

**Automobile Injury Compensation Appeal Commission**

**IN THE MATTER OF an Appeal by [the Appellants] on behalf of the Estate of [Deceased mother]**

**AICAC File No.: AC-14-044**

**PANEL:** Mr. Mel Myers, Q.C., Chairperson  
Ms Jacqueline Freedman  
Ms Nikki Kagan

**APPEARANCES:** The Appellants, [Appellant #1] and [Appellant #2], appeared on their own behalf;  
[Deceased child's father] appeared on his own behalf;  
Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Steve Scarfone.

**HEARING DATE:** October 23, 2014

**ISSUE(S):** Whether the Appellants are entitled to file a Notice of Appeal regarding lump sum indemnity payments made in respect of the death of [Deceased mother] to the Estate of [Deceased child].

**RELEVANT SECTIONS:** Sections 120, 121, 122 and 123 of The Manitoba Public Insurance Corporation Act ('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**

**Background:**

The Appellants, [text deleted], are the mother and step-father of the late [Deceased mother]. [Deceased mother] and [Deceased child's father] were the biological parents of the late [Deceased child]. On May 3, 2013, [Deceased mother] and [Deceased child] were tragically

involved in a serious motor vehicle accident (“MVA”), and neither survived the accident. [Deceased mother] was [text deleted] years old at the time and [Deceased child] was [text deleted] years old at the time. Neither of them had a will.

Under Division 3 of the MPIC Act, a death benefit is payable where a victim dies as a result of an accident. MPIC interprets this legislation very broadly where two people die at the same time, and calculates the payments as though each person survived the other. Accordingly, a payment was made by MPIC to [Deceased mother’s] estate with respect to the death of [Deceased child] (there is no dispute regarding this payment). Similarly, a payment was made by MPIC to [Deceased child’s] estate with respect to the death of [Deceased mother].

[Deceased child’s father] is the Administrator of [Deceased child’s] estate. The payment that was made to [Deceased child’s] estate with respect to the death of [Deceased mother] was paid to [Deceased child’s father] in his capacity as Administrator of [Deceased child’s] estate. The Appellants in this case seek to file a Notice of Appeal with the Commission with respect to that payment, more specifically with respect to the letter from the Internal Review Officer outlining the details of that payment. The issue to be decided by the Commission is whether that appeal ought to be allowed to proceed. It should be noted that the funds have already been paid out to the Administrator, and apparently distributed by him in accordance with provincial legislation. Accordingly, [Deceased child’s father], Administrator of the estate, was given notice of and invited to attend the hearing.

**Relevant Provisions of the MPIC Act:**

The relevant provisions of the MPIC Act are as follows:

### **Computing indemnity under schedules**

120(1) The spouse or common-law partner of a deceased victim is entitled to a lump sum indemnity equal to the product obtained by multiplying the gross income that would have been used as the basis for computing the income replacement indemnity to which the victim would have been entitled if, on the day of his or her death, the victim had survived but had been unable to hold employment because of the accident, by the factor appearing opposite the victim's age in Schedule 1 or, where the spouse or common-law partner is disabled on that day, Schedule 2.

...

### **Lump sum indemnity to other dependant**

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.

### **Dependent child of deceased victim with no spouse or common-law partner**

122 If on the day he or she dies the deceased victim has no spouse or common-law partner but has a child who is a dependant, the child is entitled, in addition to a lump sum indemnity under section 121, to a lump sum indemnity under section 120 and, where there is more than one child, the lump sum indemnity shall be divided equally among them.

### **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 \$13,154.

### **Decision:**

For the reasons set out below, the panel finds that the appeal ought not to be allowed to proceed.

### **Evidence and Submission of the Appellants:**

The Appellants testified at the hearing. In addition, [Appellant #2's sister], [text deleted], also testified in support of their position.

The Appellants' position was that it was not fair to exclude them from the payment made in respect of [Deceased mother's] death that was made to [Deceased child's] estate, as they were significantly involved in the early years of [Deceased child's] life. They indicated that right after [Deceased child's] birth, he, [Deceased mother] and [Deceased child's father] lived for several months with [Appellant #2's sister]. Following that period of time, the three of them moved into their own apartment. After [Deceased mother] and [Deceased child's father's] relationship ended, [Deceased child] lived with [Deceased mother] in [text deleted] for a period of time. Subsequently, [Deceased child] lived with his grandparents, the Appellants, from age [text deleted] to age [text deleted]. From the time [Deceased child] was age [text deleted] until the time of his passing, [Deceased mother] and [Deceased child's father] had shared custody of [Deceased child]; although [Deceased child] was going to school in [text deleted], where [Deceased child's father] lives.

