

**Automobile Injury Appeal Commission
Province of Saskatchewan**

Citation: *N.N. v. Saskatchewan Government Insurance,*
2004 SKAIA 090
Date: 20070807
File: 012 of 2006

BETWEEN

N.N., Applicant

and

Saskatchewan Government Insurance, Respondent

Appearances:
N.N., the Applicant
Jane Watson, for the Respondent

Before: **Barbara Tomkins, Chair**
Jeffrey Scott, Commission Member
Beverly Cleveland, 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 Regina, Saskatchewan
June 5, 2007

DECISION

[1] The Appellant, N.N., appeals a decision by Saskatchewan Government Insurance (SGI) dated January 9, 2006, concerning her further entitlement to benefits under Part VIII of *The Automobile Accident Insurance Act*, c. A-35, R.S.S. 1978, as amended (the “Act”). The Appellant disagrees with SGI’s decision that her current conditions no longer relate to injuries suffered in the accident. In particular, the Appellant disputes the pain and restriction in her neck and associated headaches were not caused by the accident.

JURISDICTION

[2] This Commission derives its jurisdiction to hear and consider appeals from section 191 of *The Automobile Accident Insurance Act*:

191(1) A claimant may appeal a decision of the insurer pursuant to this Part to either the Court of Queen’s Bench or the appeal commission within the later of:

(a) 90 days after the date of the insurer’s written decision; and

(b) if a claimant has requested mediation pursuant to section 190, 60 days after the date [of] the mediator’s written statement pursuant to subsection 190(8) declaring that the mediation is completed.

[3] This section sets out the time frames within which appeal may be brought before this Commission. Barring an express agreement between the parties to alter the limitation period¹ or exceptional circumstances, the Commission is without jurisdiction to consider appeals brought outside these time frames.² In this case, SGI ‘s written decision is dated January 9, 2006 and the Appellant’s appeal was filed on January 30, well within the 90 days set out in subsection 191(1)(a) above, and is properly before us.

SUMMARY OF FACTS

[4] The Appellant was involved in a motor vehicle accident at an uncontrolled intersection on November 10, 2003 when a vehicle turned left across the path of the car she was driving. The right front corner of the Appellant vehicle struck the right rear wheel, quarter panel and fender of the other vehicle.

¹ *The Limitations Act*, C. L-16.1 , S.S., 2004, as amended by S.S., 2007, c.28; section 21

² *Mintzler v. Saskatchewan Government Insurance* 2001 SKCA 54 (CanLII)

[5] Following the collision, the Appellant attended the South Hill Medical Clinic and a few days later, on November 14, 2003, she saw her family doctor, Dr. Sanderson. He prescribed anti-inflammatory (Celebrex) medication and referred her for physical therapy.

[6] In her Application for Benefits, completed on November 25, 2003, the Appellant indicated that she was experiencing right-sided pain, particularly in her neck, shoulders/upper back, right arm and elbow, low back and right knee. She described the most severe injury as being to her neck.

[7] The Appellant underwent an intake assessment at Independent Medical Rehabilitation (IMR) on November 20, 2003. The physical therapist examined the Appellant and conducted cervical, thoracic and lumbar range of motion tests. She noted moderate to severe myofascial irritability and restriction through the cervical and upper thoracic paraspinal and upper trapezius (muscles) and mild to moderate restriction through the rest of the paraspinal muscles; articular irritability all through cervical and upper thoracic and lumbar spines; normal ligamentous stress tests with positive pain provocation through all resisted shoulder ranges of motion.

[8] The therapist further reported the Appellant exhibited functional limitations in her ability to reach above her shoulders, head, lift anything more than 5 lbs. floor to waist and repetitive arm use for activities with sustained neck and lumbar flexion and extension. She noted a functional abilities evaluation would be done at a later date as deemed necessary.

[9] The Appellant was diagnosed with a whiplash associated disorder (WAD) grade II and the therapist recommended the following treatment plan:

1. Patient education on condition, treatment goals, plans, and self-management;
2. A regional conditioning program to address neck, right upper extremity, and lumbar stability, mobility and strength;
3. Manual therapy, heat, and ice.

