

**Automobile Injury Appeal Commission
Province of Saskatchewan**

Citation: *A.K. v. Saskatchewan Government Insurance,*
2006 SKAIA 020
Date: 20060324
File: 022 of 2005

BETWEEN

A.K., Applicant

and

Saskatchewan Government Insurance, Respondent

Appearances:
A.K., Applicant
Cheyenna Daigneauot, for the Respondent
Dale Brown, for the Respondent

Before: **Joy Dobko, Chair**
Carolyn Jones, Commission Member
Marjory Gammel, 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
January 11, 2006

DECISION

[1] This is an appeal by A.K., the Appellant, of a decision made by Saskatchewan Government Insurance (“SGI”) dated November 25, 2004 which denied her permanent impairment benefits for psychological issues arising out of injuries suffered in a motor vehicle accident of May 11, 1996.

FACTS:

[2] The Appellant was involved in a motor vehicle accident on May 11, 1996. She was [a minor] at the time of the motor vehicle accident. She was a passenger in a vehicle which was speeding on a grid road near [location]. The driver of the vehicle lost control and the vehicle rolled. The Appellant was not wearing a seatbelt and was thrown from the vehicle.

[3] She completed her Application for Benefits on June 19, 1996 in which she reported injuries to her ankle and a severely cut left eye. She suffered scars to her ankle, knees, her lower back and her left eye. The Appellant has had more than eight plastic surgeries to repair her left eye.

[4] The Appellant suffered significant emotional distress following the motor vehicle accident. Her social worker, Evelyn Gregory, reported:

Since the accident [the Appellant] has had a significant loss of self-esteem due to the weight she has gained. She has turned to eating as a way to address her facial disfiguration and her vision problems which were a result of the accident. Other behaviors that escalated were alcohol use and promiscuity. [The Appellant]’s grades tumbled in school and she began skipping classes. All of the combined led her to her mother’s doorstep.

[5] After the motor vehicle accident, the Appellant resided with her father in [location]. The Appellant’s mother, E.N., testified at the appeal on behalf of the Appellant. The Appellant’s mother reported that her daughter became very depressed, angry and belligerent after the accident. She started self-mutilating and gained a lot of weight. The Appellant’s mother stated that the Appellant became addicted to codeine and alcohol. Eventually, the Appellant left her father’s home in [location] and went to live with her mother in [location]. The Appellant’s mother reported that the Appellant attended [a treatment program] prior to coming to live with

her in [location]. It is noted that the Appellant attended and completed the treatment program from November 14 to December 12, 1996 inclusively.

[6] The Appellant's mother reported that her daughter had an extremely difficult time staying clean while she was in [location]. Rumors circulated at her school that her facial disfigurement was due to a knife fight. During the time that the Appellant lived with her mother she reported that the Appellant's life was very hectic. She was attending alcoholics anonymous to stay clean and was also attending tertiary assessments and treatments. The Appellant's mother reported that the Appellant bounced between her father's home and her mother's home because of the psychological and schooling difficulties that she was having.

[7] In May 1998, the Appellant attended for a tertiary assessment. The team assessed her injury related diagnoses to be facial scarring, WAD II resolving, left ankle pain and psychological issues. At the time of the assessment, the Appellant had completed seven surgeries to repair her left eye. She had three or four surgeries left to complete the correction. The team concluded that the Appellant displayed clinically significant psychological symptoms which were likely motor vehicle accident related. The psychological symptoms identified include Depression, Dissociation, Sexual Concerns, Anxiety and Post-traumatic Stress. The team concluded that following the motor vehicle accident, the Appellant was disfigured and had low self-esteem and she was involved in substance abuse. The team recommended immediate clinical intervention to deal with her psychological symptoms and continued counseling to deal with low self-esteem and substance abuse.

[8] On June 1 & 2, 1999, Dr. Landry completed a neuropsychological evaluation on the Appellant. Dr. Landry's assessment indicated that the Appellant suffered only one area of cognitive impairment. He concluded that she likely sustained a concussion type injury in the motor vehicle accident but that she demonstrated good cognitive recovery. Dr. Landry did identify significant emotional distress in the form of depression and anxiety. He did not recommend cognitive rehabilitation treatment but he did recommend psychotherapy for the Appellant's depression.

