

**Automobile Injury Appeal Commission  
Province of Saskatchewan**

**Citation:** *S.A. v. Saskatchewan Government  
Insurance, 2007 SKAIA 063*  
**Date:** 20060514  
**File:** 016 of 2005

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**BETWEEN**

**S.A., Applicant**

**and**

**Saskatchewan Government Insurance, Respondent**

**Appearances:**  
**Keith Amyotte, for the Applicant**  
**Dale Brown, for the Respondent**

**Before:** **Jane Lancaster, Q.C., Chair**  
**Al Knippel, Commission Member**  
**Carol Olson, 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 Saskatoon, Saskatchewan  
April 26, 2007

## DECISION

[1] The Appellant, S.A., appeals the November 8, 2004 decision of Saskatchewan Government Insurance which terminated chiropractic treatment.

[2] The Appellant had been injured in a motor vehicle accident on February 4, 2000. As a result of this accident, she suffered severe headaches, severe neck pain, pain in her left trapezius and shoulder and lumbar pain.

[3] A MRI showed significant pre-existing arthritis as well as a posteriolateral disc herniation at C6. It was unclear if this was aggravated by the motor vehicle accident.

[4] She was referred to FIT for Active Living Program with the restriction from Dr. Voll, neurologist, that she should have no cervical manipulations or mobilizations.

[5] The Appellant continued to experience severe discomfort especially cervicogenic headaches, thoracic and low back pain, left knee and mild traumatic brain injury which was nearly completely resolved. These were attributed to her motor vehicle accident. It was unclear whether issues with C8-T1 were accident related. In addition to these conditions, the Appellant also was diagnosed with hypertension, obesity, osteoarthritis of cervical spine, chronic bronchitis and history of diagnosis of fibromyalgia. In addition, at Wascana Hospital, additional non-injury related issues such as reflux and urinary issues were reported by the Appellant.

[6] She was referred to tertiary treatment on February 11, 2002 and assessed on June 18, 19 and 20, 2002. As a result of this assessment, the Appellant was set up with a home exercise regime, as well as therapy in [town] twice a week, swimming, and stretching. This program was set up to accommodate the Appellant's rural location and family priorities.

[7] As she continued to experience significant pain in her lower back, constant pain in her head, numbness in arms, and dizzy flashes, she was referred by SGI to Wascana Rehabilitation for treatment.

[8] The Wascana Hospital, the tertiary assessment centre, made a number of recommendations to the Appellant recognizing that she felt strongly that about the direction and type of treatment that worked best for her. As a result, Wascana advised that the Appellant had likely reached maximum medical improvement, although she would benefit from lumbar strengthening, but the physiotherapy and chiropractic treatment that she is willing to do or her personal situation will allow has not been effective.

[9] However, Wascana did recommend a series of acupuncture treatments if she obtained significant prolonged relief. SGI approved a series of acupuncture treatments.<sup>1</sup> In addition, Wascana had performed a functional assessment of the Appellant and had concluded that she met the job demands of a regular school teacher.

[10] The Appellant attended Dr. Sheppard, chiropractor, in June 2004. He had begun treating the Appellant October 31, 2003 predominantly for right side lower back pain. He advised that the Appellant had fallen down steps in May 2004 and this had aggravated her lower back, neck and upper back pain. He noted that she also suffered headache, numbness of finger of left hand, pain in right calf and thigh. In a letter to SGI, he stated:

Treatment rendered: I provide spinal manipulation/mobilization on an as-needed basis for control of chronic symptoms. I understand that despite extensive treatment in the past, she continues to experience chronic pain. **I don't really think there is anything more that I can offer her in hopes of resolving her condition.** (emphasis added)

[11] The Appellant's medical doctor, Dr. Morin, wrote to SGI on August 13, 2004. She indicated that the Appellant was a new patient to her. She advised that the Appellant's major concerns were recurrence of headaches, migraine/tension headache, as well as early onset of numbness with movement of both arms above shoulder or head. There is also some weakness of both arms, left greater than the right, and also complaints of decreased strength. In addition, the Appellant had complained of stool incontinency which had mostly resolved, stress incontinence onset one year after accident, as well as weakness, numbness and fatigue of arms.

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<sup>1</sup> April 11, 2003

[12] Dr. Morin advised that the Appellant was managing her symptoms with chiropractic, massage, acupuncture, as well as swimming. She recommended that the Appellant have access to these treatments on a regular basis and for as long as it is beneficial for relief of her symptoms.

[13] SGI referred the Appellant's medical file to their chiropractic consultant, Dr. Miereau for a medical opinion on continued funding for chiropractic treatment. Dr. Mierau did not recommend further funding for chiropractic funding. He also commented on the fact that he doubted whether the Appellant's GI symptoms were related to the accident, and preferred the reports of Wascana and FIT as to whether the Appellant's symptoms were motor vehicle related.

**Preliminary Issue:**

[14] Counsel for the Appellant advised that the Appellant was appealing the SGI's decision regarding chiropractic care and in addition, a generalized concern by the Appellant of the breakdown in communication with SGI which has resulted in termination of a number of benefits during the course of her dealings with SGI.

