

Automobile Injury Appeal Commission

Province of Saskatchewan

Citation: *L.L. v. Saskatchewan Government
Insurance, 2006 SKAIA 060*

Date: 20061027

File: 117 of 2005

BETWEEN

L.L., Applicant

and

Saskatchewan Government Insurance, Respondent

Appearances:

L.I., for the Applicant

Cheyenna Daigneault, for the Respondent

Before: **Joy Dobko, Chair**
Stephanie Pfefferle, 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**

Heard at Saskatoon, Saskatchewan
May 25, 2006

DECISION

[1] This is an appeal by the Appellant, L.L., of a decision made by Saskatchewan Government Insurance (“SGI”) dated July 14, 2005 with respect to permanent impairment benefits for concussion and scarring. [The Appellant’s parents] represented her at the appeal. They argued that the assessment of permanent impairment benefits did not appropriately take into account the pain and headaches and the drooping right eyelid which are caused by the scar to the Appellant’s right eye.

FACTS:

[2] The Appellant was involved in a motor vehicle accident on September 3, 2004. As a result of the motor vehicle accident, the Appellant suffered lacerations over her right eyebrow¹ and her right cheek which penetrated her mouth. She also suffered an injury to her left knee and exhibited signs and symptoms of a concussion.

[3] The Appellant completed her Application for Benefits on September 7, 2004 in which she reported her most significant injuries to be to her knee and head.

[4] On March 16, 2005, Dr. van der Watt completed a facial diagram showing that the Appellant’s scar to her right eyebrow was 2 cm in length and the scar to her right cheek was 1.5 cm in length.

[5] Dr. Flotre, medical consultant for SGI completed an assessment on July 7, 2005 with respect to the Appellant’s entitlement to permanent impairment benefits. His medical report stated:

I have reviewed this young woman’s file as requested by you. There are a couple of areas in which [the Appellant] will be entitled to a permanent impairment rating.

Although it is unclear whether [the Appellant] lost consciousness at the time of the accident, she was certainly confused and disoriented at the time of the arrival of the EMS. It was stated that she had fainted after getting out of the vehicle. She was retained in the hospital overnight of observation. I believe that she

¹ The emergency report states left eyebrow, however, this was clearly an error as all other medical documentation supports a finding of a laceration to the right eyebrow.

would be entitled to a 0.5% permanent whole body impairment for a mild concussion based on the new *Regulations*, Division 2, Subdivision 1, Part 1.1(a).

The other area of entitlement would be scarring on her face. The scar through the eyebrow measures 2 cm by an average of 0.3 cm, giving a 0.6 cm² of surface area. The scar lateral to the right side of the mouth measures 1.5 cm by 0.2 cm giving a 0.3 cm² surface area. In total there is 0.9 cm² of scarring. Based on Table 12.1 of the *Regulations*, this is rated at 1% per cm², giving a 0.9% rating.

In total then, [the Appellant] is entitled to 1.4% permanent whole body impairment.

[6] On July 14, 2005, SGI sent a decision letter to the Appellant with respect to her permanent impairment benefits for facial scarring and concussion. The Appellant was awarded 1.4% permanent impairment. The decision was as follows:

Medical consultants have completed a review of your claim for permanent impairment benefits. According to the current medical information, your injury has resulted in a 1.4% of the whole body permanent impairment. The maximum amount of benefits for permanent impairment is \$150,974.00 (2004). The amount of your benefit is \$2,113.64 which is 1.4% of \$150,974.00. A cheque in this amount will be forwarded directly to yourself.

[7] Dr. van der Watt wrote to SGI on November 18, 2005 advising them that the Appellant was going to be seeing a plastic surgeon with respect to her scarring and that she continued to have residual weakness and nerve pain in the scarred area.

[8] On January 4, 2006, Dr. Classen, plastic surgeon, provided an assessment and medical opinion with respect to the Appellant's facial scarring. He reported:

She has an approximate 1 cm scar in the right eyebrow. This scar is well approximated. She occasionally gets some tenderness of this scar with palpation, occasional numbness just above the scar. The mother relates that her eye looks like it might droop towards the end of the day when she gets tired. She also feels that she gets some migraine headaches from this scar. This scar is over the area where the supraorbital nerve lies, and there could have been some underlying injury to the nerve causing some tenderness and nerve irritation. I have explained to them that I don't feel that any surgical scar revision would be of value for this scar, and hopefully the sensory symptoms she is describing will gradually get better with time.

