

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an Appeal by [the Appellant]
(ESTATE OF [text deleted])**

AICAC File No.: AC-11-004

PANEL: Ms Yvonne Tavares, Chairperson
Ms Sandra Oakley
Ms Deborah Stewart

APPEARANCES: The Appellant, [text deleted] (Estate of [text deleted]),
appeared on her own behalf via teleconference;
Manitoba Public Insurance Corporation ('MPIC') was
represented by Ms Alison Caldwell.

HEARING DATE: January 17, 2012

ISSUE(S): Whether spousal indemnity and other indemnity benefits
were correctly calculated.

RELEVANT SECTIONS: Sections 120 and 121(2) 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], is appealing the Internal Review Decision dated October 7, 2010 with respect to the amount of the spousal indemnity and other dependant indemnities paid as a result of the loss of her husband, [the Deceased], in a motor vehicle accident of September 1, 2009.

Facts and Background:

The facts of the appeal can be briefly summarized as follows:

1. On September 1, 2009, [the Deceased] was fatally injured as a result of a motor vehicle accident.
2. [The Deceased] was unemployed at the time of the motor vehicle accident.
3. At the time of the accident, [the Deceased] was married to and living with [the Appellant] and had four children:
 [Appellant's Child #1], date of birth [text deleted], age [text deleted],
 [Appellant's Child #2], date of birth, [text deleted], age [text deleted],
 [Appellant's Child #3], date of birth [text deleted], age [text deleted], and
 [Appellant's Child #4], date of birth [text deleted], age [text deleted].
4. On February 12, 2010, MPIC's case manager issued a decision setting out the spousal indemnity and other dependant indemnities payable to the Appellant and her children as follows:

As we discussed on February 9, 2010, based on the available information, you are entitled to a spousal payment of \$54,466.00. If you have information concerning any income that [the Deceased] was earning at the time of the accident, please provide this information for our review, so we can determine if it alters this decision.

Your children are entitled to the following lump sum indemnity payments:

Name	Date of Birth	Age	Indemnity Amount
[Appellant's Child #1]	[text deleted]	[text deleted]	\$25,871.00
[Appellant's Child #2]	[text deleted]	[text deleted]	\$28,593.00
[Appellant's Child #3]	[text deleted]	[text deleted]	\$31,318.00
[Appellant's Child #4]	[text deleted]	[text deleted]	\$44,932.00

The Appellant sought an Internal Review of that decision. In a decision dated October 7, 2010, the Internal Review Officer dismissed the Appellant's Application for Review and confirmed the case manager's decision. The Internal Review Officer found that the Appellant had received the

spousal benefit and dependants' benefit prescribed by the legislation and confirmed there was no entitlement to further benefits.

The Appellant has now appealed that decision to this Commission. The issue which requires determination on this appeal is whether the spousal indemnity and other dependants' indemnity payments were correctly calculated by MPIC.

Relevant Legislation:

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.

Minimum indemnity

[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.

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.

Appellant's Submission:

The Appellant disagrees with the amount of the indemnities paid to her. She submits that the indemnities provided under the MPIC Act are insufficient. She maintains that as a result of the

loss of her husband, she has lost financial stability and she is unable to provide for her children. The Appellant confirmed that her husband was not employed at the date of the accident, however, she contends that he was always able to provide for his family. The Appellant submits that due to the motor vehicle accident, her family is now facing an unfair financial hardship. She submits that they should be entitled to greater indemnities as a result of the death of her husband, as he was the main provider for the family.

MPIC's Submission:

Counsel for MPIC submits that the Appellant has received the spousal benefits and dependants' benefits prescribed by the MPIC Act and there is no discretion on the part of MPIC or of the Commission to award an amount in addition to what the MPIC Act allows.

Counsel for MPIC maintains that Section 120(2) provides for the spousal indemnity benefit. The section sets out how the calculation is to be done. Since [the Deceased] was unemployed and a non-earner at the date of the motor vehicle accident, the Appellant is entitled to the minimum lump sum indemnity payable pursuant to Section 120(2), which amount is indexed yearly for inflation. Counsel for MPIC also submits that pursuant to Section 121(2) of the MPIC Act, the lump sum indemnities paid to the Appellant's children were correctly calculated according to the ages of the children at the date of death. Counsel for MPIC submits that the Appellant has received the amounts that she is entitled to pursuant to the MPIC Act and there is no discretion to award any other payments. As a result, counsel for MPIC submits that the Appellant's appeal should be dismissed and the Internal Review Decision dated October 7, 2010 should be confirmed.

Decision:

Upon hearing the testimony of the Appellant, and after a careful review of all of the medical, paramedical and other reports and documentary evidence filed in connection with this appeal, and after hearing the submissions of the Appellant and of counsel for MPIC, the Commission finds that the Appellant has received the appropriate spousal indemnity and other dependant indemnity benefits as a result of the loss of her husband in the motor vehicle accident of September 1, 2009.

Reasons for Decision:

The Commission finds that at the time of the accident, the Appellant's late husband was a non-earner. The Appellant did not have a remunerative occupation and he did not hold employment as defined under the MPIC Act. As a result, the spousal benefit payable to the Appellant is provided for pursuant to Section 120(2) of the MPIC Act, which provides a minimum benefit of \$40,000. The Appellant received a benefit \$54,466, which is the minimum benefit payable in accordance with Section 120(2) of the MPIC Act, indexed to the year of death. The Commission finds that the spousal indemnity was correctly calculated in accordance with the provisions of the MPIC Act. The Commission has no discretion to award an amount in addition to what the MPIC Act provides.

As surviving dependants, the Appellant's children are also entitled to receive a benefit. This benefit is prescribed by Section 121(2) of the MPIC Act. The dependants' lump sum indemnities are set out by the age factor in Schedule 3 and the amount is subject to indexing every year. The Commission confirms the following payments:

[Appellant's Child #1] date of birth [text deleted], age [text deleted]. The Schedule gives the prescribed benefit as \$25,871.00;

[Appellant's Child #2], date of birth [text deleted], age [text deleted]. The Schedule gives the prescribed benefit as \$28,593.00;

[Appellant's Child #3], date of birth [text deleted], age [text deleted]. The Schedule gives the prescribed benefit as \$31,318.00; and

[Appellant's Child #4], date of birth [text deleted], age [text deleted]. The Schedule gives the prescribed benefit as \$44,932.00.

The Commission finds that the Appellant's children, as surviving dependants, received the benefits that they were entitled to pursuant to Section 121(2) of the MPIC Act. The Commission does not have the authority or the discretion to award amounts in addition to what the MPIC Act allows.

Accordingly, the Commission finds that the Appellant and the Appellant's children have received the appropriate spousal indemnity and other dependant indemnity benefits payable pursuant to the MPIC Act. As a result, the Appellant's appeal is dismissed and the Internal Review Decision of October 7, 2010 is confirmed.

Dated at Winnipeg this 2nd day of February, 2012.

YVONNE TAVARES

SANDRA OAKLEY

DEBORAH STEWART