



## DECISION

[1] The Appellant appeals five decisions by Saskatchewan Government Insurance (SGI) dated November 21, 2006, January 24, 2007, September 10, 2007, September 26, 2007 and September 19, 2008 dealing with the Appellant's entitlement to personal and living assistance benefits<sup>1</sup> from the date of her accident on June 23, 1996 to the present date.

### THE GRIDS FOR PERSONAL HOME ASSISTANCE AND LIVING ASSISTANCE

[2] In order to decide if SGI's decision with respect to personal and living assistance benefits should be set aside, confirmed or varied by the Commission,<sup>2</sup> it is necessary to first understand the way the legislation and regulations required SGI to reimburse these costs under the old *Act*,<sup>3</sup> and then under the new *Act*.<sup>4</sup>

#### Old Act

##### **Benefits for personal assistance expenses**

158(1) Subject to the Regulations, if a victim is unable because of an accident to care himself or herself or to perform the essential activities of everyday life without assistance the insurer may pay a benefit to reimburse the victim for expenses related to personal home assistance.

(2) The maximum amount of a benefit pursuant to this section is \$550 per week.<sup>5</sup>

#### New Act

##### **Benefits for living assistance expenses**

156(1) Subject to the regulations, if an insured is unable because of the accident to care for himself or herself or to perform the prescribed basic activities of daily living without assistance, the insurer shall pay a living assistance benefit to the insured for expenses related to obtaining assistance.

(2) The insurer shall calculate and reimburse the insured for the living assistance benefit in accordance with the regulations.

(3) The maximum amount of a living assistance benefit is \$947 per week.

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<sup>1</sup> Under the old *Act* and *Regulations*, the benefits for personal and home care and neurological effects are referred to as "personal assistance expenses" and under the new *Act* and *Regulations*, the benefits for functional and cognitive activities are referred to as benefits for living expenses.

<sup>2</sup> Pursuant to its mandate under section 193(7) of *The Automobile Accident Insurance Act*.

<sup>3</sup> Part VIII of *The Automobile Accident Insurance Act* in force from 1995 to August 1, 2002.

<sup>4</sup> Part VIII of *The Automobile Accident Insurance Act* in force from August 1, 2002.

<sup>5</sup> This benefit (and others) are indexed to the Consumer Price Index annually on January 1: section 188(3) of the old *Act*, and section 187

*Old Regulations***Reimbursement of personal home assistance under Appendix D**

44 Subject to the maximum amount set pursuant to section 158 of the *Act*, where a victim incurs an expense for personal home assistance that is not covered pursuant to any other *Act* and provides the insurer with receipts for that expense, the insurer shall reimburse the victim for the expense in accordance with Appendix D.

*New Regulations***Living assistance benefit under Appendix D**

44 Subject to the maximum amount set pursuant to section 156 of the *Act*, if the insured is unable because of the accident to care for himself or herself or to perform the prescribed basic activities of daily living without assistance and has an expense for living assistance that is not covered pursuant to any other *Act*, the insurer shall reimburse the victim for the expense in accordance with Appendix D.

[3] As can be seen, the legislation and regulations above have not changed significantly. The big difference is in Appendix D. Appendix D (old and new) provides instructions on how to determine if the person requires assistance or not, when the requirement is not applicable,<sup>6</sup> definitions of the terminology used, “evaluation grids” to compute points. The grids are completed by an SGI injury representative, usually based on evaluation by others, such as an occupational therapist.

[4] Under the old *Act* and *Regulations*, there were three grids (Grid A: personal care, Grid B: housekeeping and meal preparation, Grid C: neuropsychological factors)<sup>7</sup> and now there are two (Grid A: functional activities, Grid B: cognitive activities). The personal care (bathing, bowel and bladder control, dressing and undressing, etc.) and household activities (meal preparation, light and heavy housekeeping) which were dealt with in Grids A and B under the old *Act* and *Regulations*, are now combined in a new Grid A, with a maximum of 68 or 70 points (depending on size of house), as opposed to 51 points for old Grids A and B combined.

[5] Under the old *Act* and *Regulations*, Grid C factored in the effect on a victim of neurological or psychological after effects. If, for example, a person needed supervision of some kind because of problems with memory, temporal or spatial orientation, communication or self-control, or other aspects of higher cerebral functions, old Appendix D awarded points up to a maximum of 3, which was then converted into a percentage of the weekly maximum of \$550.

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<sup>6</sup> e.g. if the care is already provided in a health care facility or program

[6] Finally, under the old *Act* a determination was made as to whether *specific* supervision (where needs under Grids A and C are inapplicable) is required for four hours or less per day or more than four hours, which again translated into a percentage of 24% or 47%, again applied to the \$550 per week. However, in no case was the amount to exceed \$550 per week.

[7] Under the new *Act* and *Regulations*, new Grid B deals with cognitive activities, on a scale of 70. These activities are attention/memory, behaviour, communication, financial management, planning and organizing activities, and safety concerns. The logic of the assignment of points to various activities is not apparent: someone who needs constant supervision doing homework or home therapy gets 7 points; while someone who needs constant supervision in communication (understanding, speaking, reading and writing) gets only 4.

#### ***How the Process was Applied under the old Act***

[8] To illustrate how the process is applied under the old *Act*, a person *completely* dependent on assistance for all of the aspects of personal care would be rated at 24 out of 24 possible points on Grid A. Similarly, a person completely dependent on assistance for activities of daily living, including meal preparation, light housekeeping, house cleaning, laundry and purchase of supplies, would be scored at 27 of out of a maximum of 27 points on Grid B. When the two grid scores are totaled, from a minimum of 0 to a maximum of 51, a “Chart of Qualifying Personal Care Expenses at Home” relates the number of points to a “percentage”, and this percentage is applied to the \$550 per week available under section 158(2) of the *Act*, and then indexed to the Consumer Price Index under section 188(3).

#### ***How the Process is Applied under the new Act***

[9] Under the new *Act*, a person *completely* dependent on assistance for all required functional activities would be rated at 68 out of 68 possible points on Grid A. A person completely independent for such activities in terms of physical ability, but with a brain

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<sup>7</sup> Note: a fourth grid - Grid D (need for particular supervision) - under the old *Act* applied where Grids A and C were inapplicable – see paragraph [6]

injury rendering him constantly in need of supervision because of attention and memory deficits, problems initiating and completing activities, and who continually required supervision and reminders to take medication would be rated at  $5 + 6 + 6 + 1 = 18$  out of 70.

[10] The conversion of points to a percentage has been done away, so that the formula now is:

$$\frac{\text{An individual's points}}{\text{Total points}} \quad \times \quad \$947^8$$

[11] The benefits are indexed to the Consumer Price Index under section 184.

