

**Automobile Injury Appeal Commission  
Province of Saskatchewan**

**Citation:** *K.U. v. Saskatchewan Government Insurance,*  
2004 SKAIA 098  
**Date:** 20071115  
**File:** 048 of 2005

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**BETWEEN**

**K.U., Applicant**

**and**

**Saskatchewan Government Insurance, Respondent**

**Appearances:**  
**K.U., for the Applicant**  
**Stephen McLellan, for the Respondent**

**Before:** **Jeffrey Scott, Chair**  
**Jean MacKay, Commission Member**  
**Tim Brown, 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  
April 27, 2006, September 22, 2006 and September 20, 2007.

## **DECISION**

### **INTRODUCTION**

1] This appeal was initially heard by a three member panel of the Automobile Injury Appeal Commission comprising of Tim Brown, Chairman, Jean MacKay and Jeff Scott. During the course of the Appeal, Mr. Brown's Commissioner Appointment expired. The Appeal continued to be heard and was decided by Mr. Scott as Chairman and Mrs. MacKay.

2] On June 25, 2004 the Appellant, K.U., was, as a passenger, injured in a single vehicle roll over accident (the "Accident"). She suffered a number of cuts/abrasions and bruises/contusions. The Appellant completed an Application for Injury Benefits-No Fault Coverage. Due to the injuries that the Appellant suffered in the Accident, the insurer, Saskatchewan Government Insurance ("SGI") initially paid, on behalf of the Appellant, a number of benefits including Income Replacements Benefits and treatment benefits. Then by a letter dated January 17, 2005 (the "First Decision Letter") Gayleen Olson, Personal Injury Representative, SGI informed the Appellant that SGI had decided that the Appellant was no longer injured due to the Accident. Consequently, SGI concluded that the Appellant was no longer entitled to funding for treatment benefits. Further, by a second letter dated January 17, 2005 (the "Second Decision Letter") Ms. Olson informed the Appellant that she had "... completed rehabilitation to the point that you are now earning as much as you did at the time of the accident". Consequently, Ms. Olson informed the Appellant that effective January 9, 2005 Income Replacement Benefits would cease to be paid to her.

### **POSTION OF THE PARTIES**

3] The Appellant claims that she continues to be injured from the Accident. Further, she claims that due to her injuries she is not capable of the employment that she held before the Accident. Consequently, she claims that she is entitled to the payment of treatment expenses and the payment of Income Replacement Benefits.

4] Mr. McLellan, lawyer for SGI asserts that the Appellant is no longer injured due to the Accident. Consequently, he asserts that SGI correctly terminated the payment for treatment expenses and the payment of Income Replacement Benefits.

## **JURISDICTION, NATURE OF THE HEARING AND THE ONUS OF PROOF**

5] In reviewing a decision of SGI, the Commission has jurisdiction under section 193(7) of the Act to:

set aside or vary the insurer's decision; or make any decision that the insurer is authorized to make pursuant to this Part.

6] In *George Allary v. Saskatchewan Government Insurance*<sup>1</sup>, the Saskatchewan Court of Appeal considered the nature of a hearing before the Commission and the standard of review of an appeal before the Commission. In *Allary*, as in this appeal, the claimant put the facts in issue before the Commission. The Court in *Allary* held, in part, as follows:

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 in dispute on the appeal. The appeal commission must determine whether the decision of SGI was erroneous having regard to all of the evidence (See paragraph [20]).

7] The Commission received and considered all of the new evidence submitted by the Appellant and SGI. As held by the Court in *Allary*, we will determine whether "... the decision of SGI was erroneous having regard to all of the evidence".

8] The Saskatchewan Court of Appeal has held that where SGI decides to terminate the payment of benefits to an accident victim SGI has the onus to prove, on the balance of probabilities, that the benefits are no longer payable under the Act<sup>2</sup>. *Job* (supra) was recently cited and applied by Zarzezcny, J. in *Murphy v. Saskatchewan Government Insurance*<sup>3</sup>. Given all of the evidence, we will consider whether SGI has proven, on the balance of probabilities, that it was justified in deciding that the Appellant was no longer entitled to Income Replacement Benefits and medical treatment costs.

