

**Automobile Injury Appeal Commission
Province of Saskatchewan**

Citation: *E.S. v. Saskatchewan Government Insurance,*
2005 SKAIA 045
Date: 20050915
File: 025 of 2004

BETWEEN

E.S., Applicant

and

Saskatchewan Government Insurance, Respondent

Appearances:
E.S., for the Applicant
Stephen McLellan and Linda Lapage, for the Respondent

Before: **Stan Loewen, Chair**
Dr. Mukesh Mirchandani, Commission Member
Conrad Hnatiuk, 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 Saskatoon, Saskatchewan
June 16, 2005

DECISION

[1] E.S., the Appellant, appeals the decision by SGI dated November 28, 1997 and further affirmed May 27, 1998, denying Income Replacement Benefits effective November 30, 1997.

FACTS

[2] The Appellant was involved in a MVA on December 19, 1996, "...struck from behind by another vehicle."

[3] Prior to MVA, the Appellant taught school for over 25 years.

[4] The Appellant presented evidence of attendance at work, performance and activities, attesting to her good state of health prior to MVA.

[5] Since 1984, the Appellant, due to death of her husband, was the sole supporter of her family. She also cared for her ailing mother from 1993-1996.

[6] The Appellant applied for benefits, December 26, 1996. The Appellant was discharged from treatment September 14, 2001. Benefits terminated on September 21, 2001. The Appellant participated in treatment and rehabilitation with varied success

[7] During the above period, five or six different Personal Injury Representatives handled the file.

[8] Dr. P. T. Taillon, SGI Medical Consultant wrote on December 5, 2000..."It is now 4 years since this woman's MVA. It has been well documented that prior to her accident she did not suffer from the present disabling symptoms." Dr. Taillon goes on to report...

"From the medical documentation available, I think it is safe to conclude that there is no significant, sinister or serious underlying pathology that may have been missed in this case."

Dr. Taillon summarizes, on this date, the series of rehabilitation and Return to Work attempts ending in failure. The conclusion Dr. Taillon reaches is..."to meet with the client and negotiate a

rehabilitation project that would probably require 10 to 12 weeks It would have to be quite clear to the customer that the final goal would be graduated and full return to pre-injury work."

[9] From the above events, it is clear that there was a recommendation and expectation for services and reasonable to expect continued Income Replacement Benefits until at least September 2000.

[10] In September 2000, the Appellant participated in further assessment at Bourassa Rehabilitation Centre wherein the decision was "Client is not able to perform her pre- injury work at this time but should be able to with the rehabilitation plan as outlined. Nonetheless, the prognosis is extremely guarded for reasons noted: hurt vs harm symptoms interpretation, failed prior return to work."

[11] By June 28, 2001, the Appellant was making progress in the Rehabilitation plan, although still complaining about significant pain response to all treatments and activities.

[12] By July 26, 2001, rehabilitation continued, with no significant changes, goals remained the same - return to work program.

[13] In August 2001, the Appellant notified SGI that she is now in receipt of a CPP Disability entitlement. SGI requested a copy of an assessment performed by Kinetic, the basis used to determine CPP disability entitlement. The Appellant refused to provide release of information and testified that she assumed that SGI should simply accept the CPP interpretation of "disability".

[14] On August 28, 2001, a team rehabilitation meeting was held at Bourassa & Associates Rehabilitation Centre and SGI. The Appellant chose not to attend.

[15] At this meeting, a plan was developed that would include "job shadowing; continued functional conditioning and request to Dr. Hibriam, the Appellant's physician to provide input particularly due to the Appellant's diagnosis of fibramyelgia. The Appellant felt she should not continue until a 1 - 2 week break.

[16] On September 13, 2001, the Appellant wrote to SGI and confirmed her refusal to sign any consent for SGI to obtain information regarding CPP disability benefits. However, it was this information upon which she believed SGI should accept a decision about permanent disability.

[17] On September 14, 2001, Bourassa & Associates Clinic reported to SGI that the Appellant withdrew from the program.

[18] The Appellant provided a hand written, brief note from Dr. Hibriam dated September 9, 2001 stating: "The above patient is unable to continue physio-therapy treatment due to severe fibromyelgia." This has no additional assessment and during evidence the Appellant indicated she had "asked" for this note.

THE LAW

[19] Section 185 (b) (c) (e) (f) (g) of the Act states:

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;
- (b) refuses or neglects to produce information required by the insurer for the purposes of this Part or to provide an authorization reasonably required by the insurer to obtain the information;
- (c) without valid reason, refuses to return to his or her former employment, leaves an employment that he or she could continue to hold, or refuses a new employment;
- (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;
- (f) without valid reason, prevents or delays recovery by his or her activities;
- (g) without valid reason, does not follow or participate in a rehabilitation program made available by the insurer; or

- (h) prevents or obstructs the insurer from exercising any of its rights of recovery or subrogation pursuant to this Part."

ANALYSIS

[20] The Appellant's file is complicated. When Income Replacement Benefits were terminated in November of 1997, the issue of Income Replacement was never re-visited. During the period from application to voluntary withdrawal from program in September 2001, the Appellant participated in numerous rehabilitation programs, albeit without success. The Appellant continued to receive benefits from employer and achieved eligibility from CPP during this period. Costs of treatment and therapy were covered as long as she participated but the issue of Income Replacement benefits were not revisited.

[21] It is reasonable for SGI to revisit the eligibility and entitlement for Income Replacement and costs associated with rehabilitation to the date of September 2001, at which time the Appellant became non-compliant. The Appellant was not helpful to SGI by not consenting to SGI obtaining relevant information from CPP - the Kinetic assessment. Although the progress was "guarded", it is evident that opportunity for Rehabilitation continued and therefore possible return to work. By voluntarily withdrawing from rehabilitation, the Appellant disqualified herself from further benefits.

CONCLUSION

[22] It is reasonable for SGI to revisit Income Replacement Benefits and visits associated with rehabilitation until September 2001. This would exclude any period of time during which the Appellant did not participate in rehabilitation. The Commission finds SGI acted appropriately to terminate benefits when the Appellant voluntarily withdrew and therefore became disqualified in September 2001.

Dated at Regina, Saskatchewan on September 15, 2005.

Stan Loewen, Chair

Dr. Mukesh Mirchandani, Commission Member

Conrad Hnatiuk, Commission Member