

**IN THE MATTER OF THE *INSURANCE ACT*, R.S.O. 1990, c.I.8,
s. 268 AND REGUALTION 283/95 THEREUNDER;**

AND IN THE MATTER OF THE *ARBITRATION ACT*, 1991, S.O. 1991, c.17;

AND IN THE MATTER OF AN ARBITRATION

BETWEEN:

NORTH WATERLOO FARMERS MUTUAL INSURANCE COMPANY

Applicant

- and -

UNIFUND ASSURANCE COMPANY

Respondents

DECISION

COUNSEL:

Mark K. Donaldson for the Applicant

Derek Greenside for the Respondent

ISSUES:

Was Tabitha Williams principally dependent for financial support or care upon her father, Terrence George Williams, at the time of the accident, and if so who is responsible for payment of accident benefits to or on behalf of Tabitha Williams?

ORDER:

Tabitha Williams was not dependent for financial support upon her father but was dependent upon him for care and accordingly North Waterloo Farmers Mutual Insurance Company is responsible for paying accident benefits to or on behalf of Tabitha Williams.

BACKGROUND:

Tabitha Williams was riding her bicycle southbound on Highbury Avenue in London Ontario on October 19, 2014, when she was struck by a motor vehicle insured by Unifund Assurance Company ("Unifund"). Unfortunately, Tabitha sustained catastrophic injuries as a result of the accident and remains comatose to this date. An application for accident benefits was submitted to the insurer of Tabitha's father (Terence Williams), the North Waterloo Farmers Mutual Insurance Company (now known as Heartland Farm Mutual), claiming that Tabitha was principally dependent upon her father for financial support and/or care. Heartland commenced payment of the accident benefits, however they have commenced a priority dispute arbitration, taking the position that Tabitha was not principally dependent upon her father for financial support or care at the time of the accident.

The priority for payment of accident benefits is covered by section 268 (2) of the Insurance Act which provides:

2. In respect of non-occupants,
 - i. the non-occupant has recourse against the insurer of an automobile in respect of which the non-occupant is an insured,
 - ii. if recovery is unavailable under subparagraph i, the non-occupant has recourse against the insurer of the automobile that struck the non-occupant,

Thus, in our case, if Tabitha was an “insured” under the Heartland policy at the time of the accident, Heartland would be responsible for the accident benefits. If she was not, then Unifund, as the insurer of the vehicle that struck her is responsible for the payment of the accident benefits.

The definition of an “insured person” is set out in section 3(1) of the Statutory Accident Benefits Schedule which states:

“insured person” means, in respect of a particular motor vehicle liability policy,

(a) the named insured, any person specified in the policy as a driver of the insured automobile and, if the named insured is an individual, the spouse of the named insured and a dependant of the named insured or of his or her spouse,...

For an individual to be a “dependent” for the purposes of the Statutory Accident Benefits Schedule, that person must “principally dependent for financial support or care on the other person or the person’s spouse”.

In our particular case, Unifund has alleged that Tabitha was principally dependent upon her father, Terrence, for both financial support and care. Before delving too deeply into the case law that has developed in this area, it is useful to have a basic understanding of the background of both Tabitha and her father prior to the accident. Unfortunately there is only limited information available in this regard, despite the able efforts of counsel. Tabitha, as mentioned above, was rendered unconscious as a result of the accident and remains so do this day. Terrence was suffering from cancer at the time of the accident and succumbed to that disease in September, 2015, just under a year after the accident. The limited information we have available comes from a signed statement of Terrence, dated December 18, 2014 as well as various school records and assessments of Tabitha pre-accident and the ODSP files of both Tabitha and Terrence as well as tax returns of Tabitha.

While I will go into the details later in this decision, suffice to say that both Terrence and Tabitha have had difficult lives with numerous challenges and issues. Terrence was 54 years old at the time of the accident and 55 when he passed away. He had been receiving ODSP payments since at least 2002. By that time he had a long history of mental health issues, difficulties with the law,

as well as chronic pain syndrome involving his neck and back. There was a history of alcoholism and he used a number of drugs to control his pain as well as his moods. He had not worked for a number of years even prior to 2002, when he started receiving ODSP.

Tabitha was 25 years of age at the time of the accident. She had a long history of learning difficulties. Her learning difficulties were identified early on at school and she received special education support. When assessed by ODSP in 2007, she was attending Ingersal District Collegiate Institute in the special education program. Her reading was at the order of level 4 and math skills at a grade 2 level. She was mentally challenged and it was felt that her issues would raise serious challenges for attempting to live independently. She started receiving ODSP benefits in 2007 and she was classified as "semi-mute" when assessed by a psychological associate in that year. By the time of the accident she rarely spoke to anyone but her father. At the time of the accident she lived with her father in a house apparently owned by him.

With this general background in mind, it remains to look at the law as it applies to financial and care dependency in order to determine if Tabitha was primarily dependent for financial support or care upon Terrence.

The test for dependency was dealt with by the Ontario Court of Appeal in Miller vs. Safeco, (1986) 13 C.C.L.I. 31. In that case the court determined that the relevant criteria were:

- (1) Amount of dependency;
- (2) Duration of dependency;
- (3) The financial and other needs of the alleged dependent; and
- (4) The ability of the alleged dependent to be self-supporting.

While that particular case involved financial dependency the criteria are essentially the same for both financial and care. Numerous arbitrators and judges have used these criteria to determine dependency since then. Because some of the relevant facts differ when applying these criteria, I will examine the financial dependency first and then care.

It has long been held that in order to be financially dependent upon another person, the dependent must contribute less to their financial support than from other sources of financial support. In

other words, in our case, Tabitha would only be considered financially dependent if her father was contributing more to her financial needs than she herself.

