

**Automobile Injury Appeal Commission
Province of Saskatchewan**

Citation: *S.L. v. Saskatchewan Government Insurance,*
2008 SKAIA 007
Date: 20070211
File: 064 of 2006

BETWEEN

S.L., Applicant

and

Saskatchewan Government Insurance, Respondent

Appearances:
S.L., Applicant
Dale Brown, for the Respondent

Before: **Jane Lancaster, Q.C., Chair**
Carolyn Jones, Commission Member
Darleen Topp, 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 Saskatoon, Saskatchewan
January 22, 2008

DECISION

[1] The Appellant, S.L., was injured in a motor vehicle accident on June 3, 2005. He applied for and received benefits from Saskatchewan Government Insurance (SGI) pursuant to Part VIII of *The Automobile Accident Insurance Act* (the Act).

[2] The Appellant appealed two decision letters from SGI dated April 3, 2006 which related to income replacement (IRB) and travel benefits.

[3] In addition, the Appellant also appealed a decision from SGI dated April 24, 2007 wherein SGI advised that the medical information state “*they do not find compelling indications for treatment and state that it appears that you have recovered from the motor vehicle accident from a standard medical definition.*”

[4] At the hearing, the Appellant clarified that he is no longer contesting the April 3, 2006 decisions concerning IRB nor travel and this hearing was concerned solely with his view that he requires continued chiropractic and massage therapy as a result of the motor vehicle accident. Acupuncture had been mentioned in some of the documentation, but the Appellant indicated that he was not asking for funding for acupuncture.

[5] Therefore, the decision letters of April 3, 2006 are upheld.

JURISDICTION

[6] The Commission derives its jurisdiction from section 191(1) of the *Act* which provides as follows:

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 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.

[7] SGI's decision letter is dated April 24, 2007 and the Appellant's application for appeal was received on June 7, 2007. Thus, his appeal was received within 90 days after SGI's decision, in accordance with section 191(1)(a). The appeal is properly before us.

[8] **FACTS AND FINDINGS**

[9] The Appellant was involved in a motor vehicle accident on June 3, 2005. He was diagnosed with a mild WAD II (whiplash associated disorder grade II) neck and thoracic spine and Low back pain grade II.

[10] As a result of this accident, he attended chiropractic treatments three times per week and those treatments continued when he returned to hair stylist school in Calgary. He also received some massage therapy.

[11] When his condition did not seem to be improving within the time frames usual for this condition and he was experiencing considerable pain and discomfort in his neck and shoulder regions, the Appellant was referred for a secondary assessment. This assessment took place October 18, 2005 in Saskatoon.

[12] The secondary assessment recommended a further rehabilitation program on a daily basis for a period of 8 weeks with the expectation that after this treatment he should be able to return to his pre-injury work as a hair stylist.

[13] The Appellant attended at CBI Physiotherapy and Rehabilitation Centre in Calgary commencing November 9, 2005 and participated in an active rehabilitation program including stretching and strengthening his neck and back and lessening pain.

[14] When he returned to Saskatoon in December, 2005, the Appellant attended the CBI Physical Rehabilitation Centre in Saskatoon participating in a four week program. During this time he was also seeing his chiropractor for manipulative therapy "on a weaning frequency over the next few weeks."

[15] The Appellant returned to work in Calgary in January 2006 at a hair salon although he reported that he was unable to work full hours due to the pain in his back, neck and headaches.

[16] The Appellant reported to his Innovative Rehab Consultants on February 6, 2006, that he had returned to his previous employment and fitness activities and is reporting that he is almost 100% better. No further treatment was recommended by the health care providers and the Appellant did not report any functional difficulties after two weeks of work.

[17] The Appellant reported to SGI that his back and neck conditions had not improved and he was still suffering pain. In December 2006, SGI agreed to fund a re-assessment at the Canadian Back Institute (CBI) in Saskatoon January 2007.

[18] The Appellant went through an extensive Multi-Disciplinary Assessment on January 3, 2007. The Appellant had reported to the assessment team that he had not improved since his secondary treatment a year previously and still has recurrent neck and upper back pain, some lower back pain and occasional numbness in arms or hands. He reported that it comes and goes and is increased with the demands of his hair styling employment, limiting his work hours to 32 instead of the normal 40 hour week.

