

IN THE MATTER OF THE INSURANCE ACT, R.S.O. 1990,  
c. I. 8

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

AND IN THE MATTER OF AN ARBITRATION

**BETWEEN:**

**FARMER'S MUTUAL INSURANCE COMPANY**

Applicant

- and -

**GORE MUTUAL INSURANCE COMPANY**

Respondent

**DECISION**

**COUNSEL:**

James V. Leone for the Applicant

Lawrence M. Foy for the Respondent

**ISSUES:**

Was Matthew Lesperance a dependent of his mother, Donna Lagree and/or Richard Maurice at the time of the accident, such that Farmer's Mutual would be responsible for payment of accident benefits payable to or on behalf of Matthew Lesperance?

**ORDER:**

Matthew Lesperance was not a dependent of Donna Lagree or Richard Maurice at the time of the accident and accordingly Gore Mutual Insurance Company is responsible for payment of accident benefits to or on behalf of Matthew Lesperance.

**HEARING:**

The hearing in this matter took place on September 5 and 6, 2007 in the city of Toronto.

**FACTS AND ANALYSIS:**

This arbitration arises out of a motor vehicle accident which occurred on October 8, 2003. On that date Matthew Lesperance was riding his bicycle when he was struck by a motor vehicle insured by Gore Mutual Insurance Company (“Gore”). At the time of his accident, Matthew Lesperance was 21 years of age and living with his mother, Donna Lagree, and his stepfather, Richard Maurice. Matthew was injured in the accident and applied for and received accident benefits from Farmer’s Mutual Insurance Company (“Farmer’s Mutual”) who insured Donna Lagree’s motor vehicle.

Pursuant to section 268 (2)(i) of the *Insurance Act*, the injured party may apply for and receive accident benefits from his or her insured.

Section 2 of the Statutory Accident Benefits Schedule, accidents on or after November 1, 1996

(Bill 59) defines an “insured person” as:

- (1) the named insured, any person specified in the policy as a driver of the insured automobile, the spouse of the named insured, and any dependent of the named insured or spouse, if the named insured, specified driver, spouse or dependent
  - (a) is involved in an accident inside or outside Ontario that involves the insured automobile or another automobile.

Sub section 2 (6) of the Schedule states:

For the purpose of this Regulation, a person is a dependent of another person if the person is principally dependent for financial support or care on the other person or other person’s spouse or same sex partner.

Thus, if Matthew Lesperance was financially dependent on Donna Lagree, or his spouse, Richard Maurice, then Farmer’s Mutual is responsible for payment of accident benefits to or on behalf of Matthew Lesperance. Farmer’s Mutual, however, takes the position that he was not financially dependent within the meaning of section 2(6) of the Schedule at the time of the accident and therefore, pursuant to section 268(2)(ii) of the *Insurance Act*, Gore, as the insurer of the vehicle which struck Matthew Lesperance, is responsible for payment of accident benefits.

Arbitrators and the Courts have dealt with the issue of financial dependency on numerous occasions. As Arbitrator Samis stated in Co-operators vs. Halifax [2002] O.J. No. 2459:

The definition requires a dependent to be a “principal dependency” resulting in the determination that the person is only a dependent if they are “chiefly” or “for the most part” dependent on the other person. Mathematically, this suggests the person’s reliance on the other person must be for more than 50% of their need in 2-person relationship.

The criteria for determining dependence was set out by the Ontario Court of Appeal in Miller vs. Safeco Insurance Company of America (1985) 50 O.R. (2<sup>nd</sup>) 797, wherein the Court held that it was appropriate to look at the following:

- (a) the amount of the dependency
- (b) the duration of the dependency
- (c) financial and other needs of the alleged dependent
- (d) the ability of the alleged to be self-supporting

Dependency issues are normally very much driven by the facts of each individual case, and that is particularly so in this case. As mentioned above, Matthew Lesperance was 21 years of age at the time of the accident. In the few years leading up to the accident he had led a somewhat unsettled life. In 2000 he and his girlfriend, Amanda Gill, lived with Matthew’s mother and stepfather when Amanda had Matthew’s child, Christian. While I will not go into the details, it is clear that during this time and indeed up until July 2003, Donna and her husband, Richard Maurice, financially supported Matthew, especially when Matthew was not working. In 2001, Matthew, Amanda and Christian moved into an apartment at the Javelin Co-op. When they were unable to pay the rent, Donna stepped in and paid roughly \$1,5000 for that rent. She also

contributed significantly for groceries, etc. In early 2002, Matthew, Amanda and Christian moved back into Donna's residence and she supported them financially. In April 2002 Donna bought a house on Fox Street in Penatang for roughly \$63,500. Matthew and Amanda were to pay \$500 a month rent. They continued to live there until early 2003, when Matthew moved out and essentially lived on the street. While living on Fox Street Matthew paid some but not all of the rent. In addition, Donna often paid for some groceries, diapers etcetera.

