

**Automobile Injury Appeal Commission**

**Province of Saskatchewan**

**Citation:** *D.Q. v. Saskatchewan Government Insurance,*  
2006 SKAIA 021

**Date:** 20060330

**File:** 081 of 2005

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**BETWEEN**

**D.Q., Applicant**

**and**

**Saskatchewan Government Insurance, Respondent**

**Appearances:**

**D.A., Applicant**

**Robert Borden, Applicant Solicitor**

**Allan McLeod, for the Respondent**

**Before:** **Joy Dobko, Chair**  
**Carolyn Jones, Commission Member**  
**Carol Olson, 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 Saskatoon, Saskatchewan  
February 27, 2006

## DECISION

[1] This is an appeal by D.Q., the Appellant, of a decision made by Saskatchewan Government Insurance (“SGI”) dated April 21, 2005 regarding SGI’s termination of funding for cab fare to attend medical appointments.

### FACTS:

[2] The Appellant was involved in a motor vehicle accident on December 4, 2002 (hereinafter referred to as the “motor vehicle accident”). On December 11, 2002 she completed her Application for Injury Benefits. She reported pain in the back of her head, neck and low back, across her chest and in her right shoulder and hand. She also reported headaches and loss of vision in her right eye. The Appellant testified that she was rear-ended in the motor vehicle accident and that her head struck the headrest.

[3] The Appellant suffers from a number of non-mva related illnesses such as diabetes, degenerative arthritis secondary to fibromyalgia and morbid obesity. She has been a Type 2 diabetic for approximately 27 years. Her diabetes is complicated by retinopathy, nephropathy and some clinical neuropathy. The Appellant reported a bad back and other little pains prior to her motor vehicle accident in January 1999.

[4] The Appellant reported that she has been in three motor vehicle accidents: January 4, 1999; September 6, 1999 and December 4, 2002. Prior to the January 1999 accident, she reported 3 lasers to her left eye and only a lazy right eye. Following her January 4, 1999 accident, she testified that she was no longer able to foster children and the vision in her left eye became much worse. After the September 1999 accident she reported that her vision in her left eye continued to worsen. She testified that she attended upon an eye doctor in Edmonton for a consult on her left eye following the second motor vehicle accident. Following that accident, she started to receive significant lasers to her left eye. She testified that she had a total of 19 lasers, 2 shots of cortisone and 4 major surgeries on her left eye. The Appellant reported that after the motor vehicle accident in question, her right eye went completely blind. This is a little confusing because she testified that her right eye had always been 20/200 and was considered to be a “dead

eye”; however, she reported she had some peripheral vision in her right eye prior to the accident and after the accident she went completely blind due to a ruptured vein behind her eye. She testified she did not note any difficulties with her left eye following the motor vehicle accident.

[5] On January 24, 2003, Dr. Avinshi, reported that the Appellant sustained a musculo-skeletal injury in the December 4, 2002 accident which he expected to resolve in four to six weeks. He also noted that she gave a history of no vision in her right eye since the accident.

[6] On January 30, 2003, Dr. Erasmus reported that the Appellant sustained a vitreous hemorrhage in the right eye which was most likely precipitated by the motor vehicle accident.

[7] On June 4, 2003, Dr. Potapinski, chiropractor, diagnosed the Appellant to be suffering from a cervical and thoracic whiplash associated disorder. He recommended 1-2 treatments per week.

[8] The Appellant testified that she currently sees Dr. Colleaux with respect to difficulties with her vision. On August 20, 2003, Dr. Colleaux reported:

[The Appellant] has changes of advanced diabetic retinopathy in both eyes that has required aggressive laser treatments as well as vitrectomy surgery for each eye. She has just recently come under my care and I have seen her for the first time on August 18, 2003. She underwent vitrectomy surgery in the right eye for a vitreous hemorrhage in January 2003, and she feels that the hemorrhage was provoked by trauma of a motor vehicle accident. A similar occurrence apparently happened causing hemorrhage in the left eye once two years ago and she had surgery for that eye as well. **As I discussed with her, the diabetic vascular changes that she has (sic) made her more vulnerable to vitreous hemorrhage although this could be triggered by blunt trauma directly or indirectly to the eye or head. As she currently stands, she had had vitrectomies bilaterally now which have resulted in a complete recovery of the vitreous hemorrhage and her residual visual deficit is on the basis of pre-existing right amblyopia (by history) as well as the changes of her diabetic retinopathy, which is relatively stable at this point. (emphasis added)**

