Automobile Injury Appeal Commission

Province of Saskatchewan

Citation: *O.H. v Saskatchewan Government Insurance*, 2006 SKAIA 074

Date: 20061124

File: 003 of 2006

BETWEEN

O.H., Applicant

and

Saskatchewan Government Insurance, Respondent

Appearances*:*
Angela Giroux, for the Applicant
Allan McLeod, for the Respondent

Before: **Joy Dobko, Chair**
Carolyn Jones, Commission Member
Jane Lancaster, Q.C., 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
September 14, 2006

DECISION

[1] This is the appeal of the Appellant, O.H., dated January 6, 2006, against the decision made by Saskatchewan Government Insurance (SGI) on May 26, 2005, with regard to the assessment of his functional abilities and the living assistance calculations pursuant to *The Automobile Accident Insurance Act*, 2002, Part VIII, Division 7 and *The Personal Injury Benefits Regulations*, Part VII and Appendix D.

[2] Counsel for the Appellant and for SGI advised the appeal panel that there is no dispute on the facts of this case and both parties agreed with the assessment of Innovative Rehabilitation Consultants who prepared an Occupational Therapist Home Assessment Report for SGI dated November 4, 2004.

[3] Counsel for the Appellant and for SGI also agree that the Appellant is completely disabled as a result of the motor vehicle accident in activities of daily living such as preparing meals, laundry, light and heavy housekeeping, and purchasing of supplies ("the activities"). It was also agreed by counsel that prior to the Appellant's accident that the Appellant and his wife shared equally in the activities.

[4] The two issues identified by the parties are:

> (a) Does SGI have the power under the legislation to reduce the amount of benefits that the Appellant is entitled to receive for living assistance by reducing the points awarded under Appendix D of *The Personal Injury Benefits Regulations* by 50% on the basis that he shared responsibility equally with his wife for the activities prior to his accident?

(b) How is the maximum amount of living assistance benefits of $947 per week as specified in Section 156(3) of the *Act* to be applied to Grid A (Functional Activities) and Grid B (Cognitive Activities) as set out in Appendix D of the *Regulations?*

FACTS AND FINDINGS

[5] The Appellant was involved in a motor vehicle accident on May 30, 2004. As a result of this accident, he sustained a fracture to his 5th, 6th, and 7th cervical vertebrae with associated quadriplegia at the 6th cervical vertebra level. Both parties agreed that the Occupational Therapist Home Assessment Report prepared by Innovative Rehabilitation Consultants sets out accurately what activities of daily living the Appellant was able to perform before the accident and his percentage of responsibility and what the Appellant's abilities are after the accident. We adopt these facts, as we are required, pursuant to section 193(5) of *The Automobile Accident Insurance Act*, which states as follows:

> Unless the claimant puts them in issue, the insurer's findings of facts must be adopted on appeal.

LAW

Relevant Legislation:

***Automobile Accident Insurance Act 2002* cA-35**

[6] Division 7 Benefits for Expenses

> 156 (1) Subject to the regulations, if an insured is unable because of the accident to care for himself or herself or to perform the prescribed basic activities of daily living without assistance, the insurer shall pay a living assistance benefit to the insured for expenses related to obtaining assistance.
>
> (2) The insurer shall calculate and reimburse the insured for the living assistance benefit in accordance with the regulations.
>
> (3) The maximum amount of a living assistance is $947 per week.

***The Personal Injury Benefits Regulations* (Chapter A-35 Reg (effective January 1, 1995) as amended by Saskatchewan Regulations 70/2002, 121/2002 and 48/2004**

44 Subject to the maximum amount set pursuant to section 156 of the Act, if the insured is unable because of the accident to care for himself or herself or to perform the prescribed basic activities of daily living without assistance and has an expense for living assistance that is not covered pursuant to any other Act, the insurer shall reimburse the insured for the expenses in accordance with Appendix D.