[10] The Appellant started her rehabilitation program on November 20. She progressed well and was discharged on January 22, 2004 with “only occasional and minimal aggravation of neck pain”. Despite being discharged without restrictions, the therapist indicated that the Appellant would benefit from extension of her massage therapy to bi-weekly for a further eight weeks and that she may benefit from a one month gym membership in order to achieve full strength.

[11] The SGI personal injury representative (PIR) later advised the Appellant by letter on February 4, 2004 that funding for extended massage therapy and a gym pass would not be approved based on the discharge report from IMR and because she was able to resolve her occasional neck pain with self-management techniques.

[12] At or about the same time as her discharge from IMR, the Appellant saw Dr. Reihl, chiropractor, on January 16, 2004, complaining of headaches and neck, shoulder and lower back pain. Dr. Reihl reported³ to SGI that his objective findings were consistent with an unresolved flexion/extension injury and diagnosed an unresolved WAD II type injury, associated cervicogenic tension headaches and mechanical low back pain (LBP) II. In particular, he noted the following ranges of motion:⁴

January 25, 2004: Pain on all cervical ROM tests with full range of motion in forward flexion, extension, right lateral flexion, right rotation; Left rotation on lateral flexion was reduced to 75% of normal; Lumbar range of motion was full in all ranges of testing but painful on extension.

April 27, 2005 on the cervical spine: 40° forward flexion (normal 50°); 30° extension (normal 63°); 30° left lateral flexion (normal 45°), 30° right lateral flexion (normal 45°), 60° left rotation (normal 85°), 60° right rotation (normal 85°).

[13] The Appellant's condition didn't resolve or further deteriorated, and on April 13, 2005, she saw Dr. Pansegrouw⁵ complaining of chronic neck pain, stiffness and headaches. On April 28 Dr. Pansegrouw reported to SGI that chiropractic treatment hadn't helped and on examination, she found a decreased range of motion in flexion and left rotation with tenderness paravertebral muscles.

[14] Unattributed handwritten notes show the Appellant's file with SGI was "re-opened" on April 13, 2005. An injury note dated April 19 indicates the Appellant was told since she had been discharged from IMR without restriction, the PIR would require updated medical information; as well, she would request an accident reconstruction report and have the file

³ note - Dr. Reihl's report was dated May 11, 2005 and is noted here for purposes of chronology.

⁴ ROM measurements taken using a goniometer

⁵ The Appellant designated Dr. Sanderson as her family doctor in her Application for Benefits. However, she explained that Dr. Pansegrouw had been her "family's" doctor for several years predating the MVA but because it was often difficult to get in to see her, she designated Dr. Sanderson instead; the Appellant continued to see both practitioners after the accident.

reviewed to determine if SGI would provide coverage for any further treatment and that this could take months. In the meantime if the Appellant required physical therapy, she suggested the Appellant ask her doctor to send her for SH⁶ coverage at the hospital.

[15] In a Practitioner's Report to SGI dated July 22, 2005, Dr. Sanderson diagnosed a WAD II and LBP III and remarked that the Appellant was experiencing reactive depression secondary to chronic injury symptoms and functional limitations. He further noted that he was referring the Appellant to Dr. Ekong, neurosurgeon.

[16] On July 25, 2005, the PIR requested an accident reconstruction report from Carl Shiels. She wrote in part "...we have some questions about whether or not the subject motor vehicle accident could have caused the degree of injuries she is claiming to have suffered in this accident. She is claiming disability from employment and further treatments due to upper neck and back problems keeping her from being able to sew for any length of time." Mr. Shiels was provided a brief description of the collision, police report, a description of accident from both parties and copies of damage estimate and photos for all "three"⁷ vehicles.

[17] Mr. Shiels provided a written opinion to SGI dated August 3, 2005. Based on his analysis of the information and documents provided, he concluded that the damage sustained by the vehicle in this collision was superficial. He indicated the forces experienced by the driver of the [Appellant's vehicle] would have been extremely minor and well within the range of normal day-to-day activity of a physically active adult. He expressed the forces experienced by the Appellant's vehicle as similar to those of a "bumper car" at the fair. In his opinion, the potential for any type of injury, and in particular, one to the neck and back, was negligible.

