

**LICENCE APPEAL  
TRIBUNAL**

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

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

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



**Tribunal File Number: 18-002240/AABS**

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

Between:

**L.M.**

**Applicant**

and

**Certas Home and Auto Insurance Company**

**Respondent**

**DECISION**

**PANEL:**

**Nidhi Punyarthi, Adjudicator**

**APPEARANCES:**

For the Applicant:

Mireille Dahab, Counsel

For the Respondent:

Pamela Vlastic, Counsel

**HEARD as a combination hearing:**

**Teleconference Component: November 27,  
2018**

**Written Component: March 8, 2019**

## OVERVIEW

- [1] The applicant was involved in an accident in the State of California, in the United States, on September 23, 2014. He claimed benefits from the respondent under the *Statutory Accident Benefits Schedule – Effective September 2010* (the “*Schedule*”) on the basis that he is a “dependant”, and therefore, an “insured person,” as defined in the *Schedule*. The respondent determined that the applicant was not a “dependant” and denied the applicant’s claim for benefits.
- [2] An application was made to the Licence Appeal Tribunal (“Tribunal”) for a determination of whether the applicant is entitled to benefits under the *Schedule*. The application proceeded to a combination hearing before me. I heard the cross-examination evidence of the parties’ affiants over the telephone, and also received documentary evidence and written submissions from the parties. The written submissions were delivered in accordance with a procedural order that was made on November 27, 2018.

## ISSUES IN DISPUTE

- [3] The parties identified and agreed to the following issues in dispute:
- a. Whether the applicant is an “insured person” under the *Schedule*.
  - b. Whether the applicant is entitled to interest for overdue benefits under the *Schedule*.
  - c. Whether the applicant is entitled to an award under Section 10 of *Ontario Regulation 664* because the respondent unreasonably withheld or delayed payments to him.

## RESULT

- [4] The applicant is not an insured person under the *Schedule*. He does not fall within the definition of a “dependant” for two reasons:
- a. He has the ability to grow and contribute to his father’s wealth and family business.
  - b. The evidence before me does not allow me to determine exactly what his income is and what his father’s income is in the family business.
- [5] Given this finding, there is no interest or award owing to the applicant.

## ANALYSIS

- [6] The applicant's father is a "named insured" in Ontario. The applicant, on the other hand, is insured in California, and is applying for benefits under the *Schedule* on the basis that he is a "dependant" of his father.
- [7] For the applicant to be a "dependant" under the *Schedule*, he has to be "principally dependent" on his father for either financial support or care.<sup>1</sup> The submissions before me address the financial support aspect only.
- [8] The parties agree that I am to be guided by the factors listed in *Miller v. Safeco Insurance Co. of America*, 1985 CanLII 2022 (Ont. C.A.) with respect to an analysis of dependency for financial support. These factors, using the language in *Miller*, are as follows:
- a. The amount of the dependency;
  - b. The duration of the dependency;
  - c. The financial or other needs of the applicant; and
  - d. The ability of the applicant to be self-supporting.<sup>2</sup>
- [9] The evidence presented to me on these factors falls in three general categories: (i) the activities of the applicant; (ii) the applicant's representations on the application for benefits under the *Schedule* (OCF-1); and (iii) the health of the applicant. I will address each of these areas of evidence in turn.
- (i) ***The activities of the applicant***
- [10] The applicant had a previous accident in 2010. After that accident, he started working for his father, who owns a successful liquor business.
- [11] The applicant testified that he attempted to start a vodka business in the United States with his father's financial support, and that his father transferred money to the applicant's bank account and paid for all day-to-day expenses.
- [12] The applicant made efforts to grow the United States vodka business. At the time of his evidence, this business was not yet viable. On this basis, the applicant argued the he was completely financially dependent on his father.

---

<sup>1</sup> *Schedule*, s. 3(7)(b).

<sup>2</sup> *Miller v. Safeco Insurance Co. of America*, 1985 CanLII 2022 (Ont. C.A.).

