

**Automobile Injury Appeal Commission**

**Province of Saskatchewan**

**Citation:** *T.C. v. Saskatchewan Government Insurance*,  
2006 SKAIA 016

**Date:** 20060315

**File:** 175 of 2004

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**BETWEEN**

**T.C., Applicant**

**and**

**Saskatchewan Government Insurance, Respondent**

**Appearances:**

**T.C., Applicant**

**Joan Eremko, for the Respondent**

**Before:** **Ann Phillips QC, Chair**  
**Conrad Hnatiuk, Commission Member**  
**Darlene Topp, Commission Member**

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

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Heard at Prince Albert, Saskatchewan  
July 13, 2005

## DECISION

[1] The Appellant, T.C., appeals from a decision by Saskatchewan Government Insurance (SGI), September 21, 2004 denying “to fund further treatment nor time missed from work as a result of attending treatment (physiotherapy, chiropractic, etc ;)”

### FACTS:

[2] The Appellant was involved in a motorcycle accident on October 6, 2001. The Appellant testified that he was blinded by the sun while negotiating a curve, caught some loose gravel and crashed into the ditch, going through the bike’s windshield on impact.

[3] The Appellant was admitted to the Prince Albert Union Hospital on October 6, 2001. The Appellant reports he lost consciousness, however hospital records from the Emergency Room indicate he was not knocked out. The Appellant complained of neck pain and pain in left hip. He was medically reviewed. Results of X-rays of chest pelvis, left hip, skull and neck reported no abnormalities. He tested 15/15 on Glasgow Scale. He was given a shot of morphine, prescribed Tylenol #3 and Naprosyn and sent home.

[4] The Appellant was employed for two (2) weeks at the time of the accident at [employer 1]. Prior to this job he was a welder with [employer 2] for nine (9) years. He was laid-off for two weeks in between jobs.

[5] On October 17, 2001, the Appellant was diagnosed with WAD II and given recommendation for delayed return to work of three weeks.

[6] On October 18, 2001, the Appellant applied for Income Replacement Benefits. He was unable to accept work as a welder at employer 1 due to limited neck and arm movement and pain.

[7] Between October 26, 2001 and November 7, 2001, the Appellant participated in Physical Therapy Assessment with the North East Health District. He attended three times per week with

minimal improvement to neck and shoulder pain, he reported headaches and intermittent numbness along both arms into his 4<sup>th</sup> and 5<sup>th</sup> fingers.

[8] On December 4, 2001, the Appellant participated in a multi-disciplinary assessment with Saskatoon Musculoskeletal Rehabilitation Centre. He was recommended to a Secondary Treatment program of 12 weeks plus 4 week graduated return to work if available. Frequency of treatment was 5 days per week, 4 hours per day. It was expected he would return to work full time at employer 1 upon completion and could now resume all activities of daily living, except for vacuuming and washing floors. He was expected to be able to resume playing tennis and riding his motorcycle following the secondary program.

[9] The Appellant attended Saskatoon Physiotherapy Rehabilitation and Fitness Centre for secondary assessment on January 18 and 21, 2002 and treatment until May 30, 2002. He began his graduated return to work on May 6, 2002 and completed five weeks of graduated return to work by June 10, 2002 with [employer 3] in [town]. A further 2 weeks, until June 21, 2002 was recommended as the Appellant reported increases in neck pain and headaches during the fifth week of the plan

[10] By June 26, 2002 the Appellant completed, and additional to his initial Physical Therapy Treatment, fifteen (15) weeks of Secondary Level Rehabilitation and seven (7) weeks of graduated return to work. His secondary treatment file was closed with the recommendation. “[The Appellant] has been encouraged that although he still complains of a high level of symptoms....his objective status has not changed and therefore his is safe to continue working”

[11] The Appellant’s graduated return to work ended June 24, 2002. While participating in the return to work, the Appellant continued weekly physiotherapy in Prince Albert. There was no worksite evaluation or onsite work review during his graduated return to work program.

[12] The Appellant’s employer, employer 3, complained to North East Rehabilitation Centre that they were getting insufficient work from the Appellant. This resulted in the Appellant leaving employer 3 and working in [town] as a welder during which time the Appellant received Physiotherapy once per week at North East Rehabilitation Centre in Tisdale. North East Rehabilitation Centre reported good progress until November 2002 where it is reported that his

condition deteriorated and a recommendation for a reassessment with a specialist in neurology or orthopedics.