## **IDENTIFICATION OF THE ISSUES and DETERMINATION OF THE ISSUES**

9] The issues, and our determination of the issues, are as follows:

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<sup>1</sup> 2006 SKCA 89

<sup>2</sup> *Gerald Job v. Saskatchewan Government Insurance*, 2004 SKCA 164

<sup>3</sup> 2007 SKQB238

- a) Has SGI established, on a balance of probabilities, that the Appellant is not entitled to the payment of treatment expenses?

For the reasons discussed below, we are of the view that the Appellant continues to be injured from the Accident. Consequently, the Appellant is entitled to the payment of treatment expenses.

- b) Has SGI established, on a balance of probabilities, that the Appellant is not entitled to the payment of Income Replacement Benefits?

For the reasons discussed below, we are of the view that there is insufficient evidence for us to determine whether or not the Appellant is entitled to the payment of Income Replacement Benefits. Consequently, we recommend that SGI immediately arrange for the Appellant to undergo a formal Functional Capacity Evaluation. The results of the Functional Capacity Evaluation will determine whether the Appellant is entitled to the payment of Income Replacement Benefits.

## **ANALYSIS AND DISCUSSION OF THE ISSUES**

### **A) Has SGI established, on a balance of probabilities, that the Appellant is not entitled to the payment of treatment expenses?**

- 10] In the First Decision Letter, Ms. Olson states, in part, as follows:

As we have discussed, I recently had your file reviewed by one of SGI's Medical Consultants.

It is the Consultant's opinion that your current symptoms are related to health conditions that pre-existed the June 25<sup>th</sup>, 2004, motor vehicle accident. The information supplied to our office indicates that there is no neurological cause for your symptoms, and that you are at your preaccident state at this time.

Therefore, effective January 21<sup>st</sup>, 2005, SGI will not be able to consider funding further treatment or related expenses.

- 11] The SGI Medical Consultant, referred to by Ms. Olson in the First Decision Letter, is Dr. Arnold Endsins. Dr. Endsins provided a Memorandum dated January 4, 2005 to Ms. Olson. We are assuming that Ms. Olson relied upon the information contained within Dr. Endsins's

Memorandum as the basis for the First Decision Letter. In the Memorandum, Dr. Endsins states, in part, as follows:

I have reviewed the medical information in this file including the print outs we have received from Medical Services regarding treatment, as well as notes provided by Dr. Kitchen. It is clear from this information and from the claimant's initial statement of claim that the claimant has pre-existing history of back pain. In her application of benefits she states that she requires treatment every couple of months for this condition. Based on the information provided by Dr. Kitchen and the Medical Services report she required treatment for this condition more frequently than this prior to the motor vehicle accident of the above date. Indeed, in the two or three months prior to the motor vehicle accident she attended on average at least three times/month for chiropractic treatment of her back and legs. It appears at best that the motor vehicle accident may have only aggravated some pre-existing symptoms.

...

It is my opinion that the majority of the claimant's symptoms are pre-existing, which although aggravated by the motor vehicle accident appear to have resolved significantly. I would suggest therefore that she is at her pre-accident state at this time.

There does not appear to be any neurological cause for the symptoms she is experiencing as there is a lack of anatomical or pathological information that suggests a change from the time before the motor vehicle accident.

Upon completion of the graduation return to work I believe the claimant will be at her pre-accident state. Based on the frequency or (sic) her treatments her perception of pain appears to be consistent with her perception of pain prior to the motor vehicle accident.

...

12] Dr. R. G. Kitchen testified at the Hearing. Dr. Kitchen is the Appellant's treating chiropractor. Dr. Kitchen testified that he provided chiropractic treatments to the Appellant before the Accident. He further testified that he has been providing chiropractic treatment to the Appellant due to the injuries that she suffered in the Accident. He testified that during the months immediately before the Accident he provided chiropractic treatments to the Appellant for a work related left knee injury. There is no evidence nor did Mr. McLellan assert that the pre-existing left knee injury is relevant to the Appellant's claim. Further, Dr. Kitchen testified that before the Accident he provided chiropractic treatments to the Appellant for "mechanical lower back pain"/"posterior joints of the lumbar spine" and that after the Accident the "... primary area of concern has been the sacroiliac joint". Dr. Kitchen went on to testify that before the Accident, he was providing treatment to the Appellant for pain that is "actually involved with part of the

spine” whereas after the Accident he is providing treatment to the Appellant that “is involved with part of the pelvis”.