[18] Thereafter, the PIR requested a file review by the SGI medical consultant. She said, in part, "(T)he accident reconstruction demonstrates this type of accident would not have caused this type of problems [sic], she started doing her [business] after the accident, she had just looked into doing it prior to the accident. The constant neck flexion is causing the headaches." The PIR then asked "(A)re her current problems related to the accident?"

⁶ We assume this means SK Health.

⁷ We think this is an error and should read "two".

[19] In his report dated December 19, 2005, Dr. Flotre commented that the Appellant responded well to early treatment and was discharged without restriction on January 22, 2004. He felt, based on the medical file and evidence, that SGI should accept responsibility for a WAD II injury – but that, given her response to early treatment, it wouldn't be expected that her injuries would become chronic. In the end, Dr. Flotre didn't think SGI was responsible for funding (further) benefits or treatment related to the Appellant's neck pain.

[20] On February 1, 2006 Dr. Pansegrouw advised SGI that the Appellant continued to experience pain, spasm and headaches. She included a recent x-ray that "proved" muscle spasm that she believed was related to the Appellant's November 2003 accident. The x-ray report of the cervical spine (with obliques) read in part "(S)traightening of the cervical curve, I suspect, is related to positioning or muscle spasm...".

[21] On March 8, 2006, Dr. Alport, also a medical consultant for SGI, reviewed the file and, in particular, the accident reconstruction report, the recent letter and x-ray from Dr. Pansegrouw. He commented that straightening of the neck is a frequent finding on x-ray in people with sore necks but his experience was it was more commonly seen in an acute injury rather than a chronic one. As a result, he suspected the Appellant was holding her neck straight when the x-ray was taken. In his opinion, the Appellant's subjective complaints of pain, clinical findings of a tender neck and the findings on the x-ray were not sufficient information for her physician to make an accurate statement on causation.

[22] Dr. Alport considered the accident reconstruction report and said:

... it seems evident to me that the damage to her vehicle can be used to estimate the likelihood of injury because it was so minor. Mr. Carl Shiels has provided his opinion that the forces transmitted to the occupant of this vehicle would likely be less than those experienced by the occupant of a "bumper car" at the fair.⁸

[23] Dr. Alport acknowledged the amount of damage to a vehicle can't always be equated to the severity of injury but, in this case, he thought Mr. Shiels' opinion was accurate.

[24] As well, Dr. Alport stated the human neck tolerated front end collisions, such as the one the Appellant was in, much better than rear-end collisions and this was another reason why he

⁸ Emphasis in the original.

suggested no serious injury occurred. He observed that the Appellant had almost completely recovered by January 2003 and it was illogical to conclude her injuries were so severe that she would continue to have symptoms two years later. In his view, her occupation of sewing, with a head down posture, was the potential cause of any neck pain that the Appellant now had.

[25] On August 9, 2006, Dr. Ekong reported to Dr. Sanderson the recent MRI showed a right-sided C₅₋₆ disc bulge but no significant nerve root compression. He noted the Appellant was still having neck discomfort and occasional pain down her right arm but that when he last saw her the symptoms were quite minimal.

[26] Dr. Reihl testified by telephone. He said the frequency of his treatment varied from daily to once or twice weekly when the Appellant was experiencing a flare-up of her symptoms; during the period January 2004 – April 2005, he saw her 17 times. He confirmed that her symptoms hadn't changed a great deal and felt that part of her struggle was her career choice, particularly work that required pulling (e.g. removing zippers) or holding her arms up (e.g. house cleaning) seemed to be triggers. It was his opinion that the Appellant was still suffering from an unresolved WAD II injury and associated headaches; he did not, however, relate the lower back pain, which he described as a mechanical joint problem, to the accident.

[27] Dr. Reihl acknowledged he didn't have access to the Appellant's pre-accident medical file but felt there was nothing in his clinical notes that would suggest or cause him to think her injuries were other than as had been reported.

