

**Automobile Injury Appeal Commission  
Province of Saskatchewan**

**Citation:** *K.R. v. Saskatchewan Government Insurance,*  
2007 SKAIA 097  
**Date:** 20071109  
**File:** 005 of 2007

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BETWEEN

**K.R., Applicant**

and

**Saskatchewan Government Insurance, Respondent**

**Appearances:**  
**K.R., Applicant**  
**Dale Brown, for the Respondent**

**Before:** Beverly Cleveland, Chair  
Peter Bergbusch, 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  
August 29, 2007

## DECISION

### INTRODUCTION

[1] The Appellant, K.R., has appealed a decision of Saskatchewan Government Insurance (“SGI”) dated September 21, 2005, in accordance with subs. 191(1) of *The Automobile Accident Insurance Act*, R.S.S. 1978, c. A-35 (the “Act”). In that letter, SGI advised that it was discontinuing funding for treatment, including chiropractic treatment, massage therapy and physiotherapy, on the ground that the Appellant had been rehabilitated to his pre-accident physical condition.

[2] As the Appellant’s motor vehicle accident occurred in 1998, his claim is subject to the provisions of the *Act* in force at that time (when necessary, we will refer to the “*Old Act*” to identify the operative provisions).<sup>1</sup>

### SUMMARY OF FACTS

[3] The Appellant suffered injuries in an automobile accident on August 8, 1998. He was traveling south on [Avenue] in Saskatoon, in the right hand lane, when a vehicle traveling in the same direction in the left hand lane attempted a right-turn, colliding with the front driver’s side of his vehicle. He did not immediately attend the hospital, but saw his chiropractor on August 10, 1998, complaining of neck stiffness. Dr. Sutton, his chiropractor, diagnosed whiplash-associated disorder, grade II. Upon examination, he noted reduced cervical spine range of motion and palpatory tenderness in the neck and midback regions. He recommended treatments two to three times per week, with an expectation that the Appellant would return to his pre-accident status within four to five weeks, assuming the injury was not exacerbated during that time.

[4] In his Application for Benefits dated August 29, 1998, the Appellant indicated that the accident had caused him neck and shoulder pain and headaches, moderate mid back pain, but no low back pain. He disclosed that he had suffered lower back injuries in the past for which he had

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<sup>1</sup> *An Act to Amend The Automobile Accident Insurance Act*, S.S. 1994, c. 34, s. 18, amending *The Automobile Accident Insurance Act*, R.S.S. 1978, c. A-35.

been receiving chiropractic treatment every month. Since the accident he had missed two days of work.

[5] Since June 1994, the Appellant has been employed as a bakery helper in a food processing business, making bakery mixes; this involved lifting of up to 40 lbs. Approximately four months before the motor vehicle accident, according to his testimony, he injured his lower back at work while moving heavy bags and made a claim for workers' compensation benefits. He received chiropractic treatment for this injury.

[6] In the weeks following the motor vehicle accident, he missed two days of work, and had been performing lighter duties in the "packing" department to which he was trying to transfer permanently.

[7] The Appellant saw his family doctor on September 11, 1998, and was diagnosed with a soft tissue injury. The recommended course of treatment was massage, chiropractic treatment, medications, and modification of his work duties. In addition to confirming the diagnosis of whiplash-associated disorder, grade II related to the Appellant's neck, Dr. Slavik also diagnosed grade II low back pain.

[8] In a follow-up report dated October 6, 1998, Dr. Sutton affirmed his earlier findings of reduced cervical range of motion and tenderness. He also recorded that the Appellant was experiencing mild low back discomfort. His treatment plan for the Appellant was continued spinal manipulative therapy and massage therapy.

[9] Twelve weeks post-injury, the Appellant's functional rehabilitation had not progressed as expected. He was assessed on November 13, 1998, by a multidisciplinary team. The Appellant reported that he continued to suffer from daily neck pain, especially on the right side radiating into his shoulder and upper back, and headaches. The pain became more severe with tasks involving repetitive arm activity. Once or twice a week he would experience severe throbbing headaches. The Appellant reported that pre-existing low back pain had been aggravated initially

by the motor vehicle accident, but had subsided to some degree as a result of altering his work duties. The team outlined its findings as follows:

Medical Diagnosis:

Related to MVA : Whiplash associated disorder Grade II.