13] During cross-examination by Mr. McLellan, Dr. Kitchen acknowledged that the area of the Appellant’s body where he provided chiropractic treatment before the Accident is in very close proximity to the area of her body where he provided chiropractic treatment after the Accident. He further acknowledged during cross-examination that his notes delineating the treatment area before the Accident and the treatment area after the Accident could have been clearer. However, during the cross-examination Dr. Kitchen maintained his position that the treatment area before the Accident was different to the treatment location area after the Accident.

14] In response to a question asked of him by a panel member Dr. Kitchen testified that he is of the opinion that the injury and resulting discomfort to the Appellant’s sacroiliac joint is not a “permanent issue”. He went on to testify that he is “seeing improvements day to day”. He testified that he believes the prognosis for the Appellant’s sacroiliac joint is “excellent”. In a letter dated September 11, 2007 addressed to the Commission Dr. Kitchen stated, in part, as follows:

[The Appellant] has asked me to provide you with an update on her condition.

...

On examination lumbar spine range of motion is within normal limits. There is pain at the end of range of extension. She is able to rise upon her heels and toes, however rising upon the left toes is done with difficulty. **There is tenderness to palpation of the left sacroiliac joint and this joint is fixed in motion** (emphasis added).

Treatment is provided in the form of interferential current (a physical therapy treatment modality for muscle relaxation) and **spinal manipulation to the left sacroiliac joint, which requires manipulation** (emphasis added).

It would appear that [the Appellant] has plateau (sic) at her level of MMI (Maximum Medical Improvement). Her requirement for treatment is patient driven and as such amounts to every three weeks.

15] During closing argument, Mr. McLellan candidly acknowledge that Dr. Endsin did not have the benefit of hearing Dr. Kitchen’s testimony that the chiropractic treatment area after the Accident is different from the treatment area before the Accident. Mr. McLellan acknowledged

that Dr. Endsln, in arriving at his opinion, relied upon the written documentation that was included within SGI's file.

16] We accept the testimony of Dr. Kitchen that after the Accident he has been providing chiropractic treatment to the Appellant's sacroiliac joint. Further, we accept Dr. Kitchen's testimony that before the Accident he was not providing chiropractic treatments to the Appellant's sacroiliac joint. Also, we accept Dr. Kitchen's testimony that the area of the Appellant's body where he provided chiropractic treatment to the Appellant after the Accident is different from the treatment area where he provided treatment to her before the Accident.

17] Before leaving the discussion concerning the injury to the Appellant's sacroiliac joint, we do want to comment on the testimony of Dr. M. Youssef. Dr. Youssef is a physiatrist. He is the Appellant's treating physiatrist. Dr. Youssef testified at the Hearing. Dr. Youssef testified that the Appellant informed him that, at the time of the Accident, she was a seat belted passenger within a vehicle, in a reclining position, with her left leg bent under her buttocks. He went on to testify that the Appellant informed him that due to the Accident her left leg came forward and hit the dashboard of the vehicle. Dr. Youssef testify that the mechanism of the left knee coming forward and hitting the dashboard of the vehicle can cause injury to the sacroiliac joint on the left side. The mechanism of injury, as described by Dr. Youssef , is found in some of the written materials that were filed for the appeal.

18] Given the testimony of Dr. Kitchen and Dr Youssef we find that the Accident did cause injury to the Appellant's sacroiliac joint. We further find that at the time of the issuance, and following the issuance, of the First Decision Letter that the Appellant was and is receiving chiropractic treatments for the injury to her sacroiliac joint and she is entitled to the payment by SGI of chiropractic treatments. We find that the current periodic chiropractic treatments to her sacroiliac joint does prevent her from becoming worse and is necessary for her rehabilitation and/ lessens the Appellant's disability caused by the Accident (i.e. maintains her at Maximum Medical Improvement).