A. Evaluation Grid of Required Functional Activities

Activity	**Completely Dependent**	**Partially Dependent**			**Does Not Apply**					
		a	**b**	**c**	**A**	**B**	**C**	**D**	**E**	**F**
arising from bed	6	4	2	1						
bathing/hygiene	6	3	2	1						
bladder control	2	1	1	1						
bowel control	3	2	1	1						
cleaning up after meals	1	1	1	1						
dressing/undressing	4	3	2	1						
eating/drinking	3	2	2	1						
functional supervision	8	5	4	3						
gardening/shoveling/ yard work	2	1	0.5	0.5						
grooming	2	1	1	1						
heavy housekeeping: < 1500 sq ft. > 1500 sp ft.	 2 3	 1 2	 0.5 1	 0.5 0.5						
laundry	5	4	3	2						
light housekeeping: < 1500 sq ft. > 1500 sp ft.	 1 2	 1 1	 0.5 0.5	 0.5 0.5						
mobility/locomotion	5	4	3	2						
preparing meals: breakfast lunch supper	 1 2 2	 1 1 1	 1 1 1	 1 1 1						
purchasing supplies	3	2	1	0.5						
taking medications	1	1	1	1						
toileting	2	1	1	1						

transportation	5	4	3	2						
Total	**68**									

B. Evaluation Grid of Required Cognitive Activities

Activity		**Constant Attention**	**Partial Attention/ Supervision**			**Does Not Apply**					
			A	**b**	**c**	**A**	**B**	**C**	**D**	**E**	**F**
attention/memory	therapeutic techniques	5	4	3	2						
	staying on task	6	5	3	2						
behaviour	initiating activities	6	5	3	2						
	completing activities	6	5	3	2						
	irritability/outbursts	6	5	3	2						
	physical violence (personal/property)	8	6	4	2						
communication	understanding, speaking, writing, reading	4	3	2	1						
financial management	managing finances independently	3	2	1	0.5						
planning and organizing activities	completing daytimer/ activity lists	3	1.5	1	0.5						
	making/keeping appointments	4	3	2	1						
	meals	3	2	1	1						
	homework	7	5	4	2						
safety concerns	stove, gas, heights, crossing street, chopping food, etc.	8	6	4	2						
	taking medications	1	1	1	1						
Total		**70**									

[7] Specifically, the points in issue in this appeal are as follows:

Preparing Meals: 5 points
Laundry: 5 points
Light Housekeeping: 2 points
Heavy Housekeeping: 3 points
Purchasing Supplies: 3 points

Total Points: 18 points

[8] SGI has compensated the Appellant for a total of 8.5 points out of the total 18 points based upon their reduction of 50% shared responsibility. SGI has provided the additional points in the area of light and heavy housekeeping as it is agreed by the parties that that the Appellant's home has more than 1500 square feet.

SUBMISSIONS BY THE PARTIES:

Issue 1 – Reduction of maximum points for housekeeping tasks:

[9] The Appellant disputes the reduction of maximum points that he was entitled to receive pursuant to Section 44, Appendix D of the *Personal Injury Benefits Regulations*. In particular, the Appellant disputes the reduction of the points provided for the activities of daily living of meal preparation, laundry, light and heavy housekeeping, and purchasing of supplies based on the fact that pre-accident, he and his wife shared those responsibilities equally.

[10] SGI argues that although *The Automobile Accident Insurance Act* and *The Personal Injury Benefits Regulations* do not specifically authorize the insurer to deduct the percentage that the insured contributed prior to the accident, the insurer can find authorization under Appendix D, (2) (E) where:

> In grading the degree of assistance necessary, the following apply:
>
> a = Maximum Assistance Person requires maximum physical assistance or verbal cues to complete the tasks; assistance with 75% of the task.
>
> b = Moderate Assistance Person requires moderate assistance or verbal cues to complete the task; assistance with 50% of the task.
>
> c = Minimal Assistance Person requires minimal physical assistance or verbal cues to complete the task; assistance with 25% of the task.
>
> A = completely independent
>
> B = does not apply in terms of the injured person's chronological age

C = covered by a health-care facility or program

D = covered by an integration facility or program

E = the injured person was not able to or did not usually do this before the accident (emphasis added)

F = other reason (specify)

[11] The parties agree that the Appellant requires Maximum Assistance in performing the activities after his accident. SGI argued that Section E, in conjunction with the internal policy guide of SGI provided to their Personal Injury Representatives, authorizes them to calculate the points as they did. The internal policy guide was filed by SGI.

