

Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by [the Appellant]

AICAC File No.: AC-02-11

PANEL: Mr. Mel Myers, Q.C., Chairman
Ms. Yvonne Tavares
Mr. F. Les Cox

APPEARANCES: The Appellant, [text deleted], appeared on her own behalf; Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Terry Kumka.

HEARING DATE: April 4, 2002

ISSUE: Calculation and entitlement with respect to lump sum indemnity provided for spouse of a deceased victim.

RELEVANT SECTIONS: Sections 120(1) and (2) and Schedule 2 of The Manitoba Public Insurance Corporation Act ('the 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

On April 17, 2001, the Appellant's husband, [text deleted], was riding on his bicycle when he was in collision with a motor vehicle. [Appellant's husband] sustained severe brain injury as a result of the motor vehicle accident, and he passed away on June 2, 2001. At the time of his death, [Appellant's husband] was [text deleted] years of age and was retired from his employment. [Appellant's husband's] only income was a Canada Pension Plan pension of \$272.66 per month and an Old Age Security pension of \$855.73 per month. The annual income in respect of both of [Appellant's husband's] pensions amounted to \$13,600.

At the time of the motor vehicle accident, the Appellant, who was also disabled, was receiving a disability pension of \$570.28 per month. The total pension income of [Appellant's husband] and [the Appellant] prior to the motor vehicle accident was \$1,698.67 per month. As a result of the death of [Appellant's husband], his two pensions were terminated. The only income available to the Appellant after the motor vehicle accident was the monthly amount of \$657.97 which is composed of her disability pension together with the Canada Pension Plan survivor's benefit.

The Appellant, who was disabled, was entitled to a spousal benefit pursuant to Sections 120(1) and (2) and Schedule 2 of the Act.

Computing indemnity to spouse under schedules

120(1) The spouse 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 is disabled on that day, Schedule 2.

Minimum indemnity to deceased victim's spouse

120(2) The lump sum indemnity payable under subsection (1) shall not be less than \$40,000. whether or not the deceased victim would have been entitled to an income replacement indemnity had he or she survived.

SCHEDULE 2

(Section 120)

LUMP SUM INDEMNITY TO DISABLED SPOUSE OF DECEASED VICTIM

Age of victim on day of death	Factor
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65 years or over	1.0
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Applying these provisions, the MPIC case manager determined that the lump sum indemnity to which the Appellant was entitled was the sum of \$46,035 and so advised the Appellant by a letter dated October 22, 2001.

The Appellant filed an Application for Review of the case manager's decision. On January 9, 2002, the Internal Review Officer confirmed the case manager's decision dated October 22, 2001, and rejected the Application for Review. The Appellant appealed this decision to the Commission.

The Internal Review Officer, in arriving at his decision, stated;

REASONS FOR REVIEW DECISION

[Appellant's husband] lost his life due to an automobile accident. He was [text deleted] years of age at the time. You are disabled and are, therefore, entitled to a spousal benefit under Section 120(1) and Schedule 2 of the Act. The Act provides that the spousal benefit is calculated in two steps. The first step consists of calculating [Appellant's husband's] Gross Yearly Employment Income ("GYE'I). (This is a figure based on his employment earnings. It would have been used in calculating the Income Replacement Indemnity ("IRI") he would have received if he had survived the collision, but was unable to work thereafter.)

[Appellant's husband] was, in fact, a non-earner as of the date of loss. He did not have a GYEI (and would not have been entitled to IRI had he survived). At the hearing you objected that your husband had CPP and Old Age Security pension income of \$13,600.00 per year and that he was, therefore, an earner. I do not think this is correct, but because of the next step in calculating the benefit, the point makes no difference in any event.

The second stage in calculating the spousal benefit involves multiplying the appropriate GYEI by the age factor set out in Schedule 2. For [Appellant's husband], the factor is 1.0. The benefit then would be something under \$13,600.00 if we applied your argument concerning his status as an earner, but Section 120(2) provides a minimum benefit of \$40,000.00. This figure is subject to indexing every year. You received a benefit of \$46,035.00, which is the minimum benefit payable in accordance with Section 120(2).

