IN THE MATTER OF THE *INSURANCE ACT*, R.S.O. 1990, c. I. 8 (as amended), AND ONTARIO REGULATION 283/95 (as amended)

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

AND IN THE MATTER OF AN ARBITRATION

B E T W E E N :

AVIVA INSURANCE COMPANY

Applicant

- and -

CERTAS DIRECT INSURANCE COMPANY

Respondent

DECISION

COUNSEL

Derek Greenside – Kostyniuk & Greenside
Counsel for the Applicant, Aviva Insurance Company
(hereinafter referred to as "Aviva")

Aida Davari - Desjardins General Insurance Group
Counsel for the Respondent, Certas Direct Insurance Company
(hereinafter referred to as "Certas")

ISSUE – FINANCIAL DEPENDENCY

[1] In the context of a priority dispute pursuant to s.268 of the *Insurance Act*, *R.S.O. 1990, c. I.8* and *Ontario Regulation 283/95*, the issue before me is to determine which insurer stands in priority to pay statutory accident benefits to or on behalf of the claimant DV with respect to personal injuries sustained in a motor vehicle accident which occurred on March 30, 2019.

[2] The priority determination requires analysis of whether the claimant was an "insured person" under the Aviva policy by reason of being principally financially dependent on his parents, who were insured by Aviva.

PROCEEDINGS

[3] The matter proceeded on the basis of Examination Under Oath transcripts, Document Briefs, Books of Authority and written submissions.

FACTS

[4] The claimant DV was operating an automobile owned by his parents and insured with Aviva General Insurance Company (hereinafter "Aviva"), when it was involved in a motor vehicle accident on March 30, 2019. The claimant was not a named insured or listed driver under the Aviva policy.

[5] The claimant owned his own vehicle and was the named insured under Certas Direct Insurance Company (hereinafter "Certas"), policy D 414-1713, at the time he was involved in the aforementioned motor vehicle accident when driving his parents vehicle.

[6] The Certas policy would take priority unless it is determined that the claimant was principally financially dependent on the Aviva named insureds. The Aviva named insureds were the claimant's parents TV and JV.

[7] The claimant had separated from his common-law spouse and had been living with his parents at 351270 17th Line, in East Garafraxa, a rural farming community near Orangeville, Ontario, since October 2017. Prior thereto he had lived independently for 15 years. He was 34 years of age at the time of the accident.

[8] The claimant had last worked in 2009. He stopped working, at that time, as a result of a wrist injury. He had received some WSIB compensation until 2012 or 2013, but was only receiving ODSP income in the amount of approximately $850.00 each month, during the interval he had been living with his parents.

[9] The home, located at 351270 17th Line, East Garafraxa, is a four-bedroom home. The claimant occupied one bedroom. His brother occupied one bedroom. His parents occupied another.

[10] The parents did not provide DV with any money.

[11] The claimant gave his parents about $400.00 each month (20 of the 24 months preceding the motor vehicle accident) for room and board.

[12] The other expenses incurred by the claimant according to his Examination Under Oath testimony were as follows:

- Groceries when children attend for dinner at his parent's home	up to $60.00 month
- Tim Hortons when children visit with David Vizi	up to $40.00 month
- Clothing	$16.67 month
- Footwear	$1.25 month
- Cell Phone	between $15.00 and $35.00 month
- Cigarettes	$50 month
- Alcohol	up to $30.00 month
- Auto Insurance	$79.00 month
- Vehicle Maintenance	$16.67 month
- Gasoline	between $80 and $120.00 month

ANALYSIS AND FINDINGS

[13] A priority dispute arises when there are multiple motor vehicle liability policies which might respond to a statutory accident benefits claim made by an individual involved in a motor vehicle accident. Section 268 (2) of the *Insurance Act* sets out the priority rules or hierarchy of priority to be applied to determine which insurer is liable to pay statutory accident benefits.

[14] Since the claimant was an occupant of a vehicle at the time of the accident, the following rules with respect to priority of payment apply:

> *(i)* *The occupant has recourse against the insurer of an automobile in respect of which the occupant is* ***an insured****;*
>
> *(ii)* *If recovery is unavailable under (1), the occupant has recourse against the insurer of the automobile in which he or she was* ***an occupant****;*
>
> *(iii)* *If recovery is unavailable under (1) or (2), the occupant has recourse against the insurer of any other automobile involved in the incident from which the entitlement to statutory accident benefits arose;*

(iv) *If recovery is unavailable under (1), (2) or (3), the occupant has recourse against the Motor Vehicle Accident Claims Fund.*

[emphasis mine]

[15] Section 3 (1) of the Statutory Accident Benefits Schedule – Accidents On or After September 1, 2010, Ontario Regulation 34/10 defines an "insured person" as follows:

(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 dependent of the named insured or of his or her spouse

[16] Section 3 (7)(b) of the Statutory Accident Benefits Schedule – Accidents On or After September 1, 2010, Ontario Regulation 34/10, as amended, reads as follows:

"a person is dependant of an individual if the person is principally dependent for financial support or care on the individual or the individual's spouse".

