

**Automobile Injury Appeal Commission
Province of Saskatchewan**

Citation: *P.L. v. Saskatchewan Government
Insurance, 2006 SKAIA 090*
Date: 20061211
File: 045 of 2005

BETWEEN

P.L., Applicant

and

Saskatchewan Government Insurance, Respondent

Appearances:
P.L., Applicant
Dale Brown, for the Respondent

Before: **Joy Dobko, Chair**
Carolyn Jones, Commission Member
Darleen Topp, 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
July 25, 2006

DECISION

[1] This is an appeal by the Appellant, P.L., of a decision made by Saskatchewan Government Insurance (“SGI”) dated January 4, 2005 with respect to the denial of benefits for ongoing chiropractic treatment.

FACTS:

[2] The Appellant was involved in a motor vehicle accident on December 6, 1999 (the “accident”).

[3] The Appellant has a history of prior motor vehicle accidents which pre-dated the accident. The first was on January 21, 1992 (the “January 1992 accident”). He had complaints of shoulder and back pain following that accident. He attended chiropractic treatment for his injuries. Eight weeks following the January 1992 accident, it was noted that he had some residual pain with minimal loss of function. On April 23, 1992, he was referred to Bourassa’s for a flexion extension injury with resulting headaches. The next motor vehicle accident occurred on September 4, 1992 (the “September 1992 accident”). He was diagnosed with traumatic soft tissue injury and advised to continue with physical therapy. On July 28, 1993, he attended upon his physician, Dr. Maurer. Dr. Maurer reported decreased range of motion of the SI joint and decreased left lateral bending and right rotation in the lower back. Dr. Maurer recommended that the Appellant continue to see Jeff Bourassa at Bourassa’s Physical Therapy. The Appellant’s injuries from these accidents continued.

[4] On November 12, 1999, which is just prior to the accident from which this appeal arises, the Appellant reported a slip on grease at his workplace. As a result he twisted his mid back and strained his low back. He was diagnosed with mechanical low back pain and spinal subluxations. On November 30, 1999, X-rays were taken of the Appellant’s thoracic spine, lumbar spine and pelvis. The x-ray report stated:

THORACIC SPINE

The alignment and vertebrae appear normal. There is slight disc space narrowing evident at T6-7.

LUMBAR SPINE WITH FLEXION & EXTENSION VIEWS

There is a mild scoliosis convex to the left. Flexion and extension are both slightly limited, but no instability is evident. There appears to be minimal wedging of L1 which may be related to a previous mild compression fracture. The vertebrae are otherwise unremarkable in appearance. The disc spaces are well maintained.

PELVIS

The pelvis, sacroiliac joints and hips appear normal.

[5] Following the December 6, 1999 accident, on December 7, 1999, the Appellant attended upon his chiropractor, Dr. Simpson, for treatment of his accident injuries. Dr. Simpson, in his practitioner's report to SGI, diagnosed the Appellant to be suffering from "moderate to severe acceleration deceleration syndrome with multiple spinal subluxations". He also made notation of a lump on the left lower anterior ribs. He further diagnosed WAD II and LBP II, with a delayed return to usual activities of two to six weeks.

[6] On December 14, 1999, following the accident, X-rays were taken of the thoracic spine again. The report stated:

THORACIC SPINE

Coned down views of the thoracolumbar junction were obtained. There is slight wedging of T12 and L1, which may be related to mild compression fractures, but there are no features to indicate whether these are recent or not and no adjacent soft tissue swelling is noted. Alternatively, these could be related to normal variations.

[7] The Appellant advised the Commission that the compression fractures noted at T12 and L1 relate to previous injuries and were not caused by the motor vehicle accident nor are they the subject of this appeal.

[8] The Appellant completed his application for benefits on December 21, 1999. The Appellant reported pain in his neck, both shoulders and down the entire left side of his body, ribs, low mid back, low back, left arm, left hand, left leg and abdomen, chest and groin. He further reported that he had difficulty with daily home activities, bending, lifting and prolonged walking at work and anything that involved putting pressure or strain on his chest or hips. The Appellant reported moderate neck pain and headaches prior to the accident. At the time of the accident, the Appellant reported that he was a Dietary Aide at [employer]. He further reported the injuries in this accident were a flare up of the injuries suffered in his January 1992 accident.

[9] The Appellant continued to complain of pain in his left ribcage; however, an x-ray taken of the Appellant's chest and left anterior lower ribs on December 22, 1999 showed no evidence of injury or pathology.

[10] On January 6, 2000, Dr. Simpson sent a report to SGI advising that the Appellant was scheduled to return to work on December 13, 1999, from his slip and fall at work on November 16, 1999. Dr. Simpson reported that he had shown significant improvement and in his opinion, the Appellant would have been able to return to work. We note that Dr. Simpson did not say that the Appellant was fully recovered; only that he had made significant improvement in three weeks.

[11] On January 27, 2000, Dr. Simpson sent another practitioner's report to SGI. He reported that the Appellant had improved significantly and that he was gradually able to do more activities. He expected the Appellant's symptoms to go on for another three to six weeks.

[12] On February 16, 2000, Dr. Simpson reported concerns about a "possible costo-cartilage separation of the left anterior region" which he wanted assessed by the secondary assessment team. However, despite previous improvement, Dr. Simpson reported minimal improvement in the Appellant's condition on March 2, 2000 and recommended ongoing chiropractic treatment three times per week.

