

**LICENCE APPEAL
TRIBUNAL**

**TRIBUNAL D'APPEL EN MATIÈRE
DE PERMIS**



**Safety, Licensing Appeals and
Standards Tribunals Ontario**

**Tribunaux de la sécurité, des appels en
matière de permis et des normes Ontario**

Citation: M.H. vs. Aviva General Insurance, 2019 ONLAT 17-006910/AABS

Tribunal File Number: 17-006910/AABS

In the matter of an Application pursuant to subsection 280(2) of the *Insurance Act*, R.S.O. 1990, c. I.8, in relation to statutory accident benefits.

Between:

M.H.

Applicant

and

Aviva General Insurance

Respondent

DECISION

ADJUDICATOR:

Craig Mazerolle

APPEARANCES:

Representative for the Applicant: Edward Kim, Counsel

Representative for the Respondent: Ramandeep Kaur Pandher, Counsel

Held by Written Hearing:

October 10, 2019

OVERVIEW

- [1] On October 31, 2014, the applicant's son was struck by a car while crossing the street. He passed away several months later on December 15, 2014.
- [2] The applicant sought a death benefit from the respondent, pursuant to the *Statutory Accident Benefits Schedule* (the "*Schedule*").¹ When the respondent refused this request, the applicant applied to the Licence Appeal Tribunal – Automobile Accident Benefits Service (the "Tribunal").
- [3] In the original decision from the Tribunal, Adjudicator Norris awarded the benefit.² This decision was later overturned by Associate Chair Jovanovic.³ This matter has now been assigned to me.
- [4] As I will explain below, I find that the applicant is not entitled to a death benefit.

ANALYSIS

- [5] Section 26(2)(5)(i) of the *Schedule* states that a death benefit (in the amount of \$10,000) is owed to "a person in respect of whom the insured person was a dependant at the time of the accident".
- [6] Section 3(7)(b) of the *Schedule* provides guidance in defining this relationship: "a person is a dependant of an individual if the person is principally dependent for financial support or care on the individual or the individual's spouse".

Parties' Positions

- [7] Though her son lived on his own for many years, the applicant submits that their relationship still met the standard listed in the *Schedule*. That is, due to his developmental delay and diabetes, her assistance ensured that his health did not deteriorate. Put another way, while her son may have lived independently, this setup was only possible through her intensive love and support.
- [8] The respondent contends that the applicant does not meet the high level of support necessary to demonstrate entitlement to a death benefit. Specifically, the son was not "principally dependent" on the applicant's care, and he only required her financial assistance to cover a part of his expenses. The respondent also highlighted the son's ability to work, volunteer, and attend appointments in the community, all without his mother's assistance.

¹ *Effective September 1, 2010*, O. Reg. 34/10.

² *17-006910 v. Aviva Insurance Canada*, 2018 CanLII 110955 (ON LAT).

³ *M.H. v. Aviva Insurance Canada*, 2019 CanLII 58155 (ON LAT).

Day-to-Day Life

- [9] The applicant's son was diagnosed with a developmental delay when he was quite young. At the time, a psychiatrist estimated that he would never develop past the mental age of four. Though the parties dispute the mental age that the applicant's son had at the time of the accident, I accept that he had issues with mental capacity that affected his ability to live a wholly independent life.
- [10] In spite of these challenges, he began living on his own in a subsidized apartment around the age of 21. He would continue to live on his own until his life was tragically cut short at the age of 49.
- [11] The applicant's son was quite limited in the activities he could do around the house. For instance, he could do basic tasks like heating up soup, but he could not cook a full meal. Instead, he generally ate out at local restaurants. Additionally, while he was able to manage much of his personal hygiene, these tasks were often done in a subpar manner (e.g., he would only shave part of his face; he had trouble clipping his nails, etc.).
- [12] On the other hand, the applicant's son was quite independent in the community. As she noted during her examination under oath, her son was regularly out of the house visiting [his friends] including visits to the curling club and local fire stations. He would also occasionally stop by the applicant's house, especially when there was a special event.
- [13] The son was also independent in a number of other areas in his life. For example, after accompanying his mother a few times to the pharmacy, he learned how to pick up his medications on a regular basis. He was also able to volunteer and work out at a local gym. In fact, sports were such a big part of his life that he once travelled to Alberta to participate in the Special Olympics for curling.
- [14] To get around the community, he mainly walked or took the bus. He was able to navigate the local transit system himself, and he knew some of the bus drivers so well that they would occasionally invite him over for dinner. However, the applicant noted that she would still drive him to some of his medical appointments.

Income and Expenses

- [15] The applicant's son's monthly expenses included: rent, utilities, a home phone line, bus passes, medication/medical supplies, hair cuts, and food. He covered most of these expenses himself, though his medications and insulin needles were covered through public funding. His mother also assisted him on a regular basis, as will be described below.
- [16] To meet these expenses, the applicant's son worked two part-time jobs. One position was at a local fast food restaurant, where he worked one three-hour shift

per week. He worked at this restaurant for 25 years. The other position was at a curling club. He would mainly work there on the weekends from September to June, and he held this position for about ten years.

