IN THE MATTER OF the *Insurance Act* R.S.O 1990, c. I.8, as amended: section 268
AND IN THE MATTER OF the *Arbitration Act, S.O.1991, c.17,* as amended

BETWEEN:

CO-OPERATORS GENERAL INSURANCE COMPANY	Applicant
- and -	
CHUBB INSURANCE COMPANY OF CANADA	Respondent

DECISION

COUNSEL

Daniel Strigberger, counsel for the Applicant, Co-operators General Insurance Company (hereinafter called "Co-operators").

Colin MacDonald, counsel for the Respondent, Chubb Insurance Company of Canada (hereinafter called Chubb).

BACKGROUND

This matter comes before me pursuant to the *Insurance Act*, R.S.O. 1990 c. I as amended, the *Arbitrations Act*, S.O. 1991 c. 17 as amended and Regulation 283/95 of the *Insurance Act*. This is a priority dispute between two insurers.

The dispute arises out of an accident that occurred on October 14, 2020.

The claimant was a pedestrian that was struck by a school bus that was turning left.

The claimant sustained various injuries and applied to Co-operators for statutory accident benefits. Co-operators insured the claimant's son. Chubb insures the vehicle that struck the claimant.

The claimant sustained serious injuries. A CAT application is pending and there is an ongoing LAT dispute.

PROCEEDINGS

Counsel selected me on consent as an arbitrator as set out in the Arbitration Agreement filed before me dated October 3, 2023.

This matter proceeded to primarily a written hearing. Both parties made Written Submissions, a Joint Book of Documents was filed and both parties submitted Books of Authority. There was also a brief oral hearing during which counsel made some additional oral submissions supplementing their written materials and allowing me an opportunity to ask some questions. The oral hearing took place on January 19, 2024. In terms of the evidence before me, it included various medical records and medical reports relating to the claimant, a transcript of a telephone statement from the claimant dated April 23, 2021, a copy of the transcripts of the examination under oath of the claimant's son taken October 29, 2021, a copy of the transcripts of the examination under oath of the claimant taken October 29, 2021 and a further transcript of a supplementary examination under oath of the claimant's son taken May 30, 2022.

ISSUES

The Arbitration Agreement submitted by the parties identifies the following issues for my determination:

1. Which insurer is required to pay statutory accident benefits to the claimant?; and

2. If it is determined that Chubb is required to pay the benefits, what is the reimbursement amount owing from Chubb to Co-operators?

Only the first issue was argued before me. That issue can be narrowed down to the following:

> "Was the claimant principally dependent for financial support or care on his son on October 14, 2020?"

AWARD/DECISION

The claimant was principally dependent for financial support or care on his son on October 14, 2020 and accordingly Co-operators is the priority insurer for the payment of statutory accident benefits with respect to the accident of October 14, 2020 to the claimant.

FACTS

There was no agreed statement of facts but generally the facts were not in dispute. What was in dispute is what legal conclusion one would draw from those facts in terms of the dependency issue.

I summarize below the key facts and evidence that I have reviewed and relied on in order to reach

my decision.

The claimant was born on January 16, 1951 and was 69 on the date of loss.

On the date of the accident, the claimant was in Canada, having arrived on August 6, 2020. He was here on a tourist visa which was valid for a period of six months at a time, and could be renewed from time to time.

The claimant had a son and daughter in Canada. He was staying with his son: Co-operators' insured.

When not in Canada, the claimant lived in India. He was retired and sometime before the accident had sold his business.

The evidence suggests that he had a house in India. He had received some money with respect to the selling of his business and lived off that income.

He did have a bank account in India and there was money in that account, although there was no evidence as to how much money.

The claimant's wife had died sometime before the motor vehicle accident. However, she had a pension estimated at $500 to $550 CAD per month. The claimant received that pension but it went into his Indian bank account. With respect to the bank account, the evidence of both the claimant and his son was that while there was money in the account, he was unable to access that account from Canada. Arrangements had not been made to allow e-transfers or other remote access to that account.

