

**Automobile Injury Appeal Commission
Province of Saskatchewan**

Citation: *I.L. v. Saskatchewan Government Insurance,*
2006 SKAIA 019
Date: 20060316
File: 032 of 2005

BETWEEN

I.L., Applicant

and

Saskatchewan Government Insurance, Respondent

Appearances:
I.L., for the Applicant
Joan Eremko, for the Respondent

Before: **Jeffrey Scott, Chair**
Beverly Cleveland, 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 Regina, Saskatchewan
October 20, 2005

DECISION

INTRODUCTION

[1] The Appellant, I.L., appeals from a decision (the “Decision Letter”) of the insurer, Saskatchewan Government Insurance (“SGI”) dated December 8, 2004. In the Decision Letter, SGI informed the Appellant that SGI is not prepared to pay for the travel costs that she incurred arising from the medical services that she received from Dr. A. Gross, Toronto, Ontario (the “Costs”).

[2] The Decision Letter referenced a letter dated November 12, 2004 from Carol Kraft, Manager, Head Office Injury Claims, SGI. In her letter, Ms. Kraft cited specific legislation from *The Personal Injury Benefits Regulations* and informed the Appellant that SGI would not reimburse her for the Costs. More will be said later about the Regulations cited by Ms. Kraft.

FACTS

[3] The Appellant was injured in a pedestrian/motor vehicle accident on February 9, 2002 (the “Accident”). The Accident occurred in [location].

[4] The Appellant was in the process of removing her skis from the trunk of her car when a vehicle struck from behind the vehicle that was parked behind her car. She was initially pinned between her car and the vehicle parked behind her vehicle. She was later dragged a distance under a vehicle.

[5] The Appellant was transported by ambulance to the Regina General Hospital. Upon her arrival at the Emergency Department, the Appellant required resuscitation.

[6] The Appellant suffered numerous and serious injuries in the Accident. The injuries included: “a compound, comminuted fracture of her right femur, a right tibia and fibula fracture, a left tibia fracture and a degloving skin injury of the left knee that resulted in life threatening hypotension (hypovolemic shock)”.

[7] Because of her injuries, the Appellant underwent a number of operative procedures. After some time, she was transferred to the Wascana Rehabilitation Center, Regina, Saskatchewan for rehabilitation and therapy.

[8] In May 2004, the Appellant was discharged home. At the time of her discharge, she required a wheelchair. Due to the injuries, the Appellant went on disability leave. As of, at least, February 24, 2005 the Appellant continued to be on disability leave. Due to the trauma that she suffered in the Accident, the Appellant was treated for depression. She has received treatment from a number of psychologists.

[9] The initial orthopaedic surgeon who attended to the Appellant was Dr. A Ahmer. Dr. Ahmer first attended on the Appellant in the Emergency Department.

[10] Dr. Ahmer performed five operative procedures on the Appellant. Three of the surgeries occurred during the first week after the Accident, one during the second week after the Accident, and the final surgery occurred in November, 2002. Dr. Ahmer left Saskatchewan in December, 2002.

[11] Subsequent to Dr. Ahmer leaving Saskatchewan, Dr. J. Fraser, orthopaedic surgeon, Regina, Saskatchewan assumed responsibility for the management of her care. We understand that Dr. Fraser continues to manage the Appellant's care.

[12] Due to the severity of her injuries and soon after the Accident, the Appellant (with the assistance of her mother) contacted and requested a second orthopaedic surgeon opinion from Dr. A. Gross, Toronto, Ontario. Dr. Gross did agree to provide a second opinion. As a result of that second opinion and the Appellant's subsequent attendances on Dr. Gross, the Appellant incurred the Costs.

[13] The Appellant requested of SGI to reimburse her for the Costs. SGI has denied payment for the Costs. This appeal centres on whether SGI acted reasonably in refusing to pay for the Costs.

POSITION OF THE PARTIES

[14] The Appellant asserts that, given the very serious nature of her injuries, she required specialized and timely orthopaedic care. She further asserts that she did not receive such specialized care and timely care from her Saskatchewan treating orthopaedic surgeons. Also, she asserts that the orthopaedic care that she did receive from her Saskatchewan treating orthopaedic surgeons was fragmented. For all of those reasons, the Appellant sought out and received medical services from Dr. Gross. The Appellant asserts that Dr. Gross' involvement in her care significantly influenced the ultimate care that she received from her Saskatchewan treating orthopaedic surgeons. Consequently, the Appellant claims that SGI should reimburse her for the Costs.