[13] On March 7, 2000, the Appellant attended Saskatoon Musculoskeletal Rehabilitation Center ("SMRC") for a multi-disciplinary assessment. The assessment team concluded:

[The Appellant] has not fully recovered from the injuries sustained in the motor vehicle accident on December 6, 1999. The injuries [the Appellant] sustained in the MVA are recoverable. There is a possibility of a mild permanent deformity from the prominence of the left lower rib cage. This deformity will not affect [the Appellant's] functional recovery.

A. Diagnosis

- Left costo-chondral sprain (grade II+) at ribs 8-10 on the left with mild prominence of rib angle.
- Mechanical low thoracic pain, grade II

- Aggravation of chronic left shoulder impingement
- Mechanical low back pain, grade I.
- Fear of driving and changed driving patterns since the accident.

Status with respect to return to work or usual activity

- Functionally at a limited to light physical demands level; this is consistent with his job demands (self-reported).
- Further functional testing will be required to evaluate his ability to sustain work-related tasks.
- Off work since November 11th, 1999 for a work related injury; has remained off work since the MVA of December 6th, 1999.
- The left shoulder was previously accommodated for and will not be a barrier for a return to work.

B. Non Accident related Comorbidity

- Chronic pain syndrome
- Prior unresolved injury to the left shoulder
- Mild compression fractures at T12 and L1
- Adversity with SGI from prior injury claim

[14] The assessment team noted that the Appellant had a significant number of non-physical risk factors for chronic disability. They further reported a prolonged history of recovery following a previous motor vehicle accident and considerable animosity towards the insurer and a lack of trust. They noted he was suspicious of the assessment process and less than forthcoming during the interview. The assessment team recommended that the Appellant attend an eight week tertiary level treatment program which could occur in conjunction with a supernumerary return to work. They also recommended a screening evaluation by a psychologist to assess psychosocial barriers to recovery and evaluate the need for counseling with respect to the Appellant's fear of driving. At the appeal, the Appellant was very critical of SMRC and their recommendations.

[15] On April 19 and 20th, 2000, the Appellant was referred to FIT for Active Living (“FIT”) for an initial assessment. The team diagnosed the Appellant with left anterior chest and abdominal myofascial irritability; mechanical low thoracic and costovertebral junction pain and dysfunction; sleep disruption; and left shoulder pain exacerbated by the accident. They recommended 10-12 weeks of tertiary treatment including a graduated return to work program. The team felt tertiary treatment was appropriate considering that pain was out of proportion to the injury stage of healing and the length of time post-injury. The biomechanical examination done at the time of his assessment was:

In the thoracic spine, left T7 through T12 were more prominent in neutral and extended positions. With flexion a left rib hump was noted. The 7th through 11th ribs on the left were more prominent in neutral, and all articulations of the joints were irritable. Stiffness was noted in the left 5th through 9th ribs with potential hypermobility of the 10th and 11th ribs. With tests of these lower ribs, spasm end feel were noted. He had trigger points in the left latissimus dorsi.

At the shoulder, scapular alignment was symmetrical with bilateral anterior tipping. With shoulder flexion and adduction, a significant amount of crepitus was noted at the left scapula which could not be resolved with manual stabilization of the scapula. On return from the flexion position, the left scapula winged significantly. The left AC joint was non-irritable to palpation, but with accessory glide testing irritability was noted with posterior glide accompanied by spasm end feel. Crepitus was noted at the sternomanubrial joint.

At the lumbar spine, myofascial tenderness was noted of the oblique abdominal muscles, the rectus abdominus and the quadratus lumborum on the left side. Left L4-5 and L5-S1 were tender to palpation and irritable to articular tests. Myofascial tenderness was also noted at the left psoas tendon.

[16] The Appellant attended tertiary treatment from May 9, 2000 until July 21, 2000. Near the end of the FIT program it was determined by Dr. Bernacki that the Appellant had “slipping rib syndrome” and that it was not safe for him to continue in his current job due to the job requirements. As a result, on July 12, 2000, the Appellant’s return to work was terminated. Dr. Bernacki’s treatment plan was anti-inflammatory medication, abdominal ultrasound, and possible anesthetic injection or referral to a thoracic surgeon.

[17] Upon discharge from the FIT program, it was determined that the Appellant had not obtained maximum medical improvement. It was also determined that he would be unable to return to his previous employment due to the diagnosis of slipping rib syndrome and that he should seek employment within his abilities. The team stated he was able to work at a light to

medium level for 8 hours per day with restrictions in repetitive lifting, pushing, pulling and trunk rotation. Supportive recommendations were a theracane and primary physical therapy.

[18] The Appellant reported that Dr. Bernacki's diagnosis was a relief to him because someone had finally been able to explain to him where all of the pain was coming from in his left ribcage. He refers to his injury as his ribs separating from the ribcage. Also near the end of the FIT program, on July 20, 2000, the Appellant was involved in another motor vehicle accident (the "July 2000 accident"). Dr. Straza reported that the Appellant suffered a strain to his left chest and hip and neck strain.

[19] On July 21, 2000, the Appellant was advised by personal injury representative, Mr. Don Bowie, that SGI would not provide coverage for chiropractic treatments that did not involve hands on treatment. This was written on the understanding that the Appellant was receiving chiropractic treatment from Dr. Simpson by use of an activator gun because the Appellant could not tolerate manipulative chiropractic treatment. Also, on July 21, 2000, the Appellant attended upon Dr. Simpson regarding his injuries sustained in the July 2000 accident. The Appellant reported to Dr. Simpson that he suffered a re-aggravation of his chest and rib problems and the onset of neck pain. He was diagnosed with a WAD II.