Before delving into the financial needs and resources of Tabitha and her father it might be useful to dispose of a few non-contentious issues. Tabitha and her father had been living together in a house Terrence had apparently inherited from his mother for sometime. While Tabitha had briefly lived with her uncle for a period of time, this was well before the accident and it was agreed by all parties that the duration of any dependency or the time to be used wasn't seriously in issue. In addition, the question of earning potential versus actual earnings, which is sometimes an issue in financial dependency matters was not an issue here. Tabitha had been receiving ODSP since early 2007 and while it appears she may have made some amount when working at placement during her school years prior to the accident, there is no indication to suggest that Tabitha had any income other than from ODSP in the year prior to the accident, nor was likely to earn anything in the foreseeable future. While I note that Tabitha's father, in a signed statement dated December 18, 2014, indicated that Tabitha had last been employed in September of 2013, I am satisfied that this work was a very best sporadic and could not have been depended upon in the future.

In light of the fact that both Tabitha and Terrence relied solely upon ODSP payments to live, and these payments had been in place for some time, it makes sense to look at the year prior to the accident to determine the financial dependency issue.

As arbitrators and the courts have remarked, determining dependency is often difficult, with only limited financial information as to living expenses, needs etc. In our particular case, the income of Tabitha and Terrence is very straightforward. Terrence received \$1,138.81 per month or \$13,665.77 per year from ODSP. Tabitha received \$9,912.00 from ODSP in 2013 and \$10,020.00 in 2014 according to Tabitha's income tax information. At the time of the accident the ODSP records indicate she was receiving \$841.00 per month, having come up from \$832.00 a month in September 2014. Thus if you annualize her ODSP payments from the date of the accident she would have received \$10,092.00 from ODSP.

What becomes clear is that both Tabitha and Terrence had very limited income. For our purposes, Tabitha was receiving \$841.00 a month and Terrence \$1,138.00 a month or \$10,092.00 and \$13,656.00 per year, respectively.

While the revenue side of the equation is quite straight forward, the expenses are not. In many of the financial dependency cases, the pre-accident living expenses are often "best estimates" as detailed records are seldom kept and often expenses are missed. In our particular case, the records regarding the pre-accident expenses are very sparse, to say the least. Tabitha herself, as stated above, has been comatose since the date of the accident and accordingly could not provide any information regarding expenses. Terrence, at the time of the accident was being treated for cancer for sometime. While he did a signed statement on December 18, 2014 regarding his financial and living situation it is clear that this statement must be viewed with a great deal of caution. Medical records from the London Health Science Centre where Tabitha was treated after the accident state, October 20, 2014:

Pt's father in to see patient, updated again, very difficult to get him focused on severity of Tabitha's illness, stated on multiple occasions, that his "brain has been fried by chemo" and has a hard time with the medical conditions.

While this notation was made roughly two months prior to Terrence making his signed statement regarding expenses, and at a time of great stress due to his daughter's condition, it is worthy of note that Terrence continued to receive treatment after the accident and eventually succumbed to the disease.

I accepted the statement signed by Terrence was made in his lawyer's office in the company of his lawyer and his step-daughter and they may have been of assistance in trying to provide as accurate information as possible for living expenses. It is clear, however, from reviewing the figures given in the signed statement that when added up, they exceed the revenues available to both Tabitha and Terrence and accordingly the numbers provided must be viewed with great caution.

There have been a number of approaches taken by arbitrator and judges in attempting to determine financial dependency. Counsel for the respondent submitted that I consider the approach adopted by Justice Myers in Allstate Insurance Company of Canada vs. ING Insurance

Company of Canada and Aviva Canada Inc, 2015 ONSC 4020. In that case Justice Myers reviewed the many difficulties and short comings of trying to accurately calculate living expenses in the dependency cases and then decided that it made more sense, in that particular case, to look at government statistics for a given location and “determine what the poverty rate is or use another acceptable proxy for the cost of self sufficiency in that location.”

Counsel for the respondent filed the Statistics Canada Low Income Cut-Off (LICO) tables for 2013 – 2014 which provides figures for communities for communities of the size that Terrence and Tabitha were living in. I have attached as “Schedule A” a copy of that document. Counsel submitted that given the very sparse and at times conflicting information about Terrence’s and Tabitha’s expenses which are discussed below, I should use the statistics set out in that document to decide the issue of financial dependency. What those statistics purport to do is estimate an income threshold at which families are expected to spend 20% more than the average family on food, shelter and clothing.

The statistics indicate that in an area with a population of roughly that of where Tabitha and Terrence lived the income break off point for one person would be \$20,952.00 and for two persons \$26,082.00.

Arbitrator Samis in Northbridge Personal Insurance Corporation vs. Belair Direct, 2015 Carswell ONT 21049, considered and accepted the use of LICO in determining financial dependency on an individual case basis, where the information regarding particular income and expenses was sparse. The difficulty I have with using these statistics is that it does not, as I understand it, purport to set a bare minimum that a person needs to live. What it shows is the point at which people spend more of their income on food, shelter and clothing than the average. In addition, as Arbitrator Samis points out:

I have a similar concern with respect to statistical information such as has been proffered by the parties. As this gives average information for Canadian households, I am concerned that this does not necessarily equate with establishing the cost of meeting a person’s needs. In fact I would be prepared to conclude that the cost of running the average household is certain to be more than the cost of meeting a person’s needs. Meeting needs should be accomplished at a “less than average” cost.

I take it from these comments that if anything the LICO statistics probably overstate what would be the cost of meeting a person's needs.

I accept that one might, in certain circumstances, use the LICO statistics to determine financial dependency, although that I would hope that there are statistics available that more accurately assess a person's needs as opposed to average household income variations as used in LICO.