[9] On March 23, 2005, Dr. Juta reported to SGI that he last saw the Appellant on December 7, 2004 and that he had not treated the Appellant for any conditions related to the motor vehicle accident. His treatment related to management of her type 2 diabetes mellitus, systemic hypertension and concomitant coronary artery disease.

[10] Dr. Lori Robinson, optometrist, reported on March 29, 2005 that she was not treating the Appellant for any symptoms which relate to her injuries sustained in the motor vehicle accident.

[11] Dr. Colleaux reported to SGI on March 31, 2005, that the Appellant retinopathy in both eyes was in no way related to the motor vehicle accident. His report stated:

[The Appellant] is being treated for complications of severe diabetic retinopathy in both eyes. This is in no way related to her motor vehicle accident from a few years ago. As previously outlined in my letter to you in 2003, [the Appellant] believes that the blunt trauma of her motor vehicle accident may have provoked a vitreous hemorrhage, but surgery was performed for that some time ago and she has remained clear of vitreous hemorrhage ever since. Her remaining functional limitation is on the basis of impairment from diabetic retinopathy as well as right amblyopia. When last seen on March 22, 2005, vision was count fingers right and 20/70 left and we are arranging for further laser treatment for recurrent left diabetic macular edema.

[12] On April 21, 2005, SGI sent correspondence to the Appellant terminating funding for cab fare for medical appointments. **It is this decision letter which is the subject of this appeal.** It stated:

This is to advise that we have obtained updated reports for your file, from numerous practitioners in regards to your current medical status:

- Dr. Juta advises that he has not treated you for any conditions related to the motor vehicle accident in question.
- Dr. Robinson advises that she is not currently treating you for any symptoms which relate to injuries sustained in the December 4, 2002 accident.
- Dr. Bose states that you were last seen by him in January 2001 and February 2001. He notes his final diagnosis as electrolyte imbalance and dehydration. He does not make any mention in his report regarding any accident-related symptoms.
- Dr. Colleaux notes that you are being treated for complications of severe diabetic retinopathy in both eyes. He states that “this is no way related to her motor vehicle accident from a few years ago”.

As it appears the medical appointments you are currently attending are for non-motor vehicle related symptoms, SGI will no longer be providing funding for cab fare for you to attend these appointments.

[13] On May 31, 2005, Dr. Syed reported that the Appellant was diagnosed with acute cervical strain after her motor vehicle accident.

[14] On June 21, 2005, Dr. Mierau prepared a very brief report in which he concluded that more treatment for motor vehicle accident related musculoskeletal conditions was not indicated. We place no weight on this report. Dr. Mierau references 21 items which were reviewed by him however he fails to provide further clarification and arrives at a conclusion for which he documents no support for his conclusion.

[15] The Appellant testified that she currently sees Dr. Colleaux with respect to difficulties with her eyes. She reported seeing Dr. Colleaux approximately every two months. Dr. Syed is her current family physician. She testified that she sees him for illnesses which are mostly non-mva related unless she receives a referral for her eyes, which she then feels is a motor vehicle accident related injury. She stated that Dr. Juta is her diabetic doctor and this condition is unrelated to the motor vehicle accident. Dr. Robinson is her optometrist and only sees her for new eyeglasses. She reported that Dr. Bose is a heart specialist. The Appellant reported that she only sees Dr. Potapinski on an as needed basis for her neck and back.

[16] The Appellant is seeking cab fare for her medical appointments to see Dr. Colleaux and Dr. Syed, when it relates to motor vehicle accident related injuries, specifically difficulty with her eyes. She reported that it is very difficult for her to book the access bus which is free, because it must be booked at least one week in advance. The Appellant testified that her cab fare to Dr. Syed's office is approximately \$5 each way.

