

**Automobile Injury Appeal Commission
Province of Saskatchewan**

Citation: *E.E. v. Saskatchewan Government Insurance,*
2005 SKAIA 030
Date: 20050517
File: 035 of 2003

BETWEEN

E.E., Applicant

and

Saskatchewan Government Insurance, Respondent

Appearances:
E.E., for the Applicant
John Schmidt and Lynn Henderson, for the Respondent

Before: Ann Phillips, Q.C., Chair

**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 22, 2003

DECISION

[1] This written decision records the decision given orally at the hearing, when E.E., the Appellant, appealed a decision of Saskatchewan Government Insurance (“SGI”) dated February 10, 2003, awarding her a lump sum death benefit of \$11,462, as the result of the death of her young daughter, T.A., in a motor vehicle accident in July 2002.

[2] This is an unusual case. The Appellant’s divorced husband applied to SGI for the death benefit, and it was paid to him in September 2002, even though the mother had custody of her daughter under the divorce decree, although the husband had access.

[3] According to an SGI file note, the father said the daughter lived with him while attending school. He had her personal documentation and received the Child Tax Benefit for her.

[4] In November 2002, the Appellant provided SGI with a copy of her divorce degree, granting custody of the daughter to her. Nothing happened. She said he refused to talk to her.

[5] On December 20, the Appellant consulted a lawyer (actually, an articling student) by telephone who, she said, asked a few questions and told her he would write a letter to SGI, which he did on January 23, 2003. On January 27, he wrote the Appellant, enclosing a retainer agreement by which the client agreed to pay 30% of the amount recovered as a fee, plus 40% of any prejudgment interest, and out of pocket expenses and applicable taxes.

[6] On Feb 3, the SGI adjuster reviewed the divorce decree, acknowledged in a file note that the mother indeed had custody, and requested a draft for the full death benefit, the same amount paid to the father.

[7] On February 6, the Appellant signed the retainer agreement and returned it to the law firm at some time thereafter.

[8] The cheque was forwarded to the Appellant's law firm. The date on which this occurred is not known with certainty, but SGI's letter of February 10 to the Appellant states: "The original draft¹ along with a copy of this letter has been forwarded to your lawyer."

[9] By letter dated February 19, the law firm reported to the Appellant, returning a copy of the retainer agreement now signed by a member of the firm, advising their receipt of funds, and pointing out the requirement of the retainer agreement to pay 30% of the amount recovered plus expenses. The letter included the following: "When we signed this retainer agreement with you we did not know that this matter would conclude itself so quickly. Indeed you should be very happy that it concluded itself so quickly."

[10] The law firm requested written instructions to forward the money being held in trust.

[11] On February 25, the firm prepared an account for \$3,959.89, which it paid from the \$11,650 in trust, remitting the Appellant \$7,690.00. They charged \$3,495 for a telephone call to the client and a letter to SGI, the remainder of the items recorded relating to processing the payment. They charged an additional \$9.84 for "file commencement, telephone, photocopying charges, laser printer, and postage/stationery".

[12] The Appellant's complaint was that the SGI adjuster had given her a hard time, and she should not have had to seek legal advice to recover the money she was owed. She also thought SGI should not have sent the money to the law firm.

[13] We do not find that SGI acted improperly. While the adjuster incorrectly paid out the father, there was some basis for his doing so. While he should have realized there was a problem when the Appellant produced the divorce decree, he did not, thinking that the file was closed. When the existence of a problem was brought to his attention (and a lawyer's letter tends to concentrate the attention), he promptly paid the Appellant what she properly should have had. In sending the money to the Appellant's lawyer, the adjuster was following normal practice when a client is legally represented.

¹ I.e. the cheque.

[14] At the hearing, the Commission strongly suggested to the Appellant that she should have the legal account reviewed. (Her right to this review was disclosed in the retainer agreement and in the firm's February 19 letter.) As the law firm was not represented before us, we made no finding with regard to its conduct.

[15] For the reasons given orally at the hearing, and recorded in this decision, the application is dismissed.

Dated at Regina, Saskatchewan, on May 17, 2005.

Ann Phillips, Q.C., Chair