[15] Ms. Eremko, lawyer for SGI takes the position that the medical care that the Appellant required was available in Saskatchewan and was provided to the Appellant by her Saskatchewan treating orthopaedic surgeons. Consequently, Ms. Eremko claims that SGI is not responsible for the Costs.

LAW AND ANALYSIS

[16] The Commission can review the legal correctness of SGI's decision. In reviewing a decision of SGI, 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".

[17] The discretion to make decisions must be exercised in a judicial manner. The discretion can only be exercised in favour of the claimant if it is demonstrated that the decision of SGI (i.e. to not pay for the costs that the Appellant incurred as a result of the medical services provided by

Dr. Gross) was erroneous or based on erroneous assumptions, or at the very least, the decision was unreasonable.¹ The Commission will exercise its discretion in the same way.²

[18] After the Hearing concluded and upon a further review of the letter from Ms. Kraft, we noted that Ms. Kraft cited the Regulations that came into effect on August 1, 2002 (the “August, 2002 Regulations”). The Accident occurred on February 9, 2002.

[19] The August 2002 Regulations cited by Ms. Kraft were section 45(1)(a) and (b), section 45(2) and section 47(1). The sections read as follows:

“45(1) The insurer shall reimburse the insured for an expense incurred by the insured to receive medical or paramedical care in the following circumstances:

the care is medically required and is dispensed in Saskatchewan by a practitioner;
the care is medically required and dispensed outside of Saskatchewan by a practitioner, if the cost of the care would not be reimbursed pursuant to any other act if the care was dispensed in Saskatchewan.

(2) The insurer’s requirement to reimburse the insured pursuant to subsection (1) is limited to the extent to which the insured is not entitled to be reimbursed for the expense pursuant to any other act.

...

47(1) If the insured incurs an expense for travel or lodging to receive care at a distance of more than 100 kilometres from the insured’s residence when the care is available within 100 kilometres of the insured’s residence, the insurer shall pay only the expenses for travel, meals or lodging that would have been incurred by the insured if the care had been received within the 100 kilometre radius.”

[20] A letter dated October 26, 2005 was sent from the Commission office to Ms. Eremko, with a copy to the Appellant. In the letter, the Commission brought to Ms. Eremko’s attention that Ms. Kraft had, for example, cited in her letter section 47 of the August, 2002 Regulations. Further, in the letter the Commission suggested to Ms. Eremko that since the Accident occurred on February 9, 2002 that, perhaps, section 51 of the former Regulations applied. The Commission invited Ms. Eremko to provide the Commission with a Brief on the issue.

¹ *Belchamber v. Saskatchewan Government Insurance* [1997] TWL QB7557; *Donan v. Saskatchewan Government Insurance* [1998] TWL QB98224; *Collis v. Saskatchewan Government Insurance* [1998] TWL QB9811.

² *R.C. v. Saskatchewan Government Insurance* 2003 SKAIA 001.

[21] Section 51 of the former Regulations reads as follows:

“51 Where a victim incurs an expense for travel or accommodation to receive care at a distance of more than 100 kilometres from the victim’s residence when the care is available **on a timely basis** (emphasis added) within 100 kilometres of the victim’s residence, the insurer shall pay only the expenses for travel or accommodation that would have been incurred by the victim if the care had been received within the 100 kilometre radius.”

[22] Ms. Eremko did provide the Commission with a Brief. In the Brief dated November 4, 2005, Ms. Eremko states, in part, as follows:

“The claimant’s appeal has to do with expenses that she incurred between October, 2002 and November, 2005, for airfare, hotels and taxis: see document No. 48. SGI is not certain that the old Regulation 50(1) does apply to this care, since the expenses which are in issue were incurred after that Regulation was repealed and replaced in August, 2002 with Regulation 47(1). However, if it does apply, we do not think that the phrase that it contains, “on a timely basis”, would change anything, since SGI takes the position that the care that the claimant received in Ontario was available in Saskatchewan on a timely basis....

...

...if the care that she received in Ontario was available in Saskatchewan (**expressly, or impliedly, on a timely basis**) then SGI is not obligated to pay for the expenses (emphasis added).

In conclusion, we submit that the care that the claimant received in Ontario has, to this date, been available in this province on a timely basis.”

The Appellant provided a written response to Ms. Eremko’s Brief.

[23] We agree with the submission made by Ms. Eremko that regardless of whether section 47(1) or section 50(1) applies the issue should be decided in the context of whether the required “care” was available in Saskatchewan on a “timely basis”. Consequently, for the purpose of this appeal, we do not need to decide whether section 47(1) of the August 2002 Regulations or section 50(1) of the former Regulations applies. We will decide the issue based on whether the required care was available, on a timely basis, in Saskatchewan.