## **LAW AND ANALYSIS**

[17] 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.

[18] The Commission determined in *R.C.*<sup>1</sup> 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.<sup>2</sup>

[19] The only issue before this Commission is whether or not the Appellant is still attending medical practitioners for motor vehicle accident related injuries and if so, is she entitled to reimbursement for cab fare for those attendances.

[20] Mr. Borden, solicitor for the Appellant, argued that although this may seem like a small issue, the Appellant's file with SGI has been very complicated and has resulted in a constant denial of benefits. He submitted that the Appellant can not afford the cab fares. He submitted that the Appellant attributes the problems with her eyes as being caused by the motor vehicle accident. He further submitted that problems may arise in the future which are related to the motor vehicle accident and SGI should use their discretion in considering which medical appointments may relate to motor vehicle accident related injuries.

[21] Mr. Mcleod, solicitor for SGI, submitted that the Appellant is attending her family physician, Dr. Syed for problems which are pre-existing and not related to the motor vehicle accident. He submitted that Dr. Colleaux clearly reported that the Appellant's ongoing attendances with him relate to her retinopathy and are in no way related to the motor vehicle accident. He further submitted that attendances upon Dr. Potapinski are on an as needed basis and are not related to the motor vehicle accident injuries.

[22] We have carefully reviewed the reports of Dr. Colleaux and Dr. Erasmus. We are satisfied that the Appellant likely suffered a vitreous hemorrhage in her right eye following the motor vehicle accident. We are also satisfied and accept the opinion of Dr. Colleaux that she underwent a vitrectomy of the right eye which resulted in a complete recovery. Dr. Colleaux is quite clear that the Appellant's residual visual deficit is on the basis of pre-existing conditions and complications of severe diabetic retinopathy which is in no way related to the motor vehicle

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<sup>1</sup> R.C. v. Saskatchewan Government Insurance 2003 SKAIA 1

accident. We understand that the Appellant believes that her eyes are worse as a result of the accident but there is simply no medical support for this contention. We are in no position to find Dr. Colleaux's report is without merit. We accept his medical opinion with respect to the Appellant's ongoing vision problems.

[23] Given our conclusion with respect to the Appellant's ongoing visual difficulties not being related to the motor vehicle accident, there would be no basis upon which her attendances upon Dr. Syed as they relate to her vision would be motor vehicle related. The Appellant admitted that most of her attendances relate to pre-existing or non-mva related illnesses.

[24] With respect to her attendances on Dr. Potapinski, we note that she is not attending him regularly. Dr. Avinshi expected her musculoskeletal injuries following the motor vehicle accident to resolve in four to six weeks. Dr. Potapinski has not indicated that the care being provided is supportive care necessary to maintain her level of function. Further we also take note of the admission of the Appellant that she had a bad back prior to her motor vehicle accidents. We are unable to conclude that her ongoing attendances to Dr. Potapinski are for injuries related to the motor vehicle accident due to a lack of medical evidence suggesting that they would be necessary as supportive care.

[25] Accordingly, we are unable to find that the Appellant's ongoing medical attendances relate to motor vehicle accident related injuries suffered in December 2002. As such, she would not be entitled to cab fare for attendances at medical appointments.

[26] If the Appellant suffers an injury in the future to her eyes or otherwise which her medical practitioners opine is related to the December 4, 2002 motor vehicle accident, then she is at liberty to present that new medical evidence to SGI to have it assessed. SGI clearly points out in their decision letter that they will reconsider their decision if any relevant new information is presented.

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<sup>2</sup> 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.

**CONCLUSION**

[27] The decision made by SGI dated April 21, 2005 regarding SGI's termination of funding to the Appellant for cab fare to attend medical appointments is upheld.

**Dated** at Regina, Saskatchewan, on March 30, 2006.

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Joy Dobko, Chair

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Carolyn Jones, Commission Member

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Carol Olson, Commission Member