

**Automobile Injury Appeal Commission
Province of Saskatchewan**

Citation: *I.C. v. Saskatchewan Government Insurance,*
2005 SKAIA 025
Date: 20050425
File: 022 of 2003

BETWEEN

I.C., Applicant

and

Saskatchewan Government Insurance, Respondent

Appearances:
Peter A. Abrametz, for the Applicant
Darrell Mack, for the Respondent

Before: **Ann Phillips, Q.C., Chair**
Beverley Cleveland, Commission Member
Mukesh Mirchandani, M.D., Commission Member

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

Heard at Prince Albert, Saskatchewan
June 15, 2004

DECISION

[1] I.C., the Appellant, appeals two decisions of Saskatchewan Government Insurance (SGI) dated December 11 and December 27, 2002. The December 27 decision simply extended the time for filing the appeal to this Commission.

[2] The December 11 decision followed an internal review by SGI of two earlier decisions. The earlier decision of July 6, 2001 terminated treatment benefits after June 30, 2001 based on two medical opinions, from the Appellant's family physician, Dr. Ardell¹ and from Dr. Jutras, SGI's medical consultant.²

[3] Very briefly, their recommendations were that she should finish her ongoing unsupervised exercise program, to be completed June 30. The decision added that if there was a further request for treatment, the file should be reviewed, with further correspondence with Dr. Ardell.

[4] The Appellant's appeal requested benefits such as travelling expenses to appointments with specialists, physiotherapy, chiropractic and massage therapy as recommended by her doctor, as she was still experiencing symptoms and had been referred to specialists.

[5] The second decision to be reviewed was a suspension of all benefits because she failed to attend a secondary assessment at Bourassa and Associates Rehabilitation Centre on November 28, 2001.³

[6] Understandably, very little evidence and argument was directed towards the July 6, 2001 decision, as it did leave open the opportunity for a request for further treatment, subject to further review, an opportunity that was foreclosed by the suspension of all benefits November 29, 2001.

¹ March 30, 2001.

² May 15, 2001

³ Letter dated November 29, 2001

FACTS

[7] The Appellant was injured in a motor vehicle accident in 1997, again on March 4, 2000, and again on December 20, 2001. The circumstances of the last motor vehicle accident are not in issue because it occurred after the letter terminating benefits on November 29, 2001.⁴

[8] The Appellant received massage therapy and chiropractic treatment for the 1997 injury. She felt that she had not been provided with proper treatment for her condition, but was too inexperienced to know what was available. Her initial complaints were of a sore neck, headaches and a tight feeling. She was tender in the cervical paraspinal muscles, diagnosed as soft tissue injury.⁵ She was x-rayed⁶ and prescribed heat and massage. There is a gap in her doctor's medical records between March 20, 1997 and September 11, 1998. At the later date, she was still having ongoing problems with neck pain and chronic headaches. She was prescribed exercises, a CT scan of her neck and a referral to Dr. Buglass, an ophthalmologist.

[9] The CT scan found nothing indicating any significant intracranial pathology, and nothing to explain the patient's headaches. The radiologist did not recommend a contrast scan as necessary in view of the results of the plain scan. She did say: "Perhaps the patient should undergo MRI if her symptoms continue". There is another gap in her doctor's clinical notes until March 6, 2000, following the second motor vehicle accident, when she lost control on an icy street, hit a snowbank and tipped her car over on its side.

[10] Following the second accident, she was seen initially in the Out-patients Department and had x-rays. She complained of pain in the back of her head, right shoulder, upper back, neck and right arm. Her family physician diagnosed post-MVA neck and back strain from C1 to T8, and including her right arm and shoulder. The thoracic pain had largely resolved by the end of May, but she was still experiencing limited range of motion of the neck and tenderness in the paraspinal muscles, C1 to T3, the right trapezius, right levator scapulae and deltoid muscles. Dr. Ardell prescribed massage therapy and a conditioning exercise program daily and a recommendation that SGI "help out at home". By June 15, she was again experiencing

⁴ Obviously, the new accident confers a new entitlement to benefits.