[17] The claimant was a named insured under the Certas policy and therefore Certas would stand at the top rung of the priority ladder. Aviva claims that the claimant was not principally financially dependent on his parents and therefore the claimant was not an "insured" under their policy, but merely an "occupant" of the vehicle insured by Aviva. If so found, Aviva would stand at the second rung of the priority ladder with Certas being the priority insurer. However, if principally financially dependent on his parents at the time of the accident, then he would be considered an "insured" under both policies. In cases where the claimant is an insured policy under two policies, s.268(5.2) of the *Insurance Act* requires the claimant to claim benefits from the insurer of the vehicle in which he was an occupant, in this case Aviva:

(5.2) Same – If there is more than one insurer against which a person may claim benefits under subsection (5) and the person was, at the time of the incident, an occupant of an automobile in respect of which the person is the named insured or the spouse or a dependant of the named insured, the person shall claim statutory accident benefits against the insurer of the automobile in which the person was an occupant.

[18] Clearly, the finding in this proceeding as to whether the claimant was principally financially dependent on his parents at the time of the accident will determine priority.

[19] In terms of traditional legal principles, criteria for determining dependency for the purposes of the SABS were established by the Court of Appeal in *Miller v. Safeco* (1986), 48 O.R. (2d) 451 (H.C.J.) aff'd 50 O.R. (2d) 797 (C.A.). Consideration should be given to criteria as follows in determining dependency for the purposes of the *Schedule*:

i. The amount of dependency;

ii. The duration of the dependency;

iii. The financial needs of the claimant;

iv. The ability of the claimant to be self-supporting.

[20] In *Federation Insurance Company of Canada v. Liberty Mutual Insurance Company* (Arbitrator Lee Samis, May 7, 1999), it was determined that a person's capacity to earn must be taken into account in measuring dependency. A person can only be principally dependent for financial support if the cost of meeting their needs is more than twice their resources. This has come to be known as the 51% rule.

[21] Early jurisprudence applied this 51% rule using a detailed analysis of the claimant's income sources in comparison to the value of that provided by the person or persons upon whom the claimant was said to be dependent. This has been referred to as the "mathematical approach". The exercise of determining the value of that provided in many cases proved to be a difficult and expensive task. In the last few years, a new approach to the analysis of dependency has emerged known as the "LICO approach". In *Allstate Insurance v. ING,* (Award of Arbitrator Vance H. Cooper, dated May 1, 2014), the arbitrator preferred to resort to an alternative approach to determine dependency, namely, to use Low Income Cut-Off measure as a qualifying number in relation to which 51% rule is to be applied (as opposed to using actual expenses of the claimant). The LICO approach focuses on statistical average needs of an individual in the geographical area where the claimant lived rather than an analysis of the claimant's specific individual needs.

[22] After hearing all evidence including evidence at cross-examinations and re-examinations of the three accountants involved in that case, Arbitrator Cooper noted that all of the accountants who gave evidence and offered expert opinions, acknowledged the inherent difficulty and weaknesses when trying to gather reliable information, documentation and evidence regarding a family's expenditures and individual expenditures in relation to needs.

[23] Arbitrator Cooper referred to decisions of Arbitrator Samis in *Coseco v. ING Insurance of Canada* (Award July 21, 2010) and *St. Paul Travelers v. York Fire & Casualty Insurance Company* (Award, dated August 11, 2011). In these decisions, Arbitrator Samis explained the intrinsic difficulties of trying to ascertain the needs of the claimant by attributing to the claimant a share of household expenditures. The allocated portion of the household expenditures may be greater than the claimant's needs or lesser than the claimant's actual needs. Arbitrator Samis compared this exercise to looking at the general standard of living in household – the exercise we were directed not to follow by the *Miller and Safeco* appeal. Instead, Arbitrator Samis suggested we should follow a "*more objective valuation of the costs of meeting someone's needs*". The history of family setting may assist in calculating the costs of meeting a person's needs, but is not determinative.

