Automobile Injury Appeal Commission

Province of Saskatchewan

Citation: *A.O. v. Saskatchewan Government Insurance*, 2005 SKAIA 023
Date: 20050405
File: 135 of 2003

BETWEEN

A.O., Applicant

and

Saskatchewan Government Insurance, Respondent

Appearances:

Loreley Berra, for the Applicant
Jane Wootten, for the Respondent

Before: **Jeffrey Scott, Chair**
Conrad Hnatiuk, Commission Member
Al Knippel, Commission Member

THIS DECISION HAS BEEN EDITED TO PROTECT THE PERSONAL AND HEALTH INFORMATION OF INDIVIDUALS BY REMOVING PERSONAL IDENTIFIERS AND OTHER IDENTIFYING INFORMATION.

Heard at Regina, Saskatchewan
December 13, 2004

DECISION

INTRODUCTION

[1] The Appellant, A.O., was in a motor vehicle accident on September 8, 2001.

[2] The Appellant appeals from a number of decisions of Saskatchewan Government Insurance ("SGI"). The decisions are dated August 14, November 24, and December 23, 2003.

[3] In its August 14, 2003 decision, SGI informed the Appellant that SGI was not prepared to pay for [an Ambulance] invoice dated May 5, 2003. In its November 24, 2003 decision, SGI informed the Appellant that SGI was not prepared to pay for a neuropsychological assessment. Further, in its November 24, 2003 decision SGI informed the Appellant that SGI was not prepared to pay for the costs associated with the Appellant obtaining mental health treatment. Finally, in its December 23, 2003 decision SGI informed the Appellant that SGI was prepared to pay only 50% of his medication costs.

PRELIMINARY MATTERS

[4] During the Hearing the following two matters were agreed to between the parties and their counsel:

(1) The appeal from the November 24, 2003 decision of SGI to not pay for a neuropsychological assessment was abandoned.

(2) The appeal from the December 23, 2003 decision of SGI to pay for only 50% of medication costs was resolved by way of an agreement between the parties. Ms. Berra, counsel for the Appellant, will provide Ms. Wootten, counsel for SGI, with satisfactory proof from the Appellant's medical caregivers that there is a causal link between the injuries that the Appellant suffered in the accident and the need for the prescribed medication. After receiving the proof, SGI will render a decision on whether:

(a) SGI is satisfied that there is a causal link between the injuries and the need for the prescribed medications and;

(b) whether SGI is prepared to pay for the past and current prescribed medication costs.

If the Appellant is not satisfied with SGI's decision, he can appeal the decision.

FACTS

[5] The Appellant complained of "severe neck pain" at the accident scene. An ambulance transported the Appellant to [a small town hospital].

[6] Dr. Correlissen assessed the Appellant at the small town hospital. Dr. Correlissen ordered x-rays of the skull and cervical spine (the "X-Rays"). According to the Outpatient Report dated September 8, 2001, Dr. Correlissen intended the Appellant to be admitted to hospital for observation overnight. However, the Outpatient Report states that the Appellant did not want to be admitted. Approximately one hour after he arrived at the hospital, the Appellant left the hospital. The Appellant was given a prescription for a soft collar.

[7] With respect to the X-Rays, the Diagnostic Imaging Report (dictated on September 10, 2001) reported a normal skull series of x-rays and no fracture was seen on the cervical spine x-ray.

[8] On September 9, 2001 the Appellant attended at a Prince Albert hospital. On the hospital chart, there are references to the Appellant complaining of "numbness" of the right hand and "tingling". The attending hospital physician ordered, amongst other items, physiotherapy. The Appellant was discharged home and asked to return in one week's time.

[9] The Appellant continued to complain of numbness and tingling.

[10] On September 26, 2001, the Appellant underwent a CT of the Cervical Spine. The Diagnostic Imaging Report reported an "[i]solated fracture of the transverse process of C6".

[11] Given the "isolated fracture of the transverse process of C6", the Appellant was seen by Dr. F. Pirouzmand, neurosurgeon in Saskatoon. In his correspondence dated October 1, 2001 addressed to Dr. R. J. Unsworth (the Appellant's family physician), Dr. Pirouzmand stated, in part, as follows:

> "His cervical spine CT scan which was performed today reveals a linear non-displaced fracture along the lateral aspect of the left C6 later mass extending anteriorly toward the foramen transverse sarium with involvement of the superior facet articular process in this region. There is no major subluxation over rotation. He also underwent MRI of his cervical spine today which revealed no additional disc herniation or spinal cord signal change. His spinal alignment has remained satisfactory.
>
> This middle-aged gentleman has presented in a delayed fashion after a left C6 lateral mass and facet fracture.
>
> He has typical left C6 radiculopathy. His fracture seems to be stable and I am planning to mange (sic) this with the application of a halo orthoses for about three months. He will be admitted for application of the halo and hopefully will be discharged tomorrow. He will be seen every month for three months to ensure adequate fusion."

