
IN THE MATTER OF the *Insurance Act*, R.S.O. 1990, c.l.8, as amended,
and Ontario Regulation 293/95

AND IN THE MATTER OF the *Arbitration Act*, S.O. 1991, c.17

AND IN THE MATTER OF AN ARBITRATION

BETWEEN:

PRIMUM INSURANCE COMPANY

Applicant

- and -

STATE FARM

Respondent

AWARD

Counsel Appearing

David Smagata for the Applicant

Mark Donaldson for the Respondent

Introduction

This matter comes before me as an arbitration between these two insurers to determine the obligation to pay statutory accident benefits. The statutory accident benefits in question are payable with respect to an injury sustained by Jordan D.¹ as a result of a motor vehicle accident which occurred in the early morning hours of July 13, 2005.

At the time of the accident, Jordan D. was the operator of a vehicle which was insured by State Farm. At the time of the accident, Jordan's mother, Giovanna, was a named insured under a policy of insurance issued by Primum Insurance Company ("Primum").

In accordance with the priority rules under the insurance legislation and regulations, Primum would be the responsible insurer to pay the statutory accident benefits if Jordan D. was principally dependant for financial support upon his mother at the time of

¹ In consideration of the privacy interests of witnesses who were required to testify about their personal affairs, I have deleted reference to surnames.

the accident. If he was not, then State Farm would be the insurer obliged to pay the statutory accident benefits.

This is a claim with some significance and benefits are ongoing with respect to this young person. Accordingly, Primum is seeking reimbursement of the benefits which it has paid to date and is also seeking an order that State Farm has an obligation to assume responsibility for the ongoing benefits claimed or claimable by Jordan D.

The essential issue in this case is the question of dependency. The parties have not yet turned their minds to the question of any quantum of reimbursement and that issue, if any, has been reserved to further proceedings if necessary.

The status of Jordan D. as a dependant or otherwise of his mother is difficult for the parties to resolve. Hence the necessity for this arbitration, which in turn has involved extensive and detailed steps of discovery and litigation. A number of witnesses have been subject to oral testimony and many documents have been reviewed and put before me.

Arbitration Agreement

The parties have agreed that I should determine this matter as arbitrator pursuant to the *Arbitration Act* and Ontario Regulation 293/95 under the *Insurance Act*. The parties have agreed to reserve the right to appeal without leave based on a question of law or mixed fact and law, and that any such appeal should be commenced within 30 days of the decision. The parties have agreed that there will be a stay of any order pending any appeal.

The parties have put before me a number of documents to form the record of this proceeding in addition to the testimony which was heard before me on August 18, 2009. Exhibit #1 to the proceeding is an arbitration document brief. This document brief consists of 48 documents which the parties have agreed can form part of the record of these proceedings. I am at liberty to refer to these documents and to accept or reject evidence based on the information in these documents. I may choose to accept items in the documents as factual or not.

In addition to this, we have marked as Exhibit #2 to the proceeding the transcript of examination of Jordan D. This was his testimony under oath on July 9, 2007.

We have marked as Exhibit #3 to the proceeding the transcript of the examination of Giovanna D., Jordan's mother. This examination took place on July 9, 2007.

Exhibit #4 to the proceeding is the transcript of the examination of Gordon C. This examination took place in Brampton, Ontario, on July 11, 2007.

Exhibit #5 to the proceeding is the transcript of the examination of Bobby L. This examination took place in Brampton, Ontario, on July 11, 2007.

During the course of the arbitration hearing, a number of other documents were marked as exhibits including the following:

- File notes made by Ed Skrypczak which were marked as Exhibit #6 to the proceeding.
- A credit counseling summary from Central Technical School with respect to Jordan D. was marked as Exhibit #7 to the proceeding.
- Janet Olsen testified as an expert witness with respect to the dependency issues. Her CV was marked as Exhibit #8 to the proceeding.
- During the course of her testimony, a document identified as a benefits summary which identifies extended health care benefits made available to Jordan D. as a result of his mother's employment policy was marked as Exhibit #9 to the proceeding.

Overview of the Dependency Issue

Priority in this case turns on the question of whether or not Jordan D. was principally dependant for financial support on his mother, Giovanna D., at the time of the accident. There is no issue about any other priority status arising from the known circumstances. The parties are well familiar with the law applicable to these kinds of disputes.

We are dealing with principal dependency which requires us to determine whether or not Jordan D. is dependent on another person to provide for more than 50% of meeting Jordan's financial needs.

At the time of the accident, Jordan was 19 years of age. He had recently received his entitlement to a grade 12 diploma from Central Technical School in Toronto. He had been living with his mother in an apartment in Toronto but immediately prior to the accident had been staying overnight on some occasions in a household in Brampton, proximate to employment that he had obtained.