Partially related to MVA: Aggravation of pre-existing lower back pathology at the beginning and which has since settled with change in work function at CPS. Yet to be determined if this will return at higher than pre-existing levels when returns to his usual work.

Not related to MVA: Preexisting biomechanical dysfunction of his spine causing low back pain. These are more continuous in nature since his MVA.

Medical Issues:

The client is continuing to suffer from whiplash associated disorder Grade II. There are no underlying signs or symptoms that would indicate a more sinister underlying disorder. The client is a smoker who is currently attempting to quit. There is no history of cardiorespiratory difficulties that would contraindicate and active rehabilitation program. He is using minimal analgesics to help him with discomfort.

Biomechanical Diagnosis:

Related to MVA: Post traumatic mild myofascial and articular dysfunction in the cervical spine (including cervicogenic headaches) and upper thoracic spines which have a greater level of discomfort than those previously managed at 1 chiro treatment / 6 weeks.

Unrelated to MVA: A mild pre-existing level of discomfort in the cervical, thoracic and lumbar spines and frontal type headaches which were apparently well maintained at 1 chiro treatment / 6 weeks. Client insisted low back is not related to MVA.

Functional Disability:

- Moderate disability for work.
- Mild to moderate disability for house and yard work.
- No disability for recreational activities.
- No disability for activities of daily living.

All of the above are related to compensable injury.

[10] The team found that the Appellant had a strong need for conditioning to improve regional strength, following which he should gradually return to his pre-accident work duties. The team also indicated that eight more weeks of rehabilitation in a multidisciplinary setting were required. Following the Appellant's completion of this program, the team recommended that he receive twenty additional sessions of biomechanical care, decreasing in frequency.

[11] The Appellant commenced a secondary treatment program on February 3, 1999, with Bourassa & Associates Rehabilitation Centre, which was completed on March 26. The discharge report noted that the Appellant had had an overall improvement in mobility and strength, but was prone to occasional flare-ups that “should respond nicely to crisis management” – this contemplated that the Appellant would receive intermittent, unscheduled chiropractic treatment. A progress report dated May 22, 1999, indicated that the frequency of the Appellant’s chiropractic treatments had dropped, but he might require further “crisis intervention” occasionally.

[12] The Appellant saw his chiropractor on several occasions in July and August for “crisis intervention,” complaining of intermittent headaches and left-sided cervical spine pain. Dr. Sutton observed decreased left lateral flexion and right rotation of the cervical spine with associated myofasciitis, with segmental restrictions at several levels of the cervical and thoracic spine regions.

[13] Dr. Sutton indicated that he had been treating the Appellant for different symptoms before the motor vehicle accident:

The fact is that any predisposition to this type of injury is of importance. However, in [the Appellant’s] case, the frequency with which he was visiting me and the type of symptomatology that he was experiencing at that time are of no pattern to what he was being treated for as a result of his MVA.

He recommended a continued course of aggressive myofascial release and inter-segmental biomechanical improvement, as well as a study of flexion and extension x-rays showing dynamic movement.

[14] By May 10, 2000, the Appellant had had 18 “crisis” chiropractic treatments and requested SGI to consider funding some massage treatments. SGI’s chiropractic consultant recommended a reassessment by the multidisciplinary team.

[15] The Appellant was reassessed by Bourassa & Associates Rehabilitation Centre on June 6, 2000. The consultants concluded that that the Appellant continued to suffer from several injury-related conditions, including mechanical neck pain and headaches, myofascial hypertonicity and irritability in the upper right cervical spine, and moderate articular dysfunction in the lower right cervical spine and mid thoracic spine. Although the Appellant had experienced periodic headaches before the motor vehicle accident, the assessment team considered his present headaches to be “more frequent and intense” and opined that he now had “a chronic headache situation likely related to muscle tension and primarily biomechanical neck abnormalities.” As the headaches were thought to be myofascial, regional conditioning was recommended, as well as education on self-applied pain management techniques. A further course of 6 to 8 weeks of secondary treatment was recommended, with the goal of achieving longer term relief with reduced dependence on crisis chiropractic treatment.