There is a second 1 cm scar on the right cheek just right to the lateral commissure. This scar is smooth and pale. There would be no value in revising this scar as any surgical scar revision would likely look very similar.

I have recommended non-operative treatment for these scars.

[9] Dr. Classen provided an updated report on January 16, 2006. He stated:

With respect to the nature and severity of the nerve pain that she is experiencing, this is most likely related to the traumatic scar that she suffered in the right eyebrow region. This relates to the supraorbital and supratrochlear nerves in this region that likely were injured and have some residual nerve pain.

[10] On January 31, 2006, Dr. Alport, medical consultant for SGI, reviewed the medical report from Dr. Classen. Dr. Alport reported:

Having now read Dr. Classen's report, I'm afraid you'll have to advise the claimant and her family that no further permanent impairment award can be made. Dr. Classen has explained that the scar over the eyebrow might have affected the supraorbital nerve, but even if it did, there is nothing in the regulations that would allow me to award a permanent impairment for this minor injury. The sensitivity that she feels might gradually subside, or at least that's what Dr. Classen has suggested might happen. The supraorbital nerve is not a motor nerve and therefore one wouldn't expect any paralysis to result from an injury to it. Dr. Classen has addressed the concern of this claimant's mother that suggests the eyelid might droop slightly at the end of the day when [the Appellant] gets tired, but this is not something that can be awarded a permanent impairment. (it's an intermittent droop, not a "permanent" droop, and so if present at all, it's 2'ry to weakness rather than permanently damaged nerve)

Dr. Classen certainly hasn't indicated that there is any evidence of paralysis nor, significant facial distortion that warrants plastic surgical correction. It is conceivable that the paralysis the family describes is more of a distortion caused by the scar tissue itself when [the Appellant] moves her forehead, but if this occurs, that's why she received a permanent impairment for the scar itself. (ie. The distortion would be caused by scar tissue and not by underlying muscle paralysis...and she received an award for the scar tissue).

In summary, there is no further permanent impairment that can be paid. Indeed, if we were to use Dr. Classen's report she would receive less than she did already because the measurements he has provided are smaller than those used in our previous calculation.

[11] On February 27, 2006, Dr. Alport provided an updated medical opinion regarding the permanent impairment benefits for the Appellant's facial scarring. He reported as follows:

Having looked at this January 16th letter from Dr. Classen, I have been unable to find anything in the regulations, that corresponds to the supraorbital or supratrochlear nerve damage that is causing this girl's pain. There is nothing in the regulation that I can even use as a guide to give an impairment rating for this problem.

It's been my experience that post scar tenderness diminishes with time. I have not seen anyone with permanent pain secondary to scars of this nature. Certainly there are people that do develop chronic neuralgic pain, secondary to scarring of a nerve (such as sometimes occurs after a nasty case of shingles), but they attend for medical care frequently and regularly because of the severe nature of their ongoing symptoms, and often regular narcotics and/or other medications or injections are tried to alleviate the severe nature of the pain. I've not seen any evidence of this happening with this claimant. I think it's likely [the Appellant] did/does have a tender scar...but it's unlikely she'll have permanent pain from it, and therefore further PI is not something that can be awarded.

[12] As a result of the medical opinion given by Dr. Alport, on February 28, 2006, SGI advised the Appellant that no further benefits were payable for nerve pain and weakness associated with the Appellant's scarring.

[13] [The Appellant's father] testified at the appeal. The Appellant's father reported that his daughter continues to experience severe headaches and migraines when she rubs her eye or bumps the scar over her right eye. He reports these headaches occur two to three times per week. He further reported that the Appellant's right eye droops when she becomes tired or exhausted which he estimates occurs two to three times per week. The Appellant's father testified that he was advised by the medical practitioners treating the Appellant that the laceration above her right eye cut the nerve.