[24] To that end, Arbitrator Samis used Canada LICO threshold statistic numbers as determined by Statistics Canada which he characterized as the "*best and most reliable*

approach to the evidence respecting one's needs". The LICO approach was used by Arbitrator Cooper and formed the basis for his decision.

[25] Arbitrator Cooper's decision in *Allstate Insurance v. ING* was appealed to Superior Court on the ground that Arbitrator Cooper did not use the correct methodology. On appeal, as reported at 2015 ONSC4020, Justice Myers found that mathematical calculation or application of 51% rule in relation to needs/means is an important factor, but it is not the only factor. Justice Myers dismissed the appeal after concluding that dividing or allocating estimated gross household spending to determine one's needs is not a "*particularly meaningful proxy*" and "*is no better than looking at government statistic to determine the cost of housing in a locale*".

[26] More recently and in a move toward a more statistical analysis of dependency, jurisprudence has emerged wherein information from Statistics Canada's Market Basket Measure has been employed. That data provides *"the cost of meeting basic modest needs for different family sizes, for different parts of the country, segmented by size of community"*. In *The Wawanesa Mutual Insurance Company v. State Farm Insurance Companies* (Arbitrator Samis - September 13, 2018), the arbitrator preferred use of the statistical data of the "Market Basket Measure" or "MBM" approach to the other approaches aforesaid. Arbitrator Samis writes at p.10 of his decision:

> *"In order to compare resources to the cost of meeting needs I prefer to look at statistical information from Statistics Canada as I find the statistical approach is likely to be more reliable than the evidence of the witnesses here. I also thing that the components of the Market Basket Measure are more focused on the costs of meeting needs than the alternative of simply compiling an inventory of any and every expenditure.*
>
> *Statistics Canada publishes the "Market Basket Measure" data which gives us the cost of meeting basic modest needs for different family sizes, for different parts of the country, segmented by size of community. Additionally, the measure is adjustable to all sizes of families.*
>
> *According to information from Statistics Canada, the "basket" of goods and services measures a "specified basket of goods and services representing a modest, basic standard of living. Taken into consideration are the costs of specified quantities and qualities of food, clothing, footwear, transportation…". This is compiled by work done by Human Resources and Skills Development Canada during the 1990's.*
>
> *According to Statistics Canada the Market Basket Measure is a measure more sensitive to geographical variations and other scales.*
>
> *By reference to the Market Basket Measure we can credibly get a number that represents the denominator making the when making the 50% calculation that the regulation requires.*
>
> *I find the "Market Basket Measure" an appropriate source for this purpose."*

[27] As jurisprudence currently stands, the "mathematical", "LICO" and "MBM" approaches are being applied by arbitrators of priority disputes involving dependency issues. In the case before me, no accounting evidence was adduced as to the claimant's actual needs and the parties were content with the statistical approaches.

[28] The Statistics Canada Tables, properly indexed for inflation, confirm the following figures for Low Income Cut Off (LICO) for each of One Person and Four Persons in Rural Areas Outside Census Agglomeration or Census Metropolitan Areas:

Year	One Person	Four Persons
2016	$17,175.00	$31,915.00
2017	$17,449.80	$32,425.64
2018	$17,845.91	$33,161.70
2019	$18,193.90	$33,808.35

[29] Aviva has submitted that it would be most appropriate to utilize the Statistics Canada 2019 figure for Four Persons, as the claimant was residing in a four member household prior to the motor vehicle accident. That figure should then be divided by 4, to arrive at David Vizi's corresponding individual share of the combined LICO. The corresponding result would be $33,808.35 divided by 4, or $8,452.09.

[30] The Statistics Canada Tables, properly indexed for inflation, confirm the following figures for Market Basket Measure (MBM) thresholds for economic families (two adults and two children) in Rural Ontario:

2018	$38,057.00
2019	$38,799.11

[31] Aviva has submitted that it would be most appropriate to utilize the Statistics Canada 2019 figure and divide by 4 to arrive at the claimant's corresponding share of the combined MBM. The corresponding result would be $38,799.11 divided by 4, or $9699.78.

[32] Aviva has submitted that the claimant cannot be found to have been principally financially dependent on his parents prior to his involvement in the motor vehicle accident on March 30, 2019, based on either the LICO or MBM approach, as his income of $850 per

month, or $10,200 annually, provides for more than the LICO or MBM figures of $8,452.09 and $9,699.78 respectively.