A further issue with regard to using LICO is the question of whether one uses the calculation based on a one or two person household. Arbitrator Bialkowski examined this question in RBC General Insurance Company vs. TD Meloche Monnex, (unreported decision of Arbitrator K. Bialkowski, dated January 5, 2018), Arbitrator Bialkowski was dealing with a situation where a married couple was injured and the question arose as to whether or not they were dependent upon their two sons. Arbitrator Bialkowski was not satisfied that the two person household should be used but based on the facts of that case, he decided that it would only be appropriate where both husband and wife were claimants. He then went on to use the two person approach.

If one were to use the LICO statistics in our case, I am of the view that the two person approach is the correct one. Both Tabitha and Terrence had lived together for an extended period of time and had very modest incomes that would require considerable co-mingling of income if they were to survive.

The two person figure from the LICO tables in our case is \$26,082.00. This then must be divided in half to obtain the needs of one person in that household, or \$13,041.00. We know that Tabitha received \$10,092.00 per year from ODSP which is clearly more than 50% of Tabitha's cost as calculated using the LICO tables and therefore Tabitha would be primarily dependent for financial support upon herself.

If I am wrong regarding the use of the two person approach and one uses the one person approach the figure is \$20,952.00. Since Tabitha's income was \$10,092.00, she would fall just short of the 50% point.

My reluctance to use the LICO figures is compounded by the fact that if you were to combine both Terrence and Tabitha's income you would have a total of \$23,742.00, significantly below

the LICO figures. In addition, Terrence alone would have been well below the one person LICO figure.

I note that Myers, J. in Allstate Insurance Company of Canada vs. ING Insurance Company of Canada, 2015 ONSC4020 apparently used the one person LICO approach. In that case, the court was asked to assume a roommate which it was not prepared to do. In our case Tabitha and Terrence had been living in the same household for an extended period of time and I don't think this can be ignored.

For the reasons above, I have decided that the LICO approach, while it has some merits, is not determinative on its own, in this particular case.

The alternative approach, and the one commonly used, is to look at the individual person and calculate what she spent and others spend to pay for her necessities. Based on the very limited information from Terrence's signed statement we know the following. Tabitha was, according to the ODSP file to be paying Terrence \$500 for room and board and was for ODSP purposes considered a live-in dependent which I take to mean that for ODSP purposes of the monies she received from them \$500 was to represent room and board payable to Terrence. In fact, Terrence, in his signed statement, while acknowledging the agreement with ODSP, indicated that he nevertheless actually took \$300 per month for room and board but he also indicated that he was "feeding her well over the \$300 per month".

Based on Terrence's statement counsel for the respondent summarized Terrence's monthly expenses on behalf of Tabitha as follows:

| | |
|---------------------------|--------------------------|
| Groceries | \$400 |
| Utilities | \$100 |
| Gasoline & Maintenance | \$200-\$250 |
| Car Insurance | \$41 |
| Toiletries/Personal Items | \$50-\$70 |
| Medication | \$35 |
| Other items | \$100 |
| Monthly Total | \$1,076 - \$1,146 |

Tabitha's income was \$841.00 per month. Terrence, in his statement indicated that Tabitha spent her money beyond the \$300 per month as follows "for the remaining \$405 Tabitha was very

giving and did give her time and money to various charities and organizations. She really didn't save her money."

I note in passing that Terrence, in his statement, referred to the remaining \$405 being spent on charities, etc. In this regard he appears to have been referring to the amount of ODSP Tabitha originally received. In fact at the time of the accident she was receiving \$841 per month and if one removes the \$300 paid to Terrence this would leave \$541 a month.

In summary, it would appear based on the numbers presented to me that Terrence spent about \$1,076 - \$1,146 on Tabitha. Even though Tabitha only paid \$300 for room and board in one portion of this statement Terrence indicated that Tabitha paid for cable and cell phone costs in the amount of \$100 - \$110 per month as well as \$100 per month for clothing also this is far from clear. I note, in passing, that if the amounts that Terrence spent on behalf of Tabitha were correct that would leave almost no money for Terrence to live on, thus showing the frailty of this approach.

When using the respondent counsel's numbers when all is said and done, you would have Terrence paying roughly \$1,076 - \$1,146 per month and if you allocate the cell phone, etc costs to Tabitha she is left \$841 minus \$100-\$110 equals roughly \$741. From all this I would conclude that while Terrence paid \$1,076 - \$1,146 per month for Tabitha, Tabitha herself had the capacity to pay \$841 per month she clearly would have had the capacity to pay more than half of her expenses and as such was not financially dependent on Terrence. The fact that she apparently chose to spend some of the monies above and beyond the \$300 for rent and board on charities does not take away from the fact that she was capable of paying more than half of her expenses and therefore was not financially dependent upon Terrence.

Taking into account all factors, as set out above, I find that Tabitha was principally dependent upon herself rather than Terrence for financial support.

CARE:

The issue as to whether a person is primarily dependent upon another for care cannot be determined on precisely the same basis as financial dependence. It is not capable of a simple

mathematical calculation. It requires both a quantitative and qualitative analysis. One must look at both the physical care provided as well as the emotional support and help provided.

Turning to the facts of our case, the evidence available regarding the care provided by Terrence and the care needed by Tabitha is limited due to the untimely death of Terrence and the fact that Tabitha remains in a coma. Accordingly we are forced to rely upon documentary evidence alone. This is comprised of the signed statement of Terrence, made shortly after the accident, as well as the ODSP files of both Terrence and Tabitha. Unfortunately a great deal of the ODSP file and information relevant to the case was somewhat dated and must therefore be relied upon with caution.