[9] In November 1999, the Appellant was referred for a second tertiary assessment. An identical set of injury related diagnoses was established as found in the first tertiary assessment. The recommendations of the team were that ongoing counseling was required on a prolonged basis, with three years not being considered an unreasonable amount of time for this counseling. They also recommended dietary consultation and a supervised exercise program to manage her weight and depression. The psychologist noted that her test profile was highly suggestive of an agoraphobic condition and that she would be at risk for further problems in this area without assistance. He also noted that the Appellant's self-esteem was very fragile and that her injury and facial disfigurement had an impact on her life and her self-esteem. He anticipated that long term counseling would be necessary for her to stay on track.

[10] On October 25, 2000, Dr. Taillon completed a permanent impairment evaluation with respect to the scarring of the Appellant's left eye, right ankle and knee. Dr. Taillon concluded that the Appellant was entitled to 15% for a Class 4 facial scar and 3.5% for scarring to her right ankle and knee. His Permanent Impairment Assessment was as follows:

Areas of Evaluation:

1. left eye laceration
2. right ankle sprain
3. psych issues due to facial disfigurement

1. left eye – class 4 faulty scar – max 15%
2. right ankle/knee

1% per cm² table

Disfigurement/Scarring of other parts of the body

Regulations, Appendix B, Part 2, Division 3, Table 17

	Length (cm)		Width (cm)	Surface Area (cm ²)	1.0% per cm ²
ankle	1.60	x	1.30	2.08	2.08%
knee	1.70	x	0.80	1.36	1.36%
total		x		0.00	3.44%

Final List of Permanent Impairments:

1. left eye scar 15%
2. right ankle/knee scar 3.5%

Therefore, the customer is entitled to 18.5% permanent whole body impairment.

[11] On November 1, 2000, SGI sent correspondence to the Appellant advising her that she was entitled to a permanent impairment benefit of 18.5% of whole body. She was paid \$23,564.38.

[12] On January 30, 2004, Dr. Resnik wrote a medical report with respect to the Appellant. It was Dr. Resnik's opinion that the Appellant was still being treated for depression at that time. He also outlined a history of events which in his opinion led to her depression, low self esteem, alcoholism, obesity and self-mutilation.

[13] On August 19, 2004, Dr. Singer, licensed clinical and forensics psychologist, diagnosed the Appellant to be suffering from Post Traumatic Stress Disorder as a result of the motor vehicle accident. Dr. Singer opined that the post traumatic stress disorder resulted in absenteeism in school, increased use of substances, dramatic weight gain, self-mutilation and promiscuity following the motor vehicle accident.

[14] On October 26, 2004, Dr. Pancyr prepared a medical opinion on behalf of SGI. Dr. Pancyr opined:

Opinion: Regarding your first question about whether the customer's psychological problems were the direct result of the car crash, it is clear that she did suffer numerous psychological problems as a direct result of the car crash. However, it is also reasonable to conclude that she may have had some of these problems prior to the car crash. Unfortunately there is a very significant lack of information regarding her pre-injury psychological status. It is documented that her parents separated prior to the car crash and that she was living with her father. The circumstances of the crash suggest that she was not well supervised given that she was [a minor] in a vehicle being driven out of control by [a minor]. There was some indication she may have had some difficulties with truancy at school just prior to the crash. **However the extent of the problems she experienced following the car crash are quite significant. Dr. Resnik and other health care professionals have made a clear link between the car crash, her disfigurement, and the development of a host of psychosocial problems including substance abuse, obesity, low self-esteem, depression, and an inability to pursue her education. I believe it is reasonable to conclude that a great many of her psychological problems were directly related to the effects of the car crash. [Emphasis added]**

[15] Dr. Pancyr was unable to offer an opinion on permanent impairment ratings.

[16] On November 16, 2004, Dr. Taillon again reviewed the Appellant's entitlement to permanent impairment benefits. He concluded:

In response to your memo dated November 9, 2004, I have reviewed this medical file once again. In particular I have reviewed Dr. Pancyr's report of October 2004 along with Dr. Jack Singer's report of August 2004.