⁵ Dr. Ardell's clinical notes.

⁶ Results not reported, presumably negative.

headaches and claimed she had slurred speech and blurred vision with the headaches. The mid-thoracic pain was back. Her symptoms were otherwise unchanged. Dr. Ardell noted that in the conditioning exercise program “she has had a falling out with SH Physio⁷ and will change to (blank)”.

[11] She cancelled a May 25 appointment, and did not show up June 5-9. South Hill advised SGI, who sent a letter June 13, advising of the possibility of termination of benefits under section 185 of *The Automobile Accident Insurance Act* (“the Act”) for non-compliance with treatment. The Appellant said the treating physiotherapist had told her on Friday, June 2, that it was “the end of the program”.

[12] She took primary treatment at Second Avenue Physiotherapy twice a week, supplemented by a gym program 5 to 6 days a week. She also attended a chiropractor 2 to 3 times a week beginning in late August.

[13] Because she was not improving, she was referred for tertiary assessment in Saskatoon. While in June, she still had limited range of motion in her neck and tenderness in the paraspinal and trapezius muscles, and headaches, by late July she had full passive ROM, but actively, movements were mildly restricted by pain. Both her family physician and the physiotherapist referred to psychological issues.⁸

[14] Things did not go well at the tertiary assessment at the FIT for Active Living program, Saskatoon City Hospital, which took place September 18-19, 2000. The team felt its ability to properly assess her was impaired and thought she “presented with disorganized thought patterns and was tangential throughout the assessment”. They recommended she continue with primary level chiropractic treatment and her gym program and said they would “support a psychiatric and psychological assessment regarding her distractibility and concerns about memory problems”. They noted her anger and frustration in her relationship with SGI, exhibiting distrust of the system and the treating practitioners.

⁷ South Hill Physio.

⁸ Dr. Ardell briefly stated: “Difficult patient”

[15] They diagnosed Whiplash Associated Disorder II with cervicogenic headaches and low back pain II.

[16] The Appellant on the other hand said that the treatment team was poorly prepared. The physiotherapist had no medical information available to her at the time of her assessment, and one of the team members thought she was a single mother when in fact she has been married for many years. She disputed the team's assessment that she would be uncomfortable being assessed with the team as a whole. She felt she should have had input into the decision to limit her contact with the assessment team to Vince Salamon, the rehabilitation coordinator, and Dr. Bernacki, the physiatrist. She said her remarks had been blown out of proportion. She particularly objected to the absence of Penny Korte, a consultant with Innovative Rehabilitation Consultants (IRC) who was sitting in on the conference on behalf of her personal injury representative at SGI, Pat Korolischuk. She was upset and "humiliated" that Dr. Bernacki told her at the assessment conference that she had no reason for her physical pain and something else was causing her problem.

[17] She complained to Dr. Ardell when she returned to Prince Albert, particularly with respect to their recommendation for psychiatric assessment. At the same time, Dr. Ardell also noted that the physiotherapist at Second Avenue Physio, to which she had changed, said that:

"They are also quite upset as [the Appellant] has been extremely difficult and is now on her 4th therapist. They would prefer not to continue seeing her at Second Avenue Physio. Concerns include her allegations that all staff including front reception etc. have been 'talking about her', laughing at her.

[18] Dr. Ardell who had not yet received the tertiary assessment report counselled her at length suggesting that she continue an exercise program at home while he contacted Second Hill Physio to see if they would agree to her continuing with an unsupervised general exercise program and the use of the gym.⁹ He considered a psychiatric referral to rule out the possibility of paranoid delusional disorder, as he thought she might be just stressed out.