[14] [The Appellant's mother] reported that since the accident her daughter has become extremely self-conscious about her scars. She wears her hair in her face and she no longer plucks her eyebrows. The Appellant's mother also supported the Appellant's father's evidence that the Appellant's right eye droops when she is tired or exhausted. The Appellant's mother stated that the Appellant had seen a specialist regarding the migraines and he had performed a CAT scan which was normal. She stated that the Appellant was advised that she would have to suffer through them. It is the Appellant's mother's opinion that the sensitivity of the scar is causing the Appellant's headaches.

[15] The Appellant also testified at the appeal. The Appellant had a very difficult time relaying the details of the accident and discussing the pain and how the scars she suffered to her face have impacted her life. The Appellant stated that if she bumps the scar over her right eye she immediately suffers a migraine. She reported the magnitude of the bump usually defines the severity of the headache. The Appellant testified that she can feel when her eyelid is drooping because it feels heavy but that it does not change her vision.

LEGISLATION AND STANDARD OF REVIEW

[16] The Commission's power on appeal is provided in Subsection 193(7) of *The Automobile Accident Insurance Act*, R.S.S. 1978, c. A-35 (the "Act"). The 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 Part VIII of the *Act*.

[17] Recently, the Saskatchewan Court of Appeal addressed the standard of review applicable for appeals to this Commission in *Allary v. Saskatchewan Government Insurance*, 2006 SKCA 89. In that case, the Court of Appeal noted that more than one standard of review was indicated by the legislation. The Court of Appeal suggested that the standard of review depends upon whether SGI has discretion to grant or deny the particular benefit claimed. In *Allary*, the claimant was seeking reimbursement of payments for medical and paramedical care as provided under Subsection 163(1) of the *Act*. The Court of Appeal held that because SGI does not have discretion to decide whether to pay the claimant such benefits, the standard of review of SGI's decision is correctness, not unreasonableness. It stated:

[19] There is no discretion on SGI's part with respect to these benefits. The victim is entitled to a benefit for medical and paramedical care, including transportation. The Regulations in effect at the appropriate time impose limits on the amount that will be paid but none of those limitations appear to apply here. For example, s. 43 provides that an expense for which the insurer may be or is required to reimburse a victim pursuant to Division 7 of Part VIII of the Act or this Part is subject to any limit set out in the Act or these regulations or, where there is no limit as to amount, to an amount that the insurer considers is reasonable. Thus, where there is no discretion to provide a benefit, asking whether the decision was "unreasonable" is not the appropriate standard. The appropriate standard is correctness.

[18] The Court of Appeal concluded that, where an appellant disputes SGI's decision and places SGI's findings of fact in issue and there is no discretion whether to grant or deny the benefit, the standard of review is correctness. Specifically, it stated:

[20] Where the facts are placed in issue, as they are here, the appeal commission has an obligation to receive and consider any new evidence submitted by the appellant and, depending on the nature of the hearing which is conducted, to consider as well the evidence received by SGI in making the finding of fact or facts in dispute on the appeal. The appeal commission must determine whether the decision of SGI was erroneous having regard to all the evidence. The factual issue for determination within the case was whether there was a causal link between the benefits claimed and the injuries caused by the accident of September 8, 2001.

[21] Notwithstanding its comments on the appropriate standard of review, the Commission in fact applied the proper standard, i.e. correctness. It conducted a hearing, heard the evidence of the appellant and reviewed the record including certain documentary evidence concerning the issue of causation to determine whether or not there was a causal link between the transportation benefits and mental health benefits claimed and the injury.

[19] In this case, the Appellant placed the facts in issue by submitting that SGI had not provided her with permanent impairment benefits for her drooping eyelid and the nerve pain associated with the scar over her right eyebrow. Further, she stated the benefits provided for scarring were inadequate.

[20] The basis upon which SGI would provide permanent impairment benefits to the Appellant is set out in Part VIII - Division 6 of *The Automobile Accident Insurance Act* in force at the time of the Appellant's accident in 2004 (the "*Act*"). The relevant sections are:²

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

154(1) The insurer shall evaluate an insured's permanent impairment as a percentage that is determined on the basis of the prescribed schedule of permanent impairments.

(2) If an insured'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.

[21] Section 36 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."