[15] Counsel for SGI had filed copies of an October 15, 2002 Notice of Motion to the Court of Queen's Bench and a Queen's Bench order dated November 28, 2002 in which the Appellant had appealed decisions of SGI regarding income replacement and medical benefits.

[16] Counsel for the Appellant advised that in light of the fact that the Appellant's appeal relating to these issues were currently before the Court of Queen's Bench, that the appeal before the panel was restricted to the issue of chiropractic benefits only.

**ISSUE:**

Is SGI responsible for funding for the Appellant's chiropractic treatment?

**Relevant Legislation:**

[17] Section 110 of The Automobile Accident Insurance Act in force at the time of the Appellant’s accident provides:

**“Rehabilitation**

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 an 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 a 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.”

**STANDARD OF REVIEW**

[18] What is the standard of review for this appeal? Section 110(1) reads as follows:

“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 an accident and to facilitate the victim’s recovery from the accident...”

[19] When determining the standard of review for this appeal, we have considered and intend to follow the decision in *I.S. v. Saskatchewan Government Insurance*.<sup>2</sup> In *I.S.*, the Commission considered a benefit pursuant to section 112 of the Act (formerly section 110). The Commission held in *I.S.* that where the benefit is “necessary” the standard of review is “correctness”. However, where the treatment is “advisable” then the standard of review is whether the decision was “unreasonable”.

[20] Adapting the comments of the Commission in *I.S.* to this appeal, the question for us to consider is whether, given all of the evidence, chiropractic treatment is “necessary” or “advisable” for the Appellant. If the evidence supports the finding that chiropractic treatment is “necessary” then we must determine whether the decision made by SGI was

correct. On the other hand, if the evidence supports the finding that physiotherapy treatment is “advisable” then we must determine whether the decision made by SGI was reasonable.

[21] In previous decisions before the appeal panel, Dr. Mierau, medical consultant for SGI, has testified regarding the criteria necessary to fund supportive care for an injury. Supportive Care is defined in the Glenerin Guidelines<sup>3</sup> as follows:

Treatment for patients who have reached maximum therapeutic benefit, but who fail to sustain this benefit and progressively deteriorate when there are periodic trials of withdrawal of treatment. Supportive care follows appropriate applications of active and passive care including rehabilitation and lifestyle modifications. It is appropriate when alternative care options, including home based self-care, have been attempted. Supportive care is inappropriate when it interferes with other appropriate primary care or when the risk of supportive care outweighs its benefits, i.e., physician dependence, somatization, illness behavior, or secondary gain.

Preventative/Maintenance Care is defined as follows:

Any management plan for the purpose of preventing disease, prolonging life, promoting health and enhancing the quality of life. The treatment plan is designed to provide for the patient’s well-being or for maintaining the optimum state of health.

[22] Dr. Mierau has testified that the difference between supportive care and preventative/maintenance care is that supportive care arises out of therapeutic necessity and preventative/maintenance care is elective or a personal choice on the part of the patient. The criteria for supportive care are a documented permanent restriction or impairment which causes an increase in functional deterioration if treatment is withdrawn. Supportive care is treatment that is necessary to maintain function for a defined medical condition.<sup>4</sup>

## **DISCUSSION;**

[23] The Appellant testified at the hearing and testified that she wants to continue chiropractic treatment on an as-needed basis in order to deal with the pain she suffers as a result of the injuries sustained in her motor vehicle accident.

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<sup>2</sup> 2006 SKAIA097

<sup>3</sup> Judicial notice is taken of the Clinical Guidelines for Chiropractic Practice in Canada also referred to as the Glenerin Guidelines

<sup>4</sup> S.N. v Saskatchewan Government Insurance, 2005 SKAIA 009 at p.12

[24] She testified that the pain she suffered was such that she needed to take significant pain drugs and she had decided that rather than taking the pain drugs, she decided to “take back her life” and used a combination of acupuncture treatments, massage therapy, chiropractic treatments, home exercise program and aquasizes to relieve her pain symptoms.

[25] She testified that since the accident, she knows what treatments she needs to do and although chiropractic treatments never cure her low back pains, it relieves the tension down the spine which causes her low back pain.

[26] Her most recent chiropractic treatment was in December 2006 and she thought she may have seen her chiropractic 2-3 times in 2006. She says that although she regularly manages her condition through home massage, home exercise, when she “over does it”, she suffers spasms down her spine.

[27] The chiropractic treatments she receives do not relieve her headaches, and she does not receive neck manipulations, but has traction for her neck, rotation of her hips, and manipulations on her spine. Sometimes she testified that she needs one treatment, but if she does not obtain relief, she has a series of chiropractic treatments.

[28] The Appellant did not take issue with the Wascana Report regarding her medical condition and agreed that this report had recommended a series of acupuncture treatments which had been approved by SGI.

[29] Counsel for SGI argued that there were a number of decision letters regarding the Appellant’s eligibility for benefits pursuant to Part VIII of the Automobile Accident Insurance Act.