[12] On December 3, 2001 the halo, referred to in Dr. Pirouzmand's above quoted letter, was removed. The halo was replaced with a collar.[1]

[13] After the removal of the halo, a number of health care professionals assessed the Appellant. As a result of all of those assessments, written reports were prepared. Many of those reports were filed for the appeal. We have reviewed and considered all of the reports that were filed.

[14] One of the medical caregivers that followed the Appellant's progress was Dr. V. Thackeray, Consultant, Wascana Rehabilitation Centre. Given the C6 fracture and signs of C5-6 radiculopathy, Dr. Thackeray requisitioned (the "Requisition") a MRI in order to visualize the Appellant's cervical spine and to determine whether or not there was radiculopathy or nerve root impingement. The Requisition was incorrectly interpreted to request an examination of the vascular structures.

[15] Arising out of the Requisition, the Appellant underwent a MR examination on August 21, 2002. The MRI Report dated August 21, 2002 reported, in part, as follows:

> "**Impression:**
>
> Complete occlusion of the left vertebral artery from just above its origin. No other abnormality on MRA. No intracranial lesion demonstrated."

[16] After receiving the MRI Report, Dr. V. Thackeray met and discussed the MR findings with the Appellant. In his file note dated September 13, 2002 Dr. Thackeray states, in part, as follows:

> "I went over those results with [the Appellant] today, and explained that there were four vessels that feed into the circle of Willis, so that as long of (sic) that system is working and one can be occluded and his brains still gets quite adequate circulation. It was further explained there is no risk of any blood clot coming from the socluded (sic) artery. He was advised, as we would anyone, that he avoid any activities that would increase atherosclerosis and might cause problems in the other arteries, and specifically he should keep his weight down, avoid fatty foods, keep active and not smoke."

[17] On October 8, 2002, the Appellant underwent a second MR study. In the MRI Report dated October 8, 2002 under the heading "Impression" it is stated as follows:

> "Mild degenerative disc changes as described above. Otherwise, no evidence of a disc protrusion or central/neural foraminal stenosis".

[18] After the October 8, 2002 MT study, the Appellant continued to be seen by a number of health care professionals.

[19] On May 5, 2003, the Appellant experienced headache pain. The Appellant called for an ambulance. On the ambulance report it is stated, in part, as follows:

> " …pt oriented apears (sic) ETUH but denys (sic) any…"

[20] An ambulance transported the Appellant to [the hospital].

[21] On the Outpatient Report under the heading "Reason for Visit" it is stated, in part, as follows:

> "2100 Took '¼ oz. of hard liquor + hours ago'. Headache began ½ hr ago. History of chronic headaches since mva-getting worse…"

[22] The Appellant was given medication for the headache pain. The Outpatient Report states that the Appellant left the hospital by walking.

[23] In a letter dated August 14, 2003 Ms. Heroux informed the Appellant that SGI was not prepared to pay for the May 5, 2003 ambulance charge. In her letter Ms. Heroux stated, in part, as follows:

> "We have been contacted by [the ambulance] regarding a billing for May 5, 2003, where you were taken from your residence to [the hospital] due to a headache. I have now had a chance to review

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[1] Entry note dated December 4, 2001.

> your file and cannot find a definite connection between your headaches and the motor vehicle accident as the started months after "(sic)."

[24] With respect to the costs associated with the Appellant accessing mental health services there are in the materials filed for the Hearing references to the Appellant obtaining mental health counselling services before and after the accident. There are, also, references in the materials to the Appellant accessing mental health services due to causes reported to be not due to the accident.

[25] For just over two years, SGI paid for the costs (mileage) associated with the Appellant accessing mental health services.

[26] Then by a letter dated November 24, 2003 Ms. Heroux informed the Appellant that SGI was no longer prepared to pay for those costs. In her letter, Ms. Heroux stated in part as follows:

> "Your file has been reviewed by our Psychologist consultant. It is the consultant's opinion that no further counselling is required for the affects of the motor vehicle accident. It is felt that your symptoms are primarily non-injury related and are primarily psychosocially based. We will not cover further trips to mental health, after the date of this letter, for counselling or any further counselling (sic) (if funding is required). You may wish to attend on your own."

[27] The psychologist consultant referred to in Ms. Heroux's letter is Dr. G. Pancyr. Dr. Pancyr's report was filed for the hearing.

LAW AND ANALYSIS

[28] 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 or vary the insurer's decision; or
> make any decision that the insurer is authorized to make pursuant to this Part".

[29] The discretion to make decisions must be exercised in a judicial manner. The discretion can only be exercised in favour of the applicant if it is demonstrated that the decision of SGI (i.e. to not pay for the ambulance invoice and to terminate the payment of the costs associated with

mental health services) was erroneous or based on erroneous assumptions, or at the very least, the decision was unreasonable.[2] The Commission will exercise its discretion in the same way.[3]

[30] In the Application for Benefits dated September 12, 2001, the Appellant self-reported that he was experiencing headache pain as a result of the accident. He self-reported the pain as being a "5"- with 0 meaning "no pain at all" and 10 meaning "pain is as bad as it could be".

[31] Further in an Initial Assessment Report dated 12/03/02 prepared by Curtis Gorkoff (sp?), Arcola Physiotherapy and Acupuncture Clinic, there is a reference to the Appellant experiencing "occasional headaches". There are additional references in the materials to the Appellant experiencing headaches after the accident.