19] As identified in Dr. Kitchen's above noted letter dated September 11, 2007, the Appellant is receiving physiotherapy treatments for the Accident related injury to her sacroiliac joint. She is receiving physiotherapy treatments from Erin Ireland. Ms. Ireland testified during the

Hearing. Mr. Ireland testified that she first provided physiotherapy treatment to the Appellant on October 8, 2004. Material was filed for the Hearing in which Ms. Ireland identified the physiotherapy treatments that she provided to the Appellant for, inter alia, the injury to the Appellant's sacroiliac joint. As with the previously discussed chiropractic treatment for her sacroiliac joint, we find that the periodic physiotherapy treatments to her sacroiliac joint does prevent the Appellant from becoming worse and is necessary for her rehabilitation and/ or lessens the Appellant's disability caused by the Accident (i.e. maintains her at Maximum Medical Improvement). Consequently, we conclude that the Appellant is entitled to payment by SGI of physiotherapy treatment expenses.

20] In addition to the injury to her sacroiliac joint, the Appellant claims that she suffers from a more generalized, and potentially more significant, injury due to the Accident. Dr. Youssef testified that the Appellant clinically presents with a condition called Reflex Sympathetic Dystrophy ("RSD") otherwise known as Complex Pain Regional Syndrome. Dr. Youssef testified that a person with RSD typically presents with: an exaggerated pain response; a prolonged feeling of pain after the painful stimulus has been removed; swelling; skin coloration; and a sweat pattern problem (a lot of sweat or no sweat). Dr. Youssef testified that the Appellant overall clinically presents with RSD. However, he testified that in order to confirm the RSD diagnosis there must be a positive three-phase bone scan. At the time that Dr. Youssef testified, Dr. Youssef and the Appellant did not have the results of the bone scan. Consequently, Dr. Youssef could not categorically state that the Appellant had RSD.

21] A panel member asked Dr. Youssef what impact a negative three-phase bone scan would have on his working diagnosis of RSD. Dr. Youssef's reply and the subsequent lengthy exchange that occurred between members of the panel and Dr. Youssef, is set out below:

Dr. Youssef: Well, this will be, un --, if that happen (sic) that will be a problem because she still has the symptoms, I can't ignore that they're symptoms, but I can not categorize her as reflex sympathetic dystrophy, and that's the problem with this. Like—like sometimes in medicine—like I saw a patient—I'm just giving you this example to make it—like I have a patient that has all the symptoms of MS, multiple sclerosis, but they didn't find in the MRI plaques, which is one of the things that you have to find to diagnosis (sic) this patient with multiple sclerosis. I still treat the patient and I see that through the weakness that she has the problems with her bladder and bowel, but I will not call her officially like, you

know, multiple sclerosis. The same thing, if her--if her MRI came back—I'm sorry, bone scan came back negative, you know, yes, it came back negative, it's a study, it's a hinging study. In the literature it has to be there to confirm the diagnosis, but if it's not there I will still treat her for her pain because I can see that she has pain, you know, and that's what I'm treating now. Like that's what I'm treating. I will not be calling-calling it reflex sympathetic dystrophy, but it's certainly a pain syndrome that may be on different shade, but there's something going on.

Jeff Scott: But if it doesn't show RSD would you--and correct me if I am wrong, it's my understanding that you're linking her current condition to the injuries that she suffered in the motor vehicle accident. Is that correct, Dr. Youssef?

Dr. Youssef: Yes, that is correct.

Jeff Scott: Okay.

Dr. Youssef: Yeah, because I'm not saying that-- and that's what I want to be clear in. Like, you know, um, the--for example the hypertrophy of the ligamentum flavum that can happen to people even that doesn't have the injury, that doesn't have accident, you know, but -- but the pain in the lower back, the pain over left SI, The (sic) pain over the piriformis muscle, the pain -- even the changes in her skin and all the stuff in her leg is very , very like, you know, matching a noxious stimuli following sequences.

Jeff Scott: Okay.

Dr. Youssef: I'm not sure if stimuli means a trauma or an accident as what she had.