- [17] In addition to these jobs, he also received social assistance—ranging from about \$700-900 each month.
- [18] According to tax documents provided to the Tribunal, the applicant's son had a total income of \$12,639.00 for the 2013 tax year, i.e., the last full year before his death.

Applicant's Assistance

- [19] The applicant helped her son in a number of different ways, including: handling all his shopping needs; ensuring his clothes were properly hemmed; completing the paperwork for his subsidized apartment; assisting with some of his medical appointments; reminding him to maintain proper hygiene; etc. Her son was also quite hard on his clothing (e.g., accidentally tearing the zippers off his winter jackets), so she purchased him new clothing and shoes on a regular basis.
- [20] In addition to several visits throughout the month at the request of her son, the applicant also made a point of stopping by his apartment at least twice per week. During these regular visits, she would clean up around the house, do the occasional load of laundry (i.e., about once a month), and she would check to make sure he was not running low on food or toiletries. If any of these supplies were running low, she would go out and buy them. Purchasing healthy food was a particular focus of the applicant, as she wanted to make sure her son was effectively managing his diabetes.
- [21] It should be noted that the applicant's regular, weekly visits would often happen when her son was not home (due to his active life out in the community). However, when she would catch him during these visits, she would make a point of washing his hair and shaving his face. This kind of visit happened every six to eight weeks.
- [22] A major part of the applicant's relationship with her son appears to have been his regular phone calls, i.e., the pair spoke between five to eight times a day. These calls would involve updating her on his whereabouts, as well as requests for help. If the applicant was unable to help him over the phone, she would go and meet with him in person. Additionally, whenever the applicant was out of town for her annual trips to Alberta, she would ensure someone [was] assigned to help handle these calls for the month.
- [23] Finally, the applicant provided her son with a significant amount of financial assistance, mainly in the form of clothing and food purchases. These purchases included: new shoes every six weeks, costing \$50-60/pair (i.e., \$433.33 – 520 per year); two pairs of winter boots every year (together costing about \$400 per year); two to three grocery runs per month (costing about \$50 per trip, or \$1200 –

1800 per year); and a new \$300 winter jacket every year. This assistance amounted to about \$3000 per year.

Additional Community Support

- [24] The applicant's son also received assistance through a [local service provider]. This organization helped him with daily tasks, like dressing and shaving before his shifts at the fast food restaurant. The organization also drew up his insulin needles once per week (though the applicant would occasionally assist with this task, especially if he broke one of these needles throughout the week). [The local service provider] would also take him on some excursions in the community, e.g., going out to a hockey game.
- [25] Other community support came from Meals on Wheels, who would deliver him four meals a week. It is also abundantly clear that the [community] loved the applicant's son very dearly.

Level of Dependence

- [26] As noted above, I do not find that the applicant and her son's relationship meets the standard of dependence described in the *Schedule*.
- [27] First, I do not find that the son was principally dependent on the applicant for financial assistance. That is, as evidenced by the amounts described above, it is clear that her son was able to primarily support himself through social assistance and his employment. At most, the applicant's financial assistance equalled about 25% of her son's annual income, and so it cannot be said that he was principally dependent on her to cover his expenses.
- [28] Then, in regard to care, I again find that the applicant and her son's relationship does not meet this standard. There is no question that the applicant provided a significant amount of love and support to her son throughout the years. However, the Tribunal's decision must be guided by the standard established in the *Schedule*, and the level of care provided by the applicant does not reach this high bar.
- [29] As summarized in *Intact Insurance Company and Majesty the Queen in Right of Ontario*, the Tribunal should consider the following factors in determining whether the deceased was principally dependent on an applicant for care: "social support, emotional support, companionship, protection, and services such as feeding, clothing, cleaning, and transporting."⁴ Arbitrator Densem then adds that this analysis must be contextual, including consideration of the dependent's "age and physical or mental condition... in the context of the need for care."⁵

⁴ Arbitration Award (dated July 12, 2012) at p. 5.

⁵ *Ibid* at p. 6.

- [30] With these considerations in mind, the applicant's son's ability to live in his own apartment for several decades weighs heavy in my analysis, especially considering his significant health and capacity issues. I also place significant weight on his ability to actively and regularly participate in the community, whether it was through gainful employment, volunteering at the gym, taking part in the Special Olympics, or meeting with [his friends].
- [31] I accept the applicant's submission that her son required assistance to ensure that his independent lifestyle was both successful and healthy. As the evidence detailed above establishes, I also accept that she consistently helped her son in a diverse number of ways. This assistance was especially apparent as it relates to emotional support and companionship (e.g., their numerous phone calls every day).
- [32] However, I still conclude that her son was able to live a largely independent life that required assistance from, but not dependence on, the applicant. It should also be highlighted that the applicant received further assistance from a number of other sources, including [the local service provider], Meals on Wheels, and [his community].

CONCLUSION

- [33] Taken together, I find that the applicant is not entitled to a death benefit.

Released: November 25, 2019

**Craig Mazerolle
Adjudicator**