

**Automobile Injury Appeal Commission  
Province of Saskatchewan**

**Citation:** *W.R. v. Saskatchewan Government  
Insurance, 2006 SKAIA 100*  
**Date:** 20061221  
**File:** 136 of 2005

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**BETWEEN**

**W.R., Applicant**

**and**

**Saskatchewan Government Insurance, Respondent**

**Appearances:**  
**W.R., the Applicant**  
**Joan Eremko, For the Respondent**

**Before:** **Barbara Tomkins, Chair**  
**Jane Lancaster, Q.C., Commission Member**  
**Conrad Hnatiuk, Commission Member**

**THIS DECISION HAS BEEN EDITED TO PROTECT THE PERSONAL AND HEALTH  
INFORMATION OF INDIVIDUALS BY REMOVING PERSONAL IDENTIFIERS AND  
OTHER IDENTIFYING INFORMATION**

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Heard at Regina, Saskatchewan  
December 13, 2006

## DECISION

[1] The Appellant, W.R., suffered serious injuries in a motor vehicle accident on December 2, 2004. She was hospitalized for approximately two months, during which time she underwent surgery to both of her legs. As part of her recovery and rehabilitation, it was recommended that the Appellant participate in the tertiary program at Wascana Rehabilitation Centre for 12 – 16 weeks. Saskatchewan Government Insurance (hereafter called “SGI”) encouraged her attendance.

[2] The Appellant attended the program for approximately 12 weeks, commencing late in June 2005. During her time in the program, in accordance with SGI policy, the Appellant received income replacement benefits (hereafter called “IRB”).

[3] The Appellant was discharged from the program pursuant to a Discharge Note dated September 13, 2005. In light of her discharge, SGI discontinued the payment of IRB and notified the Appellant of its decision in this regard by letter dated September 14, 2005. The Appellant appealed this decision.

## FACTS

[4] The Appellant participated in the tertiary program at Wascana Rehabilitation Centre (“WRC”) for 12 weeks. She was observed by staff to have worked diligently in the program, never missing a day and often coming on days she was not scheduled or required to attend. She worked independently at the exercises, as well as other aspects of her rehabilitation. As part of the program, the Appellant undertook a woodworking project; one of the staff members commented that her skills at this work were “fabulous”.

[5] However, due to a breach of WRC’s zero tolerance policy respecting substance abuse, the Appellant was discharged from the program. It was noted that she would likely have been discharged within a few days in any event, given her superior progress.

[6] WRC had lawful authorization, and arguably obligation, to conduct random drug screening on the Appellant. In conducting that screening, WRC staff obtained evidence

that suggested drug usage and, when confronted, the Appellant admitted it. Given the Appellant's circumstances and the hospital's policy prohibiting drug usage by persons attending their programs, the Appellant was discharged from the program. In consequence of this, her income replacement benefits were discontinued by SGI.

## **JURISDICTION AND STANDARD OF REVIEW**

[7] The Commission derives its jurisdiction from section 191 of *The Automobile Accident Insurance Act*. The section indicates that appeals may be made to the Commission against decisions made by SGI under Part VIII of the *Act*. By section 193(7), the Commission is empowered, upon appeal, to:

- (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.

[8] The Commission's standard of review has been addressed in *Allary v. Saskatchewan Government Insurance*, 2006 SKCA 89. At paragraph 14 of the decision, Justice Vancise said, "A reading of the relevant statutory provisions would indicate that there is more than one standard of review potentially applicable to a review of a decision of SGI." He went on to say that where there was no discretion on SGI's part with respect to the payment of a benefit, the appropriate standard of review is correctness. It is implicit in the decision that where the decision under review involves the exercise of discretion, the appropriate standard of review will be reasonableness.

[9] In this case, SGI did not specify the section of the *Act* pursuant to which it purported to discontinue the Appellant's IRB. We believe the decision was based on section 183(e) of the *Act* which provides as follows:

183 The insurer may refuse to pay a benefit to a beneficiary or may reduce the amount of a benefit or suspend or terminate the benefit if the beneficiary:

- (e) without valid reason, refuses, does not follow or is not available for treatment recommended by a practitioner and the insurer.

[10] Thus, in the event that an insured refuses, does not follow or is not available for recommended treatment, SGI is not required to suspend or terminate benefits but it may

do so. This is clearly discretionary. As such, our standard of review in this case is reasonableness.

## **ANALYSIS**

[11] The question in this appeal is whether SGI's decision to discontinue the Appellant's income replacement benefits upon her discharge was reasonable.

[12] In this regard, we note that SGI's decision letter dated September 14, 2005 refers only to the termination of IRB and does not purport to discontinue or otherwise affect any other benefit to which the Appellant might be entitled. Indeed, we were reassured of this at the hearing and are advised that the determination of other benefits was on-going.

[13] The payment of IRB in these circumstances is dependent upon an insured's participation in an approved rehabilitation program. In this case, the Appellant received IRB for as long as she participated and not for any time that she did not. We are satisfied that when the Appellant's participation in the program was terminated because of a significant breach of the treatment facility's rules, the policy reasonably required that the IRB be discontinued and that this would be the likely result irrespective of the reason participation was discontinued. As such, SGI's decision to terminate her IRB was reasonable.

## **CONCLUSION**

[14] For the reasons given above, SGI's decision to terminate the Appellant's income replacement benefits for the period indicated and for the reasons specified in its letter of September 14, 2005 is upheld. The Appellant's appeal is dismissed.

**Dated** at Regina, Saskatchewan, on December 21, 2006.

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Barbara Tomkins, Chair

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Jane Lancaster, Q.C., Commission Member

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Conrad Hnatiuk, Commission Member