Jordan's life was very much in transition around the time of the accident. He may have been transitioning away from the educational environment, may have been transitioning into the workforce, and concurrently may have been transitioning to a new residential arrangement away from his mother's home and into a more independent setting. There is a great deal of uncertainty about all of this which leaves the parties unable to resolve the question of dependency. There are inconsistencies in the evidentiary record about these issues. It is not surprising that the parties have found it necessary to proceed with an arbitration hearing in this matter to resolve these issues.

The Time Window Issue

Analysis of financial dependency cases requires ascertaining a reference timeframe for the purpose of looking at income, income earning capacity, and financial needs. It is important to select a time window that fairly reflects the status of the injured individual on the day of the accident.

In this case we have had accounting evidence tendered as expert testimony about the dependency from a financial point of view. However, the threshold issue for our analysis is to determine Jordan's status at the time of the accident and to then determine a time

window which fairly reflects that status. If Jordan's status was essentially that of a student engaged in ongoing education pursuits, temporarily interrupted by a summer respite, then a reasonable time window would have to reflect that status. On the other hand, if Jordan D. was a young man who had completed his educational pursuits and was entering the workforce, an appropriate selection of a time window for analysis would be quite different. Briefly put, selecting the former window would likely lead to the conclusion that he was principally dependant for financial support on his mother. Selecting the latter window tends to lead to the opposite conclusion. Hence, coming to some understanding of Jordan's status as of the date of the accident is critical to evaluating the dependency for the purposes of the priority regulation and the statutory accident benefits schedule.

Embedded in this analysis is the question of Jordan's residency at the time of the accident. Indisputably, he had formerly resided with his mother in an apartment in the Yonge and Eglinton area of Toronto. It is also indisputable that by the date of the accident he had spent some time, overnight, at a residence in Brampton, Ontario. This residence is owned by the C. family. Michael C. was a friend of Jordan's and, prior to the accident, Jordan had spent some time staying overnight at the C. residence in Brampton. There was some information suggesting that the Brampton residence had become the residence of Jordan, and other evidence to suggest that his residence continued to be with his mother with only infrequent overnight stays in Brampton. Aside from any impact this might have on understanding dependency from a financial point of view, the residency is capable of providing us with some insight about Jordan's status vis-a-vis continuing educational pursuits.

Evidence of Jordan D.

The testimony of Jordan D. was marked as Exhibit #2 to the proceeding. He testified that at the time of the accident his address was 101 Roehampton Street in the Yonge and Eglinton area of Toronto. He lived in apartment 102 at that location which is a 1 bedroom apartment where he was living with his mother, Giovanna. His mother had the bedroom of the apartment and he slept on a pullout couch in the living room. He believes he had moved into that living arrangement in either 2002 or 2003. His mother and father are divorced and he had previously lived with his father at another location.

On examination, it was suggested to him that in 2005 that he was "just finishing school". He did not accept this suggestion and instead asserted that he was "still in school". He testified that he was still in high school enrolled "to do a co-op". This was to be at Central Technical School in Toronto.

He also testified that immediately prior to the accident he obtained a job working at Canadian Tire. In fact, the documentation discloses that the technical arrangement for this employment was through an employment agency as an intermediary but it appears that the actual work took place in conjunction with Canadian Tire. This was working in a warehouse. He got this job only immediately prior to the accident and had only worked there 2 or 3 days prior to the accident. During his testimony, Jordan D. further indicated that he had been staying with his friend, Bobby L., at the C. home at 4 Horseshoe Court in Brampton. He suggested that he may have stayed at that residence 2 nights a week with Bobby L. because Bobby L. was his ride to work at Canadian Tire. When Jordan stayed in the C. household, he would sleep in the basement, on the couch.

Jordan testified that he kept all of his personal belongings at his mother's apartment but kept some clothes at the Brampton location. He indicated that he thought he had stayed overnight 2 days at the Brampton location prior to the accident but that he still lived at home.

During his examination, when confronted with the fact that Jordan had given employers an address of 4 Horseshoe Court in Brampton, he testified that he was "in the process of moving" but asserted that he had not moved yet. There are documents in the record where it appears that Jordan had indicated to third parties that his address was in Brampton. At question 220 of the testimony, Jordan was directly confronted with the suggestion that he had moved into the Brampton home permanently 2 weeks before the accident. Jordan asserted that he had never moved into that location. He did repeat that he intended to, but had never done it.