[12] The policy guidelines state as follows:

> Steps critical to the effective use of grids are:
>
> - Establish a clear list of what the customer did before the accident. What personal care and home care activities did the customer do each day/week? Were there any duties shared by others? Were any activities completed by paid individuals, i.e., housecleaner or yard maintenance? Has the customer's circumstances changed since the accident (but unrelated to the accident)? Would these changes affect their activities of daily living? For example, since the motor vehicle accident the customer has moved in with parents during the summer school break, before MVA was on his own attending school elsewhere.
> - When a customer shared responsibility for a grid activity and they are now unable to do this activity, we will reduce the points by half. No points are given for activities that the customer did not do before the MVA.

[13] SGI argues that pursuant to this policy and Appendix D (2) (E), they are entitled to reduce the Appellant's maximum points by 50% for the activities shared by the Appellant and his wife. In particular, the maximum points allocated to activities of meal preparation, laundry, light and heavy housekeeping, and purchasing of supplies were reduced by 50%. This reduction is based upon the parties' agreement that the Appellant is completely dependent and is unable to complete any or only minor tasks associated with the activities (range 100%-90% dependent) as a result of the injuries suffered in the motor vehicle accident.

[14] SGI argues that such an interpretation is in keeping with the purpose and scheme of the *Automobile Accident Insurance Act* and *Personal Injury Benefits Regulations* which

should be viewed as statutes and regulations of indemnification. Requirements for income replacement, living assistance, rehabilitation and medical costs were cited as examples whereby the legislation strives to put the insured customer back in the same place as he or she was prior to the accident. It is SGI's position then that providing full points to the Appellant for the activities, where he shared responsibility with his wife, would put him in a better situation that pre-accident.

[15] Counsel for the Appellant argues that *The Automobile Accident Insurance Act* is to provide benefits to an insured that used to be able to perform activities of daily living without assistance and now cannot. Counsel argues that Section 44 of *The Personal Injury Benefits Regulations* says:

> 44 Subject to the maximum amount set pursuant to the *Act*, if the insured is unable because of the accident to care for himself or herself, or to perform the prescribed basic activities of daily living without assistance and has an expense for living assistance that is not covered pursuant to any other Act, the insurer shall reimburse the insured for the expense in accordance with Appendix D.

[16] Counsel for the Appellant argues that, although the Appellant did share responsibility for the activities prior to the accident, he is now unable to do any portion of the activities as a result of the injuries suffered in the motor vehicle accident. Counsel for the Appellant argued that the Appellant is 100% unable to perform the activities that he performed pre-accident, and not 50% as calculated by SGI. Counsel points to the specific category explanations contained in Appendix D of the *Regulations* which direct how to grade the degrees of assistance when using the Grids. In particular, counsel for the Appellant argued that the legislators had specifically identified situations such as: A = completely independent, B = does not apply in terms of the injured person's chronological age, C = covered by health-care facility or program, D = covered by an integration facility or program, and in particular, E = the injured person was not able or did not usually do this before the accident. Counsel argued that if the legislators intended to allow the insurer to reduce points under the Grid because the insured shared responsibility for a grid activity prior to the accident, this would have been clearly identified and stated in the *Regulations*. Counsel argues that the Appellant is 100% unable to do the activities which he was able to

and usually did do before the accident and therefore, is entitled to maximum points for each functional activity which he did pre-accident and is now unable to do because of accident injuries.

[17] Counsel also argues that the policy is inconsistent with *The Personal Injury Benefits Regulations* and *The Automobile Accident Insurance Act,* in that both of these statutes state that, if the insured is unable to complete activities of daily living without assistance, the insured is entitled to be compensated. Counsel submitted that what is critical is that the insured is unable, due to injuries suffered in the accident, to do the activities in Grid A which they did in the past.

Issue 2: Interpretation of section 156 of *The Automobile Accident Insurance Act* with regard to the maximum amount of living assistance that an insured person is entitled to receive.

[18] Counsel for the Appellant argues that the maximum weekly living assistance benefit of $947 (section 156) should be considered for <u>each</u> Grid A Living Assistance – Required Functional Activities and for Grid B Living Assistance – Required Cognitive Activities. This interpretation would provide a maximum of $1894 per week if a person suffered both maximum physical and cognitive disabilities.