Because of the particular facts of this case, it is necessary to not only look at Tabitha's care needs but also Terrence's ability to provide for those needs.

As indicated above, both Terrence and Tabitha had very troubled and difficult lives prior to the accident.

Terrence grew up in what might be termed a dysfunctional family. It would appear that he was raised for five years at the Child and Parent Resource Institute (CPRI) and later institutionalized at other mental health facilities. By 2002, when he was accepted for ODSP, he was divorced from his common-law wife, had three children, two of which lived with him. He had been in jail for drug possession as well as assault and theft. He had been in a motor vehicle accident and suffered significant neck and back injuries. He had been diagnosed with chronic pain syndrome, major depression, anti-social personality disorder and paranoid personality traits.

The activities of daily living form filled out in 2012 indicated that he required various degrees of assistance with such activities as walking, transfers, making meals, going up the stairs, as well as problems with decision making, etc. Terrence was scheduled for a five year review for ODSP entitlement in 2007, however, the situation was such that no further medical review was deemed necessary and he continued on with ODSP until the time of his death.

The ODSP records regarding Terrence post 2002 are not terribly enlightening other than to demonstrate that he continued to be disabled, was living in a house that his deceased mother had

owned in a rural area of London, Ontario, with Tabitha. He had a scooter for mobility purposes supplied by ODSP but also had a car which he drove.

The signed statement made by Terrence in December 2014 shortly after the accident confirms that Tabitha was living with him at the time of the accident. He would drive Tabitha wherever she had to go. At the time of the accident, in fact from approximately January 2014, Terrence had been diagnosed with cancer and had been receiving chemotherapy treatments for sometime prior to the accident. In his statement Terrence stated:

on January 4, 2014 I realized that I had cancer, however I was ill in the months prior to this. As a result of being ill my daughter stopped working at this job to take care of me.

It is not clear to what degree Tabitha took care of Terrence at this time, and there is no evidence to support the statement that Tabitha had been employed at that time. Given Terrence's condition and situation at the time of giving the statement it must be viewed somewhat cautiously.

Like her father, Tabitha also had a difficult life prior to the accident. She suffered from learning disabilities as a child as was in special education classes throughout her school years. She was assessed for ODSP in 2007. Marylyn Kippax, MA, C. Psych Assoc., indicated in her assessment that Tabitha displayed selective mute-ism. When she did not get what she wanted in school activities, she would sit in the middle of the classroom with her sweater pulled over her head and refused to respond to anyone. It was felt by Kippax that she would require a great deal of support to be able to live even relatively independently and require help in all financial matters. It was also felt that she was unsuitable for competitive employment. Ms. Kippax further noted that she did not do any of the cooking, was not able to shop or plan meals independently. She did not invite others over to her home.

Unfortunately the ODSP file reveals little of Tabitha's situation after 2007 other than that she continued to receive ODSP and lived with her father.

Some limited information regarding Tabitha's pre-accident situation can be obtained from Terrence's signed statement. Keeping in mind the limitations of that statement as discussed above. In his statement he indicated that Tabitha had been employed as recently as September

2013, when she was assisting seniors, cleaning their homes, taking them shopping. He indicated that while she had been deemed developmentally challenged, he didn't think she was, as he cared for her and educated her himself. He also stated "prior to the accident, Tabitha was very self-sufficient; in fact she was caring for me during my illness".

The only other evidence before me with regard to Tabitha's pre-accident condition came from her activities on Facebook. Her Facebook page shows postings between January and April of 2014. It shows her and her sister cleaning the eaves troughs in her house. She states that:

I didn't want him [Terrence] doing it or falling. I'm afraid of heights, was not easy going up and down but I was not letting our dad do it.

Another posting indicates that she had made spaghetti for supper. She indicated that this rarely happened. In April 2014 she posted about a car she had seen run a red light and discussed the need for red light traffic cameras in London, Ontario.

Having set out the living situation prior to the accident based on the limited information available, it now remains to apply the facts situation to the law as it relates to dependent care. As indicated above it is both a quantitative and qualitative analysis.

From all the above, I find that Tabitha had significant mental handicaps and to a much lesser degree, physical ones. It is clear that without outside assistance she would have been very challenged to live an independent existence. It is also clear that her father had very significant physical and emotional issue of his own and as previously mentioned Tabitha had been providing him care during his illness. To a certain degree, they were dependent upon each other. The question is, however, was Tabitha principally dependent upon Terrence for care at the time of the accident. A brief review of some of the case law in the area is of some assistance in answering this question.

One of the earlier decisions that grappled with the issue of dependency for care was Weiler vs. The Personal Insurance Company of Canada, 1996 Carswell ONT 1878, a decision of Arbitrator Renehan. In that case the arbitrator was dealing with entitlement to a Statutory Accident Death

Benefit and had to determine if the applicant was principally dependent upon his wife for care. Arbitrator Renehan set out the following general considerations for the term "care".

1. The nature of the emotional and physical care provided:
2. Whether in fact the claimant was principally dependent on the insured for care, having regard to the amount and duration of the dependency for care, the needs of the claimant and the ability of the claimant to be self supporting.

The applicant was 32 years of age at the time of accident when his wife was killed. They had been married or living together for approximately eight years. They had a child after which the wife stopped working and raised the child and did most of the housekeeping, etc. Arbitrator Renehan decided that while Mr. Weiler may have been dependent on his wife to raise the children, he had the ability to be self supporting in other care areas and was therefore principally dependent on himself and not his wife.