[30] On April 11, 2003, SGI wrote to the Appellant providing her with a copy of the tertiary assessment report arising from the Appellant’s attendance at Wascana Hospital in December, 2002.

[31] This decision letter, in the view of SGI is important, as it confirmed:

.....Specifically the tertiary assessment team recommends that you follow up with your family physician with respect to investigations of cervical stenosis and sensory

abnormalities relating to the ulner nerve entrapment and possible carpal tunnel syndrome.

The team recognizes that further lumbar strengthening may be beneficial and that you should continue strengthening on your own as it is unlikely that continued formal treatment would provide significant further benefit. The assessment team also felt that a trial of acupuncture may be beneficial. The efficacy of this intervention would have to be monitored to ensure that the desired results are achieved. Typically, SGI limits funding for treatment of symptomatic relief as long-term dependence can unfortunately develop without long-term gains. Accordingly, SGI will fund the six acupuncture treatments and will discontinue the funding of massage, gym membership and pool program as of May 2, 2003. This should allow you the time you need to adjust to a home-based fitness regime.

The functional assessment portion of your attendance at Wascana indicated that you meet the job demands of a regular school teacher. Although your original teaching position is no longer available, your employer has indicated an interest in facilitating your return should a position become available.

[32] Counsel for SGI noted that the Appellant had never appealed this decision letter. A further letter from SGI dated April 4, 2004, was a closure letter indicating to the Appellant the breakdown of the benefits she had received from the motor vehicle accident from SGI.

[33] Counsel for SGI argued that Dr. Sheppard's June 7, 2004 letter outlining the Appellant's condition and his assessment of conditions relating to whether these conditions are the result of the motor vehicle accident. One of the problems, counsel outlines, with Dr. Sheppard's assessment is that we are not aware of what medical records he took into consideration in drawing his conclusion as to causation.

[34] This is a similar situation for Dr. Morin who began treating the Appellant in March 2004 and although, the Appellant testified that Dr. Morin works in the same clinic as her previous doctor, McCuaig, it is unknown to us, what medical records were taken into account in determining if the Appellant's major concerns in August 2004

of symptoms of weakness and numbness and fatigue associated with minimal effort. She also has a history of difficulty sleeping due to discomfort and pain. It comes of no surprise, that her mood, is also affected by all these chronic symptoms.

On review of systems: major concerns are recurrence of headaches, migraine/tension headache, as well as early onset of numbness with movement of both arms above the shoulder or head. There is also some weakness of both arms, left greater than right, and also complains of decreased strength.

[35] Counsel for SGI referred us to the Initial Assessment of the Secondary Treatment Centre where the Appellant outlined 35 subjective symptoms she was experiencing. At the Tertiary Treatment program at Wascana Hospital made recommendations regarding her treatment on June 2002 and chiropractic treatment was mentioned as part of those recommendations.

[36] Counsel for SGI argued that at the time of the April 2003 decision letter, chiropractic treatment was not part of the Appellant's ongoing plan. The Appellant is not asking that chiropractic treatment plan be set up, but rather she wants access to chiropractic treatment when she wants it.

[37] We interpret Dr. Mierau's report regarding causation as confirmatory of the tertiary assessment's assessment with regard to causation and that conditions such as neck, midback, low back, left knee conditions as well as resolving post-traumatic brain injury were motor vehicle injury related and that other conditions like fibromyalgia and upper limb neuropathy were not. We agree that as a chiropractor, it would be unlikely that Dr. Mireau or Dr. Sheppard have the expertise to comment on whether GI symptoms are related to the motor vehicle accident.

[38] In any event, the Appellant's request for chiropractic services is for relieving pain and stiffness in her spinal column.

[39] The tertiary assessment by Wascana Hospital in December 2002 did not recommend chiropractic services for the Appellant. The Appellant did not appeal the decision of April 2002 wherein SGI set out what benefits they were prepared to fund. Chiropractic services were not mentioned. It appears that the Appellant has only recently availed herself of the services of a chiropractor and then only 2-3 times over the past year.

[40] This is not a situation where SGI is terminating a benefit that an insured had been entitled; rather, it appears from Dr. Sheppard's medical notes that the Appellant attended for services beginning on October 31, 2003, and 4 treatments in November 2003, 2 times in January 2004 and then approximately 6 times in April/May 2004 after falling down steps, an

accident so serious that she feared that she had broken her back and lay unmoving for over an hour.

[41] We are unable to conclude that Dr. Sheppard has provided a diagnosis with respect to permanent impairment or structural damage that warrants ongoing supportive care for the Appellant. In fact, Dr. Sheppard states that “I don’t really think there is anything more that I can offer her in hopes of resolving her condition. ”There is no medical evidence that if the Appellant does not receive chiropractic services on an as needed basis that she will decline in her ability to function or that continued chiropractic services will restore function.

[42] We therefore conclude that SGI’s decision not to fund chiropractic care was not an error of law or unreasonable and the decision is upheld.

**Dated** at Saskatoon, Saskatchewan, on May 14, 2007.

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Jane Lancaster, Q.C., Chair

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Al Knippel , Commission Member

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Carol Olson, Commission Member