[19] The CBI Secondary Assessment took the position that the symptoms that the Appellant experienced was consistent with the physical demands of his employment as a hair stylist especially the upper back muscular symptoms. The assessment did not find any neurological abnormalities and the slight tightness in the upper back in their view is not unexpected for his profession.

[20] As a result, they concluded that the Appellant had recovered from the motor vehicle accident while acknowledging that he did not agree with their assessment. In their view, there were no compelling clinical indicators for musculoskeletal treatment.

[21] It was on the basis of this report, that SGI issued their decision letter advising that further funding for treatment was not available.

[22] The Appellant testified at the hearing and indicated that he disputes the decision of SGI to terminate funding for further treatment.

[23] The Appellant indicates that he feels that he requires continued funding of both chiropractic treatments and massage treatments on an ongoing basis so that he can function in his employment.

[24] Currently, the Appellant is attending [college] in Calgary and taking a course on entrepreneurship as a precursor to his plan to purchase and run his own hair salon.

[25] In addition to school, he is working 3 days a week at a hair salon. He reports that requires the chiropractic treatments and massage as they act as maintenance and allow him to function. As he is not able to afford the number of treatments he feels would be optimum for him, he experiences periods of pain and tension which make it impossible for him to attend for his work.

[26] He reports that on an as needed basis he receives massage therapy from the salon where he works on a reduced cost basis. His finances have not allowed him to participate in a gym and swimming program which he said had been beneficial for him. He has made adjustments in his work to have a sitting stool for hair styling which reduces some of the strain on his neck and shoulders.

[27] He reports that the symptoms although not as frequent as before target his upper back and neck and he can not identify a particular trigger. When the symptoms are such that he cannot work, he will attend his chiropractor for a treatment as well as taking muscle relaxants and pain medication.

[28] The Appellant reports that he had been going to a chiropractor for a basic adjustment on a monthly basis since he was 16 as part of his family's normal health practice. Prior to the motor vehicle accident, it was his practice to go approximately once a week for a basic chiropractic adjustment. When he returns to visit in Saskatoon, he goes to his family chiropractor approximately once a month for a basic adjustment not related to any particular complaint.

[29] Prior to the accident, the Appellant also had a Workers Compensation claim dealing with his arms and hands mainly related to his work as a hair stylist.

[30] SGI called Kerry Clarke, physiotherapist, as a witness. Mr. Clarke is employed by CBI and had been involved with the Appellant when he attended for his Secondary Assessment December 19, 2005.

[31] Mr. Clarke testified that he had been involved in the treatment program for the Appellant. He advised that the Appellant had reported persistent low back, thoracic and cervical symptoms with burning between the shoulders and that he had described that he had used passive coping strategies to deal with these symptoms.

[32] Mr. Clarke explained that passive treatment was delivered to you, such as chiropractic manipulations, massage therapy as opposed to active strategies like exercise, stretching which you do for yourself.

[33] In his view, it appeared that the Appellant had mild spinal pain with mild movement restriction. His neurological status was normal. He testified that in his view, the Appellant had given up, was relying on passive treatment and was not as active as he needed to be to return to his prior situation.

[34] During the four week program, his plan for the Appellant was to participate in a treatment program focused on education on principles of functional restoration, participation in a conditioning program, psychological assessment and return to work planning. The Appellant would continue to see his chiropractor but on a weaning frequency as per Mr. Clarke's consultation with his chiropractor.

[35] At the conclusion of the rehab program, it was Mr. Clarke's view as outlined in his discharge report that there was no pathology of the Appellant's joints, neurological status was normal, and he had full range of motion without pain of cervical spine and thoracic spine. His lumbar spine was within normal limits with some tightness in the hamstrings within normal limits and no pain. In his view, which he confirmed at the hearing, the Appellant was near a full recovery from the motor vehicle accident with some symptoms but minimal objective findings.

[36] The Appellant had reported that when he returned to Calgary he would continue with some chiropractic and massage treatments and Mr. Clarke indicated that he was supportive of

this especially during the return to work period. However, in his view this was not an open ended recommendation but would be limited to treatments once or twice a week for a four week period. If the Appellant wanted to continue the massage and chiropractic treatments past this time, in his view this would be a matter of personal choice and not medical necessity.

[37] Mr. Clarke had encouraged the Appellant to continue with a home program dealing with stretches and encouraged him that if he was sore, to do the stretches rather than rely on passive treatment.