In Giroux vs. Co-Operators General Insurance Company, OIC A95-000203, Arbitrator Rotter dealt with the issue of whether Alan and Sheila Giroux were principally dependent upon their son, Glen Giroux, who was 24 at the time of his death. Both Mr. and Mrs. Giroux were deaf and Glen was the only child. Both Mr. and Mrs. Giroux were also able to take care of their day to day personal care needs, prepared their own meals, worked at outside jobs and looked after their own financial affairs. They were, however, dependent upon Glen to assist them in communicating with others. He would act as a go between making appointments, telephone calls, etc. Arbitrator Rotter found that while that Mr. and Mrs. Giroux depended on Glen for communications this did not make them principally dependent upon him for care.

In Kaur vs. Liberty Mutual Insurance Company, FSCO A98-001322, Arbitrator Novick dealt with a situation where the applicant had sustained a head injury prior to the accident and subsequently developed chronic pain. She could not make meals for her self other than simple sandwiches or make tea. She required assistance to take a shower. She had qualified for a CPP disability pension prior to the accident and had been taking a number of medications for years. She did not go out independently other than two trips to India. Her daughter cooked her meals, bought her groceries and did the household chores. Arbitrator Novick found that while the applicant was not a complete invalid, she was significantly disabled and was more dependent

upon her daughter then herself and therefore met the test of principally dependent for care upon her daughter.

In Echelon General Insurance Company vs. State Farm Mutual Automobile Insurance Company (unreported decision of Arbitrator S. Novick), Arbitrator Novick dealt with a situation where the applicant was 32 years old at the time of the accident and lived with his mother and brother. He suffered from Schizophrenia and was developmentally delayed. He received a CPP disability pension and ODSP. He did limited piece work, a few days a week if it was available. His mother had been appointed his trustee for ODSP and administered his financial affairs. She made his meals, but he did some house cleaning. She had been able to leave him at home while she worked although she would call him regularly during the day to make sure he was alright. His mother testified that he could have lived alone but that he would need supervision. She further testified that she attended his medical appointments and often made decisions regarding his medical care. Arbitrator Novick determined that he was reliant on his mother to the point where he was principally dependent for care, noting that his mother not only provided assistance to him in many concrete ways but also, more importantly, her presence in his life provided him with a sense of security and supervisory oversight that allowed him to go out into the community knowing that she was always available to assist him if required.

In Aviva Canada vs. State Farm Mutual Automobile Insurance Company (unreported decision of Arbitrator S. Densen), Arbitrator Densen dealt with the question of whether the injured person, Warren Wollsey, was principally dependent for care upon his sister and/or her husband. In that case, prior to the accident Mr. Wollsey had limited mental capacity as well as behavioral problems. He was living with his sister and brother-in-law. He had alcohol abuse problems. He had a previous motor vehicle accident which left him significant leg issues. This was followed by another motor vehicle accident where he suffered a relatively minor brain injury and had one leg amputated. The arbitrator found that Mr. Wollsey was able to function fairly normally in the community and in church related activities. He was independent with all self care tasks. He was a social person and took care of family animals and helped out on the family farm occasionally. He assisted with home and house keeping chores, did his own laundry, etc. He had been certified by his doctor as permanently unemployable. Arbitrator Densen found that without the support of his sister and brother-in-law, Mr. Wollsey would not have achieved the level of independence that

he did and would not have been able to maintain his independence with regard to those tasks without their support. Arbitrator Densen stated:

Without the care in the qualitative factors of companionship, supervision and sense of security provided by his sister and brother-in-law, Mr. Wollsey was vulnerable to descend back into his previous troubled and self-destructive ways.

Arbitrator Densen then found Mr. Wollsey principally dependent for care upon his sister and brother-in-law.

The facts situation in our case is probably closest to the Aviva vs. State Farm case, discussed above. Tabitha's capacity to cope herself was, if anything, even less than that of Mr. Wollsey. She had almost no contact with anyone other than her father and occasionally her sister. She was able to do only the most minor of financial tasks. She did very little cooking or other tasks around the house. Health care professionals had expressed the opinion that she would require a great deal of support to live even relatively independently and require help with financial matters and was not competitively employable.

The question then becomes, was Tabitha principally dependent for care upon her father? When analyzing this issue, the time frame to be looked in my view is roughly the year before the accident. Tabitha and Terrence had been living at the same house for quite sometime, however Terrence was diagnosed with cancer in January of 2014 and had been ill for some time prior to that time, and this must be taken into account.

Unfortunately, we did not have a great deal of information about how Terrence's health deteriorated during that time frame. We do know that even without the cancer, he was having considerable physical and mental challenges himself. We do know that shortly after the accident he told the nursing staff at Tabitha's hospital that "his brain had been fried by chemo" and the nurse noted that it was "very difficult to get him focused on the severity of Tabitha's illness".

It is clear that Terrence did give Tabitha a great deal of support, both in terms of physical services such as cooking meals, driving her where she needed to go, as well as emotional support. Having said that, Terrence in his signed statement stated that "prior to the accident Tabitha was very self-sufficient in fact, she was taking care of me during my illness". For

reasons set out above this comment and his entire signed statement must taken with some caution.

In weighing all the evidence, I am of the view that to a certain degree Tabitha and Terrence were dependent on one another. On balance I find that Tabitha was principally dependent on Terrence for care. While she certainly was capable of some things it is also clear that she was very dependent upon him for many things, to the point that she was unlikely to have been able to function but for Terrence's care. Based on all the evidence I find that Tabitha was therefore principally dependent on Terrence at the time of the motor vehicle accident.

Accordingly North Waterloo Farmers Mutual Insurance Company (Heartland) is responsible for paying accident benefits to or on behalf of Tabitha Williams.

In the even that the parties cannot agree upon the issue of costs I may be spoken to.

DATED at TORONTO, ONTARIO this 11th DAY OF OCTOBER, 2018.