[16] The Appellant attended a secondary treatment program at Daniels Kimber Physiotherapy Clinic from July 17, 2000, to September 11, 2000. At the conclusion of the program, his strength had improved, but the frequency and intensity of his headaches had also increased. The physiotherapist’s report suggested that further investigation might be required.

[17] Following an inquiry by SGI’s personal injury representative assigned to the Appellant’s file, SGI chiropractic consultant remarked that the Appellant’s chiropractic treatments were twice as frequent as before the accident and, accordingly, SGI should only take responsibility for half of the treatments, or one per month. This coverage would continue while the Appellant’s family doctor tried medication therapy or referred the Appellant to a neurologist for consultation. SGI then sent the Appellant a letter advising that SGI would fund one treatment per month for twelve months or until the neurological consultation had been completed.

[18] The Appellant was seen by Dr. Christopher Voll, a neurologist, on March 29, 2001. He concluded that the Appellant was experiencing “ice-pick headaches (idiopathic stabbing headache)” but could not identify a specific cause for these. He also reported that the Appellant continued to suffer from moderate discomfort in the upper cervical region, related to a soft tissue injury. Finally, he suspected that pain extending into the Appellant’s right shoulder and

numbness and tingling in his right forearm might be caused by nerve root impingement. He scheduled an MRI to investigate this possibility. He also scheduled a trigger point injection at the right skull base and indicated that the Appellant would benefit from cervical massage.

[19] Sometime in the summer of 2001 the Appellant had the trigger point injection, which provided some relief although he continued to have some headaches. His personal injury representative advised him that SGI would consider funding some cervical massage treatments since Dr. Voll had recommended this treatment.

[20] An MRI on February 4, 2002, did not reveal any nerve impingement.

[21] Following a further request for a review by the personal injury representative, SGI's chiropractic consultant, Dr. Mierau, concluded that he saw no reason to continue funding for chiropractic treatment without evidence that it was needed as supportive care. He remarked that the benefit from such treatment appeared to be short-lived and it did not seem to affect the Appellant's long-term prognosis.

[22] Penny Thorson, the personal injury representative, wrote to Dr. Sutton to advise him that SGI would not continue to fund chiropractic care, but inviting him to provide objective findings if he believed further care was warranted.

[23] On May 3, 2002, Dr. Sutton wrote a reply in which he argued forcefully for continued funding of chiropractic treatments as supportive care. He referred to objective findings, such as a restricted cervical range of motion and pain resulting from cervical compression, and stated:

It is not unreasonable to assume that there will be periods of exacerbation due to the poor mechanics of the joints that are involved in the supporting and contributing musculature.

He concluded that chiropractic treatment did contribute to the Appellant's ability to function:

Supportive care is appropriate and validated at this time as home care has been undertaken, rehab has been undertaken, modification of lifestyles has been undertaken and a modification of job description has also been undertaken. [The Appellant's] chiropractic care is based solely on his needs and does not follow a specific treatment plan at this time, however, he

does experience improvement in function and a decrease in symptomatology with occasional treatments.

[24] Upon review of Dr. Sutton's opinion, SGI chiropractic consultant recommended that SGI fund up to 12 chiropractic treatments per year for supportive care, to be reviewed yearly for 3 years; SGI accepted this and advised the Appellant.

[25] On February 5, 2004, SGI advised the Appellant that it would only fund 4 chiropractic treatments per year, to be reviewed annually. This decision was based upon the fact that the Appellant had had only three chiropractic treatments during the preceding year.