[19] Counsel for SGI argues that the maximum amount of a living assistance is $947 (adjusted for Consumer Price Index) pursuant to section 156 of *The Automobile Accident Insurance Act*. Counsel for SGI further argued that the maximum amount of the benefit payable for a living assistance benefit to an injured person without any cognitive dysfunction associated with the accident was $694 as of January 1, 2006. This amount represents the original amount established in section 158(1) of *The Automobile Accident Insurance Act* 1995 as adjusted by the Consumer Price Index.

[20] SGI filed a letter dated March 23, 2005 from Lynn Henderson, Manager, Head Office Injury Claims, SGI, which explains the rationale for using $694 as the maximum under Grid A of the Living Assistance Benefits. Ms. Henderson states as follows:

In August 2002, the total limit for living assistance benefits was increased to $947.00 per week as provided in section 156(3) of The Act. The increase was based on a recommendation from SGI to the Personal Injury Protection Plan Review Committee in April of 2000 in a document entitled "Personal Injury Protection Plan Review".

Recommendation 2 – Personal Care Grids:

Section 158;Regulation44;Appendix D

The maximum allowed for care benefits is $595/week based on the number of points allotted within the four grids; Personal care, home care, supervision and particular supervision(e.g., supervising a blind person until they start to function on their own). The personal care grids do not provide adequate assistance for catastrophic brain injuries. In addition, point allocation is not always fair and the grids do not cover some common assistance requirements. A committee, including health care workers has recommended that these grids be changed.

Example:

A person who suffers a brain injury and required daily supervision (in addition to personal and home care assistance) is not sufficiently compensated by the grids. Using the grids, a person who requires assistance with dinner presentation is allowed 11 points, whereas a person who requires assistance with laundry is allowed one point. These point allocations are unfair. In addition, there is no provision for snow removal and garden care.

Recommendation:

Revise the grids for personal and home care, allowing for such items as snow removal and lawn and garden care, and allocating points fairly. ***Condense the activities into two grids – one for physical care and one for mental care. Allow extra compensation for mental care, at half the benefits allowed for physical care(this would effectively increase the care limits for those catastrophically injured.)***

SGI acted on this recommendation in implementing the 2002 revisions to both The Act and the Regulations. The $550/week limit in 1995 had been increased by the Consumer Price Index each year until 2002 to reach the amount of $631 per week. The recommendation was to the effect that extra compensation be allowed for mental care at *half the benefits allowed for physical care.* As a result, the limit was increased in 2002 to add another one-half or an additional $316 to the maximum benefit payable to cover the mental care grid. As a result, the total benefit payable pursuant to Section 156 of The Act is $947 adjusted by any increases pursuant to the Consumer Price Index.

The apportionment of the benefit in that fashion was not specifically set out in the regulations when the amendments were made to *The Act* and to the Regulations, but a correction is in the planning stages and should be implemented in the near future. SGI has been apportioning the benefit in that fashion in accordance with the recommendation that prompted the increase in the amount of the benefit.

SGI's policy since the change in 2002 is to apply the new regulations to claims that predated those claims where the new regulations will supply a higher benefit. If the old regulations would have supplied a higher benefit, the old regulations would be applied.

[21] This issue had been raised in previous appeals to the Automobile Injury Appeal Commission namely, O.U. (AIAC No. 064 of 2005) and W.S. (AIAC No. 021 of 2005), however; it was not dealt with in those decisions as they were subject to the 1995 legislation and not the 2002 legislative changes.

[22] In the alternative, SGI submitted that the points allocated to an insured would have to be divided by the total number of points available under Grid A and Grid B and then multiplied by the maximum of $947. Using this method of calculation, the Appellant would receive fewer benefits than he currently receives pursuant to the calculations done using the SGI policy which relies upon the recommendations made to the Personal Injury Protection Plan Review Committee.

[23] SGI asked the appeal panel to consider the interpretation provided in the letter by Ms. Henderson as more advantageous to the Appellant. Counsel for SGI advised that changes in the legislation are scheduled to take place in 2007 which will clarify the *Regulations* and provide a maximum of $694/weekly effective January 1, 2006 for Grid A and a maximum of $350/weekly effective January 1, 2006 for Grid B, which are then adjusted by Consumer Price Index..