M. Guy Jones
Arbitrator

SCHEDULE "A"



Statistics
Canada

Statistique
Canada

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Low Income Lines, 2013-2014: Update

Table 2

Low income cut-offs (1992 base) before tax

| Size of family unit | Community size | | | | |
|----------------------|--|--|--|--|--------------------------------|
| | Rural areas outside CMA or CA ¹ | Census Agglomeration (CA) | | Census Metropolitan Area (CMA) | |
| | | Less than 30,000 inhabitants ² | Between 30,000 and 99,999 inhabitants | Between 100,000 and 499,999 inhabitants | 500,000 inhabitants or more |
| current dollars | | | | | |
| 1992 | | | | | |
| 1 person | 11,236 | 12,783 | 13,970 | 14,057 | 16,322 |
| 2 persons | 13,988 | 15,913 | 17,391 | 17,499 | 20,320 |
| 3 persons | 17,196 | 19,563 | 21,380 | 21,513 | 24,981 |
| 4 persons | 20,879 | 23,753 | 25,959 | 26,120 | 30,330 |
| 5 persons | 23,680 | 26,940 | 29,442 | 29,624 | 34,400 |
| 6 persons | 26,708 | 30,384 | 33,206 | 33,412 | 38,797 |
| 7 or more persons | 29,735 | 33,828 | 36,970 | 37,199 | 43,195 |
| 1993 | | | | | |
| 1 person | 11,450 | 13,026 | 14,236 | 14,325 | 16,633 |
| 2 persons | 14,254 | 16,216 | 17,722 | 17,832 | 20,707 |
| 3 persons | 17,524 | 19,936 | 21,787 | 21,923 | 25,457 |
| 4 persons | 21,277 | 24,205 | 26,453 | 26,618 | 30,908 |
| 5 persons | 24,131 | 27,453 | 30,003 | 30,188 | 35,055 |
| 6 persons | 27,217 | 30,963 | 33,836 | 34,048 | 39,536 |
| 7 or more persons | 30,301 | 34,472 | 37,674 | 37,908 | 44,018 |
| 1994 | | | | | |
| 1 person | 11,463 | 13,042 | 14,253 | 14,341 | 16,652 |
| 2 persons | 14,271 | 16,235 | 17,743 | 17,853 | 20,731 |
| 3 persons | 17,544 | 19,959 | 21,813 | 21,948 | 25,487 |
| 4 persons | 21,302 | 24,234 | 26,484 | 26,649 | 30,944 |
| 5 persons | 24,159 | 27,465 | 30,038 | 30,224 | 35,086 |
| 6 persons | 27,249 | 30,989 | 33,878 | 34,088 | 39,582 |
| 7 or more persons | 30,337 | 34,513 | 37,718 | 37,952 | 44,069 |
| 1995 | | | | | |
| 1 person | 11,718 | 13,331 | 14,569 | 14,659 | 17,022 |
| 2 persons | 14,587 | 16,585 | 18,136 | 18,249 | 21,191 |
| 3 persons | 17,933 | 20,401 | 22,296 | 22,435 | 26,052 |

Table 2 Low income cut-offs (1992 base) before tax

| | | | | | |
|-------------------|--------|--------|--------|--------|--------|
| 4 persons | 21,774 | 24,771 | 27,072 | 27,239 | 31,630 |
| 5 persons | 24,695 | 28,095 | 30,704 | 30,894 | 35,874 |
| 6 persons | 27,853 | 31,686 | 34,629 | 34,844 | 40,460 |
| 7 or more persons | 31,009 | 35,278 | 38,554 | 38,793 | 45,046 |
| 1996 | | | | | |
| 1 person | 11,891 | 13,529 | 14,785 | 14,877 | 17,274 |
| 2 persons | 14,804 | 16,841 | 18,405 | 18,520 | 21,505 |
| 3 persons | 18,199 | 20,704 | 22,627 | 22,768 | 26,438 |
| 4 persons | 22,097 | 25,139 | 27,473 | 27,644 | 32,099 |
| 5 persons | 25,061 | 28,512 | 31,159 | 31,352 | 36,407 |
| 6 persons | 28,266 | 32,156 | 35,143 | 35,361 | 41,060 |
| 7 or more persons | 31,470 | 35,801 | 39,127 | 39,369 | 45,715 |
| 1997 | | | | | |
| 1 person | 12,092 | 13,757 | 15,034 | 15,128 | 17,566 |
| 2 persons | 15,054 | 17,125 | 18,716 | 18,832 | 21,868 |
| 3 persons | 18,506 | 21,054 | 23,009 | 23,152 | 26,884 |
| 4 persons | 22,470 | 25,563 | 27,937 | 28,110 | 32,641 |
| 5 persons | 25,464 | 28,993 | 31,685 | 31,881 | 37,021 |
| 6 persons | 28,743 | 32,699 | 35,736 | 35,958 | 41,753 |
| 7 or more persons | 32,001 | 36,405 | 39,787 | 40,033 | 46,486 |
| 1998 | | | | | |
| 1 person | 12,212 | 13,894 | 15,184 | 15,279 | 17,740 |
| 2 persons | 15,204 | 17,296 | 18,902 | 19,020 | 22,086 |
| 3 persons | 18,690 | 21,263 | 23,238 | 23,383 | 27,152 |
| 4 persons | 22,693 | 25,817 | 28,215 | 28,390 | 32,968 |
| 5 persons | 25,738 | 29,281 | 32,001 | 32,198 | 37,390 |
| 6 persons | 29,029 | 33,025 | 36,092 | 36,316 | 42,169 |
| 7 or more persons | 32,319 | 36,768 | 40,163 | 40,432 | 46,949 |
| 1999 | | | | | |
| 1 person | 12,426 | 14,137 | 15,460 | 15,546 | 18,051 |
| 2 persons | 15,470 | 17,599 | 19,234 | 19,353 | 22,473 |
| 3 persons | 19,018 | 21,636 | 23,645 | 23,792 | 27,628 |
| 4 persons | 23,091 | 26,270 | 28,709 | 28,887 | 33,544 |
| 5 persons | 26,189 | 29,794 | 32,561 | 32,763 | 38,045 |
| 6 persons | 29,538 | 33,603 | 36,724 | 36,962 | 42,908 |
| 7 or more persons | 32,885 | 37,412 | 40,887 | 41,140 | 47,772 |
| 2000 | | | | | |
| 1 person | 12,761 | 14,518 | 15,866 | 15,965 | 18,537 |
| 2 persons | 15,866 | 18,073 | 19,751 | 19,874 | 23,078 |
| 3 persons | 19,530 | 22,218 | 24,282 | 24,433 | 28,371 |
| 4 persons | 23,713 | 26,977 | 29,482 | 29,665 | 34,446 |