[26] The Appellant testified that, for the years 2001 to 2004, he was the vice-president of his union local. This meant that he spent less time doing his normal work duties and was often occupied in grievance arbitrations, mediations, and other union activity. Sometimes this activity would take up three to four days in a week. During those years there were a lot of grievances that required his attention, he said. He believes that this helps to explain why he did not seek out more chiropractic treatment during that period – he was not occupied full-time in his regular, physically demanding work. Unfortunately this information regarding the Appellant's change in duties does not appear to have been known by Dr. Sutton or Dr. Mierau; at least, we find no mention of it in their opinions.

[27] Dr. Sutton was asked to provide further comment regarding the connection between the Appellant's ongoing symptoms, including headaches, and the motor vehicle accident. He replied by letter dated July 29, 2004, that he agreed with the conclusions of the secondary rehabilitation report that the motor vehicle accident had "affected the intensity, frequency and duration of his headaches and cervical discomfort". He then discussed in general terms several factors that can affect the severity of soft tissue injuries in motor vehicle accidents, suggesting that the Appellant's pre-existing cervical discomfort may have made him more susceptible to further injury. He explained some of the possible organic causes of chronic pain and headaches:

The data supporting an organic basis [sic] for chronic pain and associated headaches after whiplash is compelling and has been derived from a number of sources including experimentation and clinical settings. These approaches have been surprisingly consistent in

their findings revealing a number of pathological lesions capable of producing chronic pain after flexion/extension or whiplash injury to the neck. These have included injuries to the discs, the ligaments and cervical zygapophyseal joints. All of which can be attributed collectively or in part to chronic pain syndrome and associated headaches.

He intimated that the Appellant's attending for only three chiropractic treatments the previous year was not indicative of the discomfort he continued to experience as a result of injuries sustained in the motor vehicle accident.

[28] SGI funded five chiropractic treatments for the Appellant in 2004. In June and July 2005, however, he began attending for chiropractic treatment more frequently, complaining of an increase in headaches and right neck and shoulder pain. Dr. Sutton's opinion was that, upon his examination of the Appellant, the objective findings, such as decreased cervical range of motion, were consistent with his accident injuries.

[29] The Appellant testified that, in 2005, he was no longer involved in his union local executive and was back full-time in his regular work. Further, following a change in ownership of his employer, his job changed – it involved more manual labour than previously. In 2005, the Appellant had eight chiropractic and four massage treatments; ten chiropractic and one massage treatment in 2006; and eight chiropractic treatments during the first eight months of 2007.

[30] SGI's chiropractic consultant reviewed the Appellant's file again in September 2005. This time, Dr. Mierau concluded that further treatment for injuries related to the motor vehicle accident was not warranted. Principally, Dr. Mierau noted that the Appellant had been having chiropractic treatment every six weeks before the motor vehicle accident and concluded that, as the frequency of treatment for headaches was less than it had been before the accident, he had returned to his pre-accident functional status.

[31] Accordingly, SGI sent the Appellant the decision letter that is the subject of this appeal.

[32] According to the Appellant, one of the reasons that he had not attended chiropractic treatment more frequently before SGI's decision to terminate benefits was that he had become

quite apprehensive about the risks of such treatment after hearing a news story about the death of a patient during chiropractic treatment. The Appellant testified about this fear and appears to have raised it with his personal injury representative and his chiropractor. Dr. Sutton wrote a further letter to SGI on November 3, 2006, in which he contended that the Appellant still required chiropractic treatment for symptoms related to his 1998 accident. He stated that the Appellant had only sought chiropractic treatment when his pain became unbearable and he was in a “crisis mode,” but that a more consistent course of treatment would decrease the frequency of such extreme incidents and would improve the biomechanical function of his spine. He opined that it is “typical” for whiplash victims not to return to their pre-injury status, and it is “not uncommon” for individuals to have increased symptoms as the cervical spine adapts to changed biomechanics.