[33] In response, the Respondent Certas has stated that the MBM approach ought to be used for the analysis but the statistic used should not be 25% of a 4 person household's needs, but rather the needs of an individual "not in an economic family". They have claimed that the claimant's needs be then compared to "disposable income" as defined in the MBM:

> *"the sum remaining after deducting the following from total family income: total income taxes paid; the personal portion of payroll taxes; other mandatory payroll deductions such as contributions to employer sponsored pension plans, supplementary health plans, and union dues; child support and alimony payments made to another family; out-of-pocket spending on child care; and non-insured but medically prescribed health related expenses such as dental and vision care, prescription drugs, and aids for persons with disabilities".*

[34] Certas has claimed that MBM is the most appropriate statistical figure to be used, as it specifically contemplates a modest and basic standard of living which is in line with the principles of financial dependency in the priority context, i.e. that dependency should not take into account extravagances, but rather reflect the ability of one to fund a basic standard of living.

[35] As stated, the difference in the position taken by the parties is whether the MBM figure of 25% of a 4 person household, or whether the figure for an individual "not in an economic family" is appropriate.

[36] In *North Waterloo Farmers Mutual v. The Guarantee Company of North America* (Arbitrator Bialkowski – January 27, 2019), the arbitrator used the statistical information by Statistics Canada for an "individual in a one person household" when conducting his analysis into the financial dependency of a claimant who was 17 years old at the time of the accident and lived part time with each parent.

[37] Similarly, in *The Wawanesa Mutual Insurance Company v. State Farm Insurance Companies* (Arbitrator Samis - September 2019) , the arbitrator used the MBM threshold for a "person not in an economic family" when conducting a financial dependency assessment of a claimant who had two children and was residing with his mom and two siblings at the time of the accident, due to undergoing a separation. Prior to moving into his mother's house, the claimant was living with his spouse and two children. Arbitrator Samis noted that "if we were to consider his household with mother and siblings to be an economic family of 4, then the aggregate cost of needs would double, resulting in a 50% reduction in costs per capita".

[38] In *Pembridge Insurance Company v. Western Insurance Company* (Arbitrator Bialkowski – December 6, 2018), the arbitrator used the appropriate MBM figure for "persons not in an economic family" when conducting a financial dependency analysis of a single, 44-year-old claimant who was unemployed and living with his mother at the time of the accident. The arbitrator specifically rejected Western's position that the appropriate figure for a two

person household, divided by 2, as an acceptable method for analysis. In referring to Arbitrator Samis' decision in *The Wawanesa Mutual Insurance Company v. State Farm Insurance Companies*, the Arbitrator noted the following:

> *"In my view, to use the family size of the household in which the claimant was residing would lead to absurd results and artificially lower numbers for basic needs the larger the size of the family unit. Using the MBM for a "person not in an economic family" as the denominator of the dependency analysis equation is consistent with the original principles for determining dependency as set out by the Court of Appeal in Miller v Safeco (1986), 48 O.R. (2d) 451 (H.C.J.) aff'd 50 O.R. (2d) 797 (C.A.)."*

[39] On this basis, Certas has submitted that it would be most appropriate to utilize the MBM threshold for "persons not in economic families" in Rural Ontario. Statistics Canada's 2015 MBM threshold for persons not in economic families in Rural Ontario is $18,356.00.35. Properly indexed for inflation, this amounts to $19,759.10 in 2019 dollars, with the accident occurring in 2019. Certas has therefore claimed that $19,759.10 is the most appropriate threshold against which the claimant's disposable income should be compared.

[40] Additionally, Certas submitted that an important concept underlying the MBM is that "the income to be compared to the thresholds should not be gross income, but rather a measure of the income closer to what is actually available to purchase these goods and services". As such, "certain deductions must be made, for payments or outlays that are considered non-discretionary as they represent income that is not available to purchase the goods and services in the basket." As noted previously, per Statistics Canada "child support and alimony payments made to another family" and "out-of-pocket spending on child care", are to be deducted from the alleged dependant's income, in order to arrive at an amount that accurately reflects his/her "disposable income".

[41] In *The Wawanesa Mutual Insurance Company and State Farm Insurance Companies* (Arbitrator Samis – September 2019), the arbitrator deducted the claimant's support payments made towards his family that he did not reside with, in coming to an amount that accurately reflected the claimant's "disposable income". Arbitrator Samis noted that "[r]egardless of whether [the claimant] could be expected to pay more or less for support, the amounts that he actually paid for support reduced his available resources for meeting his personal needs and that reduction is essentially nondiscretionary". He further noted that even though the money contributed to support of the estranged family may have been "somewhat discretionary", because the payments were actually made, a reduction for same had to be made "to arrive at a number that represent[ed] [the claimant's] resources that were reasonably available to meet his personal needs".

