

Automobile Injury Compensation Appeal Commission

IN THE MATTER OF an Appeal by [the Appellant]
AICAC File No.: AC-11-055

PANEL: Ms Yvonne Tavares, Chairperson
Ms Linda Newton
Mr. Neil Cohen

APPEARANCES: The Appellant, [text deleted], was represented by Mr. Phil Lancaster of the Claimant Adviser Office; Manitoba Public Insurance Corporation ('MPIC') was represented by Ms Cynthia Lau.

HEARING DATE: September 26, 2012

ISSUE(S): Entitlement to death benefits.

RELEVANT SECTIONS: Section 70(1) and Section 123 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] as the Executor and next of kin for [the Deceased] has filed this appeal to the Commission from a decision of the Internal Review Officer dated March 23, 2011.

The facts giving rise to this appeal may be briefly summarized as follows:

1. On October 16, 2010, [the Deceased] age [text deleted], was riding his three wheeled bicycle north bound on [text deleted] in [text deleted], Manitoba, when a vehicle approaching from behind hit him.

2. [The Deceased] was transported to [text deleted] Hospital where he died from injuries from the collision.

3. [The Appellant] was a person with an intellectual disability. He resided in a home with other adults with special needs. He worked at [text deleted]. At the time of his death, he was not married and had no dependents. He was predeceased by both of his parents. He was survived by his four brothers.

4. In a letter dated December 9, 2010, MPIC's case manager issued a decision indicating that there was no entitlement to a lump sum death benefit as the late [the Deceased] did not have a spouse or dependents.

5. The Appellant sought an Internal Review of that decision. In a decision dated March 23, 2011, 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 and his brothers did not fall within the definition of "*in loco parentis*" to the deceased and therefore they were not entitled to death benefits pursuant to Section 123 of the MPIC Act.

6. As noted above, the Appellant, as the Executor and next of kin for [the Deceased], appealed the Internal Review Decision dated March 23, 2011 to this Commission.

Relevant Legislation:**Definitions**

[70\(1\)](#) In this Part,

"parent of a victim" means a person related to a victim as a parent by blood or adoption or who stands in loco parentis to a victim at the time of the accident; (« parent de la victime »)

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.

Appellant's Submission:

The Claimant Adviser submits that [the Deceased's] brothers stood "in loco parentis" to [the Deceased] at the time of his death and therefore they are entitled to a death benefit pursuant to s. 123 of the MPIC Act. The Claimant Adviser argues that [the Deceased's] brothers took on the role of his parents when their biological parents passed away. They had made a commitment to their parents that they would look after [the Deceased] and include him in family functions. The Claimant Adviser claims that the Appellant and his brothers did as much for [the Deceased] as their parents did.

The Claimant Adviser relies on the decision of the Supreme Court of Canada in *Chartier v. Chartier*, [1999] 1 S.C.R. 242, where the factors for determining the status of "*in loco parentis*" were set out as:

“. . . whether the child participates in the extended family in the same way as would a biological child; whether the person provides financially for the child (depending on ability to pay); whether the person disciplines the child as a parent; whether the person represents to the child, the family, the world, either or explicitly or implicitly, that he or she is responsible as a parent to the child; and, the nature of existence of the child's relationship with the absent biological parent.”

In this case, the Claimant Adviser argues as follows in regards to the factors that are relevant to [the Deceased's] situation:

1. The opinion of the child: [the Deceased] accepted [the Appellant's] advice and accepted the brothers' assistance and their guidance regarding many matters in his life.
2. Formal or inferred intention: The brothers' informally expressed to the world that they were taking on the role formally occupied by the biological parents.
3. Financially providing for the child: [the Deceased] was financially self-sufficient and there was no need to provide financial support for [the Deceased].
4. Explicit/implicit representations: The brothers made representations that they were responsible for [the Deceased].
5. Providing discipline: [the Deceased] accepted [the Appellant's] advice, which the Claimant Adviser argues is a broad definition of discipline. Further, the Claimant Adviser argues that when the brothers established a trust fund for [the Deceased], that was a form of imposing financial discipline upon [the Deceased].

The Claimant Adviser submits that [the Deceased's] brothers took on the role of parents when the biological parents passed away. They took on all of the roles that their parents had previously handled and more. He maintains that at the time of [the Deceased's] death, his brothers had taken on the role of parents and the requirements and factors in the Chartier case are satisfied. The Claimant Adviser argues that the brothers were not merely a support network but rather they were in fact substitute parents for [the Deceased] and therefore they are entitled to a death benefit pursuant to Section 123 of the MPIC Act.