[19] On September 27, Dr. Bernacki, the physiatrist (specialist in rehabilitation medicine), and Krista Whittard, social worker, wrote Dr. Ardell:

“[The Appellant] is aware that this writer is communicating with you regarding her assessment and recommendations.

[The Appellant] presented as a pleasant woman throughout the interview, but we felt it important to bring to your attention some concerns and observations the team made. This writer spent two hours with [the Appellant] in a psychosocial assessment and found it difficult to fully assess her current status. [The Appellant] presented with disorganized thought processes and was tangential throughout the assessment. She was easily distracted and had difficulty attending to the task of answering a specific question. Even with redirection, [the Appellant] continued to explain her story in a convoluted and verbose manner.

It appears [the Appellant] is distrustful of the insurer and practitioners she has worked with in the past, making it difficult to develop a therapeutic alliance. [The Appellant] described in acute detail her interactions with SGI and practitioners to date as well as expressed some paranoid sentiments that, in conjunction with her disorganized thought process, were of concern to the team. As a result, this affected our ability to adequately assess her psychosocial status.

The team has recommended 1) a psychiatric evaluation, and 2) a psychological assessment with psychometric testing to determine a diagnosis and treatment. We have recommended to [the Appellant] that she consult with yourself about a psychiatric referral. Given that this presentation has presented a barrier to her successful treatment, the recommendation for a psychological assessment will be made to SGI.”

[20] Dr. Ardell counselled her again on October 11, 2000, after receipt of the tertiary assessment report, which also upset her. His plan was for her to continue her own exercise program in the gym, continue with chiropractic as needed and consider a psychology appointment. He noted that “she is not keen on psychiatry assessment but will consider seeing psychologist re stress and let me know”.

[21] From the assessment report, it is apparent that the FIT team did have medical and x-ray reports available to them. However, they did not have any information as to her “premorbid health history”, i.e. before the MVA of 2000.

[22] The team recorded decreased ranges of motion in all three spinal levels, especially cervical with irritability and stiffness at all three levels and irritability and tightness in the right posterior cervical paraspinal musculature. Occasional nocturnal numbness of her right hand was noted in the medical history but the neuromuscular and musculoskeletal examination for this problem was unremarkable.

[23] All members of the assessment team referred to distractibility and “going off on tangents during conversations”. In the physical therapy/chiropractic report, the Appellant herself reported

⁹ He did this and it was agreed to on September 21.

on this, as did the assessors (chiropractor and physical therapist), the physiatrist, the occupational therapist and the social worker.

[24] She expressed anger and distrust of SGI to several team members. She complained about past caregivers. She did report success at Second Avenue Physiotherapy with the exercise program, although two days later Second Avenue Physiotherapy was complaining to Dr. Ardell about her.

[25] Her doctor negotiated terms of a return to the gym at Second Avenue, minimizing contact between the Appellant and staff and other gym members. The unsupervised gym program was relatively successful. The Second Avenue physiotherapist wrote: “No further concerns have arisen and [the Appellant] has continued to attend frequently with excellent effort in the gym.”

[26] SGI had asked Penny Korte from Innovative Rehabilitation Consultants (IRC) to follow up after the FIT assessment, but the Appellant was unwilling to sign IRC’s authorization for release of confidential information, so IRC closed the file. The Appellant claimed she had caught the consultant out in a lie about whether or not she had been present for the FIT assessment and said she was unwilling to trust her.

[27] By mid-December, the Appellant had attended three individual counselling sessions with psychologist Dr. Sonja Ruznisky, who reported that “this patient presents as quite capable and well”. She declined psychological assessment (testing) “noting that she had done such in her assessment at the FIT sessions in Saskatoon. I did not see the need for continued psychological sessions”.

[28] Dr. M. Juras, SGI medical consultant, was asked to review the Appellant’s file in February, 2001. He asked for the family physician’s opinion as to what further treatment would be needed.