### STANDARD OF REVIEW

[12] Under the old *Act*,<sup>9</sup> SGI was given discretion to pay a personal home assistance benefit to a claimant. Under the new *Act*,<sup>10</sup> it does not have discretion. SGI submitted the standard of review for claims to which the old *Act* applies is “reasonableness”, and under the new *Act*, the standard of review would be “correctness”.

[13] We accept the standard of review in this instance is “reasonableness.” Practically what this means is, even though we may have come to a different conclusion than SGI, we will not substitute our decision for SGI’s decision unless we find that it was unreasonable.

### FACTS

[14] The Appellant sustained a severe brain injury and other injuries on June 23, 1996 in a single vehicle accident. Following an initial evaluation at the local hospital, she was air ambulated to a larger center where she had a Glasgow Coma Scale score of 4/15. She remained in hospital for about 2 ½ months. She has reported amnesia for before the accident of several hours to days and amnesia after the accident of about a week. Since her discharge she has received rehabilitative services such as speech and language pathology and physiotherapy. Her brain injury is permanent and she continues to have problems with

<sup>8</sup> the maximum allowed for functional activities is \$631 and \$316 for cognitive activities.

<sup>9</sup> s. 158(1) – “...the insurer **may** pay a benefit to reimburse the victim for expenses...”

<sup>10</sup> s. 156(1) – “...the insurer **shall** pay a living assistance benefit to the insured for expenses...”

*inter alia* memory, attention, concentration, planning, initiation and follow through, word-finding, behaviour, anger, relationships and hygiene.

[15] As a result of her appeal, the Appellant's entitlement to personal and living assistance benefits was (eventually) calculated by SGI using the old *Act* from the date of her accident to July 31, 2002 and using the new *Act* from Aug 1, 2002 to Dec 31, 2008 (and on-going). For on-going claims after August 1, 2002 however, SGI's policy is to apply whichever *Act* and *Regulations* would provide the better benefit.

[16] SGI advised the Appellant on September 26, 2007 that she was entitled to benefits for assistance with personal and household duties in the total amount of \$78,529.24 for the period June 23, 1996 to April 30, 2005.<sup>11</sup> An additional \$25,559.83<sup>12</sup> was paid for interest. In arriving at its ratings, SGI relied on numerous reports in its files, meetings with the Appellant and her mother, documents from the Appellant and on an assessment by [occupational therapist 1] dated August 27, 2007.

[17] Subsequently, the Appellant hired [occupational therapist 1] to complete a comprehensive review of the Grids completed by SGI. [Occupational therapist 1]'s report dated January 16, 2009, together with other evidence heard and submitted during the hearing, resulted in SGI making a further back payment to the Appellant for personal and home assistance benefits for the period July 20, 1996 to December 31, 2008 in the amount of \$92,599.43 plus interest in the sum of \$11,982.52. After having considered [occupational therapist 1]'s January 2009 report and the Appellant's entitlement to living assistance benefits under the new *Act*, SGI submitted the old *Act* was the better benefit for the period after August 1, 2002 and on-going and was the basis for the said payment.

[18] After the comprehensive review by [occupational therapist 1] completed in January 2009 and the subsequent agreement by SGI of many of her assessments, there remained a difference in ratings for the following items - Grid B: preparation of lunch, dinner; (heavy)

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<sup>11</sup> 1996 - \$5,286.68; 1997 - \$8,966.68; 1998 - \$16,499.08; 1999 - \$18,658.06; 2000 - \$11,902.72; 2001 - \$2,126.29; 2002 - \$5,400.81; 2003 - \$3,687.54; 2004 - \$3,635.74; 2005 - \$2,366.06

<sup>12</sup> interest calculated from July 26, 1996 to September 27, 2007

housekeeping and Grid C: temporal and spatial orientation, communication and self-control.

## **GRID B**

### **Preparation of lunch, dinner and housekeeping**

Sep 96-Apr 97:

[19] [Occupational therapist 1] awarded points for preparation of lunch (4); dinner (5.5) and (heavy) housekeeping (0.5). SGI awarded no points in these categories because the Appellant was living in residence at [university] at the time and these items were included as part of her compensation for work as a “Don”.<sup>13</sup> SGI awarded 0.5 points for light housekeeping but later said no points should have been awarded for “housekeeping” (meaning light or heavy) since the Appellant was not responsible for this activity while in residence. In conjunction with the above, SGI referred us to a decision of this Commission, *K.R. v. Saskatchewan Government Insurance*, 2006 SKAIA 008, that held<sup>14</sup> “...SGI is not responsible to pay for living assistance for activities that the Appellant did not perform prior to the motor vehicle accident.”

[20] The Appellant said she had to live in residence if she wanted to stay in [city] so she could get the extra help she needed. Although meals and housekeeping were included as “room and board” for her services as a Don, the Appellant argued she effectively had to pay for these benefits and should be reimbursed. Although she attempted this work, the Appellant was unable to successfully do the job of a Don because of her brain injury.

[21] The Appellant submitted if she did not get points for lunch, dinner and housekeeping because she did not perform these duties, then SGI owed her an income replacement benefit (IRB) because the income earned as a Don was taxable to her. She argued living assistance and income replacement were two separate benefits and she was entitled to one or the other.

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<sup>13</sup> A “Don”, we understand, acts as a floor supervisor for students living in residence

<sup>14</sup> Paragraph [26]

[22] [Occupational therapist 1] assessed the Appellant needed partial help with meal preparation and housekeeping. She noted in a report dated August 19, 1996 by [occupational therapist 2] that residence was a supportive environment. [Occupational therapist 1] commented on concerns about the Appellant's isolation, vulnerability to group pressure and demands of managing her household while attempting to go to school would have been too great. If the Appellant had been living on her own, she would have required assistance with housekeeping and meal preparation. "(B)y having her live in residence, the necessary assistance was provided through the services and inherent structure within the residence itself, however, if not for the problems arising from the brain injury, she would have been able to live outside of the residence. In the event she had elected to live outside the residence during this time period, she would have found it necessary to receive assistance for these activities."

Sep 97 – Dec 97

[23] SGI awarded no points for preparation of lunch and dinner for the same reasons above. Ms. Rissling pointed out the Appellant received points for housekeeping (0.5 point - light and 0.5 point - heavy) on the earlier calculation of the Grids which she wasn't entitled to as she wasn't responsible for these activities while living in residence but SGI was not seeking repayment.