During the course of his testimony, Jordan's evidence was consistent to the effect that his plans were to return to school in September of 2005. He asserted that he had 2 options that he was pursuing. He suggested that community college at Centennial College was a potential goal. He said that he had applied, but had never heard anything back. He also testified that he had completed an application and that he had visited the school and had a look around.

His alternative plan was to pursue the cooperative program at Central Technical School. The cooperative program involves a voluntary placement with a local employer and Jordan described this as an opportunity to get his foot in the door with an employer.

In the context of his evidence, Jordan testified that he viewed the Canadian Tire position as a summer job, although in various places it had been referred to as a full time job by the employee and as a part-time job by the employer. Jordan's testimony would suggest that this was to be a job with hours akin to a full time job but not long-lasting.

Although Jordan's evidence would tend to suggest that he had the intention of moving out of his mother's apartment and into the Brampton home, he says that he had not yet taken that step. It was also his intention to return to educational pursuits in the fall and, according to him, he had taken significant steps towards that goal and was on track for that eventuality.

Evidence of Giovanna D.

Giovanna is Jordan's mother. She testified that she lived in a one bedroom apartment at 101 Roehampton Avenue, Toronto, but, in that building, she lived in 2 different apartments at different times. At the time of the accident, she was in apartment 102. Subsequently, she moved into apartment 507 in the same building. She testified that at the time of the accident her son Jordan was living with her at 101 Roehampton, apartment 102. She confirmed the sleeping arrangement described by Jordan. He was sleeping on the pull out couch in the living room.

She acknowledged that, prior to the accident, her son had been on occasion sleeping over at his friend Mike C.'s place in Brampton. Her recollection was that he was only there occasionally and she placed this as being in connection with his employment at the Canadian Tire warehouse. She indicated that her son had told her that it was his intention to eventually move out if he got a full time job at the Canadian Tire warehouse.

This testimony is slightly at variance with the testimony of Jordan who indicated that he had formed the intention to move out, already. Evidently this was not communicated to his mother. She testified also that Jordan would do his laundry at 101 Roehampton and as far as she was concerned he was not keeping any of his personal belongings elsewhere.

Giovanna offered interesting testimony about Jordan's educational status. She acknowledged that he had completed high school prior to the accident. She indicated that he had plans to be a mechanic of some sort and that he had registered for quite a few colleges to see if he could get into one of their programs. According to her, he received some letters from the colleges saying that he had to show up for some testing. That never happened because of the occurrence of the accident. Her recollection was that the testing may have been English and/or math testing. She also testified that Jordan was registered for a co-op program in September 2005 at Central Technical School. She testified that she only found out about the co-op program after his accident but the documentation is to the contrary. It appears that she signed an application for the co-op program with her son in April of 2005.

As far as Giovanna understood the status of things with the colleges, Jordan was going to have to attend and take some tests and pass those tests in order to go to college in the fall. However, she readily acknowledged that her views of what he should do with his future and what he may have wanted to do might have been different things. She wanted him to take a look at all of the information that he got from the colleges and to go for the testing. She had the impression that he was going to go towards college but the testing never took place. It doesn't appear that Jordan took any overt steps towards going to college other than his initial inquiries.

Evidence of Gordon C.

Gordon C. was examined under oath about issues in this matter. Essentially the evidence which he offers is relevant to the question of the residency of Jordan at the time of the accident. In a sense this is a secondary issue which is indirectly assisting in determining the plans of Jordan and his relationship with his mother and his ongoing expectation for the future. The problem with respect to the evidence of this witness is the possible inconsistencies between what he initially told a representative of Primmum and what he subsequently stated in a formal statement and subsequently stated under oath. He is the owner of the property at 4 Horseshoe Court in Brampton, Ontario. This is the Brampton address where Jordan sometimes stayed overnight prior to the accident. There is some suggestion that Jordan was planning to move into these premises on a more or less permanent basis as a full time resident for a period of time. There was also information given to Primmum's representative, by telephone, in September of 2005 which the Primmum representative took to be an indication that Gordon C. believed that Jordan was a resident of his household and had been for a couple of weeks and that there was a financial arrangement of a payment of \$100.00 per week. Subsequently, this position was denied by Gordon C.

Gordon lived at this Brampton address with his wife, Susan, and their son, Michael. Michael is approximately the same age as Jordan. It is that connection which makes it plausible that Jordan would have, on occasion at least, stayed overnight at Gordon C.'s home.

The testimony of Gordon C. clearly supports the existence of an environment where friends were welcome to stay over, sometimes for a short time and sometimes for a longer period of time on a more or less permanent basis. Indeed Bobby L. was, according to Gordon C., the occupant of one of the bedrooms in the home as his residence. There was some divergence in the evidence about the exact time frame when Bobby L. began to live in the home but there doesn't seem to be much doubt about the fact that he actually lived there on a continuous basis for some time period.