In July 2003 Matthew moved back into his mother's house and remained there until the accident of October 28, 2003. Donna Lagree testified at the hearing. She stated at that time she lived in a 3-bedroom bungalow with her husband. It was on a half-acre of land. It was immediately adjacent to her mother-in-law and father-in-law's property which itself was 100 acres. Ms. Lagree testified that she ran a kennel that had anywhere from 35 to 70 dogs in it at any given time. In addition there were a large number of cats to care for as well as 2 horses. Ms. Lagree testified that she only agreed to have Matthew return to the house on very specific terms, as he had been drifting and was in debt and on welfare. In return for living at the house, Matthew was to feed and groom the horses as well as clean their stalls. He was to feed and groom the dogs, let them out of and return them to their separate pens. In addition he was to take care of his own laundry and house chores. He was also to be responsible for cutting the lawn and maintaining the flower and vegetable gardens. Matthew was not to have a "free ride". At the time that he moved home, he had accumulated some debts and was still on welfare, receiving approximately \$520 a month, according to the County of Simcoe, Social Services Department, a figure which I find to be accurate. When listening to Ms. Lagree's testimony one was left with the impression

that Ms. Lagree and Matthew were determined to turn Matthew's life around, and to some degree, they did so. While living at the house, in addition to his household duties, he looked for employment and apparently enrolled in adult education courses in order to be able to get his grade 12. He had intended to return to school in January 2006, or if got employment perhaps work full time. Ms. Lagree that Matthew's chores averaged about 5 hours per day, 6 days per week.

One of the key issues in order to decide a dependency issue is what timeframe should be considered. Young adults are often in a period of transition and present a particularly difficult problem in this regard. It is clear, from case law, that one should not simply take a "snap shot" of the person as of the date of the accident. A longer timeframe, which more accurately reflects the person's true situation is required. Often this will require a fairly lengthy timeframe. In this particular case, counsel for Gore suggests that one should consider the period from at least 2000, when Matthew and Amanda had a child. From then until the accident, counsel for Gore, suggests, Matthew was basically living a very basic existence doing very little paid work and was financially dependent upon his mother. If this were the appropriate timeframe, based on all the evidence, I would have no hesitation in finding that Matthew Lesperance was financially dependent upon his mother. I am, however, convinced that this is not the appropriate timeframe in this particular instance. In my view, the appropriate time frame to examine is from July 1, 2003 until the accident which occurred on October 28, 2003. During that time Matthew had agreed to do various chores in return for room and board at home, had arranged to pay off his debts, participate in adult education, and look for employment. He had, according to his mother,

carried out all of the above prior to the accident. He had, in fact, paid off his debts, enrolled to get his grade 12 and looked forward to going to school. On balance, having considered all the relevant facts I find that the appropriate time is from July 1, to October 28, 2003.

Having determined the appropriate timeframe, it now remains to determine whether Matthew was dependent upon his mother or his stepfather during this timeframe. In order to determine this, we look at Matthew's income and expenses during that timeframe. For convenient sake, I will use to the end of October for both income and expenses.

I will deal first with income. Matthew was receiving social assistance in the amount of \$520 per month according to the County of Simcoe, Social Services Department. While there was some question as to whether the amount was slightly lower, I accept the above figure, based on a letter from the County of Simcoe dated January 26, 2004.

The more difficult task is to put a price on the various chores performed by Matthew for which he essentially received room and board from his mother. Various arbitrators and judges have held that it is appropriate in certain cases to attribute a value to services provided by a person when deciding a dependency issue. This, in my view, is an appropriate case.

The chores performed by Matthew included attending to the dogs in the kennel, cleaning and caring for 2 horses and numerous cats. In addition he was responsible for cutting the lawn and

caring for the flower and vegetable gardens as well as various handyman tasks around the house. He was responsible for his own laundry and cooking etcetera.

Counsel for Gore questioned the work alleged to have been done by Matthew in the kennel business. No records regarding the kennel were produced nor any list of hours worked in that business provided. Despite the lack of records, I am satisfied that Matthew did in fact do the work as described by Ms. Lagree. Ms. Lagree struck me as a very honest and straightforward witness. She had no reason to colour her evidence in this matter. The fact that she did not keep track of the number of hours or work performed by Matthew in a small family run kennel business does not surprise me.

Ms. Lagree estimated that it took Matthew about 5 hours per day, 6 days per week or 30 hours a week to perform the chores.

