

**Automobile Injury Appeal Commission  
Province of Saskatchewan**

**Citation:** *M.N. v. Saskatchewan Government Insurance,*  
2007 SKAIA 103  
**Date:** 20071203  
**File:** 006 of 2007

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**BETWEEN**

**M.N., Applicant**

**and**

**Saskatchewan Government Insurance, Respondent**

**Appearances:**  
**M.N.**  
**Elizabeth Flynn, for the Respondent**

**Before:** **Barbara Tomkins, Chair**  
**Conrad Hnatiuk, 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.**

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Heard at Regina, Saskatchewan  
November 6, 2007

## DECISION

[1] The Appellant, M.N., appeals a decision by Saskatchewan Government Insurance (SGI) dated November 1, 2006 terminating all benefits because it was felt that her accident related injuries had healed and her minor muscle problems related to physiotherapy treatment. SGI relies on the various practitioner reports filed and the opinion of its medical consultant. The Appellant thinks her benefits were prematurely terminated before her injuries had healed because she continues to have problems with her neck and hip that she didn't have before the accident.

[2] The Appellant was a passenger in a car that was involved in a collision on December 29, 2005. She reported injuries to her neck and back/hip. SGI accepted her claim and paid benefits for all injuries until the spring 2006 when the physical therapist discharged the Appellant on a home exercise program. SGI has the onus of proof.

[3] The decision letter notes the Appellant's current complaints are mostly for left neck pain yet she reported right neck pain after the accident. We agree that left neck pain was not reported until January 11, 2006, about two weeks after the accident but there is nothing to suggest it was caused other than by the accident regardless of whether or not it was a new complaint. Certainly there is no indication that anything else happened to the Appellant that might have caused the left neck problem. In this regard, we note that SGI continued to pay for treatment, including that relating to the left neck, well after January 11, 2006.

[4] By the late spring 2006, the physical therapy reports suggest the Appellant had healed but minor left neck stiffness was still observed. The Appellant was asked to call back if she was having any difficulty with the home exercise program but didn't although she says she continued to have problems. The Appellant said she felt the therapist had hurt her during the last session and she was afraid to tell her about it or to go back.

[5] The Appellant says that as early as July 2006 she reported to SGI and to her family doctor that she was continuing to have problems and that her family doctor suggested she return to therapy.

[6] There is no weight to the suggestion that the left neck injury related to any pre-existing condition. The only suggestion was that the Appellant had a previous rotator cuff injury and her neck may have become involved. It is not suggested this was a neck injury – it was a rotator cuff injury only and there is certainly no evidence by any practitioner the rotator cuff injury reoccurred and involved the neck again or that there was a specific neck injury caused by the rotator cuff problem.

[7] SGI's consultant also suggested that the Appellant may have simply awakened with a sore neck and that many people experience this sort of event. It may be that this happens but in this case, the Appellant had a neck injury caused by a car accident and shortly after had problems with the left side of her neck too. We find that it is much more likely it was caused in the accident than that it developed coincidentally and independent of her then current neck problems. There is no evidence the current problem relates to a prior injury.

[8] SGI also said in its decision that because both the accident and the injuries were minor, the injuries should have healed by the time of the November 2006 decision letter. In this regard, SGI is probably correct. However, the fact that the injuries would be expected to heal within that time frame does not establish that they in fact did heal within the time frame.

[9] While we have some concerns about the gap of several months where the Appellant did not seek treatment between the late spring and early fall 2006, there is nothing to suggest she is fabricating her injuries or malingering. We accept the Appellant's evidence that she has not healed and we are satisfied that her neck and back/hip injuries were caused by the accident. Even if some or all of the residual problems the Appellant is experiencing were caused by the physical therapist, they occurred during the course of recommended treatment and remain SGI's responsibility.

[10] The Appellant has succeeded not because she provided any particularly useful information but rather because SGI has failed to discharge the onus on it. The decision terminating her benefits is set aside and the Appellant is entitled to be reinstated and paid any benefits to which she was or is entitled. The Appellant may submit whatever receipts for expenses she has incurred to date and SGI shall pay for those which are eligible benefits.

[11] There was no evidence about why the Appellant is continuing to have problems or even what kinds of problems she is having. For example, is she limited in her daily activities, work, bending or lifting? The chiropractor suggested a secondary assessment because of the length of time since the accident and that she has failed to achieve a resolution of her problems. If causation was not in question, SGI's medical consultant also felt that a secondary assessment would be reasonable. We don't know if her residual pain can be effectively treated or rehabilitated but that is what the secondary assessment should show. Accordingly, SGI is ordered to arrange for a secondary assessment for the Appellant in consultation and co-operation with the Appellant and her family doctor.

**Dated** at Regina, Saskatchewan, on December 3, 2007.

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Barbara Tomkins, Chair

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Conrad Hnatiuk, Commission Member

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Beverly Cleveland, Commission Member