[24] [Occupational therapist 1] assessed the Appellant needed partial assistance for preparation of lunch and dinner and reported during this time period, the Appellant's mood was getting lower and there was nothing in the records to suggest her planning abilities for meal preparation had improved. She noted the speech therapist had indicated "the goals" the Appellant needed to target more were "motivation, insight into situation, planning, organizing, mental and physical fatigue."

[25] The Appellant stated when she prepared meals by herself she had trouble following a recipe – the steps of planning and preparing a meal. She also had problems with following through with clean-up after a meal, such as putting away left-over food and washing dishes. At this time, the Appellant began to lose weight, she said, from inadequate nutrition.

Jan 98 – May 98

[26] For the same reasons as before, SGI awarded no points for preparation of lunch. Ms. Rissling again observed that she had mistakenly awarded the Appellant points for preparation of dinner and housekeeping (light and heavy) in her initial calculations but SGI was not seeking repayment.

[27] [Occupational therapist 1] referred to the Appellant's problems with time management and irrational thinking in the various reports she reviewed for this time period. The Appellant's mood continued to be low and [occupational therapist 1] did not think the Appellant's functional ability had improved.

[28] We find the Appellant was not entitled to any points as a living assistance benefit for preparation of lunch, dinner and housekeeping for the all of the above periods (i.e. Sep 96-Apr 97; Sep 97-Dec 97; Jan 98-May 98) because she did not "do" these activities – rather, they were included as "room and board" with her Don job. Generally, a person is entitled to a living assistance benefit for an activity that was ordinarily performed before the accident. If the Appellant had been living independently, she would have required partial assistance with meal preparation and housekeeping and entitled to a benefit - but that was not the case here. However, we accept the Appellant effectively paid for these services as part of the income she earned as a Don and should be reimbursed.

[29] The Appellant alleges she was not paid an IRB for her employment as a Don. However, by letters dated October 16, 1996 and September 17, 1997, it appears SGI did in fact reimburse the Appellant, through an IRB, for loss of her job as a Don for the periods Sep 96 – Apr 97 and Sep 97 to Apr 98.

[30] Accordingly, we are satisfied overall, the Appellant was not entitled to a living assistance benefit for meal preparation (lunch and dinner) and light housekeeping for the above referenced periods and during which she lived in residence. However, we find the Appellant effectively paid for these services, which she otherwise would have required some help in doing, and she was entitled to be reimbursed. Based on the preceding paragraph, we are also satisfied that, in fact, the Appellant was reimbursed for the loss of

income from the Don job which she was unable to perform because of the injuries she suffered in the accident for the stated periods.

Sep 01 – Dec 01

[31] From January 1, 2001 to August 31, 2001, the Appellant lived in [place], an assisted living facility with 24-hour supervision, after which she lived in the community with periodic follow-up. During this time, the Appellant also attended Career Headways, a community integration program, on a daily basis to work on activities of daily living and goals.

[32] SGI awarded no points for this period based on report from Career Headways dated June 21, 2001. Ms. Rissling stated the Appellant continued to work on ADLs, home organization and was being monitored weekly by Joel from Pearl Manor.

[33] [Occupational therapist 1] assessed the Appellant as requiring partial assistance with for all tasks<sup>15</sup> except preparation of breakfast. She acknowledged this was a period when the Appellant was receiving support for meal preparation and planning. The reports [occupational therapist 1] reviewed, said the Appellant's weaknesses included: dissatisfaction with ability to consistently perform dressing and hygiene tasks due to challenges with time and overall organization in her life; the only household task performed routinely was taking out the garbage and it was hard for her to become motivated to do other housework, noting motivation was closely linked to her emotional state.

[34] [Occupational therapist 1] emphasized she scored the Grid based on the Appellant's need for assistance even though support was being provided. In her view, it didn't make sense the Appellant's needs would drop to zero from the previous period and she felt the Appellant's performance may have improved because of the structured environment but that her needs and ability to independently do the task had not changed.

[35] The Appellant noted she did not receive in-home help but rather someone checked on her biweekly or monthly and there was never an evaluation of how she did things. When

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<sup>15</sup> Preparation of lunch, dinner, light and heavy housekeeping, laundry and purchase of supplies

she knew someone was coming, she would “clean” her place by hiding things under the bed and in the closet and that no one checked. She said staff from [place] only helped her with purchasing supplies but not with laundry or housekeeping. As before, with meal preparation, she experienced trouble with planning, preparation and cleaning up afterward (left-over food and dishes).

Jan 02 – Apr 19 02

[36] SGI awarded no points for this period for the same reasons stated above.

[37] [Occupational therapist 1] assessed the Appellant as needing partial assistance with all activities except preparation of breakfast, for the reasons stated above.

[38] The Appellant also said she needed assistance with some tasks as noted above.

Apr 20 02 – Jul 31 02

[39] The Appellant was discharged from Career Headways on April 19, 2002 although she continued to receive occasional community outreach services through [place]. SGI awarded the Appellant points for partial need of assistance in completing all tasks except preparation of breakfast. The assessment by SGI was the same as the assessment by [occupational therapist 1] for this period.

Aug 02 to Dec 31 08

[40] The Appellant testified that from this point forward her daily life started to get out of control even though she had just finished at Career Headways. She was unable to initiate and complete even simple tasks such as opening her mail<sup>16</sup> and had difficulty in handling household responsibilities such as laundry and cleaning.

[41] From August 1, 2002 through to 2006 and 2007, SGI and [occupational therapist 1] agree the Appellant required partial assistance with all tasks except preparation of breakfast.

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<sup>16</sup> Apparently when community workers started attending on the Appellant in 2006, she had four years of unopened mail

[Occupational therapist 1] stated though it was likely the Appellant's needs in a number of areas would have increased more recently due to the time and energy she has put toward the appeal which has been "all consuming" and resulted in deterioration in other areas.<sup>17</sup>

[42] For the period, September 1, 2001 to April 19, 2002, we find the Appellant partially needed assistance with all activities except preparation of breakfast. We are persuaded by [occupational therapist 1]'s statement that the Appellant's needs did not change even though she was attending Career Headways.

[43] At Career Headways, the Appellant was working on learning techniques to help her with dressing, hygiene, grooming, home activities, nutrition, behaviour, attention/concentration and memory, time and fatigue management but it did not provide her residential assistance or "in-home" verbal cueing. We accept the Appellant's evidence that she ate only simple meals because she had problems planning and preparing meals, and that initiation and completion of tasks were minimal and activities were not started or completed. In a progress report dated January 8, 2002, the Appellant's attendance was described as unsatisfactory and she seemed to lack motivation to stay in the program. The discharge summary noted the Appellant faced many future challenges including anger/stress/mood, behaviour, dressing/grooming/hygiene, continuing with strategies to assist with daily living and medication management.