[22] Appendix B of the *Regulations* also provides a definition for "impairment" and "permanent impairment" as follows:

"**impairment**" is defined as a loss, loss of use, or derangement of any body part, organ system, or organ function. A medical impairment can develop from an illness or injury.

"**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. This time period is referred to as Maximum Medical Improvement (MMI). MMI does not preclude follow-up, maintenance or palliative care or an alteration of the medical condition with the passage of time.

[23] There is no discretion on SGI's part with respect to the benefits in Section 152 of the *Act*. The wording and intent of the above provisions with respect to permanent impairment benefits

clearly states that a claimant is entitled to a permanent impairment benefit if they suffer a permanent impairment because of the accident. The wording of the legislation is not discretionary and therefore the appropriate standard of review is correctness. Therefore, the Commission will determine if the decision of SGI with respect to the Appellant's permanent impairment benefits was erroneous having regard to all of the evidence before it.

ANALYSIS

[24] The Appellant's father argued that the benefits paid for scarring were inadequate because they did not take into account the pain from headaches that his daughter continued to suffer from or the drooping eyelid associated with the scar above her right eye which occurred when she was tired. The Appellant's mother argued that it is inappropriate for SGI to judge the impact of her daughter's scars based upon scales and regulations. She argued that scars on the face of a young girl would be much more traumatic and devastating for her than it would be for a young boy and that this should be given some consideration. The Appellant's parents did not take issue with respect to the award for permanent impairment benefits for the amount awarded for the Appellant's concussion.

[25] Ms. Cheyenna Daigneault, counsel for SGI, submitted that the payment made for scarring of the mouth and right eyebrow were treated as Class 2 scars. She submitted that the permanent impairment award was in accordance with the legislation and further that there is no provision in the legislation which compensates for pain. Ms. Daigneault further submitted that the Appellant has not reached maximum medical improvement with respect to the nerve pain that she is experiencing over her right eyebrow and the medical information indicates that the pain from the Appellant's scar will continue to improve with time and therefore it should not be considered for permanent impairment until such time as the injury has become static or no longer improves.

[26] Calculation of permanent impairment benefits for facial scarring are found in the *Regulations*, Appendix B, Division 12, Subdivision 1, Tables 12.1 and 12.2.³ Assessment of a permanent impairment benefit for facial scarring is determined partly by the class of impairment

² Division 6 Permanent Impairment Benefits.

³ Table 12.2 is Evaluation of Facial Disfigurement Part 2 for Classes 5 and 6, Severe impairment and Disfigurement and was not considered in this appeal.

and partly by the change in form and symmetry. There are six classes of impairment. Table 12.1 deals with classes 1-4 and is reproduced in part below.

[27] The issues in this appeal are: whether the Appellant should be awarded a permanent impairment for the migraine headaches that she experiences as a result of the residual nerve pain in the scar in her right eyebrow; whether she is entitled to permanent impairment for her drooping eyelid; and whether the scarring over the Appellant's right eyebrow and mouth should receive a higher classification, either as a Class 3 ("conspicuous change") or Class 4 ("conspicuous change that holds one's attention").

Table 12.1 Evaluation of Facial Disfigurement

Classification According to Appearance	Alteration in Form and Symmetry	Scarring	Maximum Impairment Percentage for the Class
Class 1 No impairment	Inconspicuous change	Inconspicuous	0%
Class 2 Very minor impairment	Inconspicuous change	Conspicuous 1% per cm ²	3%
Class 3 Minor Impairment	Conspicuous change and; (a) affecting one anatomical element: 3% (b) affecting two anatomical elements: 4%	Conspicuous 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%	Conspicuous and: (a) flat scar: 1% per cm ² (b) faulty scar: 3% per cm ²	15%

[28] In Appendix B, a "faulty scar" refers to a scar that is misaligned, irregular, depressed, deeply adhering, pigmented, scaly, retractile, keloidal (thickened and raised) or hypertrophic. A "flat scar" refers to a scar that is almost linear, at the same level as the adjoining tissue and almost the same colour, causing no contraction or distortion of neighboring structures. The

definition in Appendix B for “alteration in form and symmetry” refers to a skin disfigurement that results in a change in tissue bulk, consistency, length, pigmentation, or texture. It does not refer to the presence of a scar.