[20] On July 25, 2000, Dr. Mierau, medical consultant for SGI, sent a report to Mr. Bowie with respect to the need for ongoing chiropractic treatment for the Appellant relating to his "floating rib condition". It stated:

A prerequisite for SGI funding for treatment is medical necessity. It is the doctor's opinion that the floating rib condition is not disabling. Furthermore, he states that there is no good treatment for it. The claimant has had 87 chiropractic treatments, including a trial concurrent with the treatment at FIT, without long term benefit. The issue of chiropractic in the treatment of this claimant was discussed in the FIT report. It is my view that SGI funded a long trial of chiropractic, even though the method of treatment used by the chiropractor is not on the list of approved interventions.

[21] The Appellant completed his Application for Benefits for the July 2000 accident on August 3, 2000. The Appellant reported pain in his neck, both shoulders and down the entire left side of his body, ribs, low mid back, low back, left arm, left hand, left leg and abdomen, chest and groin.

[22] As a consequence of Dr. Mierau's July 25, 2000 report, SGI sent a decision letter to the Appellant on August 9, 2000 with regard to his ongoing entitlement to massage therapy and chiropractic treatment. The relevant portion stated:

Further to our conversation of August 4, 2000, I have now had the opportunity to review the file in relation to the payment for two massage therapy treatments dated April 11 and 18, 2000.

The Secondary Assessment was done on March 7, 2000 and it indicates that "there is no indication that further massage therapy will expedite [the Appellant's] functional recovery" Therefore, we wish to advise that we cannot reimburse you for the massage therapy treatments taken on April 11 and 18, 2000. It appears that we have paid for 10 treatments prior to this time.

In regards to the chiropractic treatments, we wish to advise that we will not consider funding for chiropractic treatments in that they did not provide long term benefit for the floating rib condition. There must be a medical necessity for SGI to fund treatments and in your doctor's opinion the floating rib condition is not disabling. Also the method used by the chiropractor is not on the list of approved interventions.

[23] Mr. Bowie advised Dr. Simpson that SGI would not cover future chiropractic coverage for the Appellant's floating rib condition because FIT did not believe that the Appellant would receive any benefit from it. It appears that Mr. Bowie then agreed to cover one treatment per week based upon recommendations from the Appellant's family doctor.

[24] On November 7, 2000, the Appellant attended upon Dr. Lawlor, thoracic surgeon. Dr. Lawlor reported:

I saw this gentleman in the office today.

As you know, he was involved in a minor MVA in December 1999 and has had symptoms in his chest ever since.

He claims that the lower aspect of the ribcage on the left side is extremely tender. He can't move or breathe properly. Although this is significantly better than it was when it first started he still has a lot of discomfort here to the extent that he can't even pick up minor items or twist his body.

Apparently, he was told at the "FIT program" that his ribs were not totally healed.

On examination, I can't feel any floating ribs here. There is nothing to suggest that there is in fact a break. If there was a disruption or break, this should be completely healed.

I have no suggestions for him. There is certainly nothing surgical other than perhaps referring him to the pain clinic should his symptoms persist. Thank you for the opportunity of seeing him.

[25] On November 9 and 18, 2000, the Appellant attended upon Dr. Straza, his family physician. Dr. Straza opined that the Appellant was ready to participate in a gradual return to work but that he would likely experience left chest pain with activities for about a month.

[26] On June 16, 2001, Dr. Straza reported that the Appellant continued to have complaints of anterior left chest pain associated with activity or usage. Dr. Straza reported that muscle relaxants, massage and physiotherapy were symptomatically beneficial. He further reported that chiropractic care would be beneficial.

[27] Dr. Verna Mackey, chiropractor, produced a medical report on behalf of the Appellant on November 27, 2001 which related to his January 1992 accident. This report makes reference to the Appellant's January 11, 1992 motor vehicle accident and the injuries suffered in that accident. In particular, Ms. Mackey conducted a physical examination on August 5, 2001 during which she made several objective findings. She reported that the Appellant appears to have suffered from a moderate cervical acceleration-deceleration syndrome and post-traumatic multiple-site subluxation complexes with component parts. She believes if not addressed he will continue to suffer pain for the remainder of his life. It is believed this report was produced for the litigation surrounding the January 1992 accident; however, it is interesting to note that there is no reference to the intervening accidents of December 1999 and July 2000 and the impact they have had on the August 5, 2001 examination findings, especially when the Appellant reported an exacerbation of his injuries.

[28] On January 24, 2002, Dr. Simpson provided an updated report of the Appellant's condition. He diagnosed the Appellant with post traumatic subluxation complexes and slipping rib syndrome. Dr. Simpson opines that chiropractic treatments are required once per week for the foreseeable future.

[29] On June 24, 2002, Dr. Straza reported to SGI as follows:

As per your letter of May 7, 2002, please be advised that [the Appellant] had recurrent chest wall (rib) pain that impacted on his ability to perform his former occupation. I do not know to what degree such a disability currently (still) exists.

Further, the diagnosis of “slipped rib” is not well supported medically. Torn intercostals muscles generally heal in six to twelve weeks, cartilaginous disruption may be permanent but is of little functional relevance generally. I believe you have Dr. Lawlor’s (chest surgeon) opinion on file. To what extent chiropractic treatment can provide more than symptomatic benefit is disputed in the medical community.