[44] Lastly, we are satisfied that if the Appellant's ability to perform some tasks improved during this time period, that it was only temporary because of the structured support she was receiving, otherwise her nearly immediate downslide after she left Career Headways would not have happened. Why otherwise would the Appellant not have put into use the strategies or techniques she had learned? We agree with [occupational therapist 1] that the Appellant's underlying needs remained unchanged and she was unable to independently perform the tasks listed in Grid B without partial assistance for the period stated.

### Supported Lifestyles

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<sup>17</sup> SGI has increased services to [the Appellant] from 2 hours 2 times per week to 3 hours 5 days a week for the

[45] Michelle Brooks, Coordinator, for brain injury services and Trudy Costen, mental health worker, from Supported Lifestyles Alberta Ltd. testified the Appellant's verbal and written communication can be extremely well done if she has ample time to prepare and practice what she is going to say. For example, it took 6 hours of role playing, over a two week period - during which the Appellant did not follow through with self-care – in order for the Appellant to return a lap top computer to the store. With lots of preparation and rehearsal, the Appellant can prepare a very good letter but that a one page letter could take over 20 hours to compose and in the meantime, she has not showered, hardly eaten or slept.

[46] These witnesses said the Appellant was easily distracted and referred to when she went to see [psychologist], with another worker, Sue Acorn. [Psychologist]'s opinion had to be repeated over and over to the Appellant as she had only listened to or remembered part of the conversation.

[47] Ms. Brooks testified her observational experience in providing supervision to people with brain injuries was that a person's inability to organize thoughts is often mistaken for laziness (e.g. housekeeping). Ms. Costen said there were lots of boxes and papers scattered about the Appellant's apartment and confirmed she had more than 3 years of unopened mail when she started working with her in 2006. She said the Appellant knows how to start a task or activity but unless someone reminds her or can cue her, she doesn't start the steps. Ms. Costen said she hasn't seen any changes in the Appellant since she started working with her.

[48] Ms. Costen also helps the Appellant with goal setting:

1. create and maintain a tidy living space
2. gain better control over spending and budget
3. plan and prepare meals on a regular basis
4. establish a healthier life style
5. activities of daily living routine
6. consistent follow through on tasks

[49] Ms. Costen said that follow through is always inconsistent and the Appellant does best when she has consistent, on-going support. She felt the Appellant would do best with a

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duration of the appeal

live-in room mate who would help her get going in the morning (e.g. shower, eat) and that when the Appellant has no support, she is in complete disarray.

[50] Concerns were also voiced about the Appellant's impulsiveness and decision-making about her personal safety. The Appellant moved from an approved apartment to a room in a basement that was considered inappropriate for her. The landlord had apparently made sexual gestures or comments towards the Appellant and she felt unsafe. Steps were underway to find alternate approved accommodations.

### **GRID C**

[51] The ratings provided by SGI and [occupational therapist 1] are consistently different throughout nearly all of the time periods for cognitive activities. Because of this, we will review the categories of memory, temporal orientation, spatial orientation, communication and self-control rather than by each particular period.

[52] The need for supervision is determined according to the person's needs and established on the basis of medial or other information on file. The specific items are defined in the old Regulations as:

- Memory: the ability to recall very recent events, such as water left running, something cooking on the stove, recent events, an activity of a few hours earlier, or remember things for the longer term, such as paying one's rent.
- Temporal orientation: the ability to situate oneself in the context of passing hours and days, to follow a schedule, to keep appointments, etc.
- Spatial orientation: the ability to situate oneself in a known or familiar environment i.e., to know one's address or find one's way around the neighbourhood.
- Communication: the ability to express one's needs verbally, in writing, with gestures, using sounds, etc., and understand simple orders and directions in everyday living.
- Self-control: the ability to behave properly in terms of the surroundings or people present, to control one's impulses so as to avoid placing oneself or another in a socially unacceptable or dangerous situation.

[53] Additionally, the need for supervision is categorized as:

- a) No need of supervision: the victim is able to function in this respect without the help of another person. The victim has normal ability for someone of that age.

- b) In need of slight supervision: the victim has some difficulty in connection with this function and help is required in certain situations.
- c) In need of moderate supervision: the victim has moderate difficulty in connection with this function. Help is needed on an intermittent basis in certain situations.
- d) In need of constant supervision: the victim cannot function in this respect without regular help and must be constantly supervised.

### **Temporal Orientation**

[54] With the exception of three periods (Jan 98-May 98; Jan 03 – Apr 03 and May 03 – Aug 03), the only differences in assessment for temporal orientation was between slight supervision (Ms. Rissling) and moderate supervision ([occupational therapist 1]).

[55] For those initial periods where the differences are between slight to moderate – Ms. Rissling felt the Appellant was living in residence, going to school and that while not doing great and had dropped some classes, she would have required only slight help. Keeping appointments and maintaining schedules are part of temporal orientation. [Occupational therapist 1] scored the Appellant’s need as moderate and noted she had difficulty handling the challenges associated with course work in organizing and prioritizing her time.

[56] We know from the file information that the Appellant did very poorly at school in 1997 and 1998, was unable to perform her floor rep (Don) job and completed few courses that she started. This was the beginning of her life starting to spin out of control and expression of the after effects of a severe brain injury.

[57] For the period Sep 96 – Dec 97, we accept [occupational therapist 1]’s assessment as reasonably and accurately reflecting the Appellant’s need for moderate supervision.

[58] Later on in 2003 and 2004, the Appellant returned to university and [doctor 1] was concerned about the Appellant’s ability to manage as her organizational and stress management skills were weak but he observed her mood was reasonably stable.

[59] Ms. Rissling did not provide reasons in her recalculated (old) grids for the rating of slight supervision for this period. The Appellant had returned to school though and her

mood was moderately stable as per [doctor 1]'s reports dated December 29, 2003, June 2, 2004 and August 30, 2004.

[60] [Occupational therapist 1] said the Appellant's attendance at school and her appointments are not commented on very much but she did not do well at school. She stated the information in the documents reviewed did not always provide sufficient information and the Appellant's attendance at classes and appointments were not referenced in the reports.

[61] [Doctor 1]'s reports suggested the Appellant was managing well at this time and we can not dismiss them but they are hard to square with the numerous examples referred to by the Appellant of her rescheduling appointments and failing to keep appointments.

[62] For the period Sep 03–Dec 04, overall we accept the rating of slight supervision for temporal orientation scored by Ms. Rissling based on the above and including [doctor 1]'s reports.

