



Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-04-155

PANEL: Ms Laura Diamond, Chairperson
Mr. Neil Cohen
Mr. Paul Johnston

APPEARANCES: The Appellant, [text deleted], was represented by
[Appellant's representative];
Manitoba Public Insurance Corporation ('MPIC') was
represented by Ms Danielle Robinson.

HEARING DATE: February 28, 2006

ISSUE(S): Was the Appellant a dependant of the late [text deleted] as
defined by Section 70(1) of The Manitoba Public Insurance
Corporation Act ('MPIC Act') and therefore entitled to
benefits set out in Sections 119 to 125 of the MPIC Act?

RELEVANT SECTIONS: Sections 70(1)(c), 121 and 202(a)&(b) of the MPIC Act.

AICAC NOTE: THIS DECISION HAS BEEN EDITED TO PROTECT THE APPELLANT'S PRIVACY
AND TO KEEP PERSONAL INFORMATION CONFIDENTIAL. REFERENCES TO THE APPELLANT'S
PERSONAL HEALTH INFORMATION AND OTHER PERSONAL IDENTIFYING INFORMATION
HAVE BEEN REMOVED.

Reasons For Decision

The Appellant was married to [the deceased] on [text deleted]. There are two (2) children of the marriage, born [text deleted] and [text deleted].

The evidence indicated that [the Appellant] and [the deceased] were divorced on [text deleted].

On [text deleted] the Provincial Court of British Columbia issued an Order, under *The British*

Columbia Family Relations Act, ordering [the deceased] to pay the Appellant the sum of [text deleted] dollars per month per child, for a total of [text deleted] dollars per month for the maintenance of the children, commencing [text deleted] and payable on the first day of each month and every month thereafter.

The evidence indicated that [the deceased] was frequently in arrears in regard to these support payments.

[The deceased] was killed in a motor vehicle accident near [text deleted], Manitoba, on [text deleted].

As a result of the motor vehicle accident and the death of their father, the Appellant's two (2) children were paid death benefits, as non-dependant children, pursuant to Section 123 of the MPIC Act.

However, by a decision dated December 9, 2003, a senior case manager for MPIC indicated to the Appellant that the children were considered non-dependant children at the time of their father's death, and MPIC could not give consideration to the Appellant's request for reimbursement of arrears of child maintenance, as there was no coverage for this under the Personal Injury Protection Plan ('PIPP').

The Appellant sought Internal Review of this decision, indicating that she qualified as a dependant, because, according to the court order, she was entitled to support payments at the time of death.

On June 7, 2004, an Internal Review Officer for MPIC held that the court orders provided stipulated periodic maintenance payments for the Appellant's children only. He indicated that he was not provided with any evidence that the deceased was paying, or was required to pay spousal benefits at the time of his death. At the time of the accident the children were no longer children on the marriage as defined in the *Divorce Act*, and were no longer entitled to maintenance payments from the deceased. He noted that the children had been paid non-dependant death benefits under PIPP.

The Internal Review Officer stated:

This strongly suggests that the term "support" in subsection (c) was intended to refer specifically to spousal support.

Since there was no judgment or agreement for spousal support in place on the date of the accident, you do not fit within any of the definitions of "dependant" under Section 70(1) of the *Act* and you are (sic) entitled to any of the benefits set out in Sections 119 to 125 of the *Act*.

Accordingly, the Appellant's Application for Review was denied.

Submissions

Appellant's Submission

According to counsel for the Appellant, the issue before the Commission was not whether MPIC should take over the arrear payments owed by the deceased. Rather, the issue is whether the Appellant was a dependant pursuant to Section 70(1) of the MPIC Act. Section 70(1)(c) defines a dependant as one whose marriage has been dissolved but who, at the time of the accident was receiving support payments under a judgment or agreement.

In his view, the question turns upon the definition of support. If the Appellant was entitled to receive support at the time of the accident, she is entitled to dependant benefits.

Counsel for the Appellant referred to the most recent Order of the Provincial Court of British Columbia, dated [text deleted]. That Order provided for support benefits on an indefinite basis and did not set out any expiry date. At the time of the court order, the Appellant's children were approximately [text deleted] and [text deleted] years of age, and at the time of the motor vehicle accident, that court order was still in effect.