[28] Dr. Reihl was satisfied with his current treatment but said his prognosis was guarded. He confirmed the Appellant received only temporary symptomatic relief but that because her injuries were now chronic, he was happy just to get her "over the hump" so she could continue working. Dr. Reihl does not encourage or want to foster dependence on passive treatment but he thought the Appellant could still improve. His treatment plan included on-going care for symptomatic relief and active rehabilitation to build-up endurance. When asked whether a multi-disciplinary evaluation would be helpful, Dr. Reihl remarked that it probably wouldn't achieve a good result now and any gains made would likely be minimal.

[29] He agreed with Dr. Alport that muscle spasm was seen more frequently on x-ray in acute situations but affirmed that it is also seen in chronic cases. Based on his clinical examination and evaluation of the Appellant, Dr. Reihl was of the opinion that the straightening of the cervical spine was more probably caused by muscle spasm than positioning. As well, it was his view the finding of C₅₋₆ disc bulge on MRI was incidental and not relevant to her current symptoms.

[30] At the time of the accident, the Appellant was employed part-time as a tour bus guide and general labourer but had looked into starting a custom-made [business]. Following her discharge from IMR, she attended sewing courses in February 2004 (2 days) and two 10 week courses in March 2004 and October 2004 – all of which resulted in significant bouts of neck and back pain and headaches that she was not able to self-manage. The Appellant testified that during the latter course, sponsored by Saskatchewan Community Resources, her participation was limited to part-time (about 20 hours per week) as a result of her injuries.

[31] Since January 2004, the Appellant has managed her headaches, pain and soreness primarily with chiropractic treatment and pain (analgesic and anti-inflammatory) medication. The Appellant testified that she does not want to rely on muscle relaxants or pain medication as much as before, or at all, because she is concerned about their effects on her stomach and, as well, they made her groggy. She has recently tried, with good results, herbal preparations for pain control but commented these are not covered by the provincial drug plan.

[32] The Appellant described a feeling like something ripping in her neck and shoulder area during the accident; currently, she experiences intense pinching in her right neck and shoulder that is coming on more and more frequently, as well as headaches of varying intensity. Her low back pain, right elbow and knee have resolved for the most part and are no longer causing any significant problems.

[33] She didn't think the physiotherapy at IMR helped her neck – particularly, her right neck and shoulder; her recollection was that treatment focused more on her arms. The Appellant acknowledged though that the stretching exercises she learned at IMR, and still does, were helpful.

[34] The Appellant denied she told the physical therapist that she had occasional headaches lasting 5-10 minutes or that she had low back/sacroiliac pain due to a pre-existing condition, as was reported. She testified that she did not have any pre-accident injuries or conditions similar to or in the same area as to those she experienced in the accident in November 2003.

[35] The Appellant started her custom-made [business] in mid to late 2004 and does sewing and tailoring in addition to her other work. She has achieved a level of success and remarked that “things are good” now and that she is careful not to take on too much work. She is worried what would happen to her business if she relapsed or her condition deteriorated.

[36] Since July 2006, the Appellant also manages a laundry mat in exchange for rental space where she does her sewing at the same location. The Appellant has no legal interest in the laundry mat and summarized the arrangement as ‘friends helping friends get their businesses going’. The Appellant testified she works every day, 10-16 hours per day and estimated about 60% of her time is spent managing the laundry and the rest of the time is on sewing. This arrangement allows her to take breaks throughout the day when she needs to and do different tasks.

[37] The Appellant played competitive women’s baseball and participated at a national level until a second injury (and second surgery)⁹ to her left knee ended her career in August 2004.

STANDARD OF REVIEW

[38] Subsection 193(7) of the *Act* provides the Commission may set aside, confirm or vary a decision of SGI or make any decision that SGI is authorized to make pursuant to Part VIII of the *Act*. The basis upon which we would do this may differ depending on the nature of the issue before us.