Jeff Scott: So will your opinion be altered at all if the triple bone scan is negative? In other words if the triple bone scan is negative will you still be linking the bulk of her complaints to the motor vehicle accident or would you have to reassess the cause? Are you following me?

Dr. Youssef: Yeah. Well, the symptoms I think it is—I may-I may try to find another like, you know, diagnosis that—that fits or that—that put this syndrome under a title or put what she has under a title, but if it's related I think that—that her like, you know, her pain in her lower back that occurred after the accident and the pain in her buttocks and the pain that she's suffered is mainly related to the accident, but, uh – because I don't know if in her history she has any back pain prior to the accident. Like I got what she told me. And I think if the pain appeared after the accident it's mainly related to the accident. The symptoms that are in her leg were not there before and like it fit clinically the criteria of the reflex sympathetic dystrophy or complex regional pain syndrome, and because the criteria requires or it is one of the necessity (sic), one of the criteria that it has to happen after a noxious stimulus or immobilization and she had this trauma or this motor vehicle accident, so that's why I link these symptoms to her accident. If even the MRI—the bone scan came back negative, I will still think that – in that direction, but I need to put – to find another, uh, like, you know, another title for these symptoms. We did a lot of investigation throughout a lot of --a lot of

diseases like, you know, that may have like, you know, these problems, and, un, 'til now most of the stuff that we got were negative, uh, lab results and negative imagings, but I think she had even an x-ray that was done in (sic) June 13, 2006, and came back negative for me as well, the pelvis, the SI joint, the left hip, the left femur, the left tibia and fibula, so those were negative, so we're trying to find a diagnosis. If the bone scan comes negative it will be more to the dilemma, it will be more to like, you know so what's going on, like what further we can put to these symptoms.

Chairperson: Can I just, uh – it's, uh, Tim Brown speaking. So, okay, if the bone scan comes back negative, that would not alter your opinion that it's your position or diagnosis that the pain in the lower back and buttocks is accident related, but it would make the situation with the leg a little bit more of a mystery, is that fair to say?

Dr. Youssef: No.

Chairperson: No?

Dr. Youssef: The pain in the back and the lower buttocks is definitely related to the injury.

Chairperson: Okay.

Dr. Youssef: I'm talking about reflex sympathetic dystrophy which is her leg, her left leg, the swelling, the changing in colouration, --

Chairperson: Right.

Dr. Youssef: --the, uh, uh, different sweating pattern, the over --like, you know, but these are the things that I categorize under the name reflex sympathetic dystrophy or complex regional pain syndrome. The back pain, the tenderness over the SI joint, the tenderness over the piriformis does not have anything to do with the reflex sympathetic dystrophy. That's mainly related from the impact of the – of the injury on her, and that can do what we call imbalance in her, uh, in her, um, pelvis and give her these kind – this kind of pain. So this is a dif – like this is a different, uh, is different than the reflex sympathetic dystrophy which is mainly addressing the symptoms that happened in her left leg.

Chairperson: Thank you.

22] Following the above noted exchange, a panel member asked Dr. Youssef whether he was aware that the Appellant received chiropractic treatments before the Accident and, if so, whether the Appellant's pre-Accident condition might be contributing to her current condition. Dr. Youssef testified that he had nothing in his file concerning the chiropractic treatments that the Appellant received before the Accident. Consequently, Dr. Youssef was not able to offer an opinion on whether the Appellant's pre-Accident condition was contributing to her "RSD-like symptoms".

23] We purposely use in this Decision the descriptive term “RSD-like symptoms” given the negative result arising from the triple phase bone scan. As previously stated in this Decision, Dr. Youssef testified that a positive result arising from three-phase a bone scan is required for a definitive diagnosis of RSD. Since a negative result came from the bone scan, the Appellant’s condition cannot be diagnosed as RSD. However, and as stated by Dr. Youssef, notwithstanding that the Appellant cannot be diagnosed as having RSD she does continue to present with a number of symptoms. For that reason we use the term “RSD-like symptoms”.

24] With respect to the Appellant’s pre-Accident condition, Mr. McLellan candidly acknowledged that there is no evidence to suggest that pre-Accident the Appellant presented with the “RSD-like symptoms”. Rather, Mr. McLellan asserted that there is insufficient evidence to establish a causal link between the injuries that the Appellant suffered in the Accident and the “RSD-like” symptoms.

