

**Automobile Injury Appeal Commission
Province of Saskatchewan**

Citation: *A.A. v. Saskatchewan Government Insurance*,
2006 SKAIA 011
Date: 20060301
File: 038 of 2005

BETWEEN

A.A., Applicant

and

Saskatchewan Government Insurance, Respondent

Appearances:
A.A., Applicant
Dale Brown, for the Respondent

Before: **Joy Dobko, Chair**
Dr. Mukesh Mirchandani, 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 Prince Albert, Saskatchewan
January 25, 2006

DECISION

[1] This is an appeal by A.A., the Appellant, of a decision made by Saskatchewan Government Insurance dated December 21, 2004 which denied her a loss of studies benefit because she was not considered to be a student at the time of her accident.

FACTS

[2] The Appellant was involved in a motor vehicle accident on March 18, 2004. She completed her Application for Benefits on March 28, 2004. The Appellant reported her most serious injury to be to her right ankle which was crushed and needed surgery following the motor vehicle accident.

[3] The Appellant stated in her Application for Benefits that she was enrolled to start the Corrections Worker Program (the “Corrections Worker Program”) at SIAST in January 2005. There is a portion of the Application for Benefits which is titled “STUDENT INFORMATION”. The Appellant did not complete this section except to check off that she may “possibly” have to drop out of any classes or programs as a result of the accident. She was not at the time of the accident attending an educational institution on a full-time basis.

[4] The Appellant’s injuries are not in dispute. They were very serious and all evidence suggests that she will no longer be able to complete the Corrections Worker Program. The tertiary assessment team at FIT did not feel that the Appellant would ever meet the job demands of a corrections officer given the nature of her injuries and the subsequent permanent limitations.

[5] The Appellant had clearly applied for the Corrections Worker Program in January 2004, prior to her motor vehicle accident. On January 26, 2004, SIAST wrote to the Appellant and advised her that they had received her application and that they were reviewing her file and would contact her as soon as possible as to the status of her file.

[6] The Appellant testified that on March 16, 2004, she sent in her request for funding with the Local Metis Management Board (the “Board”). The Appellant’s mother testified at the appeal on behalf of her daughter. The Appellant’s mother stated that she was the Chair of the Board

and as such she had knowledge with respect to the process that students went through to obtain funding for their educational programs.

[7] The Appellant's mother testified that the Appellant would have completed and mailed the Trainee Documentation Form sometime around March 16, 2004. The Client Information Update shows that it was received by the Board on April 5, 2004 and that paperwork would have been started to get the funding approval in place for the Appellant to attend the Corrections Worker Program. On June 30, 2004, the Board approved the Appellant's funding subject to her acceptance into the Corrections Worker Program.

[8] On October 22, 2004, the Appellant was accepted into the Corrections Worker Program at SIAST. On October 27, 2004, the Board was advised that the Appellant was accepted into the Corrections Worker Program and the Board commenced the paperwork to finalize the approval for her funding. On November 17, 2004, the Board finalized the funding for the Appellant at \$38,090.25. The Appellant's mother stated that the final approval for funding would only be completed 60 days prior to the commencement of the Corrections Worker Program and upon notice of acceptance into the Corrections Worker Program.

[9] The Appellant acknowledged that she had not received her acceptance into the Corrections Worker Program nor had she received any funding for the Corrections Worker Program prior to her motor vehicle accident. She also testified that she knew she was a very good candidate for the Corrections Worker Program. She knew there was a one year waiting list for the Corrections Worker Program but she believed that she would be accepted. She had applied for transcripts, she had initiated the funding process, spoken with other Corrections Officers and had also completed an application in February 2004 for low-income housing in [city] while she was attending the Corrections Worker Program. She testified that she had every intention of commencing her studies in January 2005 and was prevented from doing so because of her motor vehicle accident. We found the Appellant to be honest and credible and accept her evidence.

[10] The Appellant was prevented from attending the Corrections Worker Program in January 2005 due to the intensive physiotherapy that she would require on her right ankle. She delayed

her attendance until January 2006 but has since been advised that she is unlikely to ever be able to complete the Corrections Worker Program due to her physical limitations arising out of the motor vehicle accident.

LAW AND ANALYSIS

[11] The Commission's jurisdiction to review a decision of SGI is set out in section 193(7) of the *Automobile Accident Insurance Act* (the "Act"). The Appeal Commission may:

- (a) set aside, confirm or vary the insurer's decision; or
- (b) make any decision that the insurer is authorized to make pursuant to this Part.

[12] The Commission determined in *R.C.*¹ that its discretion under section 193(7) must be exercised in a judicial manner. The discretion will be exercised in favour of the Applicant only if it is demonstrated that the decision of SGI was wrong in law; or based on erroneous assumptions; or at the very least, the decision was unreasonable.²

[13] The "Loss of Studies" benefit which the Appellant is claiming is outlined in Section 121 of *The Automobile Accident Insurance Act* (the "Act") as follows:

121(1) A student who at the date of the accident is attending school on a full-time basis is entitled to a loss of studies benefit for the period the student is unable to begin or to continue his or her current studies because of the accident.

(2) The loss of studies benefit mentioned in subsection (1) is:

(c) in the case of a student studying at the post-secondary level, \$7,541 for each semester not completed, to a maximum of \$14,901 per school year.

(3) If the student is able to begin or continue a portion of his or her studies, the insurer shall prorate the loss of studies benefit set out in clauses (2)(a) to (c) to take into consideration those course of study that the student was unable to complete as a result of the accident.