You will recall that in October 2000 I did the permanent impairment assessment for the facial scarring and she received the maximum percentage rating for a faulty Class 4 scar which was 15%.

The Regulations, both old and new, do not rate psychological injury perse. Although I agree with Dr. Pancyr and Singer that there are motor vehicle accident related psychological issues, there is no directly attributable permanent impairment for the same.

[17] On November 25, 2004, SGI sent correspondence to the Appellant advising her that further permanent impairment benefits were not payable for psychological injury. It is this decision letter which is the subject of the Appellant's appeal. It stated:

As we discussed on November 25, 2004, [the Appellant]'s file was reviewed by our medical consultant. The consultant advised that "The regulations, both old and new, do not rate psychological injury per se. Although I agree with Dr. Singer, that there are motor vehicle related psychological issues, there is no directly attributable permanent impairment for the same."

"You will also recall that in October 2000, I did the permanent impairment for the facial scarring and she received the maximum percentage rating for a faulty Class 4 scar which was 15%."

Based on the consultant's review, there is no further permanent impairment payable in this instance.

[18] On March 8, 2005, Dr. Taillon prepared another medical report summarizing his findings with respect to the permanent impairment benefits available for the Appellant's psychological injuries. He reported:

[The Appellant] sustained a faulty Class 4 scar to the left upper eyelid as a result of the above motor vehicle accident. In October 2000 this was rated as the maximum allowable 15% permanent impairment due to the fact that it was conspicuous (readily visible to a lay person), involved change in form and symmetry (obviously different from the non-affected right side) and faulty (a scar that is misaligned, irregular and retractable). It is important to note that this permanent impairment is due to permanent disfigurement but does not significantly alter eyelid function i.e. opening and closing. As such, the disfigurement, without functional impairment, necessarily incorporates psychological injury and consequence.

The consequences to [the Appellant] are well documented in the SGI medical file. These are supported by an independent review by the psychology consultant, Dr. Pancyr. These

consequences include substance abuse, depression, low self-esteem and so on. The Regulations, both 1995 and 2002, do not rate psychological issues unless they are the result of motor vehicle accident related brain injury causing an alteration in cognitive and/or mental functions that impair performance of tasks necessary for everyday life. In June 1999 [the Appellant] underwent a neuropsych evaluation and Dr. Landry concluded that she had sustained a concussive type injury in the motor vehicle crash but demonstrated a good cognitive recovery. As such, she is not entitled to permanent impairment for any cognitive impairment.

This does not disclaim the psychological consequences of the motor vehicle accident to [the Appellant]. As an analogy, a motor vehicle accident frequently results in neck and back pain with decreased range of motion. The Regulations do not rate permanent impairment for reduced range of motion of the neck or spine. Nonetheless, both psychological consequences from facial trauma and reduced range of motion in the neck or spine are the treatment responsibility of the insurer.

In summary, the Regulations define permanent impairment entitlement. In [the Appellant]'s case, the maximum entitlement for facial scarring is largely based on the psychological impact of said scar. There is no file evidence of brain injury.

[19] On January 6, 2006, Dr. Taillon prepared another medical report. The relevant portions of his report are:

...

Item 153 defines "Permanent Impairment" to include a permanent anatomical or physiological deficit, a permanent disfigurement, a permanent acquired brain injury, or any other permanent impairment prescribed in the Regulations.

In my preceding letters cited above, I have made reference to the fact that [the Appellant]'s facial scarring represents a permanent disfigurement. This permanent disfigurement is on the basis of an anatomical alteration in the skin. Scarring represents a change from normal skin tissue to that of scar tissue which is distinctively different. The physiology, of function, of the skin is however, not altered or impaired. Again in the above correspondence, I note that the left upper eyelid scar has not altered eyelid function, i.e., opening and closing, or altered tear formation. Hence the skin physiology is not at a deficit as a result of the scar.

In summary, [the Appellant] has received a permanent impairment for the facial scarring which represents permanent disfigurement. This scarring has also caused an alteration in the anatomy of her skin but does not represent a physiological deficit. The Regulations do not include permanent impairment ratings for the psychological sequelae of scarring.