[63] For the period Jan 98-May 98, Ms. Rissling rated the Appellant as needing constant supervision for temporal orientations and noted she was deteriorating more cognitively due to depression. It is unclear specifically which reports she is relying on for her assessment in this regard but noted a Home Assessment by [occupational therapist 3], in July 1998, follow-up by [occupational therapist 4], in October 1998 and a report from 'Luella' that the Appellant had regressed.

[64] [Occupational therapist 1] assessed the Appellant as needing moderate supervision for this time period but noted the higher rating by SGI to constant supervision was consistent with the reports reviewed. We are puzzled by this statement though - it seems illogical to us that if [occupational therapist 1] believed the higher rating was appropriate, why she would not have changed her rating.

[65] We conclude that Ms. Rissling's rating of constant supervision was reasonable and accurate for the period stated – seemingly with the agreement of [occupational therapist 1].

[66] For the period, Jan 03 – Apr 03, [occupational therapist 1] rated the Appellant as needing constant supervision and Ms. Rissling rated her need as moderate. The Appellant experienced on-going depression during this time and had trouble staying focused and on topic. [Doctor 1] noted she has some pressured speech and appeared slightly disorganized or with a hypomanic presentation. Most significant in our view however, was the death of the Appellant's father in February. Based on the comments in the above noted reports and the loss of her father, we agree with [occupational therapist 1], and conclude the reasonable and appropriate rating was constant supervision for this period.

[67] For the period May 03 – Aug 03, [occupational therapist 1] assessed a constant need and Ms. Rissling assessed a slight need for supervision. There is little information from either Ms. Rissling or [occupational therapist 1] about the basis for their ratings. While certainly not desirable, but as we have almost no basis to accept one rating more or less than the other, we find the Appellant was in need of moderate supervision for this time period. It was just after the death of her father and she was likely still grieving. Given the sequelae of her brain injury, it is not unreasonable to think the Appellant would require moderate assistance during this time period.

[68] From Jan 05 – Dec 31 08, Ms. Rissling and [occupational therapist 1] agree that the Appellant required moderate supervision for temporal orientation.

### **Communication**

[69] Communication is defined in the legislation as “the ability to express one’s needs verbally, in writing, with gestures, using sounds, etc. and understand simple orders and directions (written and oral) in everyday living”.

[70] The most significant area of disagreement between SGI and [occupational therapist 1] was over communication. Ms. Rissling said the definition in the *Regulations* deals with simple communication only and does not cover complex communication. She felt [occupational therapist 1] provided a much broader interpretation of communication than was contemplated by the legislation.

[71] In reply to Ms. Rissling's request for additional support for her rating for communication, in a report dated May 28, 2008, [occupational therapist 1] wrote in part:

...Communication is a complex entity that by definition involves the parting or interchange of thoughts, opinions or information by speech, writing or signs. The foundations of communication are multi-factorial and involve language output but also many cognitive skills, including thinking, attention/concentration, memory, organization, self-awareness, judgment and problem solving....(The Appellant) appears to manage more basic conversations in her daily activities, however, she encounters challenges with more complex interactions and dealings with other individuals in expressing her needs and responding to simple inquiries or conversations appropriately, either verbally or in writing. Her difficulties in this area continue to present her with daily challenges and additional effort and assistance is often required to help her deal with situations whether there are higher needs for more interactive communication.

[72] [Occupational therapist 1] referred to several reports by treating practitioners who had examined the Appellant and observed her difficulty with communication, for e.g., expressive language, not staying on topic without realizing it, lack of fluency and problems with word-finding and processing, word associations and sentence assembly. However, despite [occupational therapist 1]'s comments, SGI maintained its position the Appellant was not entitled to any points for communication and required no supervision.

[73] On February 19, 2009, [occupational therapist 1] again stated her interpretation of the Appellant's need for moderate assistance for communication:

...One of the many examples was in a progress report prepared for SGI by NRCS dated June 10, 1998, where it was noted that in the area of Communication Skills, she presented with a flat affect and slow speech patterns that were often fragmented; it was observed that she had some difficulty in expressing herself clearly. In my initial report there are many references concerning difficulties in the area of communication and having dealt with (the Appellant) on a personal level, I strongly believe that there should be some recognition for her difficulties in this area.

[74] [Occupational therapist 1] disagreed with SGI's interpretation of communication and went on to say:

...the first part of the definition has to do with "the ability to express one's needs verbally, in writing, with gestures, or using sounds", however, the second part "and to understand simple orders and directions (written and oral) in everyday living" refers to the "simple" and even then I think in some everyday situations (the Appellant) could have difficulty understanding simple orders and directions given other problems and distractibility, concentration, sustained attention and memory. (The Appellant's) need to rehearse even relatively simple conversations or emails does not always involve "complicated communication". There is no reference in the definition to complicated compared to simple communication when looking at the ability to express one's needs verbally, in writing, etc. SGI does not provide any information

as to how to define “simple” when talking about orders and directions. Is this being interpreted as only being able to follow one-step directions and if so, this would not be very realistic in terms of how an individual functions in daily activities. I strongly disagree that SGI does not recognize any problems in communication, particularly given the comments in the reports prepared by the speech therapists in the past and other report (*sic*) by medical professionals provided.

[75] [Occupational therapist 1] felt confident that her assessment of the Appellant’s need for supervision for communication was supported by the information provided in the documents she reviewed. [Occupational therapist 1] also said the Appellant’s difficulties in this area were confirmed by support/rehabilitation workers from Supported Lifestyles and her personal dealings.

[76] The Appellant provided several examples of writing things out that she repeatedly rehearses before she performs the task (eg. leaving a voice message). She told us she does not answer her phone and usually lets the message manager pick up calls so she can practice her response because she gets confused if asked something she hasn’t thought about beforehand – “what if they ask me this or that”. The Appellant attributed why she has to always write out what she wants to say to the significant impairment in “verbal mediated processing speed” and (borderline) verbal memory as reported by [doctor 2] in a neuropsychological evaluation done in October 2002.

[77] The Appellant submitted her communication has been described as confused, confabulatory, full of empty phrases and failing to display local sequential relationship between thoughts. In her view, this was the cognitive aspect of communication that affects her ability to express herself. In fact, she referred to injury notes<sup>18</sup> where Ms. Rissling and another representative said it was difficult to understand her.

[78] But for the period when the Appellant was in the hospital following the accident, SGI and [occupational therapist 1] disagreed from Sep 96 – Dec 08 about the Appellant’s need for supervision with communication. As stated above, this disagreement is based on the interpretation of “communication” provided in the *Regulations*.

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<sup>18</sup> for e.g. “...it was difficult to understand as (the Appellant) was on different thoughts;” and “she went on like this for 3 minutes, (I have a hard time following her)”.

