

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [The Appellant]
AICAC File No.: AC-11-125**

PANEL: Ms Yvonne Tavares

APPEARANCES: The hearing of this appeal was conducted in writing. The Commission received written submissions from the Appellant, [text deleted] and from Mr. Matthew Maslanka, counsel for the Manitoba Public Insurance Corporation (“MPIC”).

ISSUE(S): Quantum of death benefits.

RELEVANT SECTIONS: Sections 123 and 124 of The Manitoba Public Insurance Corporation Act (‘MPIC Act’).

AICAC NOTE: THIS DECISION HAS BEEN EDITED TO PROTECT THE PERSONAL HEALTH INFORMATION OF INDIVIDUALS BY REMOVING PERSONAL IDENTIFIERS AND OTHER IDENTIFYING INFORMATION.

Reasons For Decision

The Appellant, [text deleted] has filed this appeal to the Commission from a decision of the Internal Review Officer dated September 22, 2011. [The Appellant] is the mother of the deceased victim, [text deleted]. [The deceased] was involved in a motor vehicle accident on May 1, 2011, wherein she sustained serious injuries which resulted in her death. As a result of the unfortunate death of [the deceased], an entitlement to certain death benefits arose pursuant to the MPIC Act. In a letter dated August 4, 2011, MPIC’s case manager wrote to the deceased’s parents to advise as follows:

At the time of the accident, [the deceased] was single and had no dependents. As his (sic) parents, you are each entitled to a lump sum payment totaling \$12,299.00 which has been enclosed with this letter.

We have received the invoice for funeral expenses from [text deleted] totaling \$9,112.36 and have contributed \$7,527.00 to the total cost.

Immediate family may also access \$2,500.00 per individual for grief counseling expenses if they are requested. Any member of the immediate family that wishes to access grief counseling may contact me directly to make the appropriate arrangements.

The Appellant disagreed with the case manager's decision and sought an Internal Review of this decision on the grounds that the payments made by MPIC were insufficient to cover the actual expenses incurred by the family in connection with the deceased's victim's funeral and burial. In a decision dated September 22, 2011, the Internal Review Officer confirmed the decision of the case manager and dismissed the Application for Review. In her decision, the Internal Review Officer noted that:

By way of background, the decision under review provided both you and [the deceased's] father with the maximum Parental Lump Sum Indemnity of \$12,299.00 each. The decision also indicated that you were reimbursed the maximum amount payable of \$7,527.00 for funeral expenses.

You did not agree with the decision, and in your Application for Review explained why you are contesting the amount received for the demise of your daughter. You wrote that you have incurred expenses as a result of having to hire extra help to run your [text deleted] business. You have also incurred expenses as a result of having to come to Manitoba to pick up your daughter's personal belongings. You cannot understand how the life of a human being is worth less than an arm, a broken leg, or the loss of an eye. You are requesting a Parental Lump Sum Indemnity of \$150,000.00 for yourself and \$150,000.00 for your daughter's father.

...

REASONS FOR REVIEW DECISION

The current legislation expressly states that where a deceased victim has no dependants on the day he or she dies, each parent of the deceased victim is entitled to a Lump Sum Indemnity. The amount of this indemnity is indexed annually and in the year 2011, the amount was \$12,299.00 for each parent.

...

I have reviewed the file and note that you have been paid the maximum Parental Lump Sum Indemnity of \$12,299.00 each. As we have no authority to award benefits that PIPP does not provide, no further payments can be made on behalf of your daughter as a result of the accident of May 1, 2011.

As noted above, [the Appellant] has now appealed that Internal Review decision to this Commission. The issue which arises on this appeal, concerns the quantum of the death benefits payable pursuant to the provisions of the MPIC Act.

The relevant sections of the MPIC Act provide:

Entitlement of child and parent of deceased victim

123 Where a deceased victim has no dependant on the day he or she dies, each child and parent of the deceased victim, although not a dependant of the deceased victim, is entitled to a lump sum indemnity of \$5,000.

Reimbursement of funeral expenses

124 The corporation shall reimburse the estate of a deceased victim for the actual cost of funeral expenses, including the cost of any grave marker, to a maximum of \$6,000.

In her written submission, [the Appellant] argued that the payments made by MPIC were insufficient to cover the actual costs that have been incurred since the death of [the deceased]. She requested that consideration be given to covering actual costs of the funeral, expenses to run the family farm in the weeks following the accident, loss of wages, expenses related to moving the deceased's personal effects, legal expenses, travel expenses, costs of closing accounts and the costs which the family incurred for their daughter's education as a [text deleted]. The family expected that the experience which their daughter would gain would allow her to return to the family farm and takeover the family farm. [The Appellant] requested additional indemnification for the actual costs that the family has had to incur following her daughter's death and additional compensation to recognize the value of her daughter's life.

Counsel for MPIC submitted that the maximum amounts prescribed for under the legislation have been paid to [the Appellant] and there are no other entitlements owing. Counsel for MPIC submits there is no legislative authority for MPIC to pay the amounts that [the Appellant] is claiming. As such, there is no authority granted to the Commission to order that these amounts be paid. On this basis, MPIC submits that the Internal Review decision dated September 22, 2011 should be confirmed and the Appellant's appeal should be dismissed.

Upon a careful review of the evidence before it, and the submissions of the Appellant and of counsel for MPIC, the Commission finds that MPIC correctly applied the provisions of the MPIC Act when determining the death benefit and the funeral expenses payable to [the Appellant]. Although the benefits payable pursuant to Sections 123 and 124 of the MPIC Act may be considered insufficient in the current circumstances, neither MPIC nor this Commission has any discretion to change the provisions of the MPIC Act, and we are required to apply the MPIC Act as we find it. Accordingly, the Commission must dismiss the Appellant's appeal and confirm the Internal Review Decision dated September 22, 2011.

Dated at Winnipeg this 10th day of July, 2013.

YVONNE TAVARES