[20] The Appellant's mother reported that the Appellant eventually got married and moved to [location]. She currently resides in [location] and has one [child]. The Appellant's mother reported that it is a struggle for the Appellant to leave her house. She reported that the Appellant had obtained a waitressing job at the local bar but had to give that job up because she had found it too difficult to be around the alcohol. The Appellant's mother testified that the Appellant's agoraphobia is thriving and confines her to her home. She also reported that the Appellant

continues to struggle with addiction and psychological problems. The Appellant reported that it is difficult for her to obtain counseling because of where she is residing and that her financial situation has limited her ability to travel to and pay for her counseling. The Appellant reported that she will go to a counselor when she is feeling very overwhelmed. The Appellant testified that psychologically she is still suffering from depression, agoraphobia, low self-esteem and post-traumatic stress disorder.

[21] The last payment made by SGI for psychological treatments was October 18, 2000. The Appellant was paid the permanent impairment benefits for her left eye in October 2000. She testified that she believed when that payment was made that her file had been closed and she was no longer entitled to submit a claim for her psychological counseling although she admitted that she was never advised by SGI that they would not pay for her counseling.

LAW AND ANALYSIS

[22] 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.

[23] 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

[24] There were two issues raised by the Appellant in this appeal: her entitlement to permanent impairment benefits and her entitlement to ongoing counseling for psychological problems.

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

Permanent Impairment Benefits for Psychological Injuries

[25] The basis upon which SGI provides permanent impairment benefits is set out in sections 153, 154 and 156 of *The Automobile Accident Insurance Act*, as amended and in force at the time of the Appellant's accident in 1996 (the "Act")³. The relevant sections read:

153 In this Division, "permanent impairment" includes a permanent anatomical or physiological deficit, a permanent disfigurement, a permanent acquired brain injury or any other permanent impairment prescribed in the regulations.

154 Subject to this Division and the regulations, a victim who suffers a permanent impairment because of an accident is entitled to a lump sum benefit for the permanent impairment.

156(1) The insurer shall evaluate a victim's permanent impairment as a percentage that is determined on the basis of the prescribed schedule of permanent impairments.

(2) If a victim's permanent impairment is not listed on the prescribed schedule of permanent impairments, the insurer shall determine a percentage for the permanent impairment using the prescribed schedule as a guide.

[26] The relevant section of the *Personal Injury Benefits Regulations* (the "Regulations") in force at the time of the Appellant's accident which applied to permanent impairments reads:

"36. Compensation for permanent impairments is to be determined on the basis of Appendix B."

[27] Appendix B is the Schedule of Permanent Impairments divided into two parts: Anatomical and Physiological Deficits (Part 1) and Disfigurement (Part 2).

[28] The first issue before this Commission is whether or not psychological problems which are caused by a motor vehicle accident are compensable as permanent impairment benefits under the *Act*. In order to address this issue properly, we find it necessary to comment on the permanent impairment benefit paid by SGI for the Appellant's left eye as many of her psychological problems arise as a result of the scarring to her left eye.

³ Division 6 Permanent Impairment Benefits.

[29] SGI determined the Appellant's entitlement to permanent impairment benefits for her eye in accordance with Appendix B, Part 2, Division 2, Disfigurement of the Face, Table 15 which states:

1. For the purposes of assessing disfigurement of the face, reference is made to each of the following anatomical elements:
 - (a) the forehead;
 - (b) the orbits;
 - (c) the eyelids;
 - (d) the visible part of the ocular globes;
 - (e) the cheeks;
 - (f) the nose;
 - (g) the lips;
 - (h) the ears;
 - (i) the chin.
2. The extent of disfigurement affecting the face must first be assessed overall in terms of the physiognomy, in order to determine the class of impairment.
3. For classes 1 to 4, within the class of impairment of the physiognomy determined, the percentage of disfigurement is fixed in relation to the changes in the form and symmetry of the scarring, without exceeding the maximum percentage of disfigurement prescribed for that class, according to Table 15.

Where there are both scarring and changes in the form and symmetry, the percentages of the two are totaled up to the maximum percentage prescribed for the class.