[79] Ms. Rissling felt [occupational therapist 1]’s definition of communication went beyond what the legislation stated and included cognitive ability, memory and behaviour. She took a narrower view and said the definition meant only simple communication needed for every day living, which Ms. Rissling thought the Appellant was capable of doing. Ms. Rissling noted the Appellant received additional points on Grid C for behaviour, initiating and following through of activities so she is being compensated elsewhere for more complex communication.

[80] [Occupational therapist 1] firmly remained of the view the Appellant presents with deficits in communication and required differing levels of supervision throughout the previous 13 or so years and strongly disagreed with Ms. Rissling’s interpretation of communication.

[81] The Appellant submitted a thoughtful and cogent argument that communication was different from speech impairment or else the definition would have used the phrase “speech impairment” as it does in the *Regulations* dealing with permanent impairment for speech impairment. She added if communication referred to speech impairment that communication would have been included in the functional grids which deal with the physical ability of the insured. She summarized the functional aspect of communication was speaking and the cognitive aspect involved many other areas (as [occupational therapist 1] believes) and was especially true, she said, for a person with a brain injury.

[82] The Appellant also raised an interesting argument that we have to take into account her intelligence when considering her communication needs and remarked that if you take away the variable of intelligence away, you are really just left with communication. The Appellant gave the example of “determined employment” and said she tried to explain this concept to the people at Career Headways but no one understood what she was talking about. The Appellant said that she knew it was better to pick the cheaper job – because she is smart – although she couldn’t communicate the concept to others.

[83] Neither SGI nor the Appellant offered any extrinsic evidence about what was the intent or purpose of using the particular words to describe “communication”. Was it intended that only simple communication be covered as suggested by Ms. Rissling and that

more complex communications are not compensated or else compensated elsewhere, e.g. functional grids?

[84] The definition of communication in the *Regulation* is two-fold - the ability to **express one's needs** (verbally, in writing, with gestures, using sounds, etc.) and the ability to **understand simple orders and directions** (in every day life). In our view the ordinary meaning of those words refers to a less complex definition than what [occupational therapist 1] might attribute. We do not think however the definition should be summarized as just “*simple communication*” – it is broader than that and must be consonant with one's needs.

[85] [Occupational therapist 1] is an expert in her field and we must consider her opinion. However, on the other side we need to look carefully at the specific wording given to describe "communication" and then apply that definition to the evidence that we have before us. Does the specific wording given to describe "communication" and the evidence that is before us support SGI's assertion that the Appellant is able to "communicate"? Or does the evidence, including the opinion of [occupational therapist 1], support the assertion by the Appellant that she is not able to "communicate" within the meaning given to that term in the legislation.

[86] We have determined the Appellant is able to “communicate” as that term is set out and defined in paragraph [69] of our decision and she does not require supervision. She successfully and effectively expressed herself (verbally and in writing) throughout her lengthy appeal and was able to reasonably and thoughtfully respond to questions asked of her by the panel and by SGI. Even though she writes out and rehearses her responses in some instances, and takes many hours to compose a letter, she is – in our view – able to express her needs and understand simple orders and directions in her daily life. We realize the Appellant has focussed the majority of her time toward this appeal, and other items such as her personal appearance and home care have deteriorated because of it, and she is receiving additional daily support during the appeal, however, we are still of the view the Appellant is able to “communicate” as defined in the *Regulations*. SGI's ratings for communication are upheld.

## Memory

[87] SGI and [occupational therapist 1] generally agree with the need for moderate supervision initially up until May 1998 following which there were consistently some differences. For the period Jun 98 – Dec 98, SGI assessed the Appellant needed moderate supervision and [occupational therapist 1] assessed that she needed constant supervision.

[88] [Occupational therapist 1] increased her rating because the Appellant's deteriorating mood and depression would have impacted on her memory and added to her cognitive difficulties. She referred to reports from various practitioners, the majority who observed the Appellant displayed depressive symptoms and problems with verbal memory. Some examples given were in July 1998, [occupational therapist 2], NRCS, noted the Appellant was having problems misplacing things in her home, forgetting personal items in the community and forgetting what her employer had said. [Doctor 3], clinical and neuropsychologist, reported in June 1998, the Appellant was clinically depressed and suffering from multiple memory deficits.

[89] Ms. Rissling agreed that some reports indicated the Appellant was starting to have more difficulty but other reports indicated she was doing alright.

[90] We disagree with [occupational therapist 1] that the Appellant required constant supervision. We accept the Appellant's mood were deteriorating but we can not conclude based on the reports she relied on that the Appellant required constant supervision at this time for memory. It was undoubtedly the beginning of the Appellant's eventual need to be hospitalized but the reports do not, in our view, bear out that she required constant care. SGI's rating that the Appellant required moderate supervision for the period Jun 98 – Dec 98 is upheld.

[91] For all of the remaining periods,<sup>19</sup> the differences for memory are between a rating of slight supervision, assessed by Ms. Rissing, or moderate supervision, assessed by [occupational therapist 1]. For the entire period, we agree with the assessment by

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<sup>19</sup> Sep 01-Dec 01; Jan 02-Jul 02; Aug 02-Dec 02; May 03-Aug -03; Sep 03-Dec 03; Jan 04-Apr 04; May 04-Dec 04

[occupational therapist 1] that the Appellant required moderate assistance. Our conclusion is based on the extensive report prepared by [occupational therapist 1] dated February 9, 2009 and her detailed review of the documents and practitioner reports which informed her decision and her brief follow-up comments dated February 16, 2009. We are satisfied that [occupational therapist 1]'s report reasonably and accurately reflect the Appellant's needs – that is, she required moderate assistance with memory for the specific periods.

[92] For the period Jan 05 – Dec 08, Ms. Rissling and [occupational therapist 1] agree the Appellant required moderate supervision for memory.

### **Self-control**

[93] For the entire period,<sup>20</sup> where Ms. Rissling and [occupational therapist 1] differ in their ratings, it is a difference between slight and moderate need of assistance respectively.

[94] [Occupational therapist 1] stated there were periods of time when the Appellant's ability to behave appropriately and to control her impulses fluctuated but that generally her need for moderate supervision remained unchanged and continuing to the present date but for when she was in a more controlled environment such as Career Headways. She noted this was an area that was not always well documented but problems with self-control were also documented by the Appellant.