[32] At the Hearing, the Appellant testified that he called the ambulance on May 5, 2003 because he had been told by his medical caregivers to not drive due to the occlusion of the left vertebral artery. Ms. Berra was asked at the hearing whether she had any documentary evidence to substantiate the Appellant's assertion. Ms. Berra stated that she did not have any such documentary evidence.

[33] The only documentary evidence that arguably addresses the issue of whether the Appellant should not drive is a letter dated September 17, 2003 from Dr. Ian M. Cowan addressed "To Whom It May Concern". However, Dr. Cowan's letter was written a number of months after the May 5, 2003 ambulance service. In his letter Dr. Cowan stated, in part, as follows:

> "Due to problems from a previous injury, [the Appellant] should not travel alone".

[34] As previously stated no documentary evidence was filed to substantiate the Appellant's assertion that he was told on or before May 5, 2003 by his medical caregivers that he should not drive.

[35] Upon a review of the Ambulance Report and the hospital record, we note the references to the Appellant consuming alcohol before his telephone call for an ambulance. At the Hearing,

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2 *Belchamber v. Saskatchewan Government Insurance* [1997] TWL QB97557; *Donan v. Saskatchewan Government Insurance* [1998] TWL QB98224; *Collis v. Saskatchewan Government Insurance* [1998] TWL QB98113.

3 *R.C. v. Saskatchewan Government Insurance,* 2003 SKAIA 001.

[36] Given the lack of adequate proof that the Appellant was advised on or before May 5, 2003 by his medical caregivers to not drive and given that the Appellant had consumed a quantity of alcohol on the day that he called for the ambulance, we conclude that there is not a causal link between the injuries the Appellant suffered in the accident and the need for the Appellant to be transported by ambulance on May 5, 2003.

[37] For over two years, SGI paid for the costs (mileage) associated with the Appellant accessing mental health counselling services. However, in her November 24, 2003 letter Ms. Heroux informed the Appellant that SGI would no longer pay for those costs.

[38] Prior to the accident, the Appellant accessed mental health services.

[39] After the accident, the Appellant has accessed mental health services. The cause for some of those mental health services is documented in the filed materials as being linked back to the accident. However, upon a close review of those documents it appears that the Appellant self-reported that he requires mental health counselling due to the injuries that he suffered in the accident. There is very little objective evidence in the filed materials to support the Appellant's assertion.

[40] The Appellant's current family physician is Dr. Ian Cowan. Dr. Cowan prepared a note that was filed for the Hearing. In his note, Dr. Cowan states as follows:

> "This man requires counselling as a result of his accident of 2 years ago & will continue to require counselling on a regular basis."

[41] Dr. Cowan did not document his reasons for stating that the Appellant requires counselling due to the injuries that he suffered in the accident.

[42] There are in the filed materials references to the Appellant requiring, after the accident, mental health services for causes not related to the accident.

[43] At the Hearing, the Appellant stated that he continues to access mental health services. In particular, he stated that he had recently received mental health services at the Mental Health

[44] There is no reference to the accident in the Progress Note.

[45] The Progress Note states that the Appellant was admitted to the Psychiatric Ward of the Regina General Hospital on October 15 through to October 25, 2004. No documentation was filed concerning that hospital admission.

[46] The Progress Note, also, refers to the Appellant spending a period of time in a Detox Center after the hospital admission referred to in paragraph 45. No documentation was filed concerning the Appellant's admission to the Detox Center.

[47] The Progress Note, also, refers to the Appellant being "… admitted in [the hospital] on several occasions in the past and the most recent admission was in October of 2004." No documentation was filed concerning the October, 2004 hospital admission.

[48] The Saskatchewan Court of Appeal recently held that where SGI decides to terminate benefits it has the onus to prove, on a balance of probabilities, that the benefits are no longer payable under the Act.[4]

[49] Given the Appellant's history of accessing mental health services prior to the accident, his accessing of mental health services after the accident for causes not related to the injuries suffered in the accident, and the lack of objective evidence linking the injuries suffered in the accident to the need for mental health services we are all of the view that SGI satisfied the onus of proof when it decided to terminate the payment of costs related to the Appellant accessing mental health services.

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[4] *Gerald Job v. Saskatchewan Government Insurance,* 2004 SKCA 164.

CONCLUSION

[50] The decision by SGI to not pay the ambulance invoice is upheld. The decision by SGI to not pay for the costs associated with the Appellant accessing mental health counselling services is upheld. The appeal from SGI's decision to not pay for a neuropsychological assessment is abandoned. The parties have agreed that the Appellant will provide to SGI additional information concerning his prescribed medications. Once that information is provided, SGI will decide whether it is prepared to pay for the Appellant's medication costs. If the Appellant is not satisfied with SGI's decision, he may appeal that decision.

Dated at Regina, Saskatchewan, on April 5, 2005.

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Jeffrey Scott, Chair

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Conrad Hnatiuk, Commission Member

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Al Knippel, Commission Member