



Recommendations 2010

Second Quarter Update

April - June 2010

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Overview

At Ombudsman Saskatchewan, we promote and protect fairness in the design and delivery of government services. One of the ways our office does that is by taking complaints from citizens about unfairness in government services.

We assess each complaint we receive to determine whether it is within our jurisdiction, and if so, what is the most appropriate method of service: coaching, negotiation, mediation or investigation. For those complaints that require investigation, several outcomes are possible. For example:

- We may determine that the government office was fair and that no further action is needed.
- The government office may discover and voluntarily correct an error.
- We may recommend that the government office make a change or do something differently.

An Ombudsman recommendation is different from a suggestion and is a much more formalized process. Each recommendation is the result of thoughtful research and investigation. It may be specific to the individual that brought the complaint or it may be broader, impacting policy, processes and future interactions for many people.

Although government is not obligated to accept our recommendations, it usually does - and so it should. Recommendations are not made lightly and the applicable government office always has an opportunity to review and comment on a recommendation before it is finalized. This step, which is mandated by *The Ombudsman and Children's Advocate Act*, is part of a fair process and provides an opportunity for government to state any objections they may have or challenges they may face in implementing the recommendation.

Unless there is some good reason to withdraw or change the recommendation, it remains as it is. It is then up to the ministry or government agency to determine whether it will comply with the recommendation and respond accordingly.

For files that were closed in the second quarter of 2010, Ombudsman Saskatchewan's recommendations statistics are:

Recommendations Made: 7
Accepted: 6
Partially Accepted: 0
Not Accepted: 1

Recommendations

Following is a brief description of the complaints that resulted in recommendations and were closed during the second quarter of 2010. The names of those involved have been changed to protect their privacy.

What Happened to My Application?

Clyde owned a quarter section of land next to an expanding community. He wanted to subdivide the land into lots so he could sell them. He applied to the Ministry of Municipal Affairs for approval.

More than a year later, the Ministry still had not sent Clyde a decision. Clyde then learned that his land was going to be annexed into the neighboring community. Subdividing the land would now come with a high price tag.

Our investigation found that the Ministry did not follow some of its policies around deadlines, review of files and communication with applicants. We made recommendations to prevent another such occurrence.

Recommendations:

1. That the Ministry reviews all outstanding applications for subdivision approval to ensure that they meet ministry policy and provincial legislation.
Status: Accepted
2. That in those instances where a subdivision application does not meet Ministry policy or legislation, steps be taken to advise applicants of the status of their applications and rights of appeal.
Status: Accepted
3. That the Ministry provides at the time of application the process that will be followed in assessing the application and the applicant's rights of appeal.
Status: Accepted

Suspended Benefits

Chris was receiving Workers' Compensation benefits for Carpal Tunnel Syndrome (CTS) and was on a waiting list for a surgical assessment to determine what, if anything, could be done to improve his CTS. WCB required the surgical assessment. When Chris received a call to come in for the diagnostic wrist surgery the next day on a cancellation, he could not because he was already scheduled for unrelated cancer surgery on that same day.

WCB determined that Chris had a good reason for not accepting the diagnostic wrist surgery date and then notified Chris that his benefits would continue for four more weeks and after that they would be suspended until the wrist surgery could take place. Two months after his benefits were suspended, he had the diagnostic wrist surgery and his benefits were reinstated. He did not think the suspension was fair and appealed the decision. He lost the appeal and brought the issue to our office.

Our investigation found that the WCB had based its decision on their policy which allows for a maximum of four weeks of benefits when a recipient refuses treatment for a good reason, followed by suspension of benefits until the recipient can resume treatment. This policy applies when recovery is delayed.

In Chris's case, however, the diagnostic wrist surgery revealed that nothing more could be done to improve his wrists and a few months after the wrist surgery, WCB decided that Chris was not physically able to return to his pre-injury employment. He would be expected to find alternate employment and WCB would top up his salary, so from then on his benefits were reduced but ongoing. Postponing the diagnostic wrist surgery, therefore, did not delay the recovery of Chris's wrist because it was not going to recover.

We determined that in this scenario, WCB used the wrong portion of its policy and a different portion of policy would apply which speaks to the issue of benefits paid retroactively when the delay of treatment did not affect recovery from a compensable injury.

In Chris's case if the wrist surgery had taken place when initially proposed, the only change would be that this ongoing benefit arrangement would have been worked out sooner. As a result, we determined that Chris should be reimbursed the reduced amount for the months his benefits were suspended.

Recommendation:

1. That the Workers' Compensation Board pay to Chris two additional months' reduced benefits.

Status: Accepted

Strict Rules on Student Loan Overpayments

Cody received funding through the Provincial Training Allowance (PTA) for post-secondary education, but was unable to complete the year's courses, so the remaining funds (about \$600) were considered an overpayment. When Cody tried to return to his studies the next fall, he again applied for funding and was denied because he had not paid back the overpayment. He did not think this was fair and contacted our office.

Although Cody chose not to pursue his complaint, the Ombudsman decided to review the rules related to this matter. We found that the guidelines in place allowed for some flexibility up until 365 days after the overpayment is due. After this timeframe, if payment in full or payment arrangements had not been made, there was no flexibility, regardless of the circumstances. When applied too strictly and without discretion, we found the guideline to be arbitrary and contrary to the intent of the program.

Recommendation:

1. That the PTA guideline which does not allow the granting of further assistance to a person who is in an overpayment situation for more than 365 days or has not made payment arrangements within the 365 days be amended to provide for discretion in appropriate circumstances so that additional PTA funding can be granted before the entire PTA overpayment is paid. When such discretion is exercised and additional PTA is granted, collection of the existing overpayment can be made from future benefits.

Status: Accepted

Why Denied?

While Cole was away from home, some property went missing. He filed an insurance claim with SGI Canada, which later notified him that his claim was denied because the matter was a family dispute. Cole did not agree with their response and contacted us.

Our investigation found that SGI had good reasons for denying the claim, but did not fully provide their rationale to Cole.

Recommendation:

1. That SGI provide to Cole a letter outlining the reasons for the decision to deny him coverage for the loss he reported to SGI.

Status: Accepted

Who Can be Considered a 'Child'?

Charlie was in a fatal motor vehicle accident and left behind six adult "step-children." His wife (their mother) had passed away sometime earlier and he had no biological children of his own. SGI had to determine whether the step-children were "non-dependent children" who would thereby qualify for the death benefit. The youngest sister was the only one Charlie had ever adopted and she was a half-sister to the others. SGI determined that she was the only one who qualified and paid her a benefit.

Based on their relationship with Charlie, the others believed that they too should qualify for a benefit and Caroline, the eldest sibling, contacted our office. We investigated the situation and found that the five older siblings had developed a strong relationship with Charlie. Even though they were older when he met their mother and they didn't live in the same house, they all treated him as their father. He, in turn, would introduce them as his children and when he and their mother made their wills, their wish was that all six children be treated equally. After their mother died and Charlie became ill, one of the older siblings assisted him so he could manage on his own and upon his death, they provided some financial assistance for the funeral.

Given the evidence that we reviewed, our office found that SGI had not given sufficient consideration to the unique circumstances of these older siblings and their relationship with Charlie. We determined that there was enough evidence that Charlie stood in the place of a parent to them and that the five older step-children should also qualify as "non-dependent children."

Recommendation:

1. That SGI pay to Caroline and her siblings the lump sum benefit as provided by section 147 of The Automobile Accident Insurance Act.

Status: Not Accepted

SGI maintains that these "step-children" were not within the class of individuals that the legislation intended should benefit as "non-dependent children." The Ombudsman disagrees.