[29] Where there is evidence of both scarring and alteration in form and symmetry, both impairments are rated and the percentages for both are added up to the maximum prescribed for that class.

[30] The Appellant’s parents did not focus much on the scar on the right side of the mouth, however, we have reviewed the correctness of that assessment in light of their submission that the award for facial scarring was inadequate.

Right Side of Mouth Scar

[31] Dr. van der Watt describes this scar as smooth and pale. We observed under the artificial light of the hearing room, a small pale scar on the right side of the Appellant’s mouth. We are all of the view that SGI’s determination of this scar as a Class 2 impairment is correct. We are unable to conclude that there was any alteration in form and symmetry as defined in the *Regulations* which would be considered a conspicuous change. Furthermore, Dr. van der Watt measured the scar to be 1 cm in length and Dr. Flotre assessed it to be 1.5 cm in length. Dr. Flotre compensated the Appellant in accordance with his measurement. It would appear therefore that the Appellant received correct compensation for the scar to the right side of her mouth in accordance with Table 12.1 – Class 2 impairment. In fact, she received additional compensation because Dr. Flotre’s measurement of the scar was greater than Dr. van der Watt’s.

Right Eyebrow Scar

[32] SGI’s decision with respect to the scar to the Appellant’s eyebrow is correctly categorized as a Class 2 impairment. There is no question that the Appellant’s scar holds her attention and has caused her to change her appearance and affected her self-esteem. However, to place the Appellant’s eyebrow scar into a Class 3, there must be an alteration in form and symmetry which is a conspicuous change. This means there must be an alteration in form and

symmetry which is readily discernable with the unaided eye. Dr. van der Watt reported the length of the scar to be 1 cm, however he failed to comment on the appearance of the scar. We observed under the artificial light of the hearing room, a scar over the Appellant's right eyebrow. The Appellant raised her hair to allow the members of the panel to view the scar, otherwise the scar is mostly hidden by the long bangs that she wears to hide the appearance of the scar. There is clearly a scar to her right eyebrow, however, we are unable to find that it would constitute an alteration in form and symmetry which means the presence of a skin disfigurement but does not refer to the presence of a scar, as described by the *Regulations*. We are also unable to find that it is a scar that holds one's attention as prescribed in the *Regulations*. We also note that Dr. Flotre assessed this scar to be 2 cm in length and compensated the Appellant accordingly. This is longer than Dr. van der Watt assessed the length of the scar to be, which was 1 cm. Accordingly, we are all of the view that SGI's determination of the right eyebrow scar as a Class 2 impairment is correct.

[33] We acknowledge the Appellant's mother's statement that scarring to the face may have a more devastating effect on a young girl than a young boy; however, the *Act* and *Regulations* do not provide for this distinction and therefore it can not be taken into account when considering entitlement to permanent impairment benefits. Our jurisdiction does not extend to determining if the amounts provided for permanent impairment benefits in the legislation are reasonable or have appropriately taken into account the varying emotional impact injuries surely will have on different individuals.

Right Eyebrow Residual Nerve Pain

[34] We found the evidence of the Appellant's father, mother and the Appellant all to be credible. For the Appellant, the accident has had a huge impact on her life and still continues to impact her daily. This is clear from her emotional instability when she has to relay any of the events of that day. We also believe that the Appellant continues to suffer significant pain associated with her right eyebrow scar when she bumps it.

[35] We are confused by the argument of Ms. Daigneault that the Appellant is not entitled to a permanent impairment award for this injury because she has not reached maximum medical

improvement. Dr. Alport has already made the assessment and advised that no permanent impairment would be payable for this nerve pain; partly because he can find nothing in the *Regulations* and partly because he expects the pain to resolve. If Dr. Alport is of the opinion that the nerve pain will resolve then by definition, the Appellant has not reached maximum medical improvement because her injury has not stabilized. We do not believe the argument can be two-fold. Either, the Appellant is at maximum medical improvement or she is not. If SGI is submitting that she is not at maximum medical improvement then a permanent impairment assessment should state that the injury is expected to resolve and benefits can not be assessed at this time and will be reviewed at a later date.