(4) For the purposes of this section, a student is considered to be attending school on a full-time basis if the student:

¹ *R.C. v. Saskatchewan Government Insurance* 2003 SKA1A 1

² *Belchamber v. Saskatchewan Government Insurance*, [1997] TWL QB 97557; *Donen v. Saskatchewan Government Insurance*, [1998] TWL QB 98224; *Collis v. Saskatchewan Government Insurance*, [1998] TWL QB 98113.

- (a) is registered in and admitted to a prescribed educational institution on a full-time basis;
- (b) is attending classes at the educational institution on a regular basis; and
- (c) has not abandoned his or her studies and has not been expelled from the educational institution.

[14] The following terminology is defined in Section 100 of the *Act*:

100 In this Part

(a.1) **“current studies”** means studies that are part of a program of studies offered by an educational institution at the elementary, secondary or post-secondary level to which, at the date of the accident, a student had been admitted;

(c) **“educational institution”** means a prescribed educational institution or a member of a prescribed class of educational institution;

(l) **“school year”** means:

- (i) with respect to the elementary and secondary levels, the period commencing on July 1 of one year and ending on June 30 of the following year; or
- (ii) with respect to the post-secondary level, the period commencing on September 1 of one year and ending on August 31 of the following year;

(p) **“student”** means an insured whom, at the date of the accident:

- (iii) is under 16 years of age; or
- (iv) attends an elementary, secondary or post-secondary educational institution on a full-time basis;

[15] The Appellant submitted that she relied upon the SGI Handbook and the internet which, in her opinion, stated that she was entitled to a loss of studies benefit because she was unable to begin her studies in the Corrections Worker Program due to her injuries suffered in the motor vehicle accident. She further submitted that she knew that she would be accepted into the Corrections Worker Program and had started getting funding in place to attend SIAST and was just waiting for confirmation of her acceptance to the Corrections Worker Program when the accident occurred.

[16] SGI submitted that in order for the Appellant to be eligible for the loss of studies benefit she must be a student at the time of her accident. SGI submitted that she does not fit within the definition of a “student” as outlined in the legislation. SGI further submitted that the use of the word “attends” in the definition of “student” would suggest that she is enrolled in and taking classes in a post-secondary educational institution. SGI further submitted that the intention of the legislation is to compensate for a loss of tuition or moneys expended by the student. They argued that because the Appellant had not yet been accepted to the Corrections Worker Program and had not paid any tuition or fees, she had not suffered a loss which would be compensable under the legislation.

[17] In our opinion the loss of studies benefit is available to a student who is at the date of the accident attending school on a full-time basis. The definition of “attending school on a full-time basis” is defined in subsection 121(4). In order to be considered to be attending school on a full-time basis, the Appellant must be registered in and admitted to an educational institution on a full-time basis, she must be regularly attending classes and she must not have abandoned her studies.

[18] While it is very clear to this Commission that the Appellant had full intentions of attending the Corrections Worker Program in January 2005, regrettably, she was not at the time of the accident registered or admitted to the Corrections Worker Program. In our opinion, the provisions of the legislation which address the loss of studies benefit are quite clear that the Appellant must at least be registered in and admitted to the Corrections Worker Program to qualify for the benefit.

[19] We do take note of the reading of Section 121 which makes reference to the “inability to begin” current studies. The definition of “current studies” states that the Appellant must be admitted at the time of her accident. Therefore, Section 121 appears to provide entitlement of the benefit to a student who is admitted to current studies but is unable to begin their current studies, however, subsection 121(4)(b) requires the student to be attending classes on a regular basis. Obviously a student that is unable to begin their current studies would not be attending classes on a regular basis; therefore, we note an inconsistency between these provisions of the

legislation. It is not clear to us how this section of the legislation would apply to a student whom had been admitted to an educational institution at the time of the accident but was waiting to start their studies and due to injuries sustained in the accident, was unable to begin their studies. SGI submitted that a student must have expended money in order to qualify for the loss of studies benefit; however there was no evidence presented to support this interpretation of the provision. It is not necessary for us to address SGI's interpretation and argument or to comment further on these provisions of the legislation, other than to note the inconsistency, due to our finding that the Appellant was not admitted or registered in the Corrections Worker Program at the time of the accident.

[20] Given that the Appellant was not yet registered or admitted to the Corrections Worker Program and had only applied to the Corrections Worker Program, we are unable to find any basis upon which, in accordance with our interpretation of the legislation, she was a "student attending school on a full-time basis" at the time of her accident.

[21] It is clear that the Appellant has been unable to attend the Corrections Worker Program due to her injuries suffered in the motor vehicle accident. On the face of it and as she reads it in the Handbook and on the internet , it would seem that she should be entitled to the loss of studies benefit, however, the legislation is very clear that a student must be registered in and admitted to the educational institution at the time of the accident. We questioned whether acceptance following the date of the accident would be sufficient to bring her within Section 121, however, it is our opinion that the provisions are clear that she must at the very least be registered and admitted to her current studies at the time of the accident.

[22] Many Appellants frequently ask this Commission to change the legislation to provide them with a benefit which they are not entitled to under the legislation as it is written. Our powers as a Commission only allow us to review SGI's decision in accordance with the provisions of the legislation. We have no power to alter the legislation when reviewing SGI's decisions in order to provide the claimant with a benefit to which they feel they are entitled.

[23] This is clearly a situation where we have no doubt that the loss of the Appellant's ability to attend the Corrections Worker Program has had a huge detrimental affect on her life. Regrettably, the provisions of the legislation do not entitle her to the loss of studies benefit.

CONCLUSION

[24] The decision made by Saskatchewan Government Insurance dated December 21, 2004 which denied the Appellant a loss of studies benefit is upheld.

Dated at Regina, Saskatchewan, on March 1, 2006.

Joy Dobko, Chair

Dr. Mukesh Mirchandani, Commission Member

Al Knippel, Commission Member