[24] Upon a consideration of all of the evidence, we conclude that the Appellant received in Saskatchewan, on a timely basis, the medical care that she required. In coming to that conclusion, we do acknowledge that the Appellant suffered very serious injuries in the Accident. Naturally, she and her family wanted the best of medical care. We acknowledge that the

Appellant had concerns and was not satisfied with the sufficiency and timeliness of the information that she was receiving from, for example, Dr. Ahmer with respect to the management of her care.

[25] However, in our view the legislation requires more than a personal dissatisfaction with the available medical care in order for SGI to be found responsible for the Costs. We are of the view that there must be evidence that the required medical care was not, in fact, available on a timely basis in Saskatchewan. In a case such as this we would expect that evidence to come in the form of an opinion from an orthopaedic surgeon that due to the seriousness of her injuries the Appellant required medical care from a highly specialized orthopaedic surgeon and that care was not available, on a timely basis, in Saskatchewan.

[26] In support of her position that SGI should pay for the Costs, the Appellant did file letters dated February 5, 2003, February 15, 2005 and September 5, 2005 prepared by her family physician, Dr. M. J. Nicholls. In the February 5, 2003 letter addressed to Ms. Melanie Lagus, SGI South Injury Claims, Regina, Saskatchewan Dr. Nicholls states, in part, as follows:

“As you are aware, [the Appellant] sustained extensive injuries to both her legs as a result of an MVA in February 2002. She has undergone several surgical procedures since and has been left with ongoing difficulties and surgical complications as a result of the MVA. She will require further somewhat challenging corrective surgery and I am writing to ask for coverage to allow her to seek the services of Dr. A.E. Gross in Toronto, Ontario. Given the difficult and complicated recovery that she has undergone, as well as the somewhat less than ideal outcome of her surgeries at this point, I feel that this is appropriate”.

[27] In the February 15, 2005 letter addressed “To Whom It May Concern”, Dr. Nicholls states as follows:

“I have been requested to write in support of this patient’s decision to seek medical care by Dr. Gross, an orthopedic surgeon in Toronto, Ontario as a second opinion regarding injuries that she sustained in a motor vehicle accident in February 2002.

At the time of [sic] initial surgeries and treatments, her care was somewhat fragmented with the departure of Dr. Ahmer (the original surgeon) and due to several complications, ongoing disability and uncertainty as to her best treatment options. She was frustrated with the **perceived** (emphasis added) difficulty in obtaining timely quality care and made a decision to seek an opinion by a specialist that was highly recommended to her out of province. While I realize that she may not have received prior authorization for reciprocal payment, I feel that she is entitled to the care that was provided and that a second opinion in this case was appropriate.”

[28] It should be noted that Dr. Gross' fees have been paid by Saskatchewan Health pursuant to a reciprocal billing arrangement between Saskatchewan and Ontario (see letter dated January 24, 2006 addressed to the Automobile Injury Appeal Commission from the Appellant and an attached letter addressed to the Appellant from Mrs. J. Larson, Benefits and Inquiries, Saskatchewan Health).

[29] Then in his letter dated September 5, 2005, Dr. Nicholls, states in part, as follows:

“1) It is that [the Appellant] did initiate her initial appointment with Dr. Gross in Toronto on her own initiative. I feel that it was a direct result of fragmented and less than optimal care that she received in Regina. She needed to be assessed by Dr. Fraser in May 2002 due to an extended illness that Dr. Ahmer suffered until the end of June 2002. Dr. Fraser was reluctant to intervene significantly at that time and shortly after a RGH surgery in November 2002 Dr. Ahmer announced that he was leaving Regina. [The Appellant] was frustrated with the lack of information that she was receiving and worried that there was no clear treatment plan. It was in this frame of mind that she made contact with Dr. Gross.

2) I did arrange a formal referral to Dr. Gross in August 2003, I also arranged a second referral to Dr. J. Fraser in November 2002 once I was aware that Dr. Ahmer would be leaving and had not made follow-up arrangements for [the Appellant].

3) I do believe that the information gleaned from Dr. Gross' assessments has resulted in a significant change in her treatment plan and a better understanding of the extent of her injuries. It has also been most useful in giving her the piece of mind that her crippling injuries have been thoroughly assessed and will have the best chance for recovery.”

[30] Dr. Nicholls testified at the Hearing. In his testimony, Dr. Nicholls reiterated the information that is contained within his letters.

[31] Further, Dr. Nicholls testified that the primary concern that the Appellant had with respect to the Saskatchewan care centred on the ineffective and incomplete information that she was receiving concerning the management of her care. That concern with communication caused the Appellant to seek a second opinion from Dr. Gross.