[42] Accordingly, Certas has further submitted that the claimant's expenses as they pertained to his children, should be deducted from his income, in order to arrive at his "disposable income" to be used in comparison to the MBM threshold for "persons not in economic families" in Rural Ontario.

[43] Furthermore, the arbitrator noted in *Pembridge* (supra) that in looking at statistical measures such as LICO and/or MBM to determine the needs of the claimant, "consideration must also be given to any extraordinary circumstances which might exist". In both *Pembridge* (supra) and *Co-operators General Insurance Company v. Axa Insurance* (Arbitrator Bialkowski – August 13, 2015), the arbitrator noted that an alcohol or opioid addiction may or may not have been a "need" in those cases, but nevertheless were "extraordinary circumstances" that could not be overlooked in a financial dependency analysis. Accordingly, Certas submitted that in addition to deductions for expenses pertaining to his children, the claimant's income should further be reduced by the amount that he spent on cigarettes as they were a "need" not contemplated by the MBM and an extraordinary circumstance that has to be considered before arriving at the claimant's "disposable income", as the amount spent on cigarettes reduced the claimant's resources that were reasonably available to meet his personal needs.

[44] When the claimant was asked at the EUO if he is a smoker, he replied "Unfortunately, yes". When asked about quantum, the claimant noted that he smoked less before the accident because he had "made a few attempts to quit". Furthermore, when asked if his smoking increased post-accident, he noted that "[a]fter the accident I ended up smoking more unfortunately." The claimant's evidence and description of his smoking habits does not portray an individual who smokes for entertainment. Rather, it appears that the claimant according to Certas was dissatisfied with his smoking, had made a few attempts to quit, but had been unsuccessful to the date of the accident. As such, Certas respectfully submits that the claimant's smoking expenses were a "need".

[45] The claimant had an annual income of $10,200.00 ($850.00 x 12) from ODSP. The following paragraph reflects the proposed deductions, according to Certas, to be made from his annual income in order to arrive at his "disposable income", before comparing same to the MBM threshold for "persons not in an economic family" in Rural Ontario

[46] Claimant's Income was $10,200.00. According to Certas, this ought to be reduced by:

1) Dinners/groceries for at home meals when his kids come over: $60.00 (per months) x 12 = $720.00 annually;

2) Tim Hortons for the kids: $40.00 (per month) x 12 = $480.00 annually;

3) Cigarettes: $50.00 (per month) OR $70.00 (per month) x 12 = $600.00 or $830.00 annually.

[47] This would leave a "disposable income" of between $8,170 and $8,400, which would be less than 50% of his MBM needs of $19,759 ($9,879.50), indicating that his parents provided more than 50% of his basic needs.

[49] In *Co-operators General Insurance Company v. AXA Insurance* (Arbitrator Bialkowski – August 13, 2015), the arbitrator noted that in cases where the analysis is so close to 50/50,

"it is important to consider the other factors set out in *Miller v. Safeco* and the 'big picture' approach." One of the factors outlined in *Miller* (supra) is the claimant's ability "to be self-supporting". The claimant was still suffering from a wrist injury at the time of the accident and had not worked since 2009. His condition was the basis of why he qualified for ODSP. Furthermore, when asked about his ability to rent a one bedroom in East Garafraxa, the claimant deposed as follows:

> *"Q. Do you have any information concerning the value of accommodation in East Garafraxa if you were to rent a one bedroom on your own?*
>
> *A. I don't know.*
>
> *Q. Like, without guessing, but I'm asking if you have any information, you have any knowledge?*
>
> *A. As for East Garafraxa, no. In terms of Orangeville, you're probably looking at for a one bedroom I think it's anywhere from 12 to 1,500 a month.*
>
> *Q. Okay. But East Garafraxa is a much smaller community, it would be significantly less. Have you looked at that or...*
>
> *A. I don't think it would be significantly less as for a one-bedroom apartment or anything like that. I don't think there's really any available in that area because they're mostly like farmhouses and state lots, stuff like that, so...*
>
> *Q. Does anyone rent out just a room in their home in that area?*
>
> *A. Not that I know of. I mean, I've looked around, but I haven't found anything, so...* "

[50] According to Certas, the above evidence suggests that the claimant had interest to live on his own and indeed "looked around", but was unable to find anything that he could afford. As such and in light of his medical condition and resulting inability to work, Certas submitted that the claimant was in need of his parents' support and unable to be self-supporting. As such, Certas claimed that not only does a statistical approach to determine needs support a finding that the claimant was principally dependent on his parents for financial support at the time of the accident, but that when one considers the claimant's "extraordinary circumstances" and the "big picture", the conclusion is ever so clear. The difficulty with this argument is not whether the claimant needed support from his parents, but rather whether he was "principally dependent" on them at the time of the accident. In other words, were they contributing more than 50% of his basic needs by provision of room and board.