...

TABLE 15
[Item 3 in Division 2]
EVALUATION OF PHYSIOGNOMY IMPAIRMENTS

Class of physiognomy impairments	Changes in the form and symmetry	Cicatricial Impairment	Max. Disfig.
Class 1 No impairment	Inconspicuous change	Inconspicuous Impairment	---
Class 2 Very minor impairment	Very minor change	Conspicuous Impairment 1% per cm ²	3%
Class 3 Minor impairment	Conspicuous change and: (a) affecting one anatomical element: 3% (b) affecting two anatomical elements: 4% (c) affecting more than two anatomical elements: 7%	Conspicuous Impairment and: (a) flat scar: 1% per cm ² (b) faulty scar: 2% per cm ²	7%

Class 4 Moderate impairment	Conspicuous change that holds one's attention and: (a) affecting one anatomical element: 10% (b) affecting two anatomical elements: 12% (c) affecting more than two anatomical elements: 15%	Conspicuous Impairment and: (a) flat scar: 1% per cm ² (b) faulty scar: 3% per cm ² 15%
---------------------------------------	---	--

[30] SGI determined that the Appellant was entitled to a permanent impairment benefit for her left eye at the maximum disfigurement of 15% allowable for a Class 4 faulty scar. There is no further award for permanent impairment that could be made to the Appellant for the scarring of her left eye. We find that for scarring to her left eye, SGI awarded her the maximum amount payable under the *Regulations*.

[31] The Appellant's mother submitted, on behalf of the Appellant, that psychological problems are no less damaging than physical injuries. She argued that those that suffer from mental illnesses as a result of injuries suffered in a motor vehicle accident should be treated the same as individuals who suffer permanent physical injuries. She further submitted that Dr. Taillon identified that psychological consequences are the treatment responsibility of the insurer, he agreed with Dr. Pancyr and Dr. Singer that there are motor vehicle related psychological issues; however, he failed to include a permanent impairment payment for psychological issues due to facial disfigurement in his Permanent Impairment Assessment. She argued that SGI has clearly failed to address a payment of benefits for psychological issues. She requested that the Commission consider alcoholism, drug addiction and post-traumatic stress disorder as permanent impairments.

[32] Mr. Dale Brown, legal counsel for SGI, submitted that it was reasonable for SGI to deny permanent impairment benefits for psychological issues as there is nothing provided in Appendix B for this type of permanent impairment. He further submitted that there is also no current medical evidence to support that the Appellant's psychological issues are permanent. He further submitted that the definition of permanent impairment does not include permanent psychological issues and unless we can conclude that alcoholism, drug addiction and post-traumatic stress

disorder are physiological deficits, then the Appellant's psychological problems do not fall within the definition of permanent impairment. Mr. Brown submitted that we can not even consider section 156(2) of the *Act* until a determination has been made that the injuries suffered fit within the definition of permanent impairment and then there must be supporting medical evidence of a permanent condition. He argued if the condition is treatable then it is not considered permanent. He argued that SGI relied on the report of Dr. Taillon which stated that the *Regulations* do not rate psychological issues unless they are the result of a motor vehicle accident related brain injury causing an alteration in cognitive and/or mental functions that impair performance of tasks necessary for everyday life. Mr. Brown submitted that Dr. Landry opined that the Appellant suffered no cognitive impairment as a result of the accident. In light of Dr. Landry's opinion, Mr. Brown submitted the Appellant would therefore not be entitled to a permanent impairment benefit for a permanent acquired brain injury. Mr. Brown further submitted that the 15% awarded for facial scarring contemplated the psychological impact of the said scar.

[33] There is absolutely no doubt that the Appellant suffered from psychological problems such as low self-esteem, depression, post-traumatic stress disorder, agoraphobia and alcoholism from 1996 to 2004 as a result of the facial disfigurement she suffered in the motor vehicle accident. She reported that these problems are ongoing today and we believe they likely are given that she has been unable to access the ongoing counseling recommended by the tertiary treatment team in November 1999. As of August 2004, she was diagnosed by Dr. Singer to be suffering from Post-traumatic Stress Disorder. The Appellant and her mother submit that these are permanent psychological conditions.