[33] SGI chiropractic consultant disputed Dr. Sutton’s opinion in a memo dated November 23, 2006. Dr. Mierau stated that it is uncommon for a whiplash victim to continue to require treatment eight years after the motor vehicle accident. He indicated that, after the Appellant had had 130 chiropractic treatments, it was reasonable to conclude that these were not having a lasting effect. He disagreed that more consistent care in the Appellant’s case would likely decrease the incidence of “crisis modes” as this was not supported by peer reviewed research or the example of the Appellant’s own treatment history. He observed again that the Appellant was now having fewer treatments than before the accident. He also noted that Dr. Voll, the neurologist who had examined the Appellant, did not attribute his headaches to his neck condition or the motor vehicle accident. SGI confirmed its earlier decision to terminate the Appellant’s benefits.

[34] The Appellant testified that he was attending chiropractic treatment before the motor vehicle accident to treat the lower back injury he had sustained at work. He believes that this low back injury resolved itself about a year following the motor vehicle accident. He contends that his present neck and headache problems are unrelated to the pre-accident condition for which he was receiving chiropractic treatment. He also says that, before his lower back, work-related injury, he only sought chiropractic treatment once or twice a year.

[35] The parties were advised on November 30, 2006, that mediation had been concluded. The Appellant's Application Form to appeal SGI's decision was received by the Commission on January 23, 2007. The Appellant's appeal was filed, therefore, within the 60-day limitation period prescribed by the *Act*: subs. 191(1)(b).

## **JURISDICTION AND STANDARD OF REVIEW**

[36] The Commission's jurisdiction to review a decision of SGI is set out in subs. 193(7) of the *Act*. The Commission may set aside, confirm or vary the insurer's decision. In addition, the Commission may make any decision that the insurer is authorized to make pursuant to Part VIII of the *Act*.

[37] The Saskatchewan Court of Appeal addressed the standard of review applicable to appeals to this Commission in *Allary v. Saskatchewan Government Insurance*, 2006 SKCA 89. In that case, the claimant had put SGI's findings of fact in issue and the Commission had held a hearing pursuant to subs. 193(6) of the *Act*. The Court of Appeal observed that more than one standard of review was indicated by the legislation:

[14] 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. Here, we are concerned only with determining the appropriate standard of review on an appeal where the appellant places the facts in issue.

[38] In *Allary*, the Court of Appeal concluded that, where an appellant places SGI's findings of fact in issue, the standard of review of those findings is correctness:

[20] Where the facts are placed in issue, as they are here, the appeal commission has an obligation to receive and consider any new evidence submitted by the appellant and, depending on the nature of the hearing which is conducted, to consider as well the evidence received by SGI in making the finding of fact or facts in dispute on the appeal. The appeal commission must determine whether the decision of SGI was erroneous having regard to all the evidence. The factual issue for determination within the case was whether there was a causal link between the benefits claimed and the injuries caused by the accident of September 8, 2001.

[21] Notwithstanding its comments on the appropriate standard of review, the Commission in fact applied the proper standard, i.e. correctness. It conducted a hearing, heard the evidence of the appellant and reviewed the record including certain documentary evidence concerning the issue of causation to determine whether or not there was a causal link between the transportation benefits and mental health benefits claimed and the injury.

[39] In this case, the Appellant has placed SGI's findings of fact in issue. More specifically, he takes issue with SGI's conclusions that he had reached his pre-accident level of function and that continued chiropractic or other forms of treatment were simply treating his pre-existing condition. As this case largely turns on these findings of fact, and as we have heard the Appellant's testimony and considered documents placed in evidence by both parties, the standard of review of these findings is correctness.

[40] If we do not accept SGI's findings of fact, we will then need to consider whether the Appellant is entitled to further benefits under s. 110 of the *Old Act*. Subsection 110(2) authorizes SGI to "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." A question often arises concerning the standard of review that Commission must apply in evaluating SGI's decisions under this provision. Paragraph 14 of the Court of Appeal decision in *Allary* indicates that more than one standard of review may apply to decisions under Part VIII of the *Act* (including the *Old Act*). In the case of s. 110 of the *Old Act* (s. 112 of the *Act*), decisions of the Commission have come to different conclusions. For example, in *I.S. v. SGI*, 2006 SKAIA 097, at paragraphs 5-19, the Commission held that the standard of review when a benefit is necessary is correctness; when it is advisable, the standard is reasonableness. However, *T.S. v. SGI*, 2007 SKAIA 069, at paragraph 50, holds that the standard of review of SGI's decision regarding rehabilitation benefits is reasonableness, irrespective of whether SGI determined that the benefits were not necessary or not advisable. Finally, a third possible view is that the standard of review applicable to all of SGI's decisions under s. 110(2) is correctness.