The claimant had been to Canada before on a similar visitor's visa. The evidence suggests that his first visa had been obtained on May 29, 2017 and that he came to Canada for roughly two months that year (July 18, 2017 to September 4, 2017). Visa documents were produced in the course of the hearing but it is unclear when he actually returned to India.

The documents do support that he came to Canada again on July 31, 2019. He was involved in a fall while in Canada on December 14, 2019 and he attended the office of Dr. Malhotra who was described as his family doctor. The claimant remained in Canada until March 20, 2020 when he returned to India.

His next visit to Canada was the one relevant to this priority dispute, coming in on August 6, 2020.

According to the evidence, when the claimant applied for his visitor's visa he had to provide Immigration, Refugee, and Citizenship Canada with evidence that he could support himself in Canada or had someone to support him. According to his son, he provided a written statement confirming that he would provide financial support and cover any expenses while his father was in Canada.

Both the claimant and his son gave evidence that the claimant was told not to bring any money to Canada when he came in August of 2020 as his son would take care of him.

His son describes it as follows (answer question 29 of his examination under oath):

> "I am going to look after him whatever the expenses come to, right and whether he's, like, any daily food, lunch, medication, whatever it is. The daily expenses on me, I'm bearing it, and that's I believe it's my culture and it's my responsibility to care for him. So no question on that and I don't go deep into his finances."

The evidence is also consistent between the claimant and his son that while the claimant was in Canada starting in August of 2020 up until the time of the accident, that he made no financial contribution to his son's household. His son was married with two young children. The claimant paid no rent, did not contribute in any way to any expenses, did not pay for any food and even any incidental purchases such as new clothes were covered by his son.

There is inconsistent evidence to some extent with respect to when the claimant was going to return to India. On some occasions, they both suggest that the claimant would be returning to India at the six-month mark. On other occasions, it is suggested that they would seek an extension of his stay for a further six months. It must be remembered that at the time of the accident in October 2020 there was a dire situation in India with respect to COVID and while Ontario had its own problems, both the claimant and his son felt it was safer to be in Canada during the pandemic as opposed to returning to India. In his oral telephone statement to the insurance company, the claimant said he was going to be returning to India in six months. However, in his EUO he stated that he had no plan to return to India as he was here to take care of his granddaughter and grandson. He also noted there was no one back home to take care of him. The claimant stated (question 8):

> "No one is there back home, so I am here to live with them. No one is there to take care of me."

There was little information about the claimant's pre-accident medical condition. There was a note from the family doctor's records of December 14, 2019 that indicated that the claimant had fallen at home and had felt lightheaded. He fell to the floor from a standing position and hit his head. He was in a confused state for a short period of time and did have one episode of vomiting. It was thought perhaps something to do with his blood pressure.

There was also a note from October 1, 2020 that he had gone into the same doctor complaining of lower back pain for about two or three weeks. It was a flare-up of back pain after strenuous activity.

A post-accident medical report completed by an occupational therapist (Ms. Jain, June 24, 2021) in terms of past medical history indicated that the claimant was in good health. He was not taking

any medication for health problems. He actively socialized with friends. He would travel independently using a bicycle to go shopping, visit his group of senior friends or go to the temple. He was independent with all his personal care tasks. He contributed to housekeeping and caregiving tasks in his son's home.

Both the claimant and his son acknowledged that prior to the accident of October 14, 2020 the claimant helped in the house with some housekeeping and looking after the children. There was also no doubt that the claimant was not paid for those services. At the time of the accident, the children were approximately 2 years and 6 months old.

Finally, it is to be noted that after this accident occurred, the claimant did not return to India and remains in Canada living with his son who continues to cover all his expenses.

CO-OPERATORS SUBMISSIONS

In their submissions, Co-operators appears to acknowledge that because the claimant was here in Canada without any money, living with his son and being totally supported by his son, that on those facts alone he would be considered principally dependent for financial support. However, Co-operators submits that one must look at the "big picture". The claimant was only dependent on his son in Canada because he chose to be. His son had told him not to bring any money. Co-operators states:

> "Borders do not redefine self-sufficiency."