| | | | | | |
|-------------------|--------|--------|--------|--------|--------|
| 5 persons | 26,694 | 30,596 | 33,438 | 35,644 | 39,069 |
| 6 persons | 30,333 | 34,508 | 37,713 | 37,946 | 44,062 |
| 7 or more persons | 33,770 | 38,419 | 41,987 | 42,247 | 49,057 |
| 2001 | | | | | |
| 1 person | 13,062 | 14,883 | 16,265 | 16,366 | 19,003 |
| 2 persons | 16,286 | 18,527 | 20,248 | 20,374 | 23,658 |
| 3 persons | 20,021 | 22,777 | 24,892 | 25,047 | 29,086 |
| 4 persons | 24,309 | 27,655 | 30,224 | 30,411 | 35,313 |
| 5 persons | 27,570 | 31,366 | 34,279 | 34,491 | 40,951 |
| 6 persons | 31,096 | 35,376 | 38,661 | 38,901 | 45,171 |
| 7 or more persons | 34,620 | 39,385 | 43,044 | 43,310 | 50,291 |
| 2002 | | | | | |
| 1 person | 13,376 | 15,218 | 16,631 | 16,735 | 19,431 |
| 2 persons | 16,652 | 18,944 | 20,704 | 20,832 | 24,190 |
| 3 persons | 20,471 | 23,289 | 25,452 | 25,611 | 29,739 |
| 4 persons | 24,856 | 28,277 | 30,904 | 31,095 | 36,107 |
| 5 persons | 28,190 | 32,071 | 35,050 | 35,267 | 40,952 |
| 6 persons | 31,795 | 36,171 | 39,531 | 39,776 | 46,167 |
| 7 or more persons | 35,399 | 40,271 | 44,012 | 44,285 | 51,423 |
| 2003 | | | | | |
| 1 person | 13,751 | 15,644 | 17,097 | 17,203 | 19,975 |
| 2 persons | 17,119 | 19,474 | 21,283 | 21,415 | 24,868 |
| 3 persons | 21,045 | 23,941 | 26,165 | 26,328 | 30,572 |
| 4 persons | 25,552 | 29,069 | 31,769 | 31,966 | 37,118 |
| 5 persons | 28,980 | 32,969 | 36,031 | 36,254 | 42,099 |
| 6 persons | 32,585 | 37,184 | 40,638 | 40,890 | 47,480 |
| 7 or more persons | 36,390 | 41,399 | 45,244 | 45,524 | 52,862 |
| 2004 | | | | | |
| 1 person | 14,005 | 15,933 | 17,413 | 17,521 | 20,344 |
| 2 persons | 17,435 | 19,834 | 21,677 | 21,811 | 25,327 |
| 3 persons | 21,434 | 24,384 | 26,649 | 26,814 | 31,137 |
| 4 persons | 26,024 | 29,606 | 32,356 | 32,557 | 37,804 |
| 5 persons | 29,515 | 33,579 | 36,697 | 36,924 | 42,877 |
| 6 persons | 33,290 | 37,871 | 41,389 | 41,646 | 48,358 |
| 7 or more persons | 37,063 | 42,164 | 46,080 | 46,366 | 53,839 |
| 2005 | | | | | |
| 1 person | 14,313 | 16,283 | 17,795 | 17,906 | 20,791 |
| 2 persons | 17,818 | 20,270 | 22,153 | 22,290 | 25,894 |
| 3 persons | 21,904 | 24,920 | 27,234 | 27,403 | 31,821 |
| 4 persons | 26,596 | 30,257 | 33,087 | 33,272 | 38,635 |
| 5 persons | 30,164 | 34,316 | 37,504 | 37,735 | 43,819 |