[34] The first issue to consider is whether the Appellant's psychological problems are permanent.

[35] The *Act* does not define "permanent impairment" beyond the reference in s. 153. The *Regulations* are also silent other than saying compensation shall be determined based on Appendix B. The term "permanent impairment" must therefore be given the ordinary meanings ascribed in dictionaries. *The Shorter Oxford English Dictionary* (Oxford: Clarendon Press, 1973) ascribes the following usages to the words "permanent" and "impairment":

Permanent ... 1. Lasting or designed to last indefinitely without change; enduring; persistent: opp. to temporary.

Impair, v. ...1. *trans.* To make worse, less valuable, or weaker; to lessen injuriously; to damage, injure. 2. To grow or become worse, to suffer injury or loss; to deteriorate...

Impairment, the action of impairing; the being impaired; deterioration....

[36] The 2002 *Regulations* provide a definition of “permanent impairment”. It is of limited use as it is not applicable to the Appellant’s accident and injuries because they occurred in 1996 and are subject to the *Act* and *Regulations* in force at the time of her accident. However, the 2002 *Regulations* use the following definition: “**permanent impairment** – is an impairment that has become static or has stabilized during a period of time sufficient to allow optimal tissue repair and one that is unlikely to change significantly with further therapy”. We only refer to this definition as a guide to determine whether the Appellant’s psychological problems may be considered “permanent”. It is our opinion that when considering permanency one must consider if the injuries are “static or stabilized”; “lasting or indefinite without change”; and “unlikely to change significantly with further therapy”.

[37] We are certainly of the opinion that the Appellant’s psychological problems are long-standing; however, there is no medical evidence to suggest that they have stabilized or that they are unlikely to change significantly with further therapy. We are unable to definitively conclude due to a lack of current medical evidence that the Appellant’s psychological problems are permanent. We find it noteworthy that the tertiary team in 1999 felt they may be treatable with three years+ of ongoing counseling. Dr. Singer did not provide an opinion with respect to the recommended treatment for post-traumatic stress disorder or whether it was a permanent condition for the Appellant. Dr. Resnik does report that as of January 30, 2004, the Appellant was still being treated for depression. It may be his opinion that this is a permanent condition but he does not specifically make that finding or diagnosis in his medical report.

[38] Even though we are unable to find on the medical evidence that the Appellant’s conditions are “permanent”, we are not in any way belittling the severity of the psychological impact the facial disfigurement has had on her life. It is very clear that it has had a tremendous

impact on her life and we believe she likely does require further counseling for her psychological conditions.

[39] If it were medically determined that all or some of the Appellant's psychological problems were permanent, she would still need to bring those psychological issues within the definition of "permanent impairment" as set out in section 153 of the Act. The Appellant's mother argued that the alcoholism, drug addiction and post-traumatic stress disorder would be considered to be a physiological deficit and therefore come within the definition. There is simply no medical evidence to support that the Appellant's psychological issues of low self-esteem, alcoholism, agoraphobia, post-traumatic stress disorder and depression are a "permanent anatomical or physiological deficit", a permanent disfigurement⁴, or a permanent acquired brain injury or any other permanent impairment prescribed in the regulations.

[40] We are unable to find that the Appellant's psychological issues are a permanent impairment as defined or are a permanent anatomical or physiological deficit. We are unable to find any provisions in Appendix B for these types of psychological injuries.

[41] In order for section 156(2) to be applicable such that we could determine a percentage using the prescribed schedule as a guide, we would need to conclude first that her injuries fit into the definition of "permanent impairment" as set out in section 153. We are unable to come to this conclusion based upon the medical evidence before us. There must be medical evidence of permanency and there must be medical evidence supporting that her psychological conditions would be considered a permanent anatomical or physiological deficit.

Ongoing Counselling for Psychological Problems

[42] It is very clear to this panel that we have no jurisdiction with respect to the Appellant's ongoing entitlement to counseling for psychological problems. The decision letter of November 24, 2004 does not address counseling and only deals with permanent impairment. The Appellant by her own admission reported that SGI has never denied funding for counseling although she did believe her file to be closed once she received her permanent impairment benefits.