[29] Dr. Ardell replied that he had last seen the Appellant on November 23, 2000. She continued to be tender in the interspinous ligaments C5-C7, T3-T8 and L3-L5 regions, and in both SI joints and the right trapezius muscle. Her neck lateral rotation was reduced to 50%

though lumbar and mid-back range of motion was normal. He advised her to discontinue chiropractic but to continue with her daily gym exercise routine. He stated:

“I have not seen [the Appellant] since that date. She felt that she was benefiting most from the ongoing exercise program which was in fact unsupervised in the physiotherapy gym. At her previous visit of October 11, 2000 at which her husband was present, we had agreed that she would prefer to continue on her own exercise program. At that visit, we had mentioned possible closure to this case on December 31, 2000.”

[30] He recommended continuation of the exercise program until June 30, 2001, as he thought it was not beneficial to do another tertiary assessment because of the problems with the first and her reluctance to follow through with psychiatric evaluation or psychological assessment with psychometric testing.

[31] Dr. Jutras endorsed these suggestions as “eminently reasonable”. He added:

“If there is further request for treatment beyond that point in time, I think the file should be reviewed and further correspondence with Dr. Ardell take place.”

[32] SGI advised the Appellant accordingly and she appealed after attending a new family physician, Dr. L. Rabuka, who sent a practitioner’s report to SGI dated August 29, 2001.¹⁰ However, it appears that she had complained of constant pain in her vertebra and “other symptoms affecting both head, neck and back.” Dr. Rabuka had suggested a referral to a neurologist and she also wished a referral to an orthopaedic specialist in Prince Albert, Dr. Kukkadi. An x-ray of her thoracic and lumbar spine was normal. For the cervical spine, the radiologist stated:

“Straightening of the normal lower cervical curvature likely relates to degeneration with possible contributions from positioning or spasm. Otherwise vertebral alignment and density are unremarkable as are the pre-vertebral soft tissues and posterior elements. No fracture identified Moderate and mild degenerative disc narrowing are noted at C5-6 and 6-7 respectively. When was the MVA?”

[33] Dr. Rabuka’s report had apparently recommended chiropractic and physiotherapy treatment, according to Darrell Mack’s evidence from a file review. Because SGI had advised in July (on Dr. Jutras’ recommendation) that a request for further treatment would require a file

¹⁰ This report was not produced by either party.

review, and a consultation with Dr. Ardell (who was no longer the treating physician), SGI consulted again with Dr. Jutras who recommended an assessment from a secondary team with a psychologist to assess her treatment needs.

[34] Patty Korolischuk of SGI then wrote Dr. Rabuka about the secondary assessment and attaching a list of eight secondary assessment teams in Saskatoon, requesting that he arrange for an appointment at the assessment centre of his choice, within the next week. She emphasized “if there is any medical reason why you think this assessment should not go ahead please let me know within one week.” She requested that he complete a “Customer Assessment Form” to be sent to her to be forwarded to the assessment centre, together with “copies of all the medical information that I have” to assist the assessment team in their examinations. SGI copied the Appellant on this letter.

[35] No word was received from either Dr. Rabuka or the Appellant within the time allotted and SGI then wrote to both of them on October 22, 2001 advising that SGI had referred the Appellant to Multi Disciplinary Musculoskeletal Assessment Team (Bourassa), again asking if there was any medical reason why the assessment should not occur at this time (in bold text), requesting completion of the Customer Assessment Form and any additional medical information that would be relevant. The Appellant was asked if she had any additional specialists’ reports which she would like on file. Ms. Korolischuk also sent “copies of medical information” to the Bourassa clinic.

[36] The Appellant did not attend the secondary assessment. Did she have a valid excuse? These are the events leading up to the suspension of her benefits.

[37] October 26, 2001: Marion Blair, the scheduling manager at Bourassa advised Pat Korolischuk, the Appellant’s personal injury representative at SGI, to say that they had been unable to contact the Appellant yet to advise of her appointment for November 1, 2001.