Counsel for the Appellant reviewed two (2) possible meanings for "support" contained in the definition of dependant under the MPIC Act. One (1) possible interpretation involves a narrow and restrictive approach. The second involves a more broad and liberal approach in line with the MPIC Act, which is a benefit conferring scheme. Counsel for the Appellant referred to other legislation which would support a broad and liberal interpretation. He referred to Section 6 of *The Interpretation Act* which provides:

Section 6 Rule of liberal interpretation

Every act and regulation must be interpreted as being remedial and must be given the fair, large and liberal interpretation that best ensures the attainment of its objects.

Counsel referred to a past decision of the Commission, re [text deleted] [AC-95-14], to support his argument for a broad and liberal interpretation.

He also reviewed the ways that other legislation applicable in Manitoba has defined the word "support". He reviewed *The Fatal Accidents Act*, which defines "support recipient" as:

"Support recipient" means a person to whom the deceased was, at the time of his or her death, required to pay support pursuant to a valid and subsisting written agreement or court order;

The *Inter-jurisdictional Support Orders Act* defines “support” as:

“Support” includes support, maintenance or alimony payable for a person or for the child of a person or for both.

The federal *Divorce Act* defines “support order” as:

“Support Order” means a child support order or a spousal support order.

Section 56.1 of the federal *Income Tax Act* defines a “support amount” as:

“Support amount” means an amount payable or receivable as an allowance on a periodic basis for the maintenance of the recipient, children of the recipient or both the recipient and children of the recipient, if the recipient has discretion as to the use of the amount.

Counsel for the Appellant submitted that the MPIC Act, like these other statutes, offers a broad definition of the word “support”. To restrict this interpretation, the word “support” must be qualified in some way in order to narrow or constrict it.

It was the submission of counsel for the Appellant that the Internal Review Officer took a strict and narrow interpretation of the definition of dependant, based upon poor logic. He argued that the Internal Review Officer was in error when he took into account the non-dependant benefits accepted by the deceased’s children. This should have no bearing upon the rights of the Appellant.

The Court in British Columbia required payments for the benefit of her children to go directly to the Appellant. At the time this court order was made the children were over eighteen (18) or about to turn eighteen (18) years of age. It was within the purview of the Court to order the cheques be paid directly to them, and/or to put an expiry date upon the Appellant’s right to receive these payments. The Court chose not to do that. Rather, the Court chose to make the

amounts payable directly to the Appellant to use the money as she saw fit. This was in line with the *Income Tax Act* definition of “support”.

The legislature, when drafting the MPIC Act, could have distinguished between spousal support and child support in its definition of dependant, or used the word “alimony” to do so. However, the legislature chose to use the more general term “support”.

In addition, MPIC has the power, under Section 202 of the MPIC Act to make regulations.

- (a) defining a word or expression used and not defined in this Act; or
- (b) enlarging or restricting the meaning of a word or expression used in this Act;

It was within the purview of the legislature and the corporation to provide a more clear or restrictive definition of support. As neither has done so, the Appellant should not have her rights or benefits constricted as a result. In light of all of the other legislation referred to by the Appellant, it would be illogical to assume that “support” here only means “spousal support”.

Counsel for the Appellant also addressed the previous decision of the Commission in [text deleted] (*AC-98-12*) which rejected [text deleted’s] claim for a death benefit following the death of her ex-husband. He noted that any comments which the panel made regarding whether the support was for the children or for her support, were made in obiter, as the basis for the decision was found in paragraph 10 which states:

Unfortunately, since [text deleted] does not have an agreement, she does not qualify for a death benefit under Section 70(1)(c) of the Act and therefore, is not entitled to any lump sum death benefit from MPIC.

MPIC's Submission

Counsel for MPIC argued that the relevant test was whether the Appellant was a dependant, and that she would have to prove that she was entitled to support at the time of the accident in order to do so. On the contrary, the documents on the file clearly state that the support payments were for the maintenance of the children.

She referred to the [text deleted] case, where the Commission has already dealt with the same issue. The deceased in that case was paying an amount for support, and the Appellant argued that the verbal agreement behind these payments entitled her to receive support. However, the Appellant would have had to prove that these payments were for her support and not the support of her children, counsel for MPIC submitted. Whether an individual is dependant depends on who the support was intended for. In this case, since the support was for the children and not the Appellant, the Appellant does not fall within the definition of dependant.

It was the position of counsel for MPIC that "support" under Section 70(1) is intended to refer, in cases such as this, to spousal support. The definitions provided from other statutes are not helpful in determining the issue before the panel in this case.

The crucial question, she submitted, is who the support is for. The court order makes it clear that the support here is intended for the support of the children. Accordingly, the Appellant is not a dependant under the Act. The Act is intended to cover economic loss for people affected by the death. As there is no evidence that the support was for the Appellant, the only parties who have sustained economic loss as a result of [the deceased's] death, are his children. As the support payments are for the children, and not for the Appellant, the Appellant does not fall within the definition of dependant.