25] We conclude that there is likely a causal link between the injuries that the Appellant suffered in the Accident and the “RSD-like symptoms”. We come to that finding given that:

- a) The Appellant did not experience any of the “RSD-like symptoms” before the Accident;
- b) The Appellant began to experience the “RSD-like symptoms” after the Accident; and
- c) Other than the injuries that the Appellant suffered in the Accident, no evidence was brought forward to suggest an alternate likely cause for the “RSD-like symptoms”.

26] Given our finding that the injuries that the Appellant suffered in the Accident likely caused the “RSD-like symptoms” we find that the Appellant is entitled to the payment for past treatment costs for the “RSD-like symptoms”. Given the evidence that was brought forward for the appeal, we are not able to make any finding as to what, if any, future treatment there is for the “RSD-like symptoms”. Dr. Youssef recommended that the Appellant attend upon Dr. Lang, anesthesiologist/Pain Clinic for a second opinion. The Appellant testified that she does not yet have an appointment to see Dr. Lang. We are assuming that after the Appellant attends upon Dr. Lang that Dr. Lang will be in a position to offer an opinion on what future treatment, if any,

would be recommended for the “RSD-like symptoms”. We recommend to SGI to obtain an opinion from Dr. Lang at the appropriate time.

**B) Has SGI established, on a balance of probabilities, that the Appellant is not entitled to the payment of Income Replacement Benefits?**

27] The Appellant claims that due to the injuries that she suffered in the Accident she is not able to perform her employment duties. After the Accident, the Appellant did participate in a graduated return to work program. Ultimately, however, that graduated return to work program was not successful. The Appellant informed SGI that the injuries that she suffered in the Accident prevented her from discharging her employment duties. The Appellant claims that the injuries continue to prevent her from performing her job duties.

28] Mr. McLellen asserts that the injuries that the Appellant suffered in the Accident do not preclude her from performing her employment duties.

29] In support of her position, the Appellant relies on, for example, a report dated December 5, 2006 prepared by Erin Deichert (nee: Erin Ireland), Physical Therapist. In her report, Ms. Deichert summarizes the Appellant’s condition. The summary includes the sacroiliac joint injury and the symptoms that are generally referred to in this Decision as the “RSD-like symptoms”. Under the heading “Recommendations”, Ms. Deichert states:

Functional Capacity Evaluation (FCE) to evaluate [the Appellant’s] current functional status. Currently in [town] there is no personnel to complete an FCE.

Continue physiotherapy, chiropractic and home program to maintain symptoms and monitor status.

A modified work program was initiated on April 4, 2005 going from 8 to 6 hours, 6 to 4 hours on October 31, 2005, and off work indefinitely on January 23, 2006 due to worsening of symptoms. In the writer’s professional opinion [the Appellant’s] injury and symptoms prevent her from performing her essential job duties and should remain off work indefinitely until her symptoms improve.

30] Mr. McLellan takes exception to the opinion offered by Ms. Deichert with respect to the Appellant's inability to return to work. During his Closing Argument, Mr. McLellan asserted that Ms. Deichert conceded during cross-examination that the treatment of the “RSD-like

symptoms” was not really within her area of expertise. Further, he asserted that Ms. Deichert was relying upon physicians such as Dr. Youssef to treat the “RSD-like symptoms”. With respect to specifically the sacroiliac joint injury, Mr. McLellan asserted that there was no evidence to suggest that the sacroiliac joint injury was preventing the Appellant from returning to work.

31] Ms. Deichert and Dr. Kitchen candidly testified that they were looking to physicians, such as Dr. Youssef, to manage and treat the “RSD-like symptoms”. Dr. Kitchen acknowledged during cross-examination that typically sacroiliac joint injuries do not prevent individuals from working. Consequently, we do not place much weight to the opinion offered by Ms. Deichert concerning the Appellant’s inability to return to work due to the injuries that she suffered in the Accident.

32] Given the above and with respect to the sacroiliac joint injury that the Appellant suffered in the Accident, we find that SGI has, on a balance of probabilities, established that the Appellant is not entitled to the payment of Income Replacement Benefits.

