

Automobile Injury Compensation Appeal Commission

**IN THE MATTER OF an appeal by [the Appellants]
AICAC File No.: AC-95-4**

PANEL: Mr. J. F. Reeh Taylor, Q.C. (Chairperson)
Mr. Charles T. Birt, Q.C.
Mrs. Lila Goodspeed

APPEARANCES: Manitoba Public Insurance Corporation ('M.P.I.C.')
represented by Ms Joan McKelvey;
[text deleted, the Appellants, appeared in person.

HEARING DATE: June 8th, 1995.

ISSUES: Meaning of 'dependent' under Section 70(1) of the M.P.I.C.
Act.

RELEVANT SECTIONS: Sections 70(1) and 121(2)(a) of the Act, and Schedule 3 thereto.

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 FACTS

The following facts were given as evidence by [the Appellants] at the hearing. M.P.I.C.'s file, of which we were provided with a copy prior to the hearing, contained little information related to the [Appellant's] farming operations before and after the tragic loss of their son.

[The Deceased] lived with his parents, [the Appellants], at [text deleted], Manitoba, except from early spring until the fall when he worked away from home for the [text deleted]. He would work at the construction sites and return home each weekend. [The Deceased] lost his life as a result of a two-vehicle accident that occurred on August 12th, 1994.

At the time of the accident [the Appellants] owned a section of land. [Appellant #1] leased a further three one-quarter sections and owned 70 cows and 2 bulls. One-half of their land was for the cultivation of hay and oats; the rest was used as pasture land for the cattle. The leased land was used to grow hay for the cattle.

In past years [Appellant #1] would raise approximately 65 calves. He would retain 15 for his own use, sell a number of calves in the fall, finish off the balance and sell them at the end of the year. The calving season, which occurs from January to May of each year, for this size of herd is a two-person operation, working full-time. [The Deceased], prior to his accident, worked full-time with his father from the end of the construction season until spring, helping to run all aspects of the farm. From spring until fall [the Deceased], although back working for [text deleted], would devote his weekends to helping with the haying and all other aspects of the farm operation. He would, as well, purchase items for the farm (sometimes using his own monies) and would pick up supplies and materials for the farm on his way home from the job-site. [Appellant #1] estimated that [the Deceased] would have spent an average of about \$700.00 a year out of his own pocket for that purpose.

Since the accident, [Appellant #1] has had to rely on his neighbours and his wife for assistance for the 1995 calving season. He has tried to hire someone in the community to help him with the farming, but has not had any success to date. He believes that, if he could find someone, he would have to pay that individual about \$8.00 per hour. However, it appears that, due to the limited economic viability of the farming operation, it could not support the cost of a hired hand.

[Appellant #1's] evidence was that, while [the Deceased] was alive, he ([Appellant #1]) had not needed to hire any extra hands nor, except very occasionally with a very difficult calving, to rely upon his neighbours.

[Appellant #1] has come to the conclusion that, without full-time help for at least the most demanding months of the year, he alone cannot physically handle the same number of cows. He therefore sold off all of his calves in the fall of 1994 and has reduced his herd to 50 cows. He is attempting to see if he can manage this number on his own and to determine if the operation is still financially viable. Evidence was adduced that the calves, during both their birthing and their growing until they are sold, require a lot of supervision and work for their care, feeding and general maintenance and upkeep.

[Appellant #1] would disclose the entire farm income on his yearly income tax, averaging a profit of approximately \$10,000.00 per year. In some years his net income would be slightly higher or lower than this figure. [Appellant #2] did not claim any of the farming income on her income tax and neither did their son, [the Deceased]. [Appellant #1] is [text deleted]

years of age and injured his shoulder during the 1995 calving season; it may not return to normal, but that is not a factor that we may take into account. Due to the reduced number of cows for the current year, [Appellant #1] has cancelled the leases for two of the quarter sections of leased hay land. We accept that the herd reduction is a direct result of [the Deceased's] death.

[The Deceased] did not pay for room and board while living at home. He was driving an automobile owned by one of his parents at the time of the accident. [The Deceased] had expressed a desire to take over the farm one day; his father had given him a heifer to help him establish his own herd.

[Appellant #2] helps with the operation of the farm. Prior to the accident, she worked as a home care worker in the community for approximately 25 hours per week. After the accident she could not bring herself to work outside the home for quite some months, during which she stayed home and helped her husband with the farming operation as best she could. [Appellant #2] has recently returned to working as a home care worker but, because she has lost her seniority, is only working approximately 6 hours per week.

THE LAW

Subsection 70(1) of the Manitoba Public Insurance Corporation Act ('the Act') defines "dependant" (sic), for present purposes, as

".....(e) a parent of the victim who was substantially dependant upon the victim at the time of the accident."

[The Appellants] are, patently, parents of the late [the Deceased]. The question before us is whether either or both of them were substantially dependent upon him at the time of the accident.

The position of M.P.I.C. is that the word 'dependent' must be interpreted to mean 'financially dependent'. We do not accept that position which, in our view, is too narrow. This is not to say that financial factors are irrelevant. They should certainly be looked at, but are by no means the only criterion or gauge to be considered in determining dependency. By way of a simple example, a paraplegic victim may have an adequate private income and yet be 'substantially dependent' upon a parent or child for many of the essentials of life.

The facts are that:

(a) [Appellant #1] cannot operate his farm at the same level that prevailed prior to [the Deceased's] death without hiring additional labour or obtaining help from his neighbours - help which, although doubtless freely given during emergencies, can hardly be expected to be available to anything like the extent offered by his son;

(b) [Appellant #1] has had to reduce the size of his herd from approximately 70 head of cattle (which, in itself, seems to have provided little better than a subsistence level of net income) to about 50 head, a reduction of 30% which, for a herd of that size, borders on the catastrophic;

(c) the entire farm operation has had to be proportionately reduced, with the acreage being cut back from 1120 to 800, and, even had [Appellant #1] not injured his shoulder, it is clear that what remains is not a one-man operation. It becomes essential that extra help be hired if [Appellant #1] is not to be deprived of his basic source of income. Indeed, it is far from clear whether, even with hired help, he can make a go of it financially.

DECISION

We find, upon the basis of the foregoing facts, that [Appellant #1] was, at the time of the accident, substantially dependent upon his late son for the operation of the family farm. The evidence does not support a finding that [Appellant #2] was substantially dependent upon her son for her portion of the work related to the farm nor for her work as a home care worker. While we accept her evidence that the trauma of [the Deceased's] death left her so emotionally exhausted that she could not face the idea of working outside her home for many months, the fact is that this situation post-dated the accident; immediately prior to that accident [Appellant #2] was not 'dependent' within the meaning of the Act.

The decision of the internal review officer is therefore varied, so as to award [Appellant #1], as a dependent of his late son, [the Deceased], the sum of \$19,000.00, (less the \$5,000.00 already awarded and paid to him on October 3rd, 1994) pursuant to Section 121(2) of the Act and to Schedule 3.

The decision of the internal review officer with respect to the claim of [Appellant #2] is confirmed.

Dated at Winnipeg this 19th day of June, 1995.

J. F. REEH TAYLOR, Q.C.

CHARLES T. BIRT, Q.C.

LILA GOODSPEED