On another occasion, another friend of Michael's stayed at the house for a while. This was pretty much on the same basis as the Bobby L. attendance. Gordon C.'s evidence, under oath, with respect to Jordan is that Jordan had stayed over at his house a few times. He did not see this as circumstance where Jordan had moved into his home. He estimated that in the couple of months preceding the accident, Jordan would have stayed at his home perhaps once a month. Sometimes he would stay by sleeping on the couch in the recreation room of the home. Sometimes they would just "crash on the floor". When asked directly where Jordan lived prior to the accident, Gordon C. said with his mom, somewhere downtown.

At question 263, Gordon C. was questioned directly about the investigator's assertion that Gordon C. had previously stated that Jordan had moved in permanently 2 weeks prior to the accident. Gordon C. denied this. In fact, he indicated that there was no room for Jordan to move in permanently.

In total, the evidence of Gordon C. was to the effect that Jordan may have stayed in his home up to 2 or 3 times per week but that he had not moved into the home. There was no room in the home for him to move in and the witness denied the accuracy of the interpretation given to previous comments by Primmum's representative.

Testimony of Bobby L.

This witness testified under oath before me on July 11, 2007. The significance of his evidence has to do with the question of the residency of Jordan in relation to the Brampton residence. He testified that he was living at 4 Horseshoe Court in Brampton at the time of the accident. He was living there with Gordon C. and his family. He qualified this to say that he was in the process of moving in at the time of the accident. He eventually ended up living there for a year and a half. He testified that at the time of the accident he was still on a couch in the basement and didn't yet have the use of a bedroom which ultimately was made available to him. Bobby L.'s testimony was that no one else was living in the house other than Gordon C., his wife, their son Mike, and Bobby L. Occasionally, Jordan would stay overnight on the weekends. Bobby L. thought that Jordan stayed over twice or three times a month prior to the accident.

This witness was also confronted about communications he had previously made to an insurance representative. He indicated that he was approached by a couple of representatives but he was unable to identify who they were. He indicated that they wanted him to sign some kind of a document but that he wouldn't sign. He was under the impression that these people were trying to put Jordan's mother in some kind of a disadvantaged position. It was clearly this witness' impression that by refusing to sign a statement he was somehow protecting the rights of Jordan's mother.

It is also acknowledged, however, that at another point in time he did sign a statement to an insurance representative.

The sum total of the testimony given under oath by this witness was to the effect that Jordan's residence was not at Horseshoe Court in Brampton but that he only stayed overnight there on a few infrequent occasions. The statement which he did sign in September of 2005 indicated that he had been living with Jordan in Brampton for a few months prior to the accident. But he qualified it by saying that Jordan would stay only a few days per week. The statement is found at tab 3 of Exhibit #1.

Evidence of Ed Skrypczak

This witness gave testimony under oath before me in August of 2009. He was called as a witness to deal with the previous statements and information which he obtained from other witnesses in this matter. Marked as an exhibit to this proceeding, Exhibit #6, was a copy of his file notes purporting to record his transactions in relation to this case.

This individual was introduced as an independent adjuster for Claims Partners where he has been employed since 2000. He has been experienced in the insurance industry since 1991. His educational background includes a Bachelor of Arts in psychology and he has a Chartered Insurance Professional designation from about 1994.

His involvement in this matter commenced as of August 31, 2004, when he was retained by Primmum to get a signed a statement from Giovanna D. and then subsequently he was instructed to get follow up statements. The essential evidence from this witness is that he interviewed Bobby L. and Gordon C. and attempted to refine their evidence into signed statements on subsequent occasions.

He described the procedure he would follow. He indicated that when he met with the witness he would have a dialog with them in a question and answer format and then he would write out the information in a narrative form and provide it to the person. He said he followed this procedure with Bobby L. and presented Bobby L. with the statement which he then signed and Ed Skrypczak witnessed. At one point there was a change made to the statement and Bobby L. initialled that change as well.

The chronology of events with respect to Gordon C. is somewhat prolonged. There was a hiatus between the time when Ed Skrypczak first spoke with Gordon C. and then subsequently met with him to arrange for a statement. This hiatus is explained by the fact that Gordon C. indicated that he was leaving for Houston for 3 weeks.