[30] On January 30, 2004, Dr. Simpson reported to SGI regarding the Appellant’s ongoing complaints of thoracic spine, rib and left shoulder pain. He reported as follows:

[The Appellant] continues to experience thoracic spine, rib and left shoulder pain.

The thoracic spine and rib pain continue as a result of his post-traumatic slipping rib syndrome. Though some symptomatic relief is obtained from massage therapy and chiropractic adjustments [the Appellant] likely has a permanent injury with permanent physical restrictions and limitations.

[The Appellant] experiences discomfort and a pulling sensation with most ranges of motion of the left shoulder, accompanied with crepitus and clunking noises. This is also likely a permanent injury due to scar tissue build up and he will have ongoing restrictions for using his left shoulder.

Since it is now over four years since [the Appellant’s] injuries, it is unlikely he will fully recover, and he will suffer ongoing pain and physical restrictions.¹

[31] We note Dr. Simpson’s report reference the left shoulder condition which was caused by a previous accident and not the December 1999 accident. On November 29, 2004, the Appellant underwent a physical examination by chiropractor, Ms. Carol Concelliere. Her practitioner’s report to SGI diagnosed the Appellant with post-traumatic slipping rib syndrome. Dr. Concelliere reported that although the Appellant had plateaued, ongoing reasonable treatment frequently provided the Appellant with overall relief of his symptoms. She recommended soft tissue therapy to the intercostals muscles once per week.

[32] On January 4, 2005, SGI sent a decision letter to the Appellant advising that they would no longer provide chiropractic coverage for the Appellant’s slipping rib syndrome as it was not on the list of approved interventions for an injury of that nature. **This decision letter is the subject of this appeal.** The relevant portion of the decision letter stated:

I have had your file reviewed by our consultant and his opinion is that chiropractic treatment is not on the list of approved interventions for an injury of this nature.

Based on this information effective January 4, 2005, our payment for chiropractic treatment will be concluded.

[33] It would appear that the SGI personal injury representative relied upon the July 2000 medical report of Dr. Mierau when terminating coverage. This is inappropriate considering that SGI continued to fund chiropractic coverage for many years following that report. In any event, SGI obtained a second report from Dr. Mierau a few days following the termination letter which reiterates Dr. Mierau's earlier opinion.

[34] On January 10, 2005, Dr. Mierau provided an updated report regarding the Appellant's medical file. He stated:

I reviewed this file in July 2000. At that time the doctor documented his opinion that an injury to a 'slipped rib' is not an accepted diagnosis. I agree with his opinion. The crepitus and clunking of a shoulder joint described by Dr. Simpson is not abnormal and there is no known treatment for it.

Opinion: The rib condition to which Dr. Simpson refers (i.e. the 'post-traumatic slipping rib') is not a condition that is known to cause a permanent restriction. The permanent impairment is cosmetic. There is not known treatment for 'chronic slipped rib' or a 'clunking shoulder'.

[35] On April 29, 2005, Dr. Mierau reviewed the Appellant's file again. Dr. Mierau provided a list of what documentation he reviewed in order to give his opinion. His report stated:

Items indexed 1-41 were reviewed.

The reference to a 'slipped rib' was not mine but rather that of Dr. Straza in his letter of June 24, 2002 to Mr. Bowie of SGI. In this letter Dr. Straza also refers to the letter dated November 7, 2000 by Dr. Lawlor. Dr. Lawlor did not document a recognized clinical condition in his note of November 7, 2000.

With regard to your note of April 14, 2005:

I cannot address your concern regarding the diagnosis of slipped rib any more that I did in January. The condition, as described by the chiropractor, was addressed by Dr. Straza. The opinion that this is not an accepted diagnosis was Dr. Straza's opinion – not mine. I cannot comment specifically about the effectiveness or appropriateness of chiropractic for "a posttraumatic slipping rib" as described by Dr. Simpson any more than I could on January 10, 2005.

Without more information from Dr. Simpson about his diagnostic term and the treatment of the condition as he described it I cannot offer any more than one comment on the written opinions of Drs. Straza and Lawlor.

Opinion:

My position remains unchanged.

[36] In contemplation of this appeal, Dr. Mierau's final opinion was provided on May 30, 2006. The report has been reproduced:

Items 1-41 were reviewed.

The documented symptoms after the MVA that occurred on December 6, 1999 were:

- Posterior neck pain, left shoulder upper back pain
- Left chest wall pain
- Low back pain

On February 16, 2000, the condition that Dr. Simpson wanted the assessment team to address was the 'possible costicartilage separation at the left anterior region'.

On March 17, 2000, the secondary assessment team documented injuries in the MVA as:

- Mechanical neck pain (grade II), thoracic spine pain (grade II), and low back pain grade I
- Left shoulder strain – aggravation of a previous condition of left shoulder impingement
- Thoracic spine and left chest wall sprain – left chostochondral sprain (T8-10) grade III
- Conditions that pre-dated the MVA were:
 - Chronic pain syndrome
 - Unresolved left shoulder injury
 - Mild compression fractures T12, L1
- On April 19, 2000, the tertiary assessment team documented primary diagnosis as:
 - Slipping rib syndrome
 - Mechanical low back and thoracic spine dysfunction
 - Sleep disruption

Dr. Lawlor documented that there was nothing surgical for the left chest wall condition on November 7, 2000.