The Appellant, in her submission to this Commission, did not challenge the method used by the Internal Review Officer in determining that the death benefit was \$46,035. However, the

Appellant submitted that the death benefit of \$46,035 was unfair and unreasonable and would reduce her to poverty.

The Appellant asserted that the only income left to her was the sum of \$657.97 per month.

She further asserted that the capital in respect of the death benefit of \$46,035 would be required to be used by her in order to continue to enjoy the same standard of living that she enjoyed prior to the motor vehicle accident and, as a result, this capital would be exhausted within a period of approximately four years.

In her Notice of Appeal dated January 22, 2002, the Appellant stated:

I believe it's unfair that the death benefit only covers approximately 4 years. I still have [text deleted] years to live on \$657.97. I believe that I should continue to live the way I was accustomed to before the accident took his life. The accident also took his income. It should make no difference whether he was working or not. The income is gone. The minimum of \$46,035.00 that I received will not take care of me until age 65. The fact that there's little difference between a disable [*sic*] spouse and non disable [*sic*] is ridiculous. A non disable [*sic*] can work. If proof of income is needed, I will bring T5.

In her Application for Review, dated November 2, 2001, the Appellant stated:

There is no reason for me to believe that [Appellant's husband] would not have lived for many more years, had it not been for the accident. Our plans of spending our (Golden Years) together were rudely shattered. I believe I'm entitled to 10 years of his income, minus what I'm now receiving which comes to \$124,884.00.

In the Appellant's submission to the Commission, she confirmed the written submissions that she had made in the Notice of Appeal and in the written Application for Review. The Appellant stated that as she is [text deleted] years of age, she would be required to wait until she is 65, a period of [text deleted] years, in order to obtain Old Age Security pension. During the next [text deleted] years, she would be able to maintain the standard of living that she had enjoyed prior to

the motor vehicle accident. However, for the following [text deleted] years, prior to the receipt of the Old Age Security pension, she would have no further income except her own pension of \$657.97. As a result, she would be forced into poverty and would require welfare assistance.

In summary, the Appellant submits that she suffered a financial catastrophe and is looking to MPIC to ensure that she can continue to maintain the same modest standard of living that she did prior to the motor vehicle accident until she reaches at least 65 years of age when she can access the supplemental Old Age Security pension. The request of the Appellant is hardly unreasonable.

The Internal Review Officer recognized the force of the Appellant's submission and stated in his decision dated January 9, 2002

...you have received the spousal benefit prescribed by the legislation. I do not have the authority or the discretion to award an amount in addition to what the Act allows. It has to be remembered that the benefits you are claiming are benefits provided by the Personal Injury Protection Plan ("PIPP"). PIPP is a statutory plan for compensating individuals who have sustained certain kinds of losses due to a motor vehicle accident. The benefits are prescribed by legislation. The function of Manitoba Public Insurance is to administer the payment of those benefits in accordance with the Act and Regulations. Neither our claims staff, nor the Review Office, has discretion to amend the legislation governing PIPP. None of us has authority to expand a coverage or to create a coverage that does not exist under the Plan.

Since you have received the benefits prescribed by the Act, all I can do is to confirm the adjuster's decision and to extend to you once again our sincere condolences for your loss.

The Commission is bound by the same provisions as the Internal Review Officer and with great regret is unable to grant the Appellant's entirely reasonable request.

The Commission, but for the existing legislation, would have increased the amount of the death benefits at the very minimum to ensure that the Appellant would not have suffered any financial loss as a result of the termination of [Appellant's husband's] pension income when he tragically lost his life. Unfortunately, the Commission cannot exceed the statutory requirements of the Act and Regulations and must reluctantly reject the appeal and confirm the decision of the Internal Review Officer.

Dated at Winnipeg this 19th day of April, 2002.

MEL MYERS, Q.C.

YVONNE TAVARES

F. LES COX