

**Automobile Injury Appeal Commission  
Province of Saskatchewan**

**Citation:** *T.N. v. Saskatchewan Government Insurance,*  
2006 SKAIA 051  
**Date:** 20060920  
**File:** 109 of 2004

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**BETWEEN**

**T.N., Applicant**

**and**

**Saskatchewan Government Insurance, Respondent**

**Appearances:**  
**Daniel Heffernan, for the Applicant**  
**Jennifer Bailey, for the Respondent**

**Before:** **Stanley D. Loewen, Q.C., Chair**  
**Al Knippel, Commission Member**  
**Carolyn Jones, 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  
March 15, 2005

## DECISION

[1] This is an appeal by T.N., the Appellant, of a decision made by Saskatchewan Government Insurance (hereinafter referred to as SGI) essentially terminating her income replacement benefits (IRB). An additional issue regarding start-up costs for the Appellant to re-enter the real estate profession was conceded at the hearing by Mr. Daniel Heffernan, the Appellant's counsel, to be an ex-gratia payment by SGI, and therefore not subject to review by the Appeal Commission.

[2] While the Commission members have had the opportunity to review the appeal package which contains documents supporting the position of the parties, no evidence was given regarding those positions as SGI raised a preliminary argument regarding the jurisdiction of the Commission to deal with the matter. As a result, this decision deals only with the preliminary objection.

## ARGUMENT

[3] SGI's counsel, Ms. Jennifer Bailey, argues that by virtue of Section 191(2) of the *Automobile Accident Insurance Act (2002)*, (hereinafter referred to as the Act), the Appellant's right of appeal to the Commission is barred, since she elected to proceed by way of statement of claim in the Court of Queen's Bench. SGI further argues that the Appellant is claiming income replacement benefits for the same time period in both proceedings, that being both before the Commission and before the Court of Queen's Bench. SGI stated that the matter proceeded to pretrial conference on July 2 of 2004. It was actually set for a hearing on that date and was adjourned by request of the Appellant. Subsequently, an appeal to this Commission was launched, dated and signed by the Appellant, on July 19, 2004.

[4] The Appellant appealed a decision of SGI's dated April 20, 2004 which dealt with the amount SGI would pay *ex gratia* for start-up costs and also, indirectly, with the IRB question.

[5] SGI's original decision letter of February 10, 2003 advised that IRB payments would be terminated in one year, which they suggested would be adequate time for her to re-establish herself as a real estate agent. During the year, the Appellant underwent surgery.

SGI therefore extended the payment of IRB for a further three month period to allow for the surgery and recuperation.

[6] In the second decision letter of April 20, 2004, SGI referred to this arrangement as follows:

“It is SGI’s position that startup costs such as you have requested are not covered by the legislation. The legislation provides no benefits for these types of expenses. Further, on February 10<sup>th</sup>, 2003, [the Appellant] was advised that the income replacement benefit that she was receiving would continue to be paid for a period of one year to afford her the opportunity to become re-established as a realtor. In July of 2003, [the Appellant] underwent debridement surgery, described by her physician as having an eight to twelve week recuperation period associated with it. In consideration of the surgery and the required recuperation period, income replacement benefits were extended for a further period of three months, to be payable until May 10<sup>th</sup>, 2004. In the circumstances, it is SGI’s view that your client has been afforded sufficient opportunity to become re-established as a realtor.”

[7] SGI further submitted that the Commission does have jurisdiction to deal with the issue of start-up costs but not the IRB. In addition, Ms. Bailey indicated to Mr. Heffernan that she would consent to him adding the issue of start-up costs to the Court of Queen’s Bench action in the event SGI is successful in their jurisdictional argument.

[8] Mr. Heffernan’s position is that there were two decisions rendered by SGI. The first decision letter, dated February 10, 2003, resulted in an appeal to Queen’s Bench which did proceed to pre trial conference. He claimed that subsequent to that, a specific request of SGI was made by the Appellant to extend her IRB for a period of three months which resulted in a second decision letter dated April 20, 2004. It is his argument that the second decision letter created a new right to appeal to this Commission.

[9] Ms. Bailey replied that the decision letter of April 20, 2004 simply restated SGI’s original decision of February 10, 2003, and did not create a new right of appeal.

[10] The Commission met briefly to consider the preliminary arguments, and rendered a verbal decision that the Commission would defer to the Court of Queen’s Bench in this matter. We accept that the decision letter of April 20, 2004, was clearly intended to justify not paying anything more for startup costs, and is not a new decision with respect to the income replacement benefits.

[11] Having accepted that there is only one decision, the Commission is guided by the Act, Section 191(1) which reads, in part,

“A claimant may appeal a decision of the insurer pursuant to this part to either the Court of Queen’s Bench or the appeal commission....”

and Section 191(2) which reads:

“If a claimant appeals a decision of the insurer to:

{a} the Court of Queen’s Bench, no proceeding respecting the matter may be taken before the appeal commission; or..”

[12] It was agreed by the parties that there is no legal prejudice to the Appellant and that any outstanding issues could be added to the statement of claim. If an amendment was necessary it would be consented to by SGI.

[13] The appeal is therefore dismissed.

**Dated** at Regina, Saskatchewan, on September 20, 2006.

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Al Knippel, Commission Member

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Carolyn Jones, Commission Member

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\*Mr. Loewen participated in the oral decision but was no longer an active member of the Commission at the time of the written decision.