33] With respect to the “RSD-like symptoms” we find that there is currently insufficient evidence for us to make a finding on whether the Appellant is entitled to Income Replacement Benefits. On that point, Dr. Youssef recommended that the Appellant undergo a Functional Capacity Evaluation. For his part, Mr. McLellan, also, acknowledged during the Hearing that the results of a Functional Capacity Evaluation would be helpful in determining whether the Appellant is entitled to the payment of Income Replacement Benefits.

34] We recommend to SGI that immediate arrangements be made for the Appellant to undergo a Functional Capacity Evaluation. The results of a Functional Capacity Evaluation could then be used by SGI in making a decision whether the Appellant is entitled to the payment of Income Replacement Benefits.

## **Conclusion**

35] Given our finding that there is a causal link between the injuries that the Appellant suffered in the Accident and the sacroiliac joint injury, the Appellant is entitled to the payment

by SGI for her past and future treatment costs (up to the prescribed amount, if any, as set out in the legislation) arising out of the injury to her sacroiliac joint. With respect to any past treatment costs paid personally by the Appellant, SGI shall reimburse the Appellant for those costs with interest at the prescribed rate as set out in the legislation. Those treatment costs include, for example, periodic chiropractic and physiotherapy. In the event there are other costs in relation to the sacroiliac joint injury (for example, medications, travel expenses incurred when attending chiropractic and physiotherapy) we anticipate that an agreement will be reached between SGI and the Appellant with respect to the payment of those costs. However, in the event an agreement cannot be reached with respect to those additional costs then either one or both of the parties may bring that issue before the Commission for a hearing and a determination. The Commission office will assign the panel members hearing this appeal to hear and determine the issue with respect to any additional costs arising out of the treatment of the sacroiliac joint.

36] We find that the injuries that the Appellant suffered in the Accident likely caused the “RSD-like symptoms”. Consequently, the Appellant is entitled to reimbursement, along with interest at the prescribed rate, for any past treatment costs associated with the “RSD-like symptoms”. We anticipate that the parties will be able to identify and agree to those past treatment costs. However, in the event an agreement cannot be reached with respect to those past costs then either one or both of the parties may bring that issue before the Commission for a hearing and a determination. The Commission office will assign the panel members hearing this appeal to hear and determine the issue with respect to the past treatment costs associated with the “RSD-like symptoms”. Currently, there is not sufficient information for us to make a finding on whether the Appellant is entitled to the payment of any future treatment costs for the “RSD-like” symptoms. We recommend that the Appellant undergo the evaluation by Dr. Lang. Once that evaluation has occurred we recommend that SGI obtain an opinion from Dr. Lang with respect to his diagnosis, treatment plan and prognosis. Once that information is received from Dr. Lang., we anticipate that SGI will provide the Appellant with a decision letter with respect to the payment of treatment costs for the “RSD-like symptoms”. The Appellant will then have the opportunity to accept SGI’s decision or appeal SGI’s decision.

37] With respect to Income Replacement Benefits, we find that the Appellant is not entitled to the payment of Income Replacement Benefits due to the injury to her sacroiliac joint. With

respect to the “RSD-like symptoms”, we recommend that SGI immediately arrange for the Appellant to undergo a Functional Capacity Evaluation. The results of the Functional Capacity Evaluation would be used to determine whether the Appellant is entitled to the payment of Income Replacement Benefits. We anticipate that SGI would then provide the Appellant with a decision letter concerning the issue of her entitlement to Income Replacement Benefits. The Appellant will then have the opportunity to accept SGI’s decision or appeal SGI’s decision.

38] Given the success that the Appellant has had with her appeal, SGI shall reimburse her for her Application fee. Further, and pursuant to section 169 of the *Act* and section 76 of the *Regulations*, in the event the Appellant incurred costs for the reports that were filed for the Appeal and were prepared by any of medical caregivers the Appellant shall be reimbursed by SGI.

**Dated** at Regina, Saskatchewan, on November 15, 2007.

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Jeffrey Scott, Chair

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Jean MacKay, Commission Member