[38] October 29, 2001: Marion Blair sent a letter about the November 1 appointment to the Appellant.

[39] October 30, 2001: Dr. Rabuka returned the Customer Assessment to SGI, sending x-rays of the spine, noting the referral to Dr. Kukkadi and confirming that there was no medical reason or condition that would prevent her from taking part in an active assessment and/or treatment program.

[40] October 30, 2001: Marion Blair contacted the Appellant's husband in the evening who said that she would not attend on such short notice. The Appellant denied receiving the letters of October 9 and 22, 2001 sent by SGI. She wanted a letter from SGI as to what expenses they would pay.

[41] November 9, 2001: SGI wrote the Appellant that they had asked for another appointment to be set up for her, forwarding copies of her earlier letters and stressing the importance of attendance at the assessment. It included the following paragraph:

“The assessment centre will notify you of the appointment date. Your attendance is necessary in order to help you along the recovery process. Please provide at least 48 hours notice to the centre and contact me if you are unable to attend. This should only occur if urgent events prevent your attendance. I have attached SGI's rehabilitation policy.”

[42] November 13, 2001: Marion Blair wrote rescheduling the appointment for November 28, 2001 and requesting confirmation by telephone.

[43] November 14, 2001: Marion Blair called the Appellant, who requested “a written assessment schedule” and reports.

[44] November 19, 2001: Marion Blair telephoned the Appellant, who asked for documentation of her assessment day. She also questioned Bourassa's letterhead that included the name of Mick Jutras, M.D. C.C.F.P., as one of the clinic's consultants. She raised this issue with Marion Blair and later with Richard Bourassa.

[45] November 21, 2001: The Appellant wrote Marion Blair and Richard Bourassa stating:

“One of the people who is listed on the Bourassa & Associates letterhead, namely, Mick Jutras (see attached), has already issued several reports about me, and I do not feel that I will receive an independent medical evaluation at this centre. Marion Blair stated to me she was completely

unaware of anyone from Bourassa & Associates involved in issuing previous reports about me, as they are required to follow rules of proper disclosure.

Richard Bourassa became very hostile and defensive when I referred to this information and issued an order I was not to speak to Marion Blair henceforth. This is not a situation conducive to a healthy, independent assessment at this centre.”

She requested that further inquiries and correspondence be sent to her solicitor, Martel Popescul.

[46] November 21, 2001: Richard Bourassa wrote the Appellant (presumably the letters crossed in the mail) outlining the various assessments to be carried out, the general nature of the activities and the persons who would conduct them. Dr. Jutras was not among them. He said that further information would likely be counterproductive as she would need to assess her comfort zone with this team and assessment format. He requested that she advise at her earliest convenience as they had to tell SGI if they had not heard back from her by November 26 as they had to commit that day by that time. He noted that “you have already had extensive discussions with members of our staff” and suggested that future discussions should be brief, informational and no occupy significant staff time”.

[47] November 26, 2001: Marion Blair advised SGI that she had attempted to contact the Appellant several times by telephone to find out one way or another whether she would attend. SGI suggested she leave the appointment open and if she did not attend to charge SGI for a no show.

[48] November 26, 2001: The Appellant’s lawyer faxed Bourassa as follows:

“Please be advised that our office has been retained to act on behalf of [the Appellant]. In this regard she has provided to me your letter dated November 21, 2001 and has requested that I respond to you. In this regard, I note that you have indicated in that correspondence that you require to hear back from my client by November 26, 2001 concerning a ‘full day assessment’ that you have scheduled for November 28, 2001.

Although I have been consulted by [the Appellant] in the past, I had not been asked to take an active role in her file until just recently. As a result, I need to obtain certain file particulars before I am able to further advise her. As a result, please accept this letter as formal notification that she does not intend to take part in the full day assessment that you scheduled on November 28, 2001. I have made an Access to Information Request pursuant to the Provincial Legislation and upon receiving that material, I will review same and thereafter advise my client as to her rights and obligations.