[39] The Saskatchewan Court of Appeal dealt with the Commission’s standard of review in *Allary v. Saskatchewan Government Insurance*¹⁰. In accordance with *Allary* and the Commission’s decision in *I.S. v. Saskatchewan Government Insurance*,¹¹ the standard of review

⁹ 2005

¹⁰ 2006 SKCA 89

¹¹ 2006 AIAC 97

regarding questions of causation is correctness. The Appellant has put SGI's findings of fact into issue and we will therefore, having regard to all of the evidence, review SGI's decision dated January 9, 2006 and decide if it was correct.

ONUS OF PROOF

[40] In *Collis v. Saskatchewan Government Insurance*,¹² the Saskatchewan Court of Queen's Bench considered the question of who held the onus of proof in appeals under the no-fault provisions of the *Act*. Justice Wimmer stated:¹³

Cases dealing with disability insurance contracts hold that the insured has the onus of establishing that he or she is disabled within the meaning of the policy and, having done so, the onus shifts to the insurer to prove that benefits are not, or are no longer, payable. Also, the fact that the insurer at one time accepted the claim may weigh the balance in favour of the insured.

[41] This view of onus was quoted and adopted by Justice Matheson in *Job v. Saskatchewan Government Insurance*,¹⁴ The decision was appealed to the Court of Appeal and the matter of onus of proof was among the issues appealed. In that regard, Justice Vancise said¹⁵:

We are all of the opinion that Mr. Justice Matheson did not err in determining and applying the onus of proof. He found that when an insurer alleges that benefits are no longer payable it has the onus to prove on the balance of probability that the benefits are not payable under the *Act*. While he might have been a little more precise in his choice of language it is clear that he did not reverse the onus. He referred to *Collis v. Saskatchewan Government Insurance*, which clearly finds that the onus shifts to the insurer to prove that benefits are not or are no longer payable.

[42] Has the Appellant established she is disabled within the meaning of the "policy"? The policy, for purposes of this decision, is the *Act* itself. If she has not done so, that will end the matter but if she has, then the onus shifts to SGI.

[43] Following the accident, the Appellant was diagnosed with a WAD II type injury and received treatment until January 2004. SGI paid benefits, including physical and massage therapy, relating to that diagnosis.

¹² 1998 CanLII 13463, 165 Sask. R. 108

¹³ paragraph [5]

¹⁴ 2002 SKQB 479 (CanLII)

¹⁵ 2004 SKCA 164 (CanLII)

[44] As such, in accordance with both *Collis* and *Job*, the Appellant has met the burden to prove that she was disabled in the vehicle accident and the onus is then shifted to SGI to prove, on a balance of probabilities, that benefits are no longer payable regarding this injury.

[45] SGI relied on the accident reconstruction report by Carl Shiels and the advice of its medical consultants, Drs. Alport and Flotre, in arriving at its conclusion that the Appellant's current conditions no longer relate to the injuries suffered in the accident.

ANALYSIS

Carl Shiels' opinion

[46] Mr. Shiels was asked by SGI to provide an opinion whether the severity of a collision of the kind the Appellant was involved in would likely cause the "degree" of injuries she is claiming. He concluded the superficial damage sustained by the vehicles in this collision and the forces experienced by the Appellant were so extremely minor that the potential for any injury to the Appellant, specifically to her neck and back, would have been negligible.

[47] At the request of the Commission chairperson, counsel for SGI filed, post-hearing, color photographs of both vehicles as it was difficult to see the damage in the black and white ones included in the appeal documents. We do not consider the damage, particularly to the other vehicle, as being superficial; nor does it seem plausible to us, based on our observations, that the force of a "bumper car" could have caused this much damage.

[48] The Appellant estimated the speed of her vehicle at less than 40 kilometres per hour but thought it was increasing before impact as her car slid on the ice. According to Mr. Shiels, the force necessary to cause the observed damage would have been small in comparison to the vehicle's weight, and the change in velocity on impact would be no more than a few kilometers per hour. He stated the driver's body would have responded by moving forward and slightly to the right but the lap and shoulder harness would have been highly effective in preventing forward movement.