[13] On November 28, 2002, the Appellant was further assessed by an interdisciplinary team from the Saskatoon Musculoskeletal Rehabilitation Centre (SMRC). Between June and November, the Appellant received a three (3) week extension of the graduated return to work program, approximate monthly medical reviews, weekly physiotherapy sessions, medication, provided with exercise and showed on-going improvement until mid-September when he began reporting increased symptomatology. At this time the Appellant was working at [employer 4] in [town], having left employer 3 in [town] approximately two (2) months previous. The Appellant was assessed as "...capable of continuing work performing modified duties at the present time. He does not meet his pre-accident performance abilities as a welder due to limitations ...." At this time it was recommended that the Appellant receive a CT scan of the cervical spine and see a neurologist or neurosurgeon.

[14] The results of a MRI on January 27, 2003 are summarized as...."this patient has biomechanical/minor facet cervical pain, with associated headache. This is probably best treated with a combination of physiotherapy, muscle relaxants and a centrally active pain modifying medication."

[15] By March 2003, the Appellant was seen weekly for physiotherapy and an occupational worksite assessment. He was missing a lot of work through December 2002 to February 2003. However, his reported pain experience was a fraction of what it was 6 – 9 months previous. Although he disliked his previous employer, he attended daily. He is now satisfied with his new employer even though work is heavier. Pain Management work was recommended by his Physiotherapist as well as a new on site work assessment.

[16] A secondary treatment assessment was performed by Saskatoon Musculoskeletal Rehabilitation Centre (SMRC) in March 2003 with recommendations for a new four (4) week Graduated Return to Work beginning in May 2003 with two job site visits by an Occupational Therapist and a referral to Dr. Bernacki in Saskatoon for nerve conduction assessment. The results of nerve conduction studies were reported as normal. The Appellant was discharged by SMRC on May 2003 with the assessment...."I do not anticipate that he will be symptom free but

do anticipate that he will be able to function at a full capacity at work. I expect that he will be able to moderate his symptoms with the continued use of specific stretching exercises and by varying his job tasks on a regular basis.”

[17] On May 30, 2003, the Appellant resumed regular scheduling of work hours. By June 2, 2003, the Appellant was again seeking physiotherapy and as a result he was referred to Innovative Rehabilitation Consultants (IRC). He was instructed to continue working, encouraged to do his exercises and would be monitored for two (2) more weeks. He continued on medications. By the end of July, the Appellant contacted his PIR requesting continued physiotherapy and reimbursement for drugs. In August and September 2003, the Appellant continued to work, was seeing his doctor and requesting more physiotherapy which resulted in another assessment at North East Rehabilitation Centre in Tisdale. This prompted a review by SGI Medical Consultant, Dr. Jutras. On October 21, 2003 Dr. Jutras recommended an additional short course of primary physiotherapy.

[18] On October 22, 2003, the Appellant was involved in another MVA. This exacerbated the previous symptomatology and the Appellant was referred for therapy in Nipawin beginning October 29, 2003. He was reimbursed for lost wages, treatment, travel and medications.

[19] On January 27, 2004, the Appellant was recommended for eight (8) more weeks of secondary treatment program, with four (4) weeks of Graduated Return to Work. The objective was to return the Appellant to his functional status of May 2, 2003 when his previous secondary program ended.

[20] Physiotherapy continued on October 29, 2003 and to February 19, 2004 when the Appellant was again assessed by SMRC. His functional ability was assessed as medium physical demand and a six (6) week Secondary Assessment and GRTW was approved – February 20, 2004 – April 23, 2004.

[21] The Appellant started his own business in February 2004.

[22] The Appellant was assessed again on July 7, 2004. By this date he had participated in four (4) Secondary Treatment programs, on-going physiotherapy and several GRTW attempts.

[23] The Appellant continues to be able to work, albeit with self-reported pain. He continues to take various medications. By September, 2004 the Appellant was determined to have reached maximum medical improvement and his pre MVA physical status. More treatment was not recommended. The Appellant testified that his business was unsuccessful as he was unable to do as much work as was required for success, was unable to secure appropriate equipment and was incurring expenses for medication and massages. The Appellant continues to take medications.