[95] After having heard the Appellant's, Ms. Brooks' and Ms. Costen's testimony, and having read the documents filed, we are, without any doubt, satisfied the Appellant was and continues to be in need of moderate supervision for self-control. Ms. Brooks and Ms. Costen from Supported Lifestyles felt the Appellant's decision to move to unapproved accommodation was inappropriate and might be unsafe. It was noted in an August 2000 NRCS progress report to SGI that the Appellant required a more supportive environment and noted that her safety was a concern because she makes poor decisions when on her own

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<sup>20</sup> Sep 96-Apr-97; May 97-Aug 97; Sep 97-Dec 97; Jan 98-May 98; Jun 98-Dec 98; Mar 16 00-Dec 00; Aug 02-Dec 02; Jan 03-Apr 03; May 03-Aug 03; Sep 03-Dec 03; Jan 04; Apr 04; May 04-Dec 04; Jan 05-Apr 05; May 05 – Dec 08

such as attending a weekend rock concert alone, jogging at 3 or 4 am, carrying an unwrapped VCR to a downtown [city] pawn shop in the early morning hours.

[96] Care providers have referred to the Appellant's need for help with managing her finances. SGI noted in September 2006 that [psychologist] expressed significant concern about the Appellant's bad judgment and was spending money unwisely. During the hearing, we observed what could be considered questionable financial management when the Appellant said she hoped to receive the second large back-payment (more than \$90,000) before the price of silver went up.

[97] [Doctor 3] confirmed a mood disorder due to head injury with mixed features – predominantly depression and that the Appellant was often short tempered and demanding and petulant when she does not perceive others are responding to her needs in a timely fashion. The injury notes are replete with references to the Appellant's very angry behaviour and repeatedly calling or contacting injury representative and other workers at their personal residences. Throughout the hearing we witnessed several outbursts of anger, crying and, in fact, in one very emotional outburst a threat to kill herself if she was not better in one year.

[98] We have no hesitation in accepting the Appellant's lack of self-control as evidenced above are the result of her severe brain injury. We accept [occupational therapist 1]'s assessment in this regard and conclude the Appellant required moderate supervision for the entire period noted, except for when she was at Career Headways, and that SGI's rating in this respect is not reasonable.

## **OTHER ISSUES**

### **Permanent Impairment**

[99] SGI acknowledged in a letter dated February 18, 2009 that the Appellant may be entitled to a further award for permanent impairment respecting "communication disturbances." This is not a matter before us and we recommend SGI follow-up with the Appellant particularly having regard for [occupational therapist 1]'s report detailing issues

surrounding communication. Our decision that the Appellant does not require supervision for “communication” under Grid C should not be viewed as determining that she is not entitled to an award for permanent impairment for “communication disturbances” pursuant to section 13(h), Part 1, Division 2, Subdivision 3 of the *Regulations*. Whether the Appellant is entitled to an award for a permanent impairment for “communication disturbances” is separate and apart from the issue that was before us (i.e. does the Appellant require supervision for “communication: under Grid C).

### **Functional Activities**

[100] When the initial grid analysis was done, Grid A (personal care), Grid B (home care) and Grid C (cognitive) were used up to August 2002 and thereafter, Grid A (functional activities) and Grid B (cognitive activities) were used. After [occupational therapist 1] provided her report in January 2009, SGI re-evaluated its earlier assessment and decided the Appellant received a greater benefit using Grids A, B, and C under the old *Act*. SGI determined the Appellant was not entitled to any points for Grid A (personal care) other than for the period immediately following her accident Jul 96 – Aug 96.

[101] Before SGI’s recalculation following [occupational therapist 1]’s January 16, 2009 report, it was agreed, for purposes of the appeal that functional activities would be reviewed separately from the cognitive activities for the entire period as the Appellant felt it was too much for her to concentrate on. As well, SGI was attempting to schedule the Appellant for a functional capacity evaluation which was agreed to be set over until the appeal was completed.

[102] Under the new *Act*, the Grids are based on “functional” – “cognitive” separation, however under the old *Act*, the separation is not a “clean” and functional activities are included in Grid A (personal care) and Grid B (home care). We have decided in this hearing the Appellant’s entitlement to benefits under Grids B and C, old *Act*. We did not consider her entitlement to benefits under Grid A (personal care).

[103] It is confusing to refer to Grid A under the old *Act* as the “functional” grid (because of the language used in the new *Act*) but nonetheless, that is how we have referred to it. It is

further confusing because SGI's recalculation in 2009 based on the *old* Act was done during the hearing – that is, there is no decision letter respecting this analysis.<sup>21</sup> However, based on the agreement that her entitlement to benefits under the functional grid be considered separately from the within appeal, her right to appeal Grid A (personal care) under the old *Act* is hereby preserved to be heard at a later date.

### **SGI's duty to advise and assist**

[104] Many aspects of this case are disturbing to us. It is well documented throughout the materials filed that the Appellant suffered a serious head injury, and although she appeared at first to have had a remarkable recovery, she had significant cognitive after effects which affected her daily living. She was hospitalized twice for major depression and lived for a period of time in a residential care home for individuals with cognitive impairment.

[105] As early as June 23, 1998, the Appellant contacted SGI asking for help with homecare but none was provided. Following a request by the Appellant for help, one injury note reads in part, "...All in all I did not okay any homecare, as it doesn't sound warranted from our conversation, especially when she has two days off a week, and I'm sure she doesn't sleep the entire time. Also the fact that she has not received homecare in the past, I did not want to open a can of worms. I'll leave this to you Darlene<sup>22</sup> to look after." The Appellant did not receive personal and homecare assistance despite her repeated requests – e.g. July 13, 1998, April 1, 1999, May 26, 1999 and June 7, 1999 nor does it appear she ever received a written decision why she was denied these benefits at the time.

[106] At the outset of this appeal, SGI had back-paid living assistance benefits to 2005 because it was felt that was when the Appellant indicated she needed assistance. Subsequently however, it was decided the Appellant's entitlement to personal and living

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<sup>21</sup> Again, although confusing – her right to appeal Grid A (personal care) originates with the decision letter dated September 19, 2008

<sup>22</sup> Personal injury representative in charge of the Appellant's claim; Ms. Federko testified under subpoena by the Appellant however she has since retired from SGI and said she could not recall specifics of the Appellant's claim other than she tried to do her best. She commented that under the old *Act*, injury representatives usually paid or reimbursed the service provider directly rather than a claimant for personal and home care benefits.

assistance benefits would be considered from the date of her accident in June 1996 to December 31, 2008 (for purposes of this appeal) and on-going thereafter.

[107] For more than 13 years, the Appellant's requests for home assistance were largely ignored or denied without written reasons. It is difficult to understand what happened in this case. The Appellant suffered a serious head injury and there was much medical and other information that supported her need for assistance. Indeed, in 2008 and 2009, SGI back-paid the Appellant more than \$200,000, including interest, for personal and living assistance benefits from 1996 based on documents nearly all of which SGI already had.