[32] What amounts to effective and complete information or conversely what constitutes ineffective and incomplete information is very subjective. Also, what a patient perceives to be required and timely medical care might be quite different from the perception of the perception of the patient's treating physician. This then takes us back to our previous statement that it would have been useful to have had an opinion from an orthopaedic surgeon concerning the care

that the Appellant required for her injuries and whether that care was available on a timely basis in Saskatchewan. On that point, two letters from Dr. J. Fraser were filed.

[33] Dr. Nicholls referred the Appellant to Dr. Fraser in November 2002 when he became aware that “Dr. Ahmer would be leaving and had not made follow-up arrangements for [the Appellant].”

[34] In a letter addressed to Dr. Nicholls dated January 11, 2005 Dr. Fraser states, in part, as follows:

“I reviewed [the Appellant] again today. So far she has done well and she is improving quite a bit since hardware removal...

She saw Dr. Gross in Toronto again. He thinks that she is doing fairly well and doesn't need anything further at this time. Osteotomy might be indicated later on.

...

Overall she should be left alone and we will see how she is in the next year or so. There is definite valgus of the left knee and I can certainly be talked into doing an osteotomy on that side. I think that in the long term she would be better off as this puts more stress on her lateral compartment than what it would normally have. However, it would mean going ahead with more surgery which she has probably had enough of for now. I will review her again in a number of months and we will discuss the need for an osteotomy at that point. In the meantime she should continue her conditioning program.

[The Appellant] has been having discussions with SGI as to whether her trips to Toronto to see Dr. Gross should be partially covered. It is certainly within her rights to have a second opinion and I also feel that she has the right to see whom she chooses within the Canadian system **although the consults there have not changed our management at all, I think it has helped her with respect to her peace of mind** (emphasis added).”

[35] Then in a letter dated March 7, 2005 addressed to Dr. Nicholls, Dr. Fraser stated as follows:

“This woman seen by Dr. Gross, initially, long before I took over her care. Apparently, there were decisions made at that time by Dr. Ahmer that were on the suggestion of Dr. Gross which I did not relay earlier.

[The Appellant] is now in my care and **we will keep Dr. Gross's [sic] suggestions in mind as we make further decisions** (emphasis added).”

[36] The Appellant testified at the Hearing that Dr. Gross brought to her attention and the attention of her Saskatchewan treating orthopedic surgeons that due to her injuries it was likely

that the Appellant would require an osteotomy. The Appellant pointed to Dr. Gross' opinion and identification that that she would likely require an osteotomy as an example of the medical care that she required but was not receiving in Saskatchewan.

[37] Dr. Fraser did not testify at the Hearing. Consequently, we did not hear specifically from Dr. Fraser whether he would have been aware (without the involvement of Dr. Gross) of the need to consider the Appellant for an osteotomy. It would appear; however, from his letters that Dr. Fraser is of the opinion that Dr. Gross' consults did not change the management of his care of the Appellant. With respect to his management of the Appellant's future care, we do note that Dr. Fraser intends to "keep Dr. Gross's [sic] suggestions in mind". However, we do not know whether Dr. Fraser would, on his own, have considered those matters.

[38] Dr. Fraser is, however, of the opinion that the consults from Dr. Gross might have helped the Appellant's "peace of mind". In our view, providing "peace of mind" is quite different from providing required medical services and does not assist the Appellant in her appeal.

[39] The Appellant testified at the Hearing that Dr. Gross brought to her attention and the attention of Dr. Ahmer the need for Dr. Ahmer to remove certain hardware that was initially used to stabilize the injuries that the Appellant suffered in the Accident. We did not hear from Dr. Ahmer. It would have been helpful to hear from Dr. Ahmer. Would Dr. Ahmer agree that the care that the Appellant required was not available in Saskatchewan? Would Dr. Ahmer agree that the consultations/advice from Dr. Gross were required for the management of care that he provided to the Appellant? For example, but for Dr. Gross' involvement would Dr. Ahmer have been aware that some of the hardware that was initially used to stabilize the injuries would need to be removed?

[40] We acknowledge that the Appellant has a number of concerns about the medical care that she required and received in Saskatchewan and the timeliness of that care. However, given what we heard and the material that was filed for the Hearing, we conclude that the medical care that the Appellant required, for the injuries that she suffered in the Accident, was available on a timely basis in Saskatchewan.

CONCLUSION

[41] It was reasonable for SGI to decide to not pay for the Costs. Consequently, the decision is upheld.

Dated at Regina, Saskatchewan, on March 16, 2006.

Jeffrey Scott, Chair

Beverley Cleveland, Commission Member

Al Knippel, Commission Member