ANALYSIS

Issue 1: Does SGI have the power under the legislation to reduce the amount of benefits that the Appellant is entitled to receive for living assistance by reducing by 50% the points awarded under Appendix D of *The Personal Injury Benefits Regulations?*

[24] The leading case on statutory interpretation is the Supreme Court of Canada decision in *Re: Rizzos &Rizzos Shoes Ltd.* [1998] 1 S.C.R. 27 which at paragraph 21 adopted the following statement by E.A. Driedger in his text *Construction of Statutes,* 2nd ed. (Toronto: Butterworths, 1983):

> Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in the grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.

[25] The Saskatchewan Court of Appeal in *Re: Ratzlaff Estate v. Ratzlaff,* (2002), 217 Sask.R.284 (C.A.) at para. 23, states as follows:

> (1) It is presumed that the ordinary meaning of a legislative text is the intended or most appropriate meaning. In the absence of a reason to reject it, the ordinary meaning prevails.
>
> (2) Even where the ordinary meaning of a legislative text appears to be clear, the courts must consider the purpose and scheme of the legislation, and the consequences of adopting this meaning. They must take into consideration all relevant indicators of legislative meaning.
>
> (3) In the light of these additional considerations, the courts may adopt an interpretation in which the ordinary meaning is modified or rejected. That interpretation, however, must be plausible; that is, it must be one that the words are reasonably capable of bearing.

[26] The leading Saskatchewan case on this issue is *Fairhaven Billiards Inc v. The Saskatchewan Liquor and Gaming* and *Licensing Commission the Saskatchewan Liquor and Gaming Authority* (1999), 177 Sask. R. 237, (SK.C.A.) where Mr. Justice Tallis at para 17 writes:

> The authority of a regulator like the Authority to issue non-binding statements or guidelines is well established under our jurisprudence. As a matter of sound administrative practice regulators may, without any specific statutory authority for doing so, issue guidelines and other non-binding statements of policy: Re Hopedale Developments Ltd and Town of Askvill (1965) 47 D.L.R. (2d) Ont.C.A.) at 486; Maple Lodge Farms Limited. v. Government of Canada, 1982 CanLII 24 (S.C.C.), [1982] S.C.R.2; Capital Cities Communications Inc. et al v. Canadian radio-Televison Commission, 1977 CanLII 12 (S.C.C) {1978} 2 S.C.R. 141; Friends of Oldman River Society v. Canada (Minister of Transport) , 1992 CanLII 110 (S.C.C.), {1992} 1 S.C.R.3; Pezim v. British Columbia(Superintendent of Brokers), 1994 CanLII 103(S.C.C.) [1994] 2 S.C.R. 557 and Ainsley Financial Corp et al v. Ontario Securities Commission et al 1994 CanLII 2621 (On C.A.) (1995) 121 D.L.R. (4th) 79(Ont.C.A.) affirming (1994) 106 D.L.R. (4th) 507 (Ontario Court(General Division).
>
> Although policy making undeniably facilitates performance of the Authority's administrative responsibilities and duties and makes for consistent decision making, such "policy in force" can have no effect if it flies in the face of a contradictory statutory provision or regulations. If the "policy" in question falls under the rubric of a non-mandatory guideline, as argued by the respondent Authority, it may pass muster under the above authorities. But if the "policy" is mandatory it is therefore a governing pronouncement that will have the same effect as a statutory provision. The Authority could only create such if it is empowered to do so by the statute.

[27] On the record before us, we find that the "policy" that points be reduced for shared activities is a mandatory and governing pronouncement of SGI. We have considered the language used in SGI's reasons for denial in the May 26, 2005 decision letter to be mandatory language, in which the following is stated:

> Further to our meeting of May 10, 2005, we have reviewed your entitlement to a Living Assistance Benefit. We understand and have considered your arguments regarding the reduction of your entitlement for certain duties that were shared prior to the accident; however, **<u>we maintain the method used is in keeping with established policy.</u>** *(Emphasis added).*

[28] Similarly, the language used in the policy guidelines by SGI is "<u>when a customer shared responsibility for a grid activity….we will reduce the points by half</u>". The use of the words "we will" in the policy is mandatory language. Therefore we have concluded that the SGI policy does not allow for discretion on the part of the personal injury representative to allocate the points for shared responsibility. In fact, SGI's policy states that if the activity is shared, the points will be reduced in half. It does not even allow for an allocation based upon shared percentages where the responsibility may not have been equally shared.