[49] During the hearing, one of the hearing panel members brought to the attention of counsel for SGI, the judgment of Klebuc, J. in *Smid v. Rooke*: [1995] TWL, QB 95041.¹⁶ In the trial of that action, defence counsel had Mr. Shiels qualified as an expert in the “...field of mechanical engineering and to a limited degree in the field of biomechanics, as an area of study that deals with the application of engineering principles to biological material, and specifically with the effect the application of force has on the human body:”

[50] Mr. Shiels offered two opinions in *Smid*. One related to the speed of the defendant’s vehicle at the time of impact and Justice Klebuc accepted the opinion of Mr. Shiels on that issue. The other opinion related to causation of Ms. Smid’s injury. With respect to that opinion, Klebuc, J. said:

In my opinion Mr. Shiels is not well qualified to give an opinion as to causation of injury in the human spine because of its complexity and his very limited knowledge of human anatomy and neurology. Further, his research appears to be limited to reviewing the McConnell, West and Szabo reports which may have been prepared by researchers having limited knowledge of human anatomy.¹⁷

[51] Mr. Shiels did not refer to the papers identified by Justice Klebuc, nor any papers or research, in the within opinion. He was not called to testify. Consequently, we don’t know if Mr. Shiels has upgraded his education, skills or experience since *Smid*. In fairness to Mr. Shiels, though, we think it is a reasonable assumption that his opinion in the within case was not intended to be of the same scope as in the *Smid* case. Nonetheless, given the finding of Klebuc, J. above, we have concluded that Mr. Shiels is not qualified to offer an opinion on whether the Appellant suffered an injury because of the accident.

Dr. Alport’s opinion

[52] Dr. Alport based his opinion, in part, on Mr. Shiels’ report and on the amount of damage to the Appellant’s vehicle. He referred to the “bumper car” analogy in describing the force exerted on the Appellant and concluded, in this case, that the damage to her car could be used to estimate the likelihood of injury because it was so minor.

¹⁶ See *R.N. v. Saskatchewan Government Insurance*, 2006 SKAIA 012

¹⁷ [1995] TWL, QB 95041 at paragraph 8

[53] Dr. Alport was not called to testify. Given the references in Dr. Alport's report to Mr. Shiels' causation opinion, it appears that his own conclusion on the nature and extent of the injury suffered by the Appellant was influenced by the causation opinion offered by Mr. Shiels. Since we have not accepted Mr. Shiels' opinion in that respect, the weight we give Dr. Alport's subsequent opinion is necessarily affected.

[54] Most important though, in his view, was that because the Appellant had recovered almost completely within two months, it was unreasonable to suggest she was so seriously hurt that she would continue to have symptoms two years later. As a result, in his opinion, any neck problems she might have now were likely caused by her head-down position while sewing and not the accident.

[55] We have difficulty with Dr. Alport's conclusion above because it is premised on the belief that the Appellant had recovered from her injuries within two months after her accident. For reasons given below, we do not accept this conclusion and are not satisfied that she has yet recovered from her injuries.

[56] We also think it is illogical to suggest that sewing is the independent cause of the Appellant's current right neck and shoulder problems. Although she had been discharged from treatment without restriction, she continued to consistently complain of the same injuries and receive treatment. In effect the Appellant said, and her actions confirm, that she had not in January 2004 and has not now recovered from her injuries. Finally, we note that Dr. Reihl's range of motion measurements, showing significant restriction, were taken on January 16, 2004, *before* the Appellant started sewing; these would indicate restrictions prior to the time she started sewing.

[57] For all of these reasons, we are unable to accept Dr. Alport's opinion.

Discussion

[58] The Appellant sustained a WAD II injury in the collision for which SGI accepted responsibility and paid benefits. It now bears the onus to prove she is no longer entitled to benefits.

[59] While the Appellant's injuries were not such that it was expected they would become chronic, she did, in fact, continue to consistently report symptoms the same as those suffered in the collision and to receive treatment, despite being denied benefits. We have no basis to conclude that the Appellant did not continue to suffer the symptoms she reported and we accept her evidence in this regard.