[41] Given that subs. 110(2) authorizes SGI to take any measures "it considers" necessary or advisable, it can be argued that SGI has been conferred a discretion that calls for deference on appeal. Put another way, the provision empowers SGI to exercise judgment – to follow its opinion – in making decisions regarding rehabilitation benefits. Further, the phrase "it considers

necessary or advisable” implies that SGI has a judgment call to make in deciding whether measures are either necessary or advisable. If so, the pragmatic and functional approach suggests that the standard of review applicable to SGI’s decisions under subs. 110(2) is reasonableness: see *Pushpanathan v. Canada (Minister of Citizenship and Immigration)*, [1998] 1 S.C.R. 982 at paragraphs 29-38.

[42] This reasoning would militate against the “double-standard” interpretation set out in *I.S., supra*. A “double-standard” view appears to overlook that “it considers” qualifies both necessary and advisable measures. A “double-standard” view also assumes that it is possible to differentiate readily between measures that are necessary and those that are just advisable. Medical opinion seldom makes this distinction, nor do SGI’s decisions. If the “double-standard” view is followed, evidence may need to be called on this issue simply so that the Commission can determine what standard of review should apply.

[43] While the foregoing comments reflect the views of at least one of the Commission members on the present panel, it is not necessary for us to come to a firm decision on this point. In this appeal, we would find for the Appellant even if the more deferential standard – reasonableness – applies to SGI’s decision. Accordingly, a resolution of the proper standard of review of decisions under s. 110(2) of the *Old Act* can be left for another day.

[44] Finally, since SGI had approved chiropractic and other treatment for the Appellant for a significant period of time but now takes the position that he is not entitled to further benefits, SGI bears the onus of proving that such is the case, on the balance of probability: *Job v. Saskatchewan Government Insurance*, 2004 SKCA 164.

## **LAW AND ANALYSIS**

[45] The specific benefits in issue in this appeal are found at s. 110 of the *Old Act*:

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.

[46] The question we will decide is whether SGI's decision to terminate benefits provided pursuant to s. 110 was reasonable. SGI has concluded that chiropractic treatments, physiotherapy and massage therapy are not "necessary or advisable" to contribute to the Appellant's rehabilitation, to lessen his disability caused by the accident, or to facilitate his recovery from the accident. The Appellant was particularly concerned about the discontinuance of funding for occasional chiropractic treatments and, on rare occasions, massage treatments recommended by his chiropractor. He says that he seeks treatment when neck pain and headaches become unbearable – this has been referred to as "crisis" management of his condition. However, his chiropractor, Dr. Sutton, has recommended a more consistent program of chiropractic treatment in order to avoid the occurrence of such flare-ups.

[47] We heard and read no evidence that continued funding of chiropractic and other treatment is likely to contribute to the Appellant's rehabilitation or facilitate his recovery from injuries he sustained in the accident. Nine years after the motor vehicle accident, it appears that further rehabilitation or recovery is not to be expected. The question is, therefore, whether further treatment is necessary or advisable to lessen the Appellant's disability. Mr. Brown argued, on behalf of SGI, that this aspect of s. 110 is directed at treatment that improves a claimant's ability to function and is not intended to provide for treatment that amounts to "a tune-up" – i.e., treatment that provides temporary relief from pain or discomfort but does not contribute to a claimant's ability to function.

[48] It appears to us that the occasional, "crisis intervention" chiropractic treatments and massage therapy for the Appellant's cervical spine area were intended to improve his ability to

function. Certainly, Dr. Sutton argued in May 2002 that occasional chiropractic treatments resulted in an improvement in function and a decrease of the Appellant's symptoms. SGI apparently accepted this opinion and agreed to fund twelve chiropractic treatments per year.