MPIC's Submission:

Counsel for MPIC submits that [the Deceased's] brothers were not in the position of "*in loco parentis*" to [the Deceased] and therefore there is no death benefit payable to any of the brothers pursuant to Section 123 of the MPIC Act. Counsel for MPIC argues that [the Deceased] was able to adequately manage his own affairs with some limited assistance from his family members. She argues that [the Deceased's] family members were a support network and there was no parental relationship established after his biological parents passed away. Applying the factors set out in the Chartier decision, counsel for MPIC argues the following:

1. **Opinion of [the Deceased]:** At the time of his death, [the Deceased] was not living with any of his brothers. There is no objective evidence with respect to his view of his relationship with his brothers.
2. **Representation of brothers:** There is no evidence from the brothers, other than the Appellant. She maintains logically, the brothers represented themselves as brothers of [the Deceased] who provided him with support. There is no evidence that they represented themselves as parents to [the Deceased]. Further, counsel for MPIC notes that the Application for Compensation is consistent with [the Appellant's] role as [the Deceased's] brother who provided support to him. She submits that [the Appellant] did not communicate that he was [the Deceased's] parent; rather he perceived himself as a brother who cared about [the Deceased] and ensured that he was doing well.
3. **Forming a new family and whether [the Deceased] was treated the same as other children:** Although efforts were made to include [the Deceased] in family celebrations, this did not put [the Deceased] in the same position as a child of the family.
4. **Financial support:** There was no financial support provided by any of the brothers. [The Deceased] was financially self sufficient.

5. Discipline: No evidence of discipline. [The Deceased] was receptive to his sibling's advice.

6. Representation to the world that the brothers were responsible as a parent to [the Deceased]: [the Deceased] was independent and capable of providing for himself. Providing care to a family member is not unexpected and does not render someone a parent.

Counsel for MPIC maintains that the brothers' role was one of support and guidance to [the Deceased]/ She submits that the fact that they assisted their brother does not equal an obligation as set out in the Chartier decision and did not render them [the Deceased's] parents.

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 Claimant Adviser and of counsel for MPIC, the Commission finds that the Appellant is not entitled to a death benefit pursuant to Section 123 of the MPIC Act.

Reasons for Decision:

Upon a consideration of the totality of the factors before it, the Commission finds that the Appellant and his three brothers did not stand *in loco parentis* to the deceased, [the Deceased]. The evidence before the Commission was inadequate to support a parental relationship between the four brothers and [the Deceased]. Rather the Commission is satisfied that the four brothers provided guidance and support to [the Deceased] as compassionate siblings and did not assume a parental role to their brother. The Commission finds that there was no indication that the deceased thought of any of the four brothers as parents and there is no evidence that any of the

brothers had the intention to act as parents to [the Deceased] It is clear that the brothers provided care, guidance and support in the role of compassionate siblings rather than as parents.

Although [the Deceased] was an intellectually challenged individual, he was an adult and not a child. Therefore for the purposes of ascertaining whether a parental relationship existed between [the Deceased] and his siblings, the Commission finds it necessary to establish a significant degree of dependency between [the Appellant] and his siblings. The evidence before the Commission simply did not establish such a degree of dependency between [the Deceased] and his siblings. Although they did provide advice, support and assistance to [the Deceased], the brothers did not provide financially for [the Deceased]; [the Deceased] did not reside with any of them; they did not represent themselves as parents of [the Deceased]; there was no discipline of [the Deceased]; there was no legal responsibility for [the Deceased], either as guardians, substitute decision makers or committees. Further, the Commission does not find that there were either explicit or implicit representations made to the world that they were responsible as a parent for [the Deceased]. As a result, the Commission is satisfied that none of the brothers stood in the place of a parent to the deceased, [the Deceased].

Accordingly, the Commission finds that neither the Appellant, nor his brothers are entitled to a lump sum indemnity pursuant to Section 123 of the MPIC Act. As a result, the Appellant's appeal is dismissed and the Internal Review Decision dated March 23, 2011 is confirmed.

Dated at Winnipeg this 5th day of December, 2012.

YVONNE TAVARES

LINDA NEWTON

NEIL COHEN