| | | | | | |
|-------------------|--------|--------|--------|--------|--------|
| 6 persons | 34,021 | 38,703 | 42,298 | 42,561 | 49,420 |
| 7 or more persons | 37,877 | 43,090 | 47,093 | 47,384 | 55,022 |
| 2006 | | | | | |
| 1 person | 14,593 | 16,003 | 18,144 | 18,257 | 21,199 |
| 2 persons | 18,168 | 20,668 | 22,588 | 22,728 | 26,382 |
| 3 persons | 22,334 | 25,409 | 27,769 | 27,941 | 32,446 |
| 4 persons | 27,118 | 30,851 | 33,716 | 33,925 | 39,393 |
| 5 persons | 30,756 | 34,990 | 38,240 | 38,476 | 44,679 |
| 6 persons | 34,689 | 39,463 | 43,128 | 43,398 | 50,390 |
| 7 or more persons | 38,620 | 43,936 | 48,017 | 48,314 | 56,102 |
| 2007 | | | | | |
| 1 person | 14,914 | 16,968 | 18,544 | 18,699 | 21,666 |
| 2 persons | 18,567 | 21,123 | 23,084 | 23,226 | 28,972 |
| 3 persons | 22,826 | 25,968 | 28,379 | 28,556 | 33,159 |
| 4 persons | 27,714 | 31,529 | 34,457 | 34,671 | 40,259 |
| 5 persons | 31,432 | 35,760 | 39,081 | 39,322 | 45,682 |
| 6 persons | 35,452 | 40,331 | 44,077 | 44,350 | 51,498 |
| 7 or more persons | 39,470 | 44,903 | 49,073 | 49,377 | 57,338 |
| 2008 | | | | | |
| 1 person | 15,262 | 17,364 | 18,976 | 19,094 | 22,171 |
| 2 persons | 19,000 | 21,615 | 23,623 | 23,768 | 27,601 |
| 3 persons | 23,358 | 26,573 | 29,041 | 29,222 | 33,933 |
| 4 persons | 28,361 | 32,264 | 35,261 | 35,480 | 41,198 |
| 5 persons | 32,165 | 36,594 | 39,992 | 40,239 | 46,727 |
| 6 persons | 36,278 | 41,272 | 45,105 | 45,365 | 52,699 |
| 7 or more persons | 40,390 | 45,950 | 50,218 | 50,529 | 58,673 |
| 2009 | | | | | |
| 1 person | 15,302 | 17,409 | 19,026 | 19,144 | 22,229 |
| 2 persons | 19,050 | 21,672 | 23,686 | 23,832 | 27,674 |
| 3 persons | 23,419 | 26,643 | 29,118 | 29,299 | 34,022 |
| 4 persons | 28,435 | 32,349 | 35,354 | 35,573 | 41,307 |
| 5 persons | 32,250 | 36,690 | 40,097 | 40,345 | 46,850 |
| 6 persons | 36,374 | 41,380 | 45,223 | 45,504 | 52,838 |
| 7 or more persons | 40,496 | 46,071 | 50,350 | 50,661 | 58,827 |
| 2010 | | | | | |
| 1 person | 15,583 | 17,729 | 19,375 | 19,495 | 22,637 |
| 2 persons | 19,400 | 22,070 | 24,120 | 24,269 | 28,182 |
| 3 persons | 23,849 | 27,132 | 29,652 | 29,836 | 34,646 |
| 4 persons | 28,957 | 32,943 | 36,003 | 36,226 | 42,065 |
| 5 persons | 32,842 | 37,363 | 40,833 | 41,086 | 47,710 |
| 6 persons | 37,041 | 42,140 | 46,054 | 46,339 | 53,808 |

| | | | | | |
|-------------------|--------|--------|--------|--------|--------|
| 7 or more persons | 41,240 | 46,916 | 51,274 | 51,591 | 59,907 |
| 2011 | | | | | |
| 1 person | 16,038 | 18,246 | 19,941 | 20,065 | 23,298 |
| 2 persons | 19,966 | 22,714 | 24,824 | 24,978 | 29,004 |
| 3 persons | 24,545 | 27,924 | 30,517 | 30,707 | 35,657 |
| 4 persons | 29,802 | 33,905 | 37,053 | 37,283 | 43,292 |
| 5 persons | 33,800 | 38,454 | 42,025 | 42,285 | 49,102 |
| 6 persons | 38,122 | 43,370 | 47,398 | 47,692 | 55,378 |
| 7 or more persons | 42,443 | 48,285 | 52,770 | 53,097 | 61,656 |
| 2012 | | | | | |
| 1 person | 16,279 | 18,520 | 20,240 | 20,366 | 23,647 |
| 2 persons | 20,266 | 23,055 | 25,196 | 25,353 | 29,440 |
| 3 persons | 24,914 | 28,343 | 30,976 | 31,168 | 36,193 |
| 4 persons | 30,250 | 34,414 | 37,610 | 37,843 | 43,942 |
| 5 persons | 34,308 | 39,031 | 42,656 | 42,920 | 49,839 |
| 6 persons | 38,695 | 44,021 | 48,109 | 48,408 | 56,209 |
| 7 or more persons | 43,080 | 49,010 | 53,562 | 53,894 | 62,581 |
| 2013 | | | | | |
| 1 person | 16,426 | 18,688 | 20,423 | 20,550 | 23,861 |
| 2 persons | 20,449 | 23,263 | 25,424 | 25,582 | 29,706 |
| 3 persons | 25,139 | 28,599 | 31,256 | 31,460 | 36,520 |
| 4 persons | 30,523 | 34,725 | 37,950 | 38,185 | 44,340 |
| 5 persons | 34,618 | 39,384 | 43,041 | 43,307 | 50,280 |
| 6 persons | 39,045 | 44,419 | 48,544 | 48,845 | 56,718 |
| 7 or more persons | 43,470 | 49,453 | 54,047 | 54,381 | 63,147 |
| 2014 | | | | | |
| 1 person | 16,747 | 19,053 | 20,822 | 20,952 | 24,328 |
| 2 persons | 20,849 | 23,718 | 25,921 | 26,082 | 30,286 |
| 3 persons | 25,630 | 29,158 | 31,866 | 32,065 | 37,234 |
| 4 persons | 31,120 | 35,493 | 38,691 | 38,931 | 45,208 |
| 5 persons | 35,294 | 40,153 | 43,883 | 44,154 | 51,272 |
| 6 persons | 39,808 | 45,287 | 49,483 | 49,800 | 57,826 |
| 7 or more persons | 44,319 | 50,420 | 55,103 | 55,444 | 64,381 |

1 Can include some small population centres.

2 Includes population centres with less than 10,000 inhabitants.