In reply, counsel for the Appellant noted that the payments under the court order were payable to the Appellant for the maintenance of the children, but were not held in trust. The money was paid to the Appellant to use as she saw fit, for the benefit of the family, so that she could maintain the children of the marriage.

Discussion

The definition of dependant under Section 70(1) of the Act includes:

(c) a person whose marriage to the victim has been dissolved by a final judgment of divorce or declared null by a declaration of nullity of marriage, and who, at the time of the accident, is entitled to receive support from the victim under a judgment or agreement,

[121\(2\)](#) A dependant, other than the spouse or common-law partner, of a deceased victim is entitled to

(a) a lump sum indemnity in the amount opposite the age of the dependant in Schedule 3; and

(b) if the dependant is disabled on the day the deceased victim dies, an additional lump sum indemnity of \$17,500.

Under the definition in s. 70(1)(c), the Appellant must meet three criteria to meet the definition of dependant. The Appellant must be a person:

1. whose marriage to the victim has been dissolved by a final judgment of divorce; and
2. who, at the time of the accident, is entitled to receive support from the victim; and
3. who is entitled to receive that support under a judgment or agreement.

The onus is on the Appellant to show, on a balance of probabilities, that she is entitled to a dependant benefit under the Act.

The panel has reviewed the documentation and the submissions of the parties. We find that the term “support” in the definition of dependant under Section 70(1)(c) of the Act has not been qualified by the legislature to be restricted to “spousal” or “child” support. Nor has MPIC, pursuant to its powers to regulate under Section 202(1) of the Act, made regulations to further define the word “support” or enlarge or restrict its meaning.

Pursuant to *The Interpretation Act*, the panel is of the view that under a “fair, large and liberal interpretation” of the MPIC Act, the term “support” has not been qualified or restricted by either the legislation or the regulations. The panel finds that the term is broad enough to include both spousal and child support. This interpretation is consistent with other definitions of support set out in other statutes, including *The Inter-jurisdictional Support Orders Act*, the *Divorce Act* and the *Income Tax Act*, referred to by counsel for MPIC.

Accordingly, the panel has considered the three (3) criteria set out above and their application to the Appellant. We have concluded that:

1. the Appellant has established that her marriage to the victim has been dissolved by a final judgment of divorce.
2. the Appellant has established that at the time of the accident she was entitled to receive support from the victim.
3. the Appellant has established that she was entitled to receive support from the victim under a judgment or agreement.

The Internal Review Officer took the position that because the Appellant's children accepted non-dependant benefits, the Appellant could not be a dependant. Counsel for MPIC indicated that since the support judgment of the B.C. Court was for the children's benefit and as they had already received compensation from MPIC as non-dependants, no further benefit should flow to the Appellant, as a dependant.

However, the issue before the Commission under Section 121 and Section 70(1) of the Act is not the dependant status of the children, but rather the dependant status of the Appellant.

We have reviewed the previous decision of the Commission in [text deleted]. Although the Commission in its reasons made some comments regarding for whose benefit the support payments from the deceased were made, the decision ultimately turned on a lack of any judgment or agreement pursuant to which that support was paid:

Unfortunately, since [text deleted] does not have an agreement, she does not qualify for a death benefit under Section 70(1)(c) of the Act and therefore, is not entitled to any lump sum death benefit from MPIC.

In the Appellant's case, the parties agree that there is a court order dated [text deleted] entitling the Appellant to support for the maintenance of the children in the amount of [text deleted] dollars per month commencing [text deleted], and payable on the first day of each month and every month thereafter. No conditions were imposed upon the Appellant directing particulars of how that money must be spent. Nor was there any expiration date imposed on the requirement of the victim to make the payments. Accordingly, the panel finds that the Appellant was entitled to receive support at the time of the accident, pursuant to a judgment or agreement, and as such, meets the criteria for the definition of dependant under Section 70(1)(c) of the MPIC Act.

The panel finds that the Appellant was a dependant pursuant to Section 70(1)(c) of the Act and is entitled to receive a lump sum indemnity benefit under Schedule 3, pursuant to Section 121(2)(a) of the Act. Accordingly, the decision of the Internal Review Officer dated June 7, 2004 is therefore rescinded and the foregoing substituted therefore.

Dated at Winnipeg this 29th day of March, 2006.

LAURA DIAMOND

NEIL COHEN

PAUL JOHNSTON