⁴ Other than the 15% benefit already paid for her left eye.

[43] The Appellant submitted that she needs counseling for depression, agoraphobia, post-traumatic stress disorder, low self-esteem and alcoholism and addiction. Mr. Brown advised there is no current medical evidence to suggest a need for ongoing counseling.

[44] It is clear to this panel that the lack of communication between the parties has resulted in the Appellant not being able to obtain the financial assistance she needs to address her ongoing issues of low self-esteem, depression, post-traumatic stress disorder, agoraphobia and alcoholism. The fact that she lives in a small community has contributed to this problem. As of 1999 it was strongly recommended that she receive ongoing counseling for at least a period of three years which would have brought her well into 2002. In 2000, she received her permanent impairment benefits and believed her file to be closed. As a result, her counseling has been minimal since this time due to financial constraints.

[45] We found the Appellant and her mother both to be credible. We have no doubt that the Appellant continues to struggle with psychological difficulties arising from this motor vehicle accident. SGI submitted the latest medical report was in August 2004 from Dr. Singer and current medical evidence is required. There is an overwhelming amount of evidence by treatment providers that the Appellant's psychological problems are longstanding and as of 1999, it was the opinion of her treatment providers that she would require long-term care, at least three years. If she had been able to access the much needed counseling recommended by the tertiary team in 1999, perhaps she would be better able to cope with some of her ongoing difficulties today. Unfortunately, due to a break in communication and financial constraints, she has been unable to continue with regular counseling.

[46] Although we have no jurisdiction to make an order with respect to the Appellant's ongoing entitlement to counseling and we are cognizant of Mr. Brown's submission that there is a process to follow for reinstating benefits; we are going to strongly recommend that the parties carefully re-examine the Appellant's need to ongoing counseling with her medical practitioners. If it is recommended by her medical practitioners that counseling be reinstated, every effort should be made by SGI to financially assist the Appellant, in accordance with the *Act* and the *Regulations*, to attend those counseling sessions. The Appellant's place of residence should not be a barrier to her receiving needed treatment. The injuries suffered in the motor vehicle

accident have clearly had a huge impact on her life and on her self-esteem and have caused significant psychological problems for her. We make this recommendation only to assist the parties in coming to a resolution regarding ongoing psychological counseling.

CONCLUSION

[47] The decision made by SGI dated November 25, 2004 which denied the Appellant permanent impairment benefits for psychological issues arising out of injuries suffered in a motor vehicle accident of May 11, 1996 is upheld.

[48] We have determined that we have no jurisdiction with respect to the Appellant's ongoing entitlement to psychological counseling. We have made a recommendation that the parties carefully re-evaluate the Appellant's psychological condition and provide ongoing counseling if it is determined by her treatment providers that she needs counseling to address psychological problems stemming from the facial disfigurement suffered in the motor vehicle accident.

[49] In addressing the issues on permanent impairment, we are left with the question of whether the Appellant may be entitled to permanent impairment benefits for "alteration of cerebral tissue following a concussion" as set out in Appendix B, Part I, Division 2, Subdivision 1, Item 5(b) of the *Regulations*. Dr. Landry in June 1999 was of the opinion that she likely suffered a concussion in the motor vehicle accident but demonstrated good cognitive recovery. It is not clear from the evidence whether this has been considered by SGI. Due to the lack of evidence, we recommend that the Appellant and SGI review her entitlement to permanent impairment benefits for a concussion, if it has not already been done.

[50] As the Appellant has not been successful in her appeal with regard to permanent impairment benefits for psychological injuries, she is not entitled to her costs. Our recommendation with respect to counseling was not a matter within our jurisdiction and therefore would not result in the Appellant being entitled to the costs of her appeal. Similarly, there is inadequate evidence for us to make a finding regarding the Appellant's entitlement to permanent impairment benefits for a concussion and therefore our recommendation to review this issue would not entitle her to her costs of this appeal.

Dated at Regina, Saskatchewan, on March 24, 2006.

Joy Dobko, Chair

Carolyn Jones, Commission Member

Marjory Gammel, Commission Member