[24] The Appellant is self-employed, at time of Hearing, working full time in [town]. He continues to live in [town] and commutes to his job weekly in [town]. The Appellant testified he occasionally misses work due to pain. He also testified he has not received complaint from his current employer about his work quality, but does receive complaints occasionally regarding speed of work.

[25] The Appellant testified that he would like SGI to retrain him. He is a twenty year journeyman welder. He testified he has made no application for any training or education or discussed any specific plans with SGI.

[26] The Appellant is requesting payment for loss of income while he attended physiotherapy during the period of his employment with employer 4 – approximately during December 2003 and January 2004.

[27] The Appellant is also requesting income replacement and costs for period he attended treatment (physiotherapy) after he ceased employment at employer 4 and was self-employed approximately twenty (20) treatments.

[28] L.N. testified on behalf of the Appellant, supporting the Appellant's evidence that the Appellant was employed by employer 5 when there was work and the Appellant felt good. He testified that the Appellant had difficulty with lifting; bending ... "You could just tell, especially when lifting." L.N. testified that the Appellant last worked for him on January 2004, and that he could not comment on the Appellant's status in 2005. The Appellant was often away at therapy and after therapy seemed worse. L.N. was of the opinion that stretching and massage would be more beneficial than physiotherapy.

[29] B.A. who has lived with the Appellant for four years testified that the Appellant becomes easily exhausted and needs afternoon rests, he is a restless sleeper, unable to do many domestic chores and is prone to mood changes due to medication in particular oxycontin.

#### **LAW AND ANALYSIS:**

[30] The Commission can review the legal correctness of SGI's decision. 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".

[31] The discretion can only be exercised in favour of the applicant if it is demonstrated that the decision of SGI was erroneous, or based on erroneous assumptions, or at very least, the decision was unreasonable.

[32] The Appellant has received significant number of assessments, series of treatments and medications. Evidence presented indicates no significant abnormalities preventing the Appellant from gaining and maintaining employment. The Appellant has demonstrated by his own evidence that he is able to work. There is reported pain and tiredness by the Appellant as a result of participating in activities of daily living and employment. The evidence presented demonstrated that with appropriate exercises and medication the Appellant is returned to pre-accident capabilities and has achieved maximum medical improvement.

[33] The Appellant's claims for Income Replacement Benefits for attendance to treatment and medications were to be supported by documentation which has been provided to the Commission and SGI on July 20, 2004 by Kelsey Trail Health Region.

[34] The Commission has no evidence that further treatment can improve the Appellant's condition. There is however, discrepancy regarding appropriate medication, between Dr. Wine's report of September 23, 2004 and Dr. Alport's report of June 15, 2005. The Appellant should review his medication regime with his family doctor.

[35] The Commission concludes that further treatment will not help the Appellant. The evidence presented by various practitioners indicates the Appellant has achieved maximum medical improvement. The Appellant's subjective reports and his view of his functional abilities is below his tested functional abilities. The Appellant has demonstrated his ability to work. The evidence presented confirms for the Commission that SGI's decision is reasonable.

[36] The Appellant also claims he requested a hoist to assist him in his business. This request was not addressed by SGI (SGI did supply a rolling table, chair and mats.) SGI is to investigate the outstanding request for provision of a hoist and provide a decision on this matter.

**COSTS:**

The Appellant's appeal of SGI's denial to fund further treatment and costs related to such treatment is not successful. Costs related to the appeal are denied.

**CONCLUSION:**

[37] The Commission upholds the decision of SGI and requests that:

- (1) The Appellant's submission of attendance for physiotherapy treatments at Nipawin Hospital between October 29, 2003 and September 10, 2004 and SGI's payments be reconciled. The Appellant's receipts for medications and payment by SGI for these also be reconciled.
  
- (2) SGI investigate the request for provision of a hoist and make determination on this request. Counsel for SGI indicated this will be reviewed and likely was not addressed as it was unclear whether installation was at employer's or at the Appellant's own business.

**Dated** at Prince Albert, Saskatchewan, on March 15, 2006.

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Ann Phillips, QC, Chair

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Conrad Hnatiuk, Commission Member

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Darleen Topp, Commission Member