[38] SGI also called on Ms. Sajtos, a physiotherapist, who had been the team leader of the Appellant's January 2007 assessment.

[39] Ms. Sajtos testified that she was a member of a multidisciplinary assessment team who worked with the Appellant in January 2007. The assessment team included a physician and chiropractor and Ms. Sajtos, a physiotherapist.

[40] Ms. Sajtos testified that as a result of the tests performed on the Appellant during the assessment, it was the view of the assessment team that there were no apparent structural or neurological damage, his range of motion was within normal limits and the Appellant's report of discomfort in his upper back and neck was consistent in her experience with job related physical stresses for a hair stylist.

[41] When asked why she did not attribute the Appellant's symptoms to his motor vehicle accident rather than his occupation, Ms. Sajtos testified that in her assessment, one would expect to see evidence of loss of motion, evidence that the muscles were not working well or neurological damage. In the Appellant's case, she did not see this type of evidence, but rather postural demands caused by the physical requirement of the Appellant's employment.

[42] In her view, treatment for the physical stresses that the Appellant experiences as a result of his work would include regular exercise to strengthen the back, and arm exercises to strengthen the arms as the job often requires a hair stylist to work with their arms elevated. She testified that there were not clinical indications for musculoskeletal treatment like chiropractic and massage therapy to address the Appellant's periodic pain and discomfort.

[43] None of the witnesses disputes the fact that the Appellant suffers pain and stiffness in his neck and upper back on a periodic basis. The issue is whether continued chiropractic and massage treatments will either improve his condition or lessen his disability.

[44] We accept the Appellant's evidence that chiropractic treatment and massage therapy provides him with a period of relief. The Appellant has been receiving chiropractic treatments monthly since he was sixteen, not necessarily for any specific discomfort, but more like a dental checkup in his words.

[45] At the time of the motor vehicle accident, he was seeing a chiropractor on a weekly basis. It is clear at this time that he had experienced some of the job related physical demands that Ms. Sajtos had indicated was common among the profession of hair stylists.

[46] The Appellant's condition improved significantly when he was involved in an exercise program and he advised that he had been given a stretching program to alleviate pain and stiffness. In the past months, due to cost, he had not participated in an structured exercise program, but he had the information to do some of the exercises on his own at no cost to him.

LAW AND ANALYSIS

[47] SGI's responsibility to provide treatment is set out in section 112 of the Act:

112(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 an insured, to lessen the insured's disability caused by the accident and to facilitate the insured's recovery from the accident . . .

[48] Although the assessments do not specifically use the words Medical Maximum Improvement, (MMI), it is clear that both Mr. Clarke and Ms. Sajto were of the view that the Appellant has recovered as much as he was going to recover from the motor vehicle accident. In Ms. Sajto's case, she seems to be of the view that the Appellant's current complaints are more likely job related than accident related.

[49] Given this, it is unlikely that further treatment will facilitate his recovery from the accident; he has, in all likelihood, recovered as much now as he ever will. For similar

reasons, it is unlikely that further treatment might contribute to his rehabilitation. The Appellant's chiropractors continue to provide occasional chiropractic treatment when the Appellant finds his symptoms difficult to manage. We accept the Appellant's evidence that this treatment provides him a period of relief.

[50] The question is whether on-going episodic chiropractic care might lessen his disability. The conclusion that the Appellant has reached MMI leads to the consequent conclusion that his physical condition will not likely be improved by treatment. It could be argued that his current condition disables him occasionally from managing his activities of daily living, including work and that on-going chiropractic treatment lessens *this* disability.

[51] In his own testimony, the Appellant candidly said that this chiropractic care is for treatment of symptoms only and does not improve his condition or change his disability. The reports of the secondary assessment done in December 2006 and January 2007 and the testimony of Mr. Clarke and Ms. Sajto lead to the same conclusion. We are therefore satisfied that the care the Appellant seeks and occasionally receives is not for rehabilitative for the purposes of section 112(1) and benefits are therefore not payable in this regard. This includes both chiropractic and massage therapy.

CONCLUSION

[52] SGI's decision letter of April 24, 2007 is upheld.

COSTS

[53] As the Appellant has not been successful in this appeal, there is no order as to costs.

Dated at Saskatoon, Saskatchewan, on February 11, 2008.

Jane Lancaster, Q.C., Chair

Carolyn Jones, Commission Member

Darleen Topp, Commission Member