The notes from September 27, 2005 gave important information, noted by Ed Skrypczak, and connected with a conversation with Gordon C. The information indicates that Jordan knew Gordon C.'s son, Mike, for about 1 year. The note seems to unambiguously indicate that Jordan stayed with them, the family, 2 or 3 times a week and then moved in 2 weeks before the accident at which time he was there full time. There was a mention of payment of \$100.00 per week for room and board. It appears that this may have been an indication of a proposed rate of pay that never actually translated into a payment. However, the notes do indicate that Jordan would go and visit with his mother on weekends but that he generally stayed at the Brampton house. A phrase placed in quotation marks in the notes states "this is his primary residence". Subsequently, when Ed Skrypczak met with Gordon C. in the latter part of October 2005,

Gordon C. expressed the view that Ed Skrypczak "must not have understood" there was, at this time, a complete change in the story as understood by Ed Skrypczak. At this juncture, Gordon C. indicated that Jordan was not staying with them in the Brampton home full time for the 2 weeks before the accident. He indicated that Jordan would usually stay over on weekends for 1 night and this would be associated with the friends getting together. Gordon C. also denied that Jordan ever paid rent in the household nor do they have any set meals at the home.

Allegedly, Gordon C.'s son Michael asked him if Jordan could stay with the family and pay \$100.00 per week. According to Gordon's October 25th version, he did not commit to this and just indicated that they would have to talk about this more. He affirmatively stated that his home was not Jordan's primary residence. Gordon's view was that Ed must have misunderstood what was said.

The statement as recorded by Ed Skrypczak was not signed by Gordon C. as he declined to do so.

I found the evidence of Ed Skrypczak to be professional and credible. I do not think that he would have been careless in his notes or in his reports to his client. These documents, produced in this arbitration as part of Exhibit #1, tell a careful story of the known evidence on the residency situation.

Evidence of Richard Tarasuk

This witness is the principal at Central Technical School located in Toronto and he gave testimony before me on August 18, 2009. He came with the Ontario School Record for Jordan D. and helped us to understand some of the documentation which was contained in that school record.

The essential character of this evidence was to assist us in understanding what the records disclose in terms of Jordan's status as of the date of the accident. In short, the record is quite ambiguous. The witness did produce for us various parts of the Ontario School Record and various documents have been marked as the exhibits or parts of the exhibits in this proceeding. I found the following information to be of particular interest.

First of all, Jordan D. qualified for his high school diploma in February of 2005 about 5 months prior to the accident. Nonetheless, he continued on taking additional courses following qualifying for his diploma. There is also documentation to indicate that he had "pre-registered" for the following year into the co-op stream. There is also a credit counselling sheet marked as Exhibit #7 to the proceeding. This document shows that Jordan took a number of courses going towards the co-op stream of things prior to the accident. He did not do well in these courses. In fact, his marks in the co-op courses identified for the spring of 2005 were abysmal. He had a final grade of 24% in one course and 36% in the other course. He also had numerous absences from the courses indicating aggregate non-attendance for probably more than one third of the courses. I find the suggestion that someone with this very poor record would be going forward onto the next stage of the educational process quite surprising. The record is showing little effort and no accomplishment.

The witness tactfully accepted the proposition that Jordan would have had to improve his grades in order to go to community college and that the numbers relating to his

attendance and grades would not have worked in his favour in terms of moving forward. Indeed the witness indicated that these numbers would indicate that Jordan was not going ahead into the co-op program unless there was somebody who was going to go to bat for him to offer some exceptional reasons why he should go forward into that program in spite of his record.

Evidence of Randy Lindsey

Randy Lindsey was called as a witness before me on August 18, 2009. He is a teacher at the Central Technical School in Toronto and is the leader of the technical studies and their co-operative education program. This witness offered us quite a bit of evidence about how the program works and what the requirements are for moving forward into the co-op program.

Surprisingly, the witness indicated that it was indeed possible for someone with Jordan's dismal academic record to move forward into the co-op program. However, this would require a combination of events including some unusual reason expressed by somebody "going to bat" for Jordan or something coming out of the interview process. I gather that all students intending to go into the co-op stream would go through an interview process. In particular, the school seems to have been very concerned that co-operating employers should not have to put up with students who are poorly motivated and so forth. The participation of employers is, of course, critical to the co-op program and the school is very protective of those good relationships. Mr. Lindsey testified before me that he had contacted everybody who might have been involved in the interview process in relation to Jordan D. and none of them could recall having interviewed him for that purpose.

Although this may be an indication that he did not go through the interview process, the witness candidly acknowledged that it was possible that witnesses would not recall having conducted the interview because of the passage of time and the number of interviews that are conducted. However, I am mindful of the fact that this would have been somewhat of an unusual circumstance where a student with very poor academic records would be asking to go into the co-op program and would need that extra information to come through the interview process to push him on into it. Evidently none of the witnesses contacted by Lindsey could recollect such a scenario.