On June 24, 2002 Dr. Straza documented his opinion that the diagnosis of a 'slipped rib' is not well supported medically..."cartilaginous disruption may be permanent but is of little functional relevance." He stated that 'to what extent chiropractic treatment can provide more than symptomatic relief is disputed in the medical community'.

[The Appellant] was awarded a 1% permanent whole body impairment for change in form and symmetry to the trunk on October 1, 2002.

Description of the condition:

'Slipping rib syndrome' is a description of a chronic musculoskeletal condition, not a diagnosis in a literal sense of the term. The condition is also referred to as chostochondritis and costochondral sprain – grade III. The latter is consistent with the permanent impairment award for change in form.

Pathology:

The pathology is a traumatic disruption of the ligaments and cartilage that attach the ribs to the sternum. This condition can be acute or chronic. The acute stage is the first 6 weeks after the injury. During this time, it is possible to reduce the 'subluxation' of the rib' with manual therapy such as chiropractic. However, if the condition becomes chronic, i.e. the reduction of the subluxation is only temporary, then one must accept that the holding elements have been disrupted and will not heal in the normal position therefore the rib will not be held in the normal position and may even be 'loose'. This condition could then be classified as a 'slipping rib syndrome', chronic costochondritis or a chronic costochondral sprain – grade III.

Proposed treatment:

The chiropractic intervention being proposed by Dr. Simpson and Concelliere is one of manually reducing the rib subluxation. However, the anatomical elements that support the rib in position are disrupted and no amount of manual treatment can change that. One could argue that repeated reduction of the subluxation could actually make the condition worse by repeatedly stressing whatever holding elements that remain.

There is no manual therapy manoeuvre or surgical intervention that can permanently reduce a chronic 'slipping rib syndrome'. This opinion is supported by the documents provided by Drs. Straza and Lawlor.

Opinion:

A search of the medical, physiotherapy and chiropractic literature did not reveal any peer-reviewed documentation to support repeated manipulation of a costochondral subluxation.

The treatment plan recommended by Drs. Simpson and Concelliere is neither medically indicated, advisable, nor supportive for the reasons above. On the contrary, one could argue that a chronic recurrent subluxation of a costochondral joint should not be manipulated to avoid the risk of further joint irritation (pain) and instability at the joint due to repeated manipulation.

This opinion has been based on a review of file information and does not involve an examination of the customer. If other relevant information becomes available, then I would wish to review this information, and prepare another opinion if merited.

LEGISLATION AND STANDARD OF REVIEW

[37] 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.

[38] 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

[39] In this case, the Appellant has put SGI's findings of fact in issue by stating that he requires long term chiropractic coverage for his slipping rib syndrome and his "overall condition" relating to the slipping rib. SGI's position is that chiropractic treatment for a slipping rib is not an approved intervention for that type of injury. In light of the Appellant putting this finding of fact in issue, the factual issue for determination is whether there is a need for ongoing chiropractic treatment for the Appellant's slipping rib syndrome and "overall condition" pursuant to the rehabilitation benefit provisions provided under Part VIII.

[40] In the Appellant's case, the basis upon which SGI would provide Part VIII no fault rehabilitation benefits to him is set out in section 110 of *The Automobile Accident Insurance Act*ⁱⁱ (the "Act") in force at the time of his accident on December 6, 1999. The relevant section of the *Act* reads:

110(1) In this section, "**rehabilitation**" includes any or all of the following measures, programs and treatments that the insurer considers necessary or advisable to contribute to the rehabilitation of a victim, to lessen the victim's disability caused by the accident and to facilitate the victim's recovery from the accident:

- (a) physical and acquired brain injury programs and treatment;
- (b) occupational and vocational training and programs;
- (c) alterations to a victim's residence;
- (d) modification or purchase of vehicle for a victim;

- (e) purchase of special equipment for a victim;
- (f) any additional measure, program or treatment prescribed in the regulations.

(2) Subject to the regulations, the insurer may take any measure it considers necessary or advisable to contribute to the rehabilitation of a victim, to lessen a disability resulting from bodily injury and to facilitate the victim's recovery from an accident.

[41] It is our opinion that the wording and intent of Section 110 of the *Act* provides SGI with discretion as to which “advisable” rehabilitation benefits should be provided. We are not of the opinion that SGI has the discretion to refuse a “necessary” rehabilitation benefit. Therefore, in accordance with *Allary*, if there is discretion on the part of SGI as to whether to provide the benefit, and the claimant has put SGI's findings of fact in issue, then SGI's decision must be reasonable having regard to all of the evidence. If the rehabilitation benefit is “necessary”, and the claimant has put SGI's findings of fact in issue, then SGI's decision must be correct having regard to all of the evidence.

[42] Therefore, in light of the Appellant putting SGI's findings of fact in issue as to whether ongoing chiropractic treatment is required to treat his slipping rib syndrome and “overall condition”, the Commission must determine; firstly, whether the chiropractic treatment is “necessary” or “advisable”, and secondly; whether SGI's decision with respect to terminating the Appellant's coverage for chiropractic treatment was either correct (if we find chiropractic treatment is necessary) or reasonable (if we find the chiropractic treatment is only advisable) having regard to all of the evidence.

ANALYSIS

[43] At the outset of the appeal, the Commission attempted to determine which injuries of the Appellant required ongoing chiropractic treatment. The Appellant stated he was not claiming compensation for his shoulder and back but went on to state that he was claiming for his slipping rib syndrome and his “overall condition” relating to his slipping rib which may have an effect on his shoulder and back. He indicated he wished to go back to his chiropractor. Dr. Simpson to have an assessment to determine how well he is holding up without having chiropractic treatments.