The Appellants argued that their appeal should be allowed to proceed because having the entire amount of [Deceased mother's] death benefit paid to [Deceased child's] estate disregarded the "blood lines". In their view there were no blood lines left after the death of [Deceased mother] and [Deceased child]. They suggested that a more equitable distribution of the benefit payable on [Deceased mother's] death would be to have the benefit paid to [Deceased mother's] mother or possibly to her boyfriend, with whom she had been cohabitating for a short period of time prior to her death. They argued that [Deceased mother] and [Deceased child's father] did not have the type of relationship that ought to entitle [Deceased child's father] to benefit on the death of [Deceased child], and he has been allowed to benefit indirectly through the *Intestate Succession Act* as a beneficiary of [Deceased child's] estate once the MPIC funds were paid to [Deceased child's] estate. The Appellants indicated that they wanted to use the funds to do something in honour or in memory of [Deceased mother] and [Deceased child], but with the

funds being paid to [Deceased child's] estate and with [Deceased's child's father] being the Administrator, they now have no say in how the funds are spent.

**Evidence and Submission of [Deceased child's father]:**

[Deceased child's father] indicated that he didn't seek out this payment from MPIC; rather, when he received it, he questioned it and was told that the payments were correct. He indicated that he used the funds for the future education (RESPs) of his other children (he has four other children with his current wife). In his view these were funds that [Deceased child] would have been entitled to and his only concern is that he not be responsible financially for the revocation of the RESPs.

**Evidence and Submission of MPIC:**

MPIC argued that it is not the responsibility of the Commission to interpret statutes other than the MPIC Act, such as the *Intestate Succession Act*. The issue to be decided is whether the Appellants can bring an appeal with respect to a payment made to someone other than themselves, namely [Deceased child's father]. MPIC argued that the issue is one of standing and MPIC argued that the Appellants do not have standing to bring a review of benefits paid to another person. MPIC's position is that the payments were made under its statutory authority to the correct person and that the payments were calculated properly. Accordingly, the Appellants ought not to be allowed to proceed with their appeal.

**Reasons for Decision:**

The issue to be determined by the panel is whether the Appellants can bring an appeal in respect of the payment made to the estate of [Deceased child]. The Appellants are not specifically arguing that they are entitled to the funds under the provisions of the MPIC Act, but rather that it

would be equitable that the death benefit be paid to them, given the nature of the relationship between the parties. MPIC argues that one party cannot contest a payment made to another party.

The panel finds that it is unnecessary to make a determination on the issue of whether the Appellants have standing to contest a payment made to another party; this is because we have reviewed the nature of the payments made and concluded that even if the Appellants do have standing, to allow them to file an appeal with respect of the payments made to the estate of [Deceased child] would be futile, as the payments were correctly calculated and paid, as set out below.

Based on MPIC's indication of how they interpret the legislation, the following applied on [Deceased mother's] death: under subsection 121(2), her [child] [Deceased child] would be treated as a surviving dependant and would be entitled to a lump sum indemnity calculated pursuant to Schedule 3. In addition, under section 122, since she had no spouse and no survivor meeting the definition of common-law partner, but she had a child who was a dependant, [Deceased child] would also be entitled to a lump sum indemnity under section 120.

Notionally, these amounts would go to [Deceased child]. However, since [Deceased child] was deceased, these amounts went to [Deceased child's] estate. MPIC paid these amounts to [Deceased child's father] as the Administrator of [Deceased child's] estate. This is what is set out in the letter from MPIC's Internal Review Officer dated December 5, 2013.

Based on the foregoing, the panel finds that it would be impossible for the Appellants to demonstrate that the Internal Review letter dated December 5, 2013 is incorrect. Accordingly, we find that the appeal ought not to be allowed to proceed.

The Commission wishes to extend condolences and sympathies to the Appellants and to [Deceased child's father] for their tragic loss. We recognize the difficulty that was involved in bringing this matter forward and we are appreciative of your submissions and assistance to the panel.

**Disposition:**

Based on the foregoing, the decision of the Internal Review Officer dated December 5, 2013 is confirmed. The Appellants are not permitted to file a Notice of Appeal in this matter.

Dated at Winnipeg this 2<sup>nd</sup> day of December, 2014.

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**MEL MYERS, Q.C.**

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**JACQUELINE FREEDMAN**

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**NIKKI KAGAN**