[108] While we have the benefit of hind-sight, we are unable to reconcile SGI's obligation to act with utmost good faith and duty to inform, assist and ensure the Appellant received all of the benefits which she was entitled to with what appears to be a complete failure respecting her need for personal and living assistance despite her requests and documented need. This was not an example of SGI's "finest hour".

### **Family Expenses and Costs**

[109] In her written argument, the Appellant detailed the estimated costs to her family for travel, meals and lodging and loss of income for their attendance on her for personal care during approximately the first year of her recovery.

[110] The Appellant's parents clearly expended a great deal of money in their efforts to help the Appellant in her recovery – but, this Commission is bound by its jurisdiction which is clearly set out in the legislation. As noted in paragraph [2] of this decision and we simply do not have the authority or power to award the relief requested for these expenses and costs.

### **Public Inquiry**

[111] Similarly, we have no authority to order a public inquiry respecting the handling of the Appellant's claim.

## CONCLUSION

[112] The Appellant has been significantly successful in her appeal and SGI is ordered to recalculate her entitlement to home care and cognitive benefits, where applicable, as follows:

[113] **GRID B: Preparation of lunch, dinner and housekeeping**

Sep 96 – May 98: As per paragraph [30] above, we accept SGI's assessment that the Appellant was not entitled to a benefit for this period as she did not perform these tasks and that she was reimbursed for "room and board" through an IRB for her services as a Don.

Sep 01 – Dec 01; Jan 02- Apr 19 02: As per paragraphs [42] and [44] above, we find SGI's assessment was unreasonable and accept [occupational therapist 1]'s rating that the Appellant needed partial assistance.

[114] **GRID C Temporal Orientation**

Sep 96 – Dec 97: As per paragraph [57] above, we find SGI's assessment was unreasonable and accept [occupational therapist 1]'s rating that the Appellant needed moderate supervision.

Sep 03 – Dec 04: As per paragraph [62] above, we find SGI's assessment was reasonable that the Appellant needed slight supervision.

Jan 98 – May 98: As per paragraph [65] above, we find SGI's assessment was reasonable that the Appellant needed constant supervision.

Jan 03 – Apr 03: As per paragraph [66] above, we find SGI's assessment was not reasonable and accept [occupational therapist 1]'s assessment that the Appellant needed constant supervision.

May 03 – Aug 03: As per paragraph [67] above, we find both SGI's and [occupational therapist 1]'s assessment are not reasonable and we conclude that the Appellant required moderate supervision.

[115] **GRID C      Communication**

Sep 96 – Dec 08: As per paragraph [86] above, we find SGI’s assessment was reasonable and the Appellant did not require supervision for communication as it is defined in the *Regulations*.

[116] **GRID C      Memory**

Jun 98 – Dec 98: As per paragraph [90] above, we find SGI’s assessment was reasonable and the Appellant required moderate supervision.

Sep 01 – Dec 01; Jan 02 – July 02; Aug 02 – Dec 02; May 03 – Aug 03; Sep 03 – Dec 03; Jan 04 – Apr 04; May 04 – Dec 04: As per paragraph [91] above, we find SGI’s rating was unreasonable and we accept [occupational therapist 1]’s assessment the Appellant required moderate supervision.

[117] **GRID C      Self-Control**

Sep 96 – Apr 97; May 97 – Aug 97; Jan 98 – May 98; Jun 98 – Dec 98; Mar 16 00 – Dec 00; Jan 03 – Apr 03; May 03 – Aug 03; Sep 03 – Dec 03; Jan 04 – Apr 04; May 04 – Dec 04 Jan 05 – Apr 05; May 05 – Dec 08: As per paragraph [98] above, we find SGI’s rating was unreasonable and we accept [occupational therapist 1]’s assessment that the Appellant required moderate supervision.

**OTHER**

[118] The Appellant requested in her written submissions that the interest on the back pay be calculated on a lump sum basis rather than separately as it has been. The Appellant’s personal and home care benefits were calculated for 1996 to 2002 using the old *Act*, and as well using the old *Act* for 2002 – 2008 because it paid her the better benefit.

[119] Under the old *Act* and *Regulations*, interest was calculated pursuant to the *Pre-Judgment Interest Act*. It appears that was done in this case and, assuming so, that is correct.<sup>23</sup> Since both back-payments were made during the within appeal, it is expected that Ms. Rissling will follow up with a decision letter, setting out the payment history, including

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<sup>23</sup> S 102

any further payments the Appellant is entitled to arising from the decision of the Commission, together with all interest paid to date and payable as a result of this decision and confirm how the interest payments were calculated (the decision letter should also set out the statutory basis for how the interest payments were calculated).

[120] The Appellant's appeal with respect to her entitlement to benefits for personal care – Grid A (which we have referred to casually as part of functional activities) is preserved and has been separated from the within appeal to be heard at a later date.

[121] We recommend that SGI follow-up with the Appellant to determine whether she is entitled to a further award of permanent impairment for “communication disturbances” as per paragraph [99] above.

## **COSTS**

### Payment of [occupational therapist 1]'s bill

[122] As the Appellant has been significantly successful in her appeal, she is entitled to her reasonable expenses and costs for the attendance of witnesses, and for travel, meals and hotel for herself and her mother for attendance at the hearing capped at \$2,500.

[123] In addition, she is entitled to be reimbursed for [occupational therapist 1]'s report under s. 169 of the *Act* and s. 76 of the *Regulations*. Section 76(1)(a) of the *Regulations* restricts the amount reimbursed to \$286 for a report prepared by a practitioner who examined the person for purposes of making the report. [Occupational therapist 1] did not “examine” the Appellant but she did conduct a home assessment and an extensive document review.<sup>24</sup> Subsection (2) provides that additional costs incurred over and above that amount may be paid if the insurer considers the circumstances require it. This is one of those circumstances.

[124] SGI relied extensively on [occupational therapist 1]'s January 2009 report and recalculated the Appellant's entitlement to homecare and living assistance benefits resulting

in a further payment of \$92,599.43, plus interest of \$11,982.52, being paid to her. Accordingly, this is a reasonable cost for which the Appellant is entitled to be reimbursed if the account has been paid or alternatively, to pay [occupational therapist 1] directly in the amount of \$10,230.09 plus any late interest that may accrued, if the account is outstanding.

**Dated** at Regina, Saskatchewan, on **June 3, 2009**.

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**Jeffrey Scott**, Chair

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**Conrad Hnatiuk**, Commission Member

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**Beverly Cleveland**, Commission Member

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<sup>24</sup> Previously, when engaged by SGI, [occupational therapist 1] had attended on the Appellant to conduct an assessment