[44] The Appellant went to great lengths to point out all of his concerns with how SGI has handled his case, as well as, other medical practitioners. In this case, we are reluctant to comment on many of the Appellant's complaints because they are outside of what we consider to be our jurisdiction in this case; namely whether ongoing chiropractic coverage is necessary to the Appellant's rehabilitation. However, they will be very briefly addressed at the end of our decision for the benefit of the parties.

[45] Mr. Brown, legal counsel for SGI, submitted that a decision as to whether or not the Appellant is entitled to rehabilitation benefits, namely ongoing chiropractic care, is one which should be made based upon the medical documentation and not on case management. Mr. Brown further submitted that the Commission needs to address whether ongoing chiropractic treatment is necessary or advisable to facilitate the Appellant's recovery, contribute to his rehabilitation or lessen his disability. Further, he requests that the Commission determine whether chiropractic treatment is recommended for a slipping rib syndrome and whether the ongoing treatment is treating conditions not related to the December 6, 1999 accident.

[46] The primary issue before this Commission is whether or not the chiropractic treatment that the Appellant is seeking can be considered treatment necessary or advisable to contribute to his rehabilitation. In doing so, we have reviewed all of the medical evidence on the file and the evidence provided at the appeal hearing, to arrive at our findings of fact and conclusions.

[47] The Appellant has a long history of chiropractic treatment, at least ten years prior to the accident in question. He also has a history of left shoulder and neck and back pain relating to his 1992 motor vehicle accident. It was also made very clear at the appeal that the Appellant had a long history of claims against SGI relating to accidents on January 21, 1992 and September 4, 1992. These claims were not resolved at the time of his December 6, 1999 accident. Dr. Mackey, in 2001, diagnosed the Appellant to be suffering from injuries to his left shoulder, upper chest region and a "moderate cervical acceleration-deceleration syndrome and post-traumatic multiple-site subluxation complexes with component parts" associated with these accidents. Dr. Simpson made a similar diagnosis. There are his pre-existing injuries which Dr. Mackey reported in August 2001 to be ongoing, nine years after his previous accidents.

[48] Just prior to the motor vehicle accident of December 6, 1999, the Appellant also suffered a mid and lower back strain due to a slip at his work. He was diagnosed with mechanical low back pain and subluxations. However, Dr. Simpson advised SGI that the Appellant would have returned to his work if he had not been involved in the accident of December 6, 1999. Following the accident, Dr. Simpson diagnosed the Appellant to be suffering from “moderate to severe acceleration deceleration syndrome with multiple spinal subluxations”. We find it almost impossible to determine if the injuries suffered in the Appellant’s December 6, 1999 accident are any different than those injuries he claims to have suffered in the work place accident and in his previous car accidents. It would appear that the Appellant suffered an exacerbation in the December 1999 accident of his previous injuries, at least according to the initial diagnoses made after the accident by Dr. Simpson. We presume this to be the injuries he is referring to when he states “his overall condition”. Therefore, the Appellant has asked us to review the slipping rib condition as it relates to his “overall condition” as we described above.

[49] Leaving the “overall condition” aside for now, Dr. Simpson does make note of a lump on the left anterior lower ribs after the December 6, 1999 accident. This would suggest a new injury but an x-ray taken of the ribs on December 22, 1999 showed no evidence of injury. In February 2000, Dr. Simpson suspected a “possible costo-cartilage separation of the left anterior region”. In March 2000, SMRC diagnosed him to be suffering from left costo-chondral sprain (grade II+). In July 2000, Dr. Bernacki diagnosed the Appellant with slipping rib syndrome. The Appellant was unable to tell us whether or not the costo-cartilage separation referred to by Dr. Simpson, the left costo-chondral sprain diagnosed by SMRC and the slipping rib syndrome are essentially the same diagnoses. There has also been reference to a “floating rib” which presumably is also referring to the same condition. We are all in agreement that the only medical evidence that we have before us to explain the different medical terms is the medical report of Dr. Mierau dated May 30, 2006 in which he advised that “slipping rib syndrome” is also known as chostochondritis and costochondral sprain – grade III. We accept Dr. Mierau’s report as it is the only medical evidence before us which explains the Appellant’s medical condition with respect to his left ribcage.

[50] We wish to note that the Appellant was extremely critical of the assessment team at SMRC for failing to diagnose his condition and for inappropriately forcing him through treatment during a stage of healing. In fact, in accordance with Dr. Mierau's medical opinion, SMRC did in fact diagnose the Appellant with "left costo-chondral sprain (grade II+)", which we are satisfied is the same diagnosis that Dr. Bernacki made at the FIT program. Therefore, we are not persuaded that SMRC did not properly diagnose the Appellant, only that they used a different medical term when referring to his condition.

[51] We also note that Dr. Mierau reported that slipping rib syndrome is a chronic musculoskeletal condition. This would explain why the x-ray did not show any fractures and Dr. Lawlor's subsequent medical opinion that there were no fractures. Despite reference to several different medical conditions we are satisfied that the Appellant suffered an injury to his left ribs in the December 6, 1999 accident which we will refer to it as "slipping rib syndrome", which we understand to be a disruption of the ligaments and cartilage that attach the ribs to the sternum. In so concluding, the primary issue is whether that condition is treatable with chiropractic care such that the Appellant's is entitled to benefits under section 110 of the *Act*.