- [13] I found it relevant to look at the various activities that the applicant engaged in with respect to the business. Based on the documentary evidence and testimony before me, the applicant:
- (i) made efforts to build up the business;
  - (ii) completed tasks as assigned by his father;
  - (iii) attended trade shows to try and sell the vodka product in Orlando and Las Vegas;
  - (iv) travelled extensively between Canada and the United States;
  - (v) was responsible for meeting with potential buyers, sellers, and distributors;
  - (vi) was also assigned the responsibilities of a supervisor;
  - (vii) held himself out as the owner of the business in the United States when interviewed by magazines;
  - (viii) attended a number of award shows and received awards for the product; and
  - (ix) filmed a music video with a music celebrity to advertise the product.
- [14] I have also been provided with some limited financial evidence. This includes excerpts of bank statements of a single bank account from 2012, in which certain sizeable deposits are recorded from 2012 to 2014. The applicant testified that this money was provided by his father in order to support his expenses. The respondent submits that there is no clear line between which portion of these deposits was for the applicant's personal expenses and which portion was for business development activities.
- [15] The applicant's tax returns show that he earned approximately \$3,000 a year from this business.
- [16] In my view, this level of documentation with respect to the finances is insufficient to determine whether the applicant was in fact a dependent for financial support in accordance with the *Miller* factors. There are no additional documents or details to corroborate the applicant's statement that the money deposited in the single bank account in evidence before me is from the applicant's father. The applicant's activities for the family business, which include networking and

marketing, bring in value and encourage sales. I am not therefore persuaded that the money deposited in this bank account belonged to the applicant's father alone, and that the applicant had no role to play in the earning of that money.

[17] Based on the evidence before me, the applicant engaged in significant activities with respect to what I will term "the family business", which is composed of his father's existing liquor business as well as the related business that the applicant was trying to launch in the United States. He was the face of that family business in the United States, and engaged in extensive networking and marketing of the product. He met with clients, suppliers and distributors. He created a promotional music video featuring an acclaimed music celebrity who endorsed the product. The very objectives of the applicant's activities were to increase sales and distribution and promote the name of the business. The value of these activities, for the United States business as well as the father's existing liquor business, cannot, in my view, be accurately captured by looking at the latest profit and loss statements of the United States business alone. It is reasonable to infer that the applicant's networking and marketing activities contribute to the income of the family business as a whole.

[18] For these reasons, there is no clear separation in my view between the applicant's father's income and the applicant's income. The family business is impacted by the applicant's activities, and the applicant plays a role in generating wealth for the family business.

[19] It follows that I cannot engage in the exercise of applying the *Miller* factors to this case. The financial dependency of the applicant on his father, let alone the amount, duration and needs of such dependency, cannot be identified on the evidence.

[20] The respondent submits that the activities engaged in by the applicant are evidence of "marketable skills" which the applicant can put to use in an alternative income-generating employment. I agree with the respondent in this regard. If the applicant were to engage in these activities in a remunerated position, he would be able to support himself. The applicant's marketing and networking abilities demonstrate that he has the ability to support himself.

(ii) ***The applicant's representations on the OCF-1***

[21] On his OCF-1, the applicant had indicated that he was self-employed. This indication on the OCF-1 suggests that the applicant had the ability and intention to support himself.

(iii) ***The applicant's health***

- [22] The applicant submitted that he had to work for his father due to the injuries he had suffered in the 2010 accident. The applicant also submitted that these injuries rendered him unable to work elsewhere.
- [23] I do not have evidence on:
- (i) the nature and progression of the applicant's condition from the 2010 accident; and
  - (ii) how the travelling and marketing that the applicant did for the family business represented an accommodation for his condition.
- [24] I am not, therefore, persuaded that the applicant was unable to support himself financially because his health did not permit him to do so.

## **CONCLUSION**

- [25] In summary, I conclude that there is no clear separation between the applicant and his father in terms of transfers of funds to address a financial dependency. The applicant had an important role to play in terms of adding value to and generating wealth for the family business because of the very nature of his activities, which included significant networking and marketing. Since the separation between the applicant's income and his father's income cannot be identified, I cannot, on the basis of the evidence before me, perform the exercise contemplated in *Miller*. To be specific, since the applicant had a role to play in the generation of wealth in his family business, I cannot conclusively trace the amount and duration of his financial dependency on his father or examine his financial needs and how they were being fulfilled by his father.
- [26] Furthermore, the applicant's activities and representations on the OCF-1 also support the inference that he chose to work as a self-employed individual in the family business as opposed to take up a paid position elsewhere. The activities that the applicant was engaging in for the family business, which included significant travelling, networking, marketing, and filming a music video with an acclaimed music celebrity, do not appear consistent with a health condition that needed accommodation. On the basis of this evidence, the applicant has the ability to be self-supporting.
- [27] For these reasons, I find that the applicant was not a dependant of his father as defined in the *Schedule*. Accordingly, he is not an insured person, and the

respondent was correct in its determination. Interest and the award under Section 10 are not payable.

**Released: May 8, 2019**

---

**Nidhi Punyarthi  
Adjudicator**