Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an appeal by [the Appellant]
AICAC File No.: AC-97-84

PANEL:	**Mr. J. F. Reeh Taylor, Q.C., Chairman** **Mr. Charles T. Birt, Q.C.** **Mr. Colon C. Settle, Q.C.**
APPEARANCES:	**Manitoba Public Insurance Corporation ('MPIC') represented by Ms Joan McKelvey;** **the Appellant, [text deleted], was represented by her son, [text deleted], who attended by telephone conference call**
HEARING DATE:	**February 8th, 1999**
ISSUE(S):	**Whether surviving victim of MVA entitled to personal care expenses resulting from death of co-victim, her husband.**
RELEVANT SECTIONS:	**Sections 120(1) and (2), 124, 132, 134 and 110(1)(g) 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 deceased] and [the Appellant], each [text deleted] years of age at the time and resident in [text deleted], North Dakota, were involved in a tragic motor vehicle accident on June 14th, 1995 when the vehicle that [the deceased] was driving was in collision with another vehicle, registered in Saskatchewan. The accident took place in Manitoba and the MPIC Act is therefore applicable.

[The deceased] did not survive the accident. [The Appellant] sustained a fractured left clavicle, five fractured upper ribs and sundry bruises and abrasions. She had been diagnosed with Alzheimer's Disease in 1990 but was living at home in [text deleted] with her husband. Immediately after the accident she was taken to the [hospital] in Manitoba, whence she was transferred on June 24th, 1995 to the [text deleted] Medical Centre, where she has been institutionalized ever since.

[The Appellant's] attending physician, [text deleted], reported on January 15th, 1997 that [the Appellant] appeared to have recovered completely from her physical injuries, save only for complaints of joint discomfort and some difficulty ambulating.

[The Appellant] has received the payment to which she, as surviving spouse, was entitled in the amount of $40,560.00, [the deceased's]estate has received the statutory allowance for funeral expenses of $3,549.00, and MPIC has paid for [the Appellant's] entire costs of being maintained at the [text deleted] Medical Centre from June 24th,1995 to January 15th, 1997 as well as ambulance, medication, medical, hospital and other allowable expenses totalling, in round terms, approximately $70,000.00.

As well, MPIC's Adjuster, in the mistaken belief that [the Appellant], as a disabled dependent of her late husband, was entitled to benefits under Section 121(2)(b) of the MPIC Act, paid [the Appellant] a further $17,745.00 to which, in our view, she was not entitled. The section of the

Act under which this latter sum was paid is applicable only to "a dependent, other than a spouse, of a deceased victim".

The claim that is now advanced on [the Appellant's] behalf by her son and daughter, [text deleted] of [text deleted], Saskatchewan, and [text deleted], of [text deleted], North Dakota, may be stated very simply: [The deceased] was healthy and able to care for his wife to the extent that she was not able to do so herself; she was, in any event, quite capable of feeding and clothing herself and taking care of her own basic hygiene; had he not been killed in the accident, he would be taking care of her to this day and they would both have been living at home, as before.

As MPIC's Internal Review Officer puts it, by way of response to the submission that [the Appellant] is institutionalized "because of the accident":

> This is essentially a causation argument. Under the system of compensation for automobile accident injuries that existed before the Personal Injury Protection Plan came into effect such questions would have to be analyzed in terms of "remoteness" and "foreseeability". I am by no means sure that the conclusion you proposed could be reached, even if such considerations were to be applied. [The deceased] was, after all, [text deleted] years of age at the time of the accident. His actuarially calculated life expectancy would have been very short. His autopsy report indicates the presence of a large pituitary tumor which was already beginning to affect his vision. Even without a car accident, [the deceased] might therefore easily have been deceased or disabled by January of 1997 when the benefits ceased. Anyway, I think that this is, in principle, the wrong way to approach such questions under PIPP. The PIPP coverage for personal care

> relates to the bodily injuries [the Appellant] herself sustained in this automobile accident. The causative factors you referred to are not only speculative but they also fall outside of the coverage.

The Internal Review Officer went on to examine the possibility that Sections 132 and 134 might, perhaps, have been brought into play in furtherance of [the Appellant's] claim. He concludes, however, (and, in our respectful view, correctly concludes) that a claim under either of those sections of the Act relates to the claim on behalf of a victim who ceases, by reason of accident-related injuries, to be able to look after a disabled person for whom they were caring before the accident. The Internal Review Officer went on to say:

> His, (i.e. [the deceased's]) entitlement depends on whether or not he can fall into one or another of the categories in Section 134 and the only one which is possibly applicable is Subsection (d). This depends on whether [the deceased] was entitled to an income replacement indemnity. By Section 110(1)(g), however, such an entitlement ceases when the victim dies. Accordingly, no coverage is available for [the Appellant's] personal care expenses under Section 132 and 134.

Copies of the relevant sections of the Act are annexed to these Reasons.

The simple fact is that there is no provision made under the MPIC Act for a situation like this, in which the caregiver losses his life in the accident and the surviving spouse, although apparently recovered reasonably well from the physical injuries sustained in the accident, is nevertheless institutionalized for reasons unrelated to the accident. [The Appellant] appears to have been in large measure restored by January 15th, 1997 to her pre-accident status, which included

Alzheimer's Disease with attendant dementia. [Appellant's doctor], in a letter of October 8th, 1998, raises the further speculation of possible psychological impairment resulting from the accident, but there is no evidence of any kind before us to indicate any traumatic brain injury. We have to conclude that the condition first described by [Appellant's doctor] on August 22nd, 1997, to the effect that [the Appellant] had now become dependent on staff to complete the functions of dressing, toileting and feeding that she had previously been able to accomplish by herself, was the unfortunate but inevitable result of the steady deterioration of her Alzheimer's Disease and her age.

In light of the foregoing conclusion, we are obliged to dismiss [the Appellant's] appeal.

Dated this 15th day of February, 1999.

J. F. REEH TAYLOR, Q.C.

CHARLES T. BIRT, Q.C.

COLON C. SETTLE, Q.C.