[52] The Appellant's coverage was terminated on January 4, 2005. We have reviewed the medical documentation provided by SGI and Dr. Simpson with respect to the number of chiropractic treatments that the Appellant has received since his accident. The Appellant had a total of 249 chiropractic treatments between December 6, 1999 and July 30, 2006. According to Dr. Simpson, as of July 30, 2006, **the Appellant had 7 chiropractic treatments since his termination on January 4, 2005.**

[53] The Appellant also submitted that his chiropractic coverage had been cancelled several times by SGI. Upon a review of the evidence provided, SGI failed to reimburse the Appellant for 7 chiropractic treatments prior to the final termination on January 4, 2005. The evidence suggests that the Appellant may have had his benefits temporarily suspended for a very brief point in time in August 2000 only and therefore we are not satisfied that his evidence that his benefits were terminated several times is credible.

[54] In order to determine whether ongoing chiropractic treatment is necessary, we find the recommendations for treatment by FIT as well as the report of Dr. Mierau dated May 30, 2006 to be most useful in determining whether treatment will be beneficial. The Appellant spoke very highly about the medical professionals at FIT and we have therefore relied heavily upon their recommendations for care and treatment. We note that the team advised that he would need to seek alternative employment and also that a theracone be provided and primary physical therapy. Dr. Bernacki recommended anti-inflammatories, an abdominal ultrasound, possible anesthetic injection and a referral to a surgeon. There was absolutely no recommendation made for ongoing chiropractic treatment. The fact that the Appellant was provided with supportive chiropractic care during his attendance at FIT was only for the purposes of assisting in his recovery. We are completely satisfied that FIT never made a recommendation that chiropractic care be ongoing for treatment of the slipping rib syndrome. When questioned about this, the Appellant acknowledged that Dr. Bernacki did not specifically recommend chiropractic treatment for his slipping rib but he stated that Dr. Bernacki was aware of the Appellant's intention to continue chiropractic treatment. Dr. Bernacki did not testify; but, even if we accept the Appellant's evidence that Dr. Bernacki knew the Appellant would continue with chiropractic treatment; that does not mean that Dr. Bernacki recommended ongoing chiropractic treatment. In fact, Dr. Mierau's report of May 30, 2006 suggested that the chiropractic treatment proposed by Dr. Simpson and Dr. Concelliere to manually reduce the rib subluxation may be more disruptive than beneficial. Dr. Mierau disputed this type of treatment stating that when the anatomical elements that support the rib in position are disrupted, no amount of manual treatment can change that. Further, Dr. Mierau stated that repeated reduction of the subluxation could actually make the condition worse by repeatedly stressing the holding elements that remain. We find this to be an extremely important statement in the report of Dr. Mierau which we will comment on shortly. Furthermore, Dr. Mierau reported that the treatment plan proposed by Dr. Simpson and Dr. Concelliere is neither medically indicated, advisable or supportive for a chronic slipping rib syndrome.

[55] The Appellant criticized the medical reports of Dr. Mierau because, as we pointed out, Dr. Mierau's opinion was that chiropractic for the Appellant's slipping rib syndrome may be less than helpful. This is particularly telling because the Appellant has had very little treatment

since SGI terminated funding and he reported at the appeal that he is functioning well because he has learned how to manage his condition. The Appellant advised that he has been employed at the [hotel] for the last eighteen months and has not missed any work due to his “condition”. Although, the Appellant has indicated he would like to return to Dr. Simpson to determine how he is doing, we are of the opinion that the fact that he has not been seeking treatment should be the answer to that question. In that sense, we find that Dr. Mierau’s indication that treatment may be worsening his slipping rib syndrome is correct in light of how the Appellant is presently doing. He is able to manage his symptoms and that tells us that he is functioning better than when he was receiving regular intensive chiropractic treatment. In fact, as of July 30, 2006, the Appellant had only received 7 chiropractic treatments since his termination in January 2005 and furthermore, no treatments since August 2005. This is extremely important evidence in determining if the chiropractic treatment is necessary or advisable to contribute to the Appellant’s rehabilitation. Obviously, the Appellant has been able to and is functioning without chiropractic treatment.

[56] We have not relied heavily upon the previous medical opinions of Dr. Mierau because we find his last report dated May 30, 2006, to be most useful. We place more weight on the reports of Dr. Mierau than Dr. Simpson, even though Dr. Mierau has not examined the Appellant because we are satisfied that the Appellant’s condition is that of “slipping rib syndrome”, a musculoskeletal condition. We are satisfied with Dr. Mierau’s review of the literature regarding medically indicated treatment for this condition, particularly in light of the Appellant’s reports of how he was doing at the time of the appeal. Further, we found Dr. Simpson’s recommendations to include treatment for pre-existing injuries which are clearly not related to this appeal and should have been separated from the Appellant’s claim for chiropractic care for his slipping rib. In particular, we refer to Dr. Simpson’s request for treatment for the left shoulder which clearly related to the 1992 accident and by the Appellant’s own admission was not the subject of this appeal.

