] The decision of SGI dated November 4, 2002 in which the Appellant's income replacement benefits were terminated pursuant to Section 185 of the *Act* for providing false information is upheld.

[144] The decisions of SGI dated October 11, 2002 and August 11, 2003 with respect to the calculation of and entitlement to permanent impairment benefits for Class IV Impairment, Loss of range of motion of the back and hips, loss of sight in the right eye, numbness to the right side of the face and a lump in the right wrist are upheld.

Dated at Regina, Saskatchewan, on February 25, 2005.

Joy Dobko, Chair

Beverly Cleveland, Commission Member

Dr. Mukesh Mirchandani, Commission Member