[60] In so far as it concluded that the Appellant had recovered from her injuries, we find that the IMR discharge report is inconsistent with other documentary and oral evidence. Specifically, we are unable to reconcile the IMR report with Dr. Reihl's testimony, which we accept, and his objective measurements of a significant reduction in left rotation and lateral flexion conducted within two weeks of the Appellant's discharge from treatment. On the other hand, IMR's report included only general statements without explanation and without the results of any testing or measurement that it may have taken. For these reasons, we do not accept IMR's conclusion that the Appellant had, in January 2004, recovered from her injuries.

[61] We were impressed by Dr. Reihl's testimony – it was thoughtful and candid. As always, when a patient heals slowly, or does not heal to his or her pre-accident state, or does not achieve pain-free status, the questions are whether and when end treatment. His evidence was that chiropractic care provided the Appellant significant relief from her headaches and temporary relief from her neck pain during periods of acute flare-ups, and that he felt she could still improve.

[62] We are satisfied the chiropractic treatment she received was rehabilitative and that, while not providing a "cure", it has, in fact, lessened her disability and enabled her to continue working. We think it is more probable than not that the Appellant would functionally decline without treatment.

[63] Further, we are satisfied the long hours the Appellant works have not and do not cause her to be more symptomatic; she testified, and we accept, that she will turn away work and has learned to manage her work load to help prevent a flare-up of her symptoms; as well, in managing the laundry, she can get up and stretch or walk around and do different tasks.

[64] The Appellant has continued working and we commend her for this; and she continued with treatment despite being denied benefits by SGI. It appears to us that she was not well served by SGI – the several decisions over the course of her claim were not explained well, if at all. The Appellant believes that SGI decided that it would provide eight weeks of physical therapy and that it would thereafter terminate her benefits whether or not she had recovered. While we can't say that is what was intended, the circumstances can certainly be seen that way. The fact that SGI refused, in the face of recommendations from a treating therapist, to provide funding for extended massage therapy and a gym pass, adds to the perspective.

[65] Having regard to all of the evidence, we find the WAD II injury and associated headaches, as described by Dr. Reihl, were caused in the motor vehicle accident and that the Appellant continues to be disabled as a result of those injuries. Therefore, SGI's January 9, 2006 decision will be set aside and the Appellant is entitled to all appropriate benefits.

[66] The Appellant requested that she be reimbursed for the purchase (and/or construction) of her sewing table. This is not a matter on which SGI has made a decision and we, therefore, have no jurisdiction to decide whether it is or would be a recommended work place accommodation for which SGI may provide a benefit. The Appellant is encouraged to bring the matter to the attention of her PIR so that SGI can consider her request.

[67] The Appellant expressed that she was interested in going back to physical therapy. Given our finding that the Appellant continues to suffer a disability from the injuries suffered in the accident, SGI might want to consider arranging for the Appellant to undergo a physical therapy assessment and, if further therapy is recommended, consult the Appellant as to an appropriate facility.

CONCLUSION

[68] We find that SGI's decision dated January 9, 2006 that her current condition no longer relates to the injuries the Appellant suffered in the accident on November 10, 2003 is incorrect and is set aside. The Appellant is entitled to all applicable Part VIII benefits, including rehabilitation from and after that date. The Appellant shall, when reasonably requested, provide receipts or other records in support of her claims.

[69] In respect of any expenses (e.g. treatment, medication) incurred after April 13, 2005¹⁸ and prior to this decision, the Appellant is entitled to pre-judgment interest calculated from the date of her expenditure.

COSTS

[70] As the Appellant has been successful in her appeal, she is entitled to reimbursement of her reasonable expenses relating to her appeal, including those for meals, travel and reasonable costs respecting Dr. Rheil's attendance by telephone, in accordance with section 193(11) of the Act and section 96 of the *Personal Injury Benefit Regulations*.

[71] The Appellant is also entitled to be refunded her appeal fee.

Dated at Regina, Saskatchewan, on August 7, 2007.

Barbara Tomkins, Chair

Jeffrey Scott, Commission Member

Beverly Cleveland, Commission Member

¹⁸ This is the date the Appellant's file was "re-opened".