[29] The primary question is not whether the policy is reasonable but whether it is within SGI's statutory power. *The Automobile Accident Insurance Act* provides living assistance benefits to an insured that used to be able to perform activities of daily living without assistance and now is unable to do so because of injuries suffered in a motor vehicle accident. Section 44 of *The Personal Injury Benefits Regulations* states:

> 44. Subject to the maximum amount set pursuant to s.156 of the *Act*, if the insured is unable because of the accident to care for himself or herself, or to perform the prescribed basic activities of daily living without assistance and has an expense for living assistance that is not covered by any other Act, the insurer shall reimburse the insured for the expense in accordance with Appendix D.

[30] Appendix D(2) states that in grading the degree of assistance necessary the following apply:

> E = the injured person was not able or did not usually do this before the accident.

In this case, the Appellant used to perform the activities and now is unable to do so.

[31] It is our opinion that if the legislators intended to reduce the compensation payable if the insured shared responsibility for a grid activity prior to the accident, they would have clearly stated so in the *Regulations*. We agree with counsel for the Appellant that the legislators provided under Regulation 44; Appendix D for special circumstances. In particular, they turned their attention to situations where an insured had been unable or did not usually do the activities, where the activities did not apply because of chronological age, and where activities are covered by a health-care facility.

[32] In our view, SGI's policy is inconsistent with the *Regulations*. The *Regulations* do not authorize a deduction of 50% for shared responsibility. The legislation says that if the insured is unable to complete activities of daily living without assistance he or she is entitled to be compensated. In our opinion, Appendix D(2)(E) of the *Regulations* has no application, nor does it provide SGI with authority to reduce the points by 50% for shared activities. Specifically, the Appellant was "able to do the activities" and he did "usually do the activities prior to the accident", although he shared the responsibility with his wife. It is important in this interpretation to note that he was functioning at 100% and now is functioning at less than 5% for the activities. It would be an illogical interpretation to only provide him with 50% of the benefit when he is 100% disabled. This is not a situation where he did not perform the activity at all prior to the accident. The Appellant is now completely unable to do the activities which he did in the past because of the injuries suffered in the motor vehicle accident. SGI's interpretation which only provides 50% of the benefit does not put the Appellant into the position that he was in prior to the accident because that interpretation assumes he is able to do 50% of the activities of daily living he performed prior to the accident; however, clearly on the facts, he is unable to do 100% of the activities that he performed prior to the accident.

[33] Clearly, the legislators turned their minds to special circumstances and addressed them in the legislation. In our opinion, they would have contemplated a scenario where individuals shared responsibility for household tasks, which would be a very common

situation in today's society, especially where both spouses are working outside of the home. Therefore, it is our opinion, that if the legislators intended for there to be a proportionate benefit based upon shared responsibilities, it would have been a simple provision they could have added to Appendix D(2). We believe that if it was their intention for the benefit to be proportioned based upon shared responsibility, they would have specifically addressed it in Appendix D, just as they did the other identified special circumstances. We are not of the opinion that the language in Appendix D(2)(E) is broad enough to allow SGI an interpretation which apportions the amount of benefits based upon shared responsibilities. The ordinary meaning of the language in Appendix D(2)(E) and section 156 of the *Act* does not allow an interpretation of reducing points for shared responsibility as SGI has submitted and applied in accordance with their policy.

[34] In reviewing a decision of SGI, the Commission has the jurisdiction under section 193(7) of the *Act* to:

> "set aside or vary the insurer's decision; or make any decision that the insured is authorized to make pursuant to this Part."

[35] In *George Allary v. Saskatchewan Government Insurance,* 2006 SKCA 89, the Saskatchewan Court of Appeal stated that "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."

[36] SGI does not have discretion whether to provide living assistance benefits and so the appropriate standard of review is correctness.

[37] Therefore, we find that the Appellant is entitled to 100% of the points on Grid A for meal preparation, light and heavy housekeeping, laundry, and purchasing supplies. SGI is not entitled to deduct points pursuant to a policy which is not consistent with nor a logical extension of the *Act* or *Regulations*. We find SGI's decision to reduce the Appellant's benefits by 50% to be an incorrect application of the legislation.