[51] Having considered the submissions of both counsel, I am satisfied that in the absence of accounting evidence to determine the cost of specific needs, it is appropriate to use statistical information to determine such needs to maintain a modest basic standard of living and then compare the assessed needs to the claimants available resources. I am

satisfied that the best way to determine an individual's needs to maintain a modest, basic standard of living is to look at the statistics available for a "1 person household", using LICO or an individual "not in an economic family" using MBM. This was the approach used by the arbitrators in *North Waterloo Farmers Mutual* (supra), *The Wawanesa Mutual Insurance Company* (supra) and *Pembridge Insurance Company* (supra).

[52] On the basis aforesaid, the LICO figure for providing basis needs would be $18,193.90 and using the MBM figure, it would be $19,759. The issue here is whether the claimant's parents were providing more than 50% of those needs so as to lead to a conclusion that the claimant was "principally financially dependent" on his parents, so as to make the claimant an "insured" under his parents policy of automobile insurance. 50% of the LICO figure is $9,096.95 and 50% of the MBM figure is $9,879.50. With annual resources of $10,200 from his ODSP it would appear that the claimant would be capable of providing more than 50% of his basic needs and therefore not "principally financially dependent" on his parents.

[53] However, the crucial question in the analysis herein is how much of the $10,200 of resources from ODSP represented "disposable income". If the submissions of Certas were to be accepted, the $10,200 figure ought be reduced by the cost of dinners and/or groceries when his children were over, the money spent on his children taking them to places like Tim Horton's and the cost of his cigarettes. According to Certas, this would have left the claimant with only $8,170 to $8,400 in "disposable income", being less than 50% of his basic needs. This would support a finding that it was his parents who were providing the more than 50% of his needs.

[54] Dealing firstly with the cost of cigarettes, I am not satisfied that on the evidence before me that the claimant was addicted to cigarettes. There is no medical evidence to support such a finding. It may well be that he continued smoking as his resources and living situation allowed it and may well have come to an end had his resources and living situation not allowed such discretionary expenditure. Simply stated, the evidence before me does not lead to a conclusion that the cigarette expenditure was non-discretionary.

[55] As for expenditures on his children, I take guidance from the definition of "disposable income" as contained in the MBM materials, namely:

> *"the sum remaining after deducting the following from total family income: total income taxes paid; the personal portion of payroll taxes; other mandatory payroll deductions such as contributions to employer sponsored pension plans, supplementary health plans, and union dues; child support and alimony payments made to another family; out-of-pocket spending on child care; and non-insured but medically prescribed health related expenses such as dental and vision care, prescription drugs, and aids for persons with disabilities".*

[56] I am satisfied that court ordered child support, or child support pursuant to a separation agreement, would reduce "disposable income". I am satisfied that regular payments made for weekly or monthly child care would reduce "disposable income".

Expenditures for trips to places like Tim Horton's or his children's meals while with him must in my view be looked at, in light of the definition above, as being more "discretionary" as opposed to "non-discretionary". To hold otherwise would lead to absurd results in a situation where the parent spent lavishly on his children so as to artificially reduce his or her "disposable income".

[57] On the basis of these findings, I conclude that with resources of $10,200 annually, the claimant was able to provide more than 50% of his basic needs as set out in the LICO and MBM Statistic Canada figures. He was therefore not "principally financially dependent" on his parents and not "an insured" under their automobile policy. As a "named insured" under the Certas policy, Certas would be the priority insurer.

ORDER

[58] On the basis of the findings aforesaid, I hereby order:

1. That Certas is the priority insurer and is to assume carriage of the claimant's accident benefits file;

2. That Certas indemnify Aviva for payments reasonably paid to or on behalf of the claimant;

3. That Certas pay Aviva the legal costs of this Arbitration on a partial indemnity basis;

4. That Certas pay the Arbitrator's account.

DATED at TORONTO this 23rd)

day of July, 2020.)

KENNETH J. BIALKOWSKI
Arbitrator