It is unfortunate, but confirmed by this witness, that the documentation presently available is not conclusive of whether or not Jordan was going through into the co-op program or not. It is conclusive that he never actually went into the co-op program after the accident, but that doesn't tell us what his status was in July of 2005. There was no acceptance or rejection letter associated with the program. Any communication would be verbal one way or another. There is no record of any of these decisions.

However, it is equally clear that Jordan, if he chose to, could have returned to the school in the fall of 2005 in order to take additional courses as an interim step ultimately leading towards the co-op program or perhaps community college.

There really doesn't seem to have been anything to prevent Jordan from taking this step if he would have chosen to do so. And there is evidence in the record of Jordan taking affirmative steps to pursue additional education beyond his grade 12 diploma which he had obtained in February of 2005.

Evidence of Janet Olsen

Janet Olsen was tendered as an expert witness in this matter. She is a qualified chartered accountant who has given evidence in similar matters previously with respect to questions of dependency. Her CV was marked as Exhibit #8 to the proceeding. I accept her qualifications as an expert in dealing with issues associated with the financial aspects of dependency with respect to claims under the SABS.

Reports written by her are found at tabs 23 and 24 of Exhibit #1. These reports take several different approaches towards calculation of principal dependency for financial support. Essentially the mathematical exercise is to try and discern whether or not the individual, Jordan D., was principally dependent for financial support on his mother or not. There are different approaches that can be taken to this problem. The accountant has taken several of those approaches.

She looked at 3 scenarios with respect to the residency. The first scenario was that there was permanent residency in the new household in Brampton. The second scenario was that there was permanent residency in the Brampton household but only for the work days of 4 day shifts associated with the Canadian Tire employment. The third scenario was based on the assumption that Jordan resided with his mother.

The witness offered some useful evidence with respect to looking at the cost of meeting needs for Jordan D. Aside from the different scenarios that could be applied, there are a number of different methods that could be used for determining what his needs are. As is commonly encountered in these cases, there is a tendency to make an assumption that the cost of the expenditures towards foods and shelter prior to the accident was exactly equivalent to the cost of meeting Jordan's needs. That assumption may not necessarily be correct.

However, I found the exhibits and schedules attached to the July 3, 2009 report of Ms. Olsen to be helpful with respect to the evaluation of these issues.

Analysis

Based on the evidence put before me, by way of documents and by way of testimony under oath, I find that it is necessary for me to examine 2 controversial collateral issues to get a true picture of Jordan D.'s status on the date of the accident. Once I determine his status on the date of the accident, I can then look for a time frame that most appropriately and reasonably reflects that status in order to calculate dependency.

The two controversies which stand large in this case are the question of his educational status and the question of his residence, on the date of the accident.

Without question, these issues are uncertain. Were it not the case, the parties would have easily been able to resolve many or all of the issues with respect to priority. However, these questions are not easily resolved. They are not easily resolved because of the inconsistent information that the parties have accumulated as part of their investigation. These questions are not easily resolved because the notions involved are vague and the status of Jordan D. at the time of the accident was clearly in transition.

He was a young man, recently having qualified for his grade 12 diploma, finished at least the spring term of school and out into the workforce. The record indicates that he was looking for employment on a full time basis. There is evidence that he intended to move out of his mother's home and that he was at least partly out of the home already by the date of the accident.

If I were to regard him as a young man who had finished his educational pursuits and who had entered the workforce on a full time basis, I would look for a time window that reflects that status in order to calculate his financial dependency.

On the other hand, if his true status is that of a person who is still in the educational process, still residing with his mother, and intending to return to scholastic endeavours after seasonal work during the summer months, then a different timeframe would be attractive for determining dependency. In the latter circumstance, I would be inclined to look for a timeframe that reflects periods of full time attendance at school. With respect to the former scenario, I would look for a timeframe that reflected full time participation in the workforce. Without doubt the selection of these timeframes would be very influential towards determining dependency.

The Residency Issue

There is clearly contradictory information about Jordan's residency at the time of the accident. However, the direct evidence in the hearing before me is all indicative of the fact that he had not left his mother's home. The evidence of Jordan, Giovanna and Gordon, all is to the effect that he had not left his mother's home and had not moved into the Brampton home with Gordon and his family. There was some evidence of an intention to do so, but the direct evidence does not indicate any manifestation of that intention.

However, I did note documents within the file where Jordan applied for employment in the summer of 2005 and indicated his residence address to be the Horseshoe Court residence in Brampton. I also noted documents associated with the employment indicating characterization of the employment as full time whereas there is other documentation indicating that the employment was part time or temporary. Clearly, the evidence is not unequivocal about the residential status at the time of the accident.