Ms. Angela Fleming, an occupational therapist, testified on behalf of Farmer's Mutual. She had done a "paper review" of Matthew's tasks, including speaking to Ms. Lagree about Matthew's duties and contacting various care providers to determine how much time would be required to do the tasks. She came up with a total of approximately 44 hours. I prefer Ms. Lagree's estimate of the hours required as she herself had performed most if not all of the tasks prior to Matthew's arrival in July of 2003. She also had the opportunity to observe him actually doing the chores, whereas Ms. Fleming simply performed a paper review.

Counsel for Gore questioned whether Matthew would have had time to do the chores, given that he was involved in upgrading his education and had an obligation to social services to look for work. In addition, he pointed out that Matthew intended to return to school full-time in January of 2004 if he did not find full-time work by then. When questioned about this, Ms. Lagree noted that she had performed these tasks prior to Matthew's arrival in July of 2003 and she expected that he would have been able to find the time to do them. I note that the type of work performed by Matthew was the sort that could be done at different times of the day, as well, in some cases, different days of the week. There was a certain flexibility that might not have been available had this not been essentially a family operation. Accordingly, I find that Matthew was and could have continued to work approximately 30 hours per week.

The parties could not agree upon the value of the work provided. Ms. Fleming testified that she had canvassed a number of service providers in the area and determined that the hourly rates varied, depending on the chores done, from approximately \$7.75 to \$12 per hour. She estimated his services to be worth \$350 - \$400 a week although this was based on a 44-hour week. If one were to take the mid point of \$375 per hour and divide it by 44 hours this would work out to approximately \$8.52 per hour.

Ms. Fleming conceded on cross-examination that she had used 2006 wage rates and assumed a minimum wage of \$7.75. It would appear that the minimum wage in 2003 was approximately \$6.85. It is difficult to put an exact hourly rate to Matthew's work. Certainly it would be at the lower end of the range. On balance I would estimate that he would have averaged approximately

\$7.50 per hour. For 30 hours, this would amount to approximately \$225 per week or \$967.50 per month. This combined with the \$520 per month from Social Services gave Matthew a monthly income of \$1,487.50 per month.

Turning to the expenditure side, Ms. Lagree testified that he was paying child support of \$100 per month. In addition, Ms. Lagree acted as something of an administrator of Matthew's Social Services money. Matthew had accumulated some debts prior to moving back home and Ms. Lagree administered the payment of those debts from his Social Services cheque. Ms. Lagree indicated that Matthew received approximately \$400 per month from Social Services of which \$100 went to child support and \$300 to pay off debts. There is a discrepancy of approximately \$120 per month between Ms. Lagree's figure and Social Services'. I prefer the documentary evidence of Social Services' in this regard.

It was Ms. Lagree's testimony that Matthew had paid off his debts by the time of the accident.

It is appropriate to deem a value to the room and board that Matthew received the benefit from when he lived with his mother and stepfather. A list of expenditures for the Lagree household was filed as an exhibit. Counsel for Gore calculated that the household expenditure, when you took out those expenditures which Matthew would have obtained no benefit from, would amount to \$45,012.20 per year for 2003. This would amount to \$3,751.01 per month. If one were then to divide this by 3, as there were 3 occupants in the home, you would arrive at a monthly per person expense or value of \$1,250.33.

Based on the above, Matthew had revenues both from Social Services and deemed of \$1,487.50 per month and received a benefit of \$1,250.33 from his mother. Based on this alone, Matthew would not be dependent upon his mother as she did not contribute more than 50% of his deemed revenues. While the difference between Matthew's revenues and the contribution by his mother is not great, I am reinforced in my view that he was not dependent upon her by examining some of the deemed expenses. For example one of the listed household expenses was for "housing" which presumably included the mortgage. This alone amounted to \$11,868 per year. It is unclear if this included both principal and interest on the mortgage. If it included principal it should not be included as it is a value that the owner alone benefits from. This would reduce the value received by Matthew.

In some ways, the process of deeming value for room and board and chores performed is a rough and imprecise exercise. As Directors Delegate Draper, in State Farm Insurance Company and Dianne Raffoul (F.S.C.O. Appeal P-004476, released April 25, 1996) noted, the test need not be limited to a purely mathematical calculation. In our particular case, what seems to have, in essence, occurred, is that Matthew agreed to perform some tasks and in return received room and board. The value of the room and board was worth roughly what Matthew provided in return by way of services and that seems to have been what the parties intended. Matthew was then left with the Social Services monies to pay other obligations and after paying off the debts, spend as he chose. As such, Matthew was not principally dependent upon his mother for financial support. Accordingly he was not a dependent of her at the time of the accident within the

meaning of section 2(6) of the Schedule. Accordingly Gore is responsible for payment of accident benefits to or on behalf of Matthew Lesperance.

In the event that the parties are unable to agree with the regard to the issue of costs, I may be spoken to.

Dated this \_\_\_\_\_ day of September, 2007.

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**M. Guy Jones**  
**Arbitrator**