[38] In any event and in the alternative, we find that SGI has erred in allocating the number of points that the Appellant should receive in the activity of purchasing supplies. The maximum points allocated to this activity under Grid A are 3 points. The Appellant was allocated 1 point as partially dependent instead of the 1.5 points he should have been allocated under SGI's policy. Therefore, even if we were in error in our analysis of allocating maximum points for shared responsibility, the Appellant would still be entitled to an additional .5 point for purchasing supplies and SGI's decision would still be incorrect and set aside.

Issue 2 – How is the maximum amount of living assistance benefits of $947 per week as specified in Section 156(3) of the *Act* to be applied to Grid A (Functional Activities)?

[39] Applying the principles of statutory interpretation as set out in *Re: Ratzlaff Estate v. Ratzlaff, supra.,* the ordinary meaning of section 156 of the *Act*, would lead to the interpretation that the number of available points under Grid A and Grid B of the *Regulations*, should be added together and then divided by the maximum number of points for both Grids and then multiplied by $947. The Appellant would receive fewer benefits under this interpretation than he currently receives. We are unable to agree with the submissions of the Appellant's counsel that the weekly amount of $947 should be applied to each Grid separately which would provide a weekly maximum of $1894 for someone who is 100% functionally and cognitively disabled. This is not in accordance with the ordinary meaning of the legislation which clearly states that the maximum amount of living assistance benefit is $947 per week.

[40] *Ratzlaff* states that:

> (1) It is presumed that the ordinary meaning of a legislative text is the intended or most appropriate meaning. **In the absence of a reason to reject it, the ordinary meaning prevails.**
>
> (2) Even where the ordinary meaning of a legislative text appears to be clear, the courts must consider the purpose and scheme of the legislation, and the consequences of adopting this meaning. **They must take into consideration all relevant indicators of legislative meaning.**

[41] We find that the letter signed by Ms. Henderson, Manager, Head Office Injury Claims, SGI, and filed by SGI provides additional information which assists us in determining the meaning and intent of this section. We have no reason to reject the explanation provided by Ms. Henderson as the *Act* and *Regulations* are silent on the method of allocating the maximum available under section 156(3) of the Act. Pursuant to the policy outlined in Ms. Henderson's letter, the Appellant's calculation of living assistance benefits under Grid A, are determined using the amount of $694/weekly, effective January 1, 2006 as adjusted by the Consumer Price Index. SGI's policy on allocating the maximum amount of the living assistance benefit is not contrary to the legislation and is of assistance in determining the intention of the legislation.. Therefore, in our interpretation of the legislation, we accept and rely upon the explanation provided by SGI as to the intention of the legislators.

CONCLUSION

[42] The decision of SGI dated May 25, 2005 is partially set aside. The Appellant is entitled to the maximum points for the activities of daily living which have been reduced by 50%; specifically, meal preparation, laundry, light and heavy housekeeping and purchasing supplies. The living assistance benefits are to be paid retroactively to the date in which the Appellant's entitlement to living assistance benefits commenced which we believe to be October 29, 2004; however we leave the actual calculations up to SGI and the Appellant's counsel. Even if our interpretation of the Appellant's entitlement to 100% of the points were incorrect, SGI's decision is still incorrect in that the Appellant did not receive 50% of the available points for purchasing supplies and he would be entitled to a further .5 of a point under Grid A. Therefore, SGI's decision is still incorrect and would be set aside in any event thereby entitling the Appellant to his costs of the appeal.

[43] We adopt the reasoning of SGI in dividing the maximum amount payable under subsection 156(3) between Grid A and B as the policy assists us in interpreting the allocation of funds. In this case, the letter from Ms. Henderson provides us with evidence, which we accept, which sets out the intent of the legislators with regard to the apportionment of the maximum weekly benefit available under Grid A, Functional Activities and Grid B, Cognitive Activities. As a result, the points that the Appellant

receives pursuant to Grid A will be considered against the maximum of $694/week effective January 1, 2006 and adjusted pursuant to the Consumer Price Index.

[44] As the Appellant has been partially successful in his appeal, he is entitled to reasonable costs of his appeal, including his Appeal fee in accordance with Section 193(1) of *The Automobile Accident Insurance Act* and Section 86(4) and 96 of *The Personal Injury Benefits Regulations,* subject to the maximum amount of $2500.

Dated at Saskatoon, Saskatchewan, on November 24, 2006.

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Joy Dobko, Chair

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Carolyn Jones, Commission Member

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Jane Lancaster Q.C., Commission Member