[36] Dr. van der Watt and Dr. Alport both opine that the Appellant's nerve pain will hopefully get better with time. At the time of the appeal, it had been approximately 21 months since the motor vehicle accident. The Appellant reported that she still experienced significant pain in the scar over her right eyebrow which was also causing her migraines. Dr. van der Watt believes the pain to be residual nerve pain which relates to the supraorbital and supratrochlear nerves that were likely injured at the time of the accident. Given that both the medical opinions in evidence opine that the Appellant may experience improvement in this pain, we find SGI's decision not to award permanent impairment benefits for the nerve pain to be correct, at this time, due to further anticipated recovery. This is based upon a review of all of the evidence at this time.

[37] We recommend that the Appellant consult with Dr. van der Watt to determine whether there is permanent nerve damage that is not going to resolve and that is causing her headaches. In our opinion, there must be a finding that a reasonable amount of time has passed for the nerve damage to repair itself and if it is permanent, then the Appellant should be considered to be at maximum medical improvement with an injury that has become static and stabilized. At that time a further assessment of permanent impairment benefits would be warranted to determine if the injury has caused permanent nerve damage which may be compensable under the legislation. Unfortunately, Dr. van der Watt's opinion did not specifically address how nerve damage to the supraorbital and supratrochlear nerves will have a permanent effect on the Appellant and this would need to be addressed if the nerve damage is considered to be permanent.

[38] If Dr. van der Watt determines that the residual nerve pain is permanent and there is permanent damage to the supraorbital and supratrochlear nerves; then it is strongly recommended that SGI review their obligations under Section 154 of the *Act* to assess a percentage for the permanent impairment. The use of the word “shall” in that provision requires SGI to provide a benefit using the Appendix as a guide. This is mandatory language. It is not permissible for SGI to say that “there is nothing in the regulation that I can even use as a guide to give an impairment rating for this problem” to avoid their obligation to pay benefits under that section of the legislation.

Drooping Right Eyelid

[39] The Appellant and her parents both submit that the Appellant’s right eyelid droops when she becomes tired. Dr. Alport opines that if it only happens when she is tired, then it is not a permanent impairment and does not meet the definition of a permanent impairment under the *Regulations*. There is no medical evidence on the file to support the Appellant’s and her parents’ evidence in this regard. Further, our personal view of the Appellant’s eye at the appeal did not show any droop associated with her right eyebrow scar. Ptosis, which is a drooping eye, is compensable under the *Regulations*. If the Appellant were able to medically substantiate a permanently drooping eyelid, then SGI would have an obligation to assess a permanent impairment benefit for that injury. At this time, there is no medical evidence to support that the Appellant would be entitled to permanent impairment benefits for a drooping right eyelid and therefore SGI’s decision in this regard is found to be correct based on all of the evidence before us.

CONCLUSION

[40] The decisions made by SGI dated July 14, 2005 with respect to SGI’s assessment of permanent impairment benefits for concussion and scarring for the Appellant are upheld. We find these decisions to be correct having regard to all of the evidence.

[41] We do not find that the Appellant has reached maximum medical improvement with respect to the nerve damage resulting from the scar to her right eyelid. It is our opinion that this

will need to be assessed when the medical reports indicate that she can no longer expect improvement of the nerve damage. At that time, it is strongly recommended that SGI reassess whether or not there is permanent nerve damage which should be compensable under the *Regulations* relating to permanent impairment and review their obligations under Section 154 of the *Act* to assess a percentage for the permanent impairment.

[42] Finally, if the Appellant is able to provide objective medical documentation which supports a finding of a drooping right eyelid, then SGI has an obligation to review the new medical documentation and make an assessment for permanent impairment benefits at that time.

[43] In light of our finding that SGI's decision letter with respect to the assessment of permanent impairment benefits for concussion and scarring is upheld, the Appellant has not been successful in her appeal and is not entitled to costs. Our findings and recommendations with respect to the permanent nerve damage and the drooping right eyelid are provided to assist the parties in resolving the outstanding issues of permanent impairment at the appropriate time. They do not entitle the Appellant to her costs of this appeal.

Dated at Saskatoon, Saskatchewan, on October 27, 2006.

Joy Dobko, Chair

Stephanie Pfefferle, Commission Member

Carolyn Jones, Commission Member