[49] In July 2004, Dr. Sutton provided another opinion that the Appellant's ongoing symptoms, including headaches, were connected to the motor vehicle accident. He pointed to the conclusions of the secondary rehabilitation report that the accident had "affected the intensity, frequency and duration of his headaches and cervical discomfort". He suggested that the Appellant continued to benefit from occasional chiropractic treatment, even though he had only attended for three treatments the previous year. We accept that the Appellant had been reluctant for a period of time to seek chiropractic treatment because he was apprehensive about its safety. In addition, the Appellant testified that his involvement in his union local had frequently taken him away from his usual, physical demanding work tasks.

[50] The basis of SGI's decision to terminate benefits, however, was that the Appellant had reached a point in his recovery where he was having chiropractic treatments less frequently than before the motor vehicle accident. Specifically, Dr. Mierau concluded that the Appellant had reached his pre-accident functional status as the frequency of chiropractic treatment for headaches was less than it had been before the accident. While it was correct that the Appellant was having fewer chiropractic treatments, the Appellant's evidence, which we accept, was that the chiropractic treatments he was having before the motor vehicle accident were for a low back injury sustained at work and not, principally at least, for headaches. We had very little evidence before us concerning the Appellant's low back injury: it is mentioned in the Appellant's Application for Benefits, and the multidisciplinary team that assessed the Appellant in November 1998 concluded that the lower back injury had been aggravated by the motor vehicle accident but had since settled down. In his testimony the Appellant was unable to provide much information regarding his lower back problems, which is understandable given the time that has passed since this injury. However, he thought that the lower back injury had completely resolved approximately one year following the motor vehicle accident.

[51] Dr. Mierau's reasoning, which was the basis of SGI's decision to terminate benefits, is simply not tenable in light of several factors: the fact that the principal reason for the Appellant's chiropractic treatments before the accident was to treat his lower back, a different injury than that for which he was receiving treatment, albeit infrequently, in 2005; and the fact that the Appellant's need for treatment to lessen his disability was less in 2004 because he was not performing his usual duties on a full-time basis. If we accept that the Appellant's lower back injury was essentially resolved at least by the one-year anniversary of his motor vehicle accident – this was his best guess – then by the end of 1999 he would not have needed further chiropractic treatments but for the motor vehicle accident. (His evidence was that, before his work injury, he had only had chiropractic treatments about once or twice a year.)

[52] We are satisfied that SGI's decision to terminate funding for the Appellant's chiropractic and massage treatments is unreasonable, since it is based upon the assumption that he had an underlying condition for which he was receiving chiropractic treatments before the accident, and that he had been rehabilitated to this pre-accident condition by 2005. In fact, we find that the two conditions were essentially unrelated. We have not ignored that the Appellant suffered from headaches before the motor vehicle accident, but we do not believe that these were the principal reason for his pre-accident chiropractic treatments. In addition, we accept that he suffered from headaches after the accident that were qualitatively different from, and more frequent and intense than, his pre-existing headaches. These headaches were often brought on by neck pain related to his accident injuries.

## **CONCLUSION**

[53] For the reasons set out above, the decision letter is set aside and the Appellant's benefits pursuant to s. 110 of the *Old Act* are reinstated. Upon receipt of satisfactory invoices or other documentation, SGI is directed to reimburse to the Appellant any costs he has incurred for chiropractic treatment or massage therapy since the date of the decision letter, with interest.

[54] As he has been successful in his appeal, the Appellant is entitled to have his costs and expenses reimbursed in accordance with s. 193 of the *Act* and s. 96 of *The Personal Injury*

*Benefits Regulations*, Chapter A-35, Reg 3, to a maximum of \$2,500. In addition, he shall be refunded his appeal fee.

**Dated** at Regina, Saskatchewan, on November 9, 2007.

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Beverly Cleveland, Chair

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Peter Bergbusch, Commission Member

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Carol Olson, Commission Member