It is also clear that the efforts of the parties to understand this status has been confounded by the testimony and information derived from various witnesses. The witnesses characterized the different versions as being driven by "misunderstanding" but I am uncertain that that is in fact the case. Indeed I noted in the testimony of Bobby L., the suggestion that some of the evidence was being shaped in order to prevent an insurance company from working a disadvantage on Jordan's mother. This was completely incorrect of course. There is no scenario by which there would be any disadvantage suffered by Jordan's mother as a result of any of these issues. However, the fact that one of the witnesses involved had that belief suggests a possible motivation for others to have shaped evidence in one direction, or another.

It does seem to me that some of the witnesses were inclined, at the outset, to allow people to believe that Jordan's full time residence had become the Brampton residence prior to the accident. Later, however, when compelled to testify formally in this proceeding, there was no evidence to that effect. The evidence of Jordan himself was to

the effect that he had not yet become a permanent residence of the Brampton household. Similarly, his mother considered him to be a continuing resident of her household. Additionally, there was the evidence of Jordan and his mother of Jordan's intention to be continuing at Central Technical School in Toronto, a course of action and geographic location more consistent with domicile at his mother's residence than elsewhere.

The evidence of Gordon C. is difficult to reconcile with the notes of the previous communication he had with the insurance investigator. However, he was strong in his evidence that there was no place for Jordan to live in his Brampton home at the time of the accident. The space available was already taken by others. The evidence in this hearing from Gordon was unambiguously to the effect that Jordan was not a full resident of his household.

Having examined that evidence, and having examined the evidence contained in the documents, I conclude that on the balance of probabilities, at the time of the accident, Jordan D. was not a full time resident at the Brampton household. I find that his principal residence continued to be the residence of his mother. This is the place where most of his belongings were. This is where his records indicated that he was a resident for most purposes. He may have been looking forward towards a time when he was out of that household and that might have happened very soon if the accident had not occurred. However, as of the time of the accident that transition was not substantially complete.

Indeed, this transition would necessarily have been associated with successful pursuit of employment endeavours by Jordan. His record in that regard was not very good. The job which he held at the time of the accident had been described as temporary by some of the intermediaries involved. He had only worked a very limited amount of time at that new job when the accident occurred. At his previous job, he was terminated for misbehaviour very early into his relationship with that employer. It is not at all clear that Jordan was going to successfully hold down any kind of employment as of the day of the accident.

However close Jordan may have been exiting from his mother's household to become independent of her residence, it is my finding that he had not achieved that at the time of the accident.

The Issue of Educational Status

Again the evidence with respect to Jordan's educational status at the time of the accident is highly unsatisfactory. No doubt if this evidence was somewhat less cloudy the parties would have been able to resolve some of the issues that have been put before me for resolution. The records from the school system are essentially unhelpful in understanding Jordan's status as of the time of the accident. He might have been on a track to return in the fall or he might not have been. There are no records of what conversations he had with whoever interviewed him in the spring of 2005 about continuing on in school. He had, in April, pre-registered for courses in the fall but by June his academic record was in shambles as a result of his non-participation and non-completion of the prerequisite courses for the co-op program. Similarly, the possibility of him proceeding to community college seems seriously doubtful given his record. His average in the year of the accident and the previous year was extremely poor. The evidence from his mother was to the effect that he had to do some tests in order to go to

community college. There is considerable reason to be suspicious that he would not have been successful with those tests.

However, on the balance of probabilities, I have to take into account the following facts:

He did take overt steps to register for courses for the following term of school, i.e. to be in the fall of 2005 in the co-op program. At tab 26 of Exhibit #1, is a letter dated November 24, 2005. This letter over the signature of the vice-principal of Central Technical School indicates that Jordan was pre-registered to continue his schooling for the September 2005 to June 2006 school year but was unable to attend. The evidence before me indicated that this pre-registration may have been rather perfunctory and may have taken place as early as February 2005. But nonetheless this indicates an intention on the part of Jordan to at least lay the ground work for continuation of his education after receiving credits qualified for his grade 12 diploma which he indeed received in February of 2005.

Further to this pre-registration we know that Jordan enrolled in and participated in a number of courses in the late spring of 2005. Those courses commenced and took place following his qualification for his high school diploma and were courses which were pre-requisites for co-operative education down the road. Again, this is direct evidence of a manifest intention to proceed with further educational efforts.