[57] We also note that the Appellant submitted during his evidence that he did not know how much SGI could spend on him with respect to chiropractic and massage therapy treatments. He advised he will use this treatment for the rest of his life and he wanted to negotiate coverage and

the length of time that it will be provided. We find this to be a peculiar statement. The issue of rehabilitation for the Appellant is not what SGI has available to spend on him, it is that SGI is obligated to provide rehabilitative treatment if it is necessary. The Appellant appeared to suggest that as long as SGI has funds for his treatment they should be paying for his treatment. This is not the intent of the Act. It is to provide rehabilitation necessary to treat motor vehicle accident injuries to facilitate the insured's recovery. We also wish to note that the Appellant did not testify that he was not seeking chiropractic care because he could not afford it. Therefore, we do not believe that financial constraints prevented the Appellant from having chiropractic treatments, rather he chose not to go because he was able to manage his slipping rib syndrome without attending regular treatment.

[58] The Appellant has not convinced us that his chiropractic treatment is necessary or advisable. Firstly, at the time of the appeal he had not had treatment for approximately one year and he reported that he was functioning well and had not missed any work due to his condition. Secondly, we have relied upon the opinion of Dr. Mierau with respect to the identifying the condition and also medically recommended forms of treatment. In addition, Dr. Bernacki did not recommend treatment for the condition other than anti-inflammatories. Dr. Lawlor and Dr. Straza also opined that there was no recognized form of treatment for the Appellant's condition. Dr. Straza even stated that the effectiveness of chiropractic treatment was disputed in the medical community other than for symptomatic relief. We prefer the evidence of Dr. Mierau and Dr. Bernacki over that of Dr. Simpson and Dr. Concelliere. We find their recommendations for ongoing chiropractic treatment to be based upon symptomatic relief only and we do not believe that ongoing chiropractic treatment is contributing to the Appellant's rehabilitation, lessening his disability or facilitating his recovery, particularly in light of his ability to function without chiropractic treatment for the last year.

[59] With respect to the Appellant's "overall condition", we are not satisfied by the medical evidence or the Appellant's evidence that his "overall condition" requires ongoing chiropractic care. The Appellant's personal decision to make use of chiropractic care for the rest of his life and his desire to have his condition evaluated to see if the slipping rib is affecting his overall condition is not medical evidence that chiropractic treatment is necessary to his rehabilitation.

[60] In light of our findings, it is not our opinion that ongoing chiropractic treatment is necessary or advisable in this case and accordingly, we find SGI's decision to be correct and reasonable. Further, we are not of the opinion that the Appellant needs to see his chiropractor to assess how he is doing without treatment and its effect on his overall condition. In our opinion, the best assessment of how the Appellant is functioning is shown by his ability to function without treatment.

[61] Finally, turning to the Appellant's concerns with the administration of his file. The Appellant went to great lengths to criticize SGI and other medical professionals for their conduct and the administration of his file. We acknowledge that the Appellant was frustrated with SGI and quite obviously from his testimony he has a long acrimonious history with SGI. We acknowledge that the lack of a diagnosis contributed to the Appellant's frustration and pain. We further acknowledge that there are some examples in the administration of the Appellant's file that could have been addressed more appropriately by SGI. Mr. Brown candidly admitted that requesting a medical report after issuing a decision letter would not be appropriate, as had occurred in this case. Mr. Brown also indicated that while this is not how he would like to see a personal injury representative handle a file, the central issue is whether the chiropractic treatment is necessary on an ongoing basis for the Appellant's recovery. Clearly, we are not in agreement with this conduct by the personal injury representative. However, this Commission often reviews subsequent medical opinions submitted by both parties to determine whether SGI's decisions are correct, therefore, other than identifying that it was inappropriate, we still find Dr. Mierau's opinions to be relevant to the issues and have relied upon them.

[62] We are also troubled by some of the comments of the Appellant at the appeal. The Appellant presented at the appeal as being very skeptical and critical of the insurance scheme and SGI. He testified about tactics he used to present his claim because "he had learned from his previous tort experience on how to deal with SGI". He justified everything that he did stating that it was because of his previous dealings with SGI. It is our opinion that the Appellant may not have been very cooperative or forthcoming when dealing with SGI and medical professionals who were trying to treat his injuries because of his extreme distrust of the system; even though he believes he was. For example, at the appeal, the Appellant constantly referred to

his “overall condition” but when questioned he was very vague as to what that actually entailed. Similarly, the Appellant presented into evidence several pieces of correspondenceⁱⁱⁱ that he forwarded to SGI with regards to his interpretation of how his claim had been handled by various SGI employees. It is not necessary for us to get into the details of the correspondence or to reproduce the documents other than to say that many of his comments were derogatory and belittling to SGI employees; comments which serve no purpose other than to break down communications between the insurer and the claimant. At the appeal, he openly criticized and challenged the professionalism of many medical professionals involved on his file, which in our opinion was inappropriate and without any factual basis in light of the evidence filed before us. Further, even the answers provided on the appeal application to the Commission are highly critical and derogatory. Much of the correspondence written and the comments made by the Appellant at the appeal jeopardized his credibility.

[63] In conclusion, it is our opinion that both parties contributed to the problems associated with the Appellant’s file administration.

CONCLUSION

[64] The decision made by SGI dated January 4, 2005 which terminated the Appellant’s benefits for ongoing chiropractic treatments is upheld. As the Appellant has not been successful in his appeal, he is not entitled to costs of his appeal.

Dated at [Saskatoon](#), Saskatchewan, on [December 11, 2006](#).

[Joy Dobko](#), Chair

[Carolyn Jones](#), Commission Member

[Darleen Topp](#), Commission Member

ⁱ S180

ⁱⁱ RSS 1978, c. A-35 (1995)

ⁱⁱⁱ C8A-9A; C11A-12A; C13A; C17A-19A; C20A-21A; C22A-25A