

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by THE ESTATE OF D.M.
AICAC File No. AC-01-126**

PANEL: Mr. Mel Myers, Q.C., Chairperson
Ms. Yvonne Tavares
Mr. Guy Joubert

APPEARANCES: The Appellant, The Estate of D.M., was represented by A.P. and M.P.;
Manitoba Public Insurance Corporation ('MPIC') was represented by Mr. Tom Strutt.

HEARING DATE: May 8, 2002

ISSUE: Quantum of death benefits.

RELEVANT SECTIONS: Sections 123, 124 and 165(3) of The Manitoba Public Insurance Corporation Act (the 'MPIC Act')

MAIC 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 deceased victim, D.M., was involved in a motor vehicle accident on February 28, 2000, wherein he sustained serious injuries which resulted in his death on March 2, 2000. As a result of the unfortunate death of D.M., an entitlement to certain death benefits arose pursuant to the MPIC Act. In a letter dated June 27, 2001, MPIC's case manager wrote to counsel representing the family of D.M. to advise as follows:

I have reviewed all of the receipts you have forwarded to us and have issued a cheque in the amount of \$6,000.00 to your office "in trust", which is the maximum payable under our provisions for funeral expenses.

I have also issued payment in the amount of \$5,504.00 to [A.M.], based on Section 123 of the Manitoba Public Insurance Act [*sic*]. Although you have

requested that we consider an increase of this sum, this is the maximum payable under the legislation.

An internal review was sought from 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 victim's funeral and burial. In a decision dated September 26, 2001, the Internal Review Officer confirmed the decision of the case manager and dismissed the Application for Review. In her decision, the Internal Review Officer commented that:

As with every other employee of The Manitoba Public Insurance Corporation, I am bound by The MPIC Act and Regulations. With respect to Section 123, *entitlement of child and parent of deceased victim*, there is no discretion to pay any other amount besides what has been indexed up until the time of your client's loss which is a total of \$5,504.00. This amount was paid in the case manager's decision of June 27th, 2001.

With respect to Section 124, *lump sum indemnity for funeral expenses*, the maximum amount is \$6,000.00 and again this amount was paid by Ms. Dunstone in her letter of June 27th, 2001.

The Estate of the deceased victim has now appealed 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 as follows:

Section 123:

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.

Section 124:

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.

Section 165(3):

Adjustment of other amounts on March 1

165(3) An amount of money referred to in dollar amounts

(a) in this Part other than under section 114 (maximum yearly insurable earnings); and

(b) in Schedule 3;

shall be adjusted on March 1 of each year.

At the outset of the hearing of this matter, counsel for MPIC advised that the adjustment of the payments made pursuant to Sections 123 and 124 of the MPIC Act had been overlooked by the case manager. Although the date of the motor vehicle accident had been February 28, 2000, the date of death was not until March 2, 2000. Accordingly, the benefits payable pursuant to Sections 123 and 124 should have been indexed in accordance with subsection 165(3) of the MPIC Act. Therefore, the maximum funeral benefit payable pursuant to Section 124, and to which the Appellant would be entitled, was \$6,120. The lump sum indemnity payment pursuant to Section 123, as indexed on March 1, 2000, should have been \$5,614. Beyond the adjustment of those payments, pursuant to subsection 165(3) of the MPIC Act, counsel for MPIC submitted that there was no further authority for any additional benefits to be paid to the Estate of D.M. arising out of the motor vehicle accident of February 28, 2000.

The representative of the Estate of D.M. argued that the payments made by MPIC were insufficient to cover the costs that have been incurred, and requested that consideration be given

to covering the actual costs of the funeral, burial, and transportation of the deceased victim's corpse to [Text deleted].

Subject to the required adjustment for the indexation of the benefits in accordance with subsection 165(3) of the MPIC Act, we find that MPIC correctly applied the provisions of the MPIC Act when determining the death benefit payable to the Estate of D.M. 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, subject to the adjustment for the indexation of the benefits, the Commission must dismiss the Appellant's appeal.

Dated at Winnipeg this 14th day of May, 2002.

MEL MYERS, Q.C.

YVONNE TAVARES

GUY JOUBERT

[Ed. Note: The note "[Text deleted]" indicates the removal of information which may identify individuals.]