Additionally, we have the evidence that Jordan had visited Centennial College and had applied to a number of community colleges with respect to possible attendance. The evidence of Giovanna was to the effect that he had received responses indicating that he would have to take further steps with respect to testing in order to qualify for community college. Giovanna was quite adamant that she wanted him to continue on with his education.

The evidence from the witnesses from Central Technical School was quite clear that Jordan was in no way precluded from continuing on with his educational pursuits. He might have gone directly to community college if he could have satisfied their requirements. If not, he could take additional courses in order to upgrade and go to community college. With respect to the co-op program he was eligible to take the necessary prerequisite courses with a view to ultimately going into the co-op program down the road.

According to Jordan, during his testimony, he had applied to go to college and he had signed up for co-op. He portrayed this as giving him two options. If it didn't work out in college then he would have done the co-op program.

Based on the evidence before me I conclude, on the balance of probabilities, that as of the date of the accident Jordan's status was that of a young person who was in the midst of his educational stream of life. He had finished his credits for a high school diploma. He had taken overt steps to carry on for additional education either through community college or a co-op program. He testified that he intended to do that. His mother was supportive of this. On the balance of probabilities, I think that his status as of the date of the accident was no further than the status of a student doing summer work between terms. It is entirely possible, perhaps even likely, that his status would have changed completely if a little more time had gone by prior to the accident. If the employment that he had just recently started worked out and he made it into a full time job, it is entirely

conceivable that he would have abandoned plans for returning to school, moved out of his mother's home and gone on with his life. However, we will never know what would have transpired because of the injuries that Jordan suffered in the July accident. It is my finding that as of the date of the accident his status is best described as someone who is in the educational stream, not yet living independently, and self sufficiently, as part of the labour force.

The Question of Financial Dependency

Having concluded that Jordan's status as of the date of the accident was closely associated with being a student, not living independently, I must now select a timeframe for examining his financial capacity and needs that most closely reflects that status. For that purpose I find that a 12-month window would most accurately reflect his status as someone in the educational stream and not in a full time labour attachment role. This timeframe includes periods of full time school, as well as some work history. This most closely relates to his status.

From schedule C2 of tab 23 of Exhibit #1, we see the financial resources of Jordan for the year prior to the accident. Those financial resources are, not unexpectedly, modest. He spent most of that year as a full time student. We see his earnings at slightly more than \$5,000.00 in that year.

When we try to estimate the cost of meeting his needs there are different approaches that can be taken. If one simply combines the value of his share of the shelter provided by his mother, and food, together with his own financial resources and make the assumption that the total of those of amounts represents the costs of meeting his needs then he only has capacity for meeting about 5/13 of the needs. If one looks at the statistical approach based on schedule 3C of tab 24 of Exhibit #1, we again see that the annualized financial needs based on the cost of equivalent accommodation is more than \$13,000.00. Once again the annualized resources of Jordan do not represent more than 50% of meeting those needs. I would note, parenthetically, that schedule 3C is contemplating the cost of accommodation in Brampton, Ontario, which in my view is not appropriate for the findings which I have made. The cost of accommodation would be for accommodation in downtown Toronto as Jordan would be continuing on with his education at Central Tech or elsewhere in Toronto. Accordingly, the needs are somewhat higher than represented by schedule 3C but the point becomes academic because of the limited financial resources.

Accordingly, although the matter can be approached from a number of different angles, as I have made the findings that Jordan continued to be in the educational stream, and had not yet moved out of his mother's home on a full time basis, I am driven to the conclusion that he was principally dependant for financial support on his mother at the time of the accident. The support which she provided to him in the applicable window, 12 months prior to the accident, represented more than 50% of the cost of meeting his needs and indeed he was unable to meet his own needs from his resources during that time interval and he was unable to meet 50% of his needs during that time interval.

Conclusion

The facts of this case are difficult. Some of the evidence has been inconsistent. As with many of these cases, the evidence is imperfect and testimony is understandably vague. Financial arrangements are undocumented.

The parties here have had to grapple with confounding factors of inconsistent reports of information and seemingly contradictory evidence about residence, and labour force attachment. For a variety of reasons, it was necessary for the parties to have this arbitration in order to reach some conclusion about the dependency status and the obligation to deal with statutory accident benefits. The case is rife with factual difficulty which required resolution by this proceeding.

I find that at the time of the accident, Jordan was principally dependant for financial support on his mother and that therefore statutory accident benefits are the responsibility of Giovanna's insurer, Primmum.

The parties have agreed that costs should follow the event and therefore costs will be payable by Primmum.

Counsel should advise me within 30 days if they require me to take any further action with respect to this matter, with respect to costs or any other outstanding issues.

Dated at Toronto this 31st day of August, 2009.



LEE SAMIS
Arbitrator