In the meantime, perhaps you could advise me as to the purpose of the assessment which you had planned to perform on November 28, 2001.

I thank you in advance for your anticipated cooperation and look forward to hearing from you concerning my request in due course.”

[49] November 26, 2001: The Bourassa clinic forwarded the letter from the Appellant’s lawyer to SGI by fax.¹¹

[50] November 29, 2001: SGI wrote the Appellant:

“We have been contacted by Multi Disciplinary Musculoskeletal Assessment Team (Bourassa & Associates Rehabilitation Centre) advising that you did not attend assessment on November 28, 2001. We have no alternative but to suspend all benefits.”

[51] SGI relied on section 185 of *The Automobile Accident Insurance Act* and in particular, subsections (d), (e) and (g), as follows:

“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...

(d) without valid reason, neglects or refuses to undergo an examination by a practitioner, or interferes with an examination by a practitioner, requested or required by the insurer;

(e) without valid reason, refuses, does not follow or is not available for treatment recommended by a practitioner and the insurer;...

(g) without valid reason, does not follow or participate in a rehabilitation program made available by the insurer;”

WAS SGI’S DECISION TO SUSPEND BENEFITS WRONG?

[52] The basis upon which the Commission can set aside or vary a decision of SGI under section 193(7) of *The Automobile Accident Insurance Act* (“the Act”) is not whether we would come to a different decision than SGI, but that the decision was wrong in law or based on erroneous assumptions, or at the very least, the decision was unreasonable.¹²

[53] There is no issue that the Appellant refused to undergo examination by a practitioner (or more than one, because of the multi-disciplinary aspect of the assessment); did not make herself

¹¹ Mack advised that a fax report suggested this had been refaxed to SGI on November 26.

¹² *R.C. v. SGI.*

available for treatment recommended by a practitioner (Dr. Jutras expressly and Dr. Rabuka by implication) and the insurer; and did not follow or participate in a rehabilitation program made available to her. The issue is whether she did so here without a valid reason.

[54] Her counsel, Peter Abrametz, argued that the Appellant was a person with special needs which were known to SGI through, for example, its medical consultant, Dr. Jutras. He referred to Dr. Jutras' September 27, 2001 letter which states: "FIT was unable to do a proper evaluation as they seemed to have significant problems dealing with her psychological status", and his recommendation that she be seen by an assessment team with a psychologist. In the Commission's view, whatever the Appellant's special needs might be, and her counsel did not elaborate on them, it is far from clear that SGI knew or knows what they are. SGI and Dr. Jutras would be aware, for example, of Dr. Ruznisky's report that "her overall presentation would be inconsistent with a significant psychopathological problem". There is no evidence that SGI had any indication until the hearing that the Appellant was claiming to have a severe brain stem injury which she said Dr. Ruznisky had confirmed to her based on medical information in her file.¹³

[55] Counsel for the Appellant further argued that there was "no magic in the November 28 date": the appointment could have been rescheduled. He acknowledged that the appointment had already been rescheduled once.

[56] Finally, he referred to Mr. Popescul's letter. That letter advises that until Mr. Popescul obtains documents in her file under an "Access to Information Request pursuant to the Provincial Legislation", he will then advise her as to her rights and obligations.

[57] No evidence was given as to what kind of information Mr. Popescul intended to obtain, and what use he could have made of it in advising the Appellant whether or not to attend a secondary assessment. The Appellant testified that she wanted to see "reports", and while initially acknowledging that the "reports" would be the information sent by SGI to Bourassa that they would be using in her assessment, she later said that she would not require all of this, but was unable to specify which she would forego and which she would require. She expressed the

view that the assessment team should have proof of the fact that she was injured, apparently because she thought the FIT assessment team had denied any injury. While she may have received this impression at the FIT assessment conference, the report itself clearly acknowledges physical injuries, although concerned for her psychological state.

