

**Automobile Injury Appeal Commission
Province of Saskatchewan**

Citation: *E.R. v. Saskatchewan Government Insurance*,
2006 SKAIA 022
Date: 20060404
File: 122 of 2004

BETWEEN

E.R., Applicant

and

Saskatchewan Government Insurance, Respondent

Appearances:
E.R., for the Applicant
Peter V. Abrametz, for the Applicant
Joan Eremko, for the Respondent

Before: **Tim Brown, Chair**
Carolyn Jones, Commission Member
Stan Loewen, 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
July 14, 2005

DECISION

- (1) The Appellant, E.R., is a husband, father, career [employer] employee and revenue home landlord. He claims that a motor vehicle accident on August 18th 2003 has resulted in ongoing lower back pain and lingering numbness in his thighs and tingling in his fingers. He claims to be entitled to payment for ongoing chiropractic treatments, massage therapy, medication and mileage to and from appointments from the date of June 15th 2004, when his benefits were terminated by SGI in their decision letter of that same date.
- (2) SGI's position is based on the opinion of Dr. Mierau, a chiropractor who provided four medical opinions to SGI, all expressing the view that the medical information does not support a finding of chiropractic or massage treatment. He goes further and suggests that there is no "disability" resulting from the MVA based on the absence of documentation evidencing any disability for work and an absence of clinical findings of reduced range of motion; and finally a statement from Mr. Richard Bourassa in a February 15th 2004 letter, where he expresses doubt that further biomechanical treatment would be effective.
- (3) They also rely on a document evidencing seven chiropractic visits prior to the accident for pain in the back, and particularly the lower back.
- (4) The issues raised in this appeal are:
 - (a) Does the Appellant suffer a disability resulting from the accident, and if so,
 - (b) What treatment is SGI obligated to compensate the Appellant for?
- (5) In coming to this conclusion, we accept the evidence of the Appellant. He testified that on August 17th 2003, he was in perfect health. Since August 18th 2003, he has been going for treatment and taking medication for lower back and neck pain. To this day, the Appellant testifies that he will wake up in the night with intense pain and have to pack his back with ice and, though he prefers the "common sense" approach to the pain, resorts to the aid of pain killers, such as Tylenol 3, and muscle relaxants from time to time.

- (6) He has good days and bad days. On his bad days, he has difficulty scrubbing the floors, unloading the dishwasher and other household chores. He experiences problems with back pain if he drives for more than one hour. He has stopped taking overtime at his job as working these extended hours would exacerbate his pain. He now splits the outside chores with his wife and his daughter and doesn't "tackle" bigger projects. In addition, he is unable to do maintenance work at his revenue homes as a result of his back injury and now contracts that work out at his own expense.
- (7) He testifies that chiropractic treatments give him relief from symptoms for two to three days and he does a self-maintenance program consisting of regularly stretching and resting at work, and stretching on the exercise ball once a week.
- (8) Objective evidence of the Appellant's subjective symptoms was provided by Dr. Markland, a rheumatologist. She saw the Appellant on two occasions. She sent him for assessment by a physiotherapist who discerned pain and restricted movement in the neck and "a lot of spasm" in the lower back. A blood test was performed which revealed an elevation of muscle enzymes. This elevated enzyme level relates, in her opinion, to scarring, inflammation and spasm in the back, a condition called fibrosis. Based on the Appellant's testimony, we accept this as an ongoing injury, the onset of which was the accident of August 18th 2003.
- (9) Though Dr. Mierau indicates that there is no medical imaging "to confirm or disprove" the presence of fibrosis, Dr. Markland relies on the results of the blood test and indicates in cross-examination that the best way to detect fibrosis is to feel it. With respect, we prefer her opinion to that of Dr. Mierau, taking into account the weight of her evidence as it corroborates the Appellant's testimony of his subjective experience.
- (10) Dr. Markland testifies that the Appellant would benefit from chiropractic treatment for flare-ups and an exercise regime. She says that chiropractic treatment may be needed for up to five years. She also indicates massage therapy would be of little benefit.

- (11) Dr. Potopinski suggests as well that he would benefit from regular chiropractic treatment. This approach, unlike simply treating “flare-ups”, or “crisis” is to avoid crisis by implementing a preventative regimen of treatments, indicating such treatment is preferable in the Appellant situation than crisis intervention. He indicates that he believes there will be a decline in the ability to perform day-to-day functions in life based on him flaring up when he goes off such a program.
- (12) We accept that, as a result of a consideration of the evidence as a whole, that chiropractic treatment is necessary to reduce what we have found to be his disability caused by the accident.
- (13) We accept Dr. Markland’s testimony that massage treatments “won’t do much”.
- (14) In so finding, we conclude that SGI’s decision to terminate the Appellant’s benefits was unreasonable.
- (15) This leaves the issue of what treatments SGI should be responsible for. Do we accept the response to a “flare up” model suggested by Dr. Markland, or the maintenance regime suggested by Dr. Potopinski? In resolving this issue, we are persuaded that the latter approach is preferable, given that Dr. Potopinski has been his treating chiropractor and indicates that the crises approach has not worked well in the Appellant case. We also rely on the evidence of the Appellant, who indicates that this “maintenance approach” has provided the more reliable relief in his struggle with everyday life.
- (16) We therefore order that the Appellant be compensated by SGI for all chiropractic treatments since the termination of benefits, and order that he be compensated for his mileage to and from such appointments at the rates relative to the time period in question. The Appellant shall also be entitled to compensation for his medication costs and the ongoing cost of medication as prescribed for pain and muscle relaxation relating to his injury by a physician while this problem persists. He shall also have pre-judgment interest on these amounts.

- (17) As for future treatment, we order SGI to pay for the cost of such future chiropractic care as the Appellant, in consultation with this chiropractor, deem necessary to maintain a regimen designed to prevent flare-ups, which we are satisfied, considering the whole of the evidence, is the most beneficial approach to the Appellant's injury.
- (18) In so finding, the Appellant shall be entitled to his reasonable costs on the appeal.

Dated at Regina, Saskatchewan, on April 4, 2006.

Tim Brown, Chair

Carolyn Jones, Commission Member

Stan Loewen, Commission Member