[58] We are not saying that the exercise of a right under *The Freedom of Information and Protection of Privacy Act* may never constitute a valid excuse for refusing to attend for assessment, nor are we saying that a lawyer's letter can never be a valid excuse for refusing to attend an assessment. We do, however, conclude that in this case the reasons expressed by the Appellant's lawyer in his letter of November 26 do *not* constitute a valid excuse for failure to attend the assessment. We further observe that no steps were taken in the intervening 2½ years by the Appellant or anyone on her behalf to reinstate the process, other than this appeal. Perhaps this is because the benefits that were suspended are generally covered by the provincial health plan. Even the MRI she wants and which Dr. Kukkadi recommended in March, 2002 to rule out a mechanical problem that might be causing tingling and numbness on her right side is available to the general public without SGI intervention.¹⁴

[59] SGI's appeals officer argued that there were no medical barriers to her attending the secondary assessment. There were no obvious requirements that the assessment should be delayed, e.g. an urgent need to consult with a specialist. He commented that the recommendations of the FIT tertiary assessment had not been followed up, primarily because of the Appellant's reluctance to do so. The delay between that assessment in September, 2000 could impact on the success of treatment, and further delay while the Freedom of Information request was pursued would not be beneficial. He suggested that any "special needs" that SGI was aware of had been reasonably accommodated. We agree.

BRAIN STEM "INJURY"

[60] The Appellant advanced at the hearing that in her first motor vehicle accident in 1997 she had incurred a "severe brain stem injury" for which she had never received treatment. She said

¹³ See paragraph [60] and following.

that she had been told this during counselling sessions she had with Dr. Sonja Ruznisky, a registered clinical psychologist in Prince Albert. Dr. Ruznisky, whose report is filed gives no indication at all of this. She does refer to the first accident in which she states:

“[The Appellant] noted that she experienced pain and trauma but had not filed a claim or received treatment¹⁵ and with this current accident she was determined to follow a full claim plan so that she would not suffer any of the physical and mental distress that she noted that she had experienced in the previous accident. Thereby the experience of the two accidents became ‘emotionally fused’ so to speak and [the Appellant] demonstrated a comparison approach to interpretation and treatment in sessions.”

[61] The Appellant described the symptoms she experienced as pain, fatigue. She became monosyllabic and had problems with coherence, problems with reading. She had head pressure and constant nausea.

[62] She admitted that she had contacted Dr. Ruznisky two weeks ago with a view to having her testify at the hearing. Dr. Ruznisky denied having any reports saying that she had a brain stem injury and said “I will deny all of it”, although she had acknowledged that she was subject to subpoena.

[63] We find that there is no evidence at all of a brain stem injury caused by either the first or the second motor vehicle accident. We note that the second accident did result in bruising to her head, but it was clear that she attributed the brain injury to the first accident.

[64] If the Appellant were to agree to undergo neuropsychological testing, that might highlight deficits not visible on x-rays or CT scans. If she is seeking confirmation of an injury or relief from doubt, we think this would be a preferable approach. With new evidence in hand, she could reapply for benefits.

¹⁴ We have reviewed the reports of the chiropractor, physiotherapist, family physician, orthopaedic surgeon and radiologist with respect to the MRI in 2002. They did not seem to consider it an urgent matter, and there is no recent documentation, suggesting they were probably right.

¹⁵ In fact, she did file a claim and did receive some treatment: chiropractic and massage.

[65] The appeal is dismissed. SGI's decisions of November 29, 2001¹⁶ and of December 11, 2002 upholding it, for non-compliance with section 185(d), (e) and (g) of the *Act* is confirmed.

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

Ann Phillips, Q.C., Chair

Pamela J. Dobko, Commission Member

Mukesh Mirchandani, M.D., Commission Member

¹⁶ S53.