There is also no dispute, submits Co-operators, that when the claimant is in India there is no support provided by his son whatsoever and he is clearly not principally dependent for financial support on his son while living in India. He is completely independent in his own home, he has his own bank account and access to funds both from his wife's pension and from monies he received from the sale of his business.

Co-operators submits that the fact that the claimant chose to visit Ontario without any money and stay with his son does not make him a dependant under the Statutory Accident Benefits Schedule while he is in Ontario. Co-operators submits that his brief visit to Ontario for the two months prior to the accident is not an accurate representation of his financial status/or needs at the time of the accident.

Co-operators submits that in order to fully appreciate the claimant's financial status at the time of the accident, one must look at least 6 to 12 months before the accident. That time of course includes the time when the claimant was living independently in his home in India.

Further, Co-operators aubmits that following the decision in *Federation Insurance v. Liberty Mutual* (Samis May 7, 1999), affirmed *Liberty Mutual v. Federation Insurance* (Ontario Divisional Court, September 15, 1999) and [2000] O. J. No. 1234 (Court of Appeal), one must distinguish between benefits received and needs. In applying that to this case, the son was not funding the

client's needs because he needed financial support; he was always doing so because he felt culturally responsible to pay for his father's needs. Further, if his father had chosen to bring money with him to Canada, he would not have had any "need" for his son's financial support. He voluntarily chose not to bring money and that cannot result in a finding of dependency.

Co-operators also submits that the claimant was clearly going to go back to India but for the motor vehicle accident.

Finally, Co-operators argues that it makes no sense that on one side of a border you are dependent but you step across to the other side of the border and you become independent. Whatever side of the border you are on, if you have the means to support yourself but for some reason voluntarily choose not to do so, then you cannot be considered principally dependent for financial support on someone else.

CHUBB'S SUBMISSIONS

On the issue of care, it is Chubb's position that the evidence supports that the father was principally dependent for care on his son at the time of the accident. Chubb submits that care is not a defined term in the Statutory Accident Benefits Schedule and a determination of care under the SABS is more qualitative in nature and should not take into consideration financial issues. These factors, Chubb submits, include physical assistance, social and emotional support, companionship and a sense of security that somebody is close by in the event help is needed (see decision of Arbitrator Novick in *Echelon v. State Farm Mutual*, July 13, 2011).

Chubb acknowledges that the claimant did not rely on his son for physical support but submits that there was considerable social and emotional support, companionship, and that sense of security that someone was close by in the event help is needed, and that is sufficient to establish dependency for care. To that end, Chubb relies on the evidence that both the claimant and his son acknowledge that he came to Canada because he had no one to care for him in India. By way of objective medical evidence they rely on the slip and fall that the father had in 2019 and the need to see the family doctor. Chubb also relies on the Superior Court decision in *Wawanesa Mutual Insurance Company v. Lloyds London Insurance Company*, 2004 CanLII 22694 (ONSC). This case, Chubb submits, supports the need to look at qualitative factors that do not only include physical care.

With respect to financial dependency, it is Chubb's position that while in Canada the claimant was completely dependent upon his son for financial support. He had no money of his own. He had no bank account. He made no contribution to the family expenses. All his needs were paid for by the son. There is no question that while in Canada the claimant was principally dependent for financial support on his son. This is also supported by the fact that the son acknowledged that he provided Immigration Canada with confirmation that he would cover his father's expenses and be responsible for him while staying in Canada.

Chubb also argues that it does not matter that this situation was short lived or not intended to

be permanent. In the Court of Appeal's decision in *State Farm Mutual Insurance Company v. Her Majesty the Queen*, 218 ONSC 4258 CanLII, the Court of Appeal confirmed that there is no need for any element of permanency when selecting the timeframe that is appropriate for the analysis of financial dependency. The court held there should not be any speculation with respect to the future of the relationship. What is to be looked at is what time period fairly reflects the status of the parties' relationship at the time of the accident with no consideration as to whether that would or would not be a permanent relationship.

Chubb therefore submits that the proper time frame for determining dependency in this case is from August 6, 2020 to the date of the accident. Chubb submits it is not relevant as to whether or not the claimant intended to go back to India in February of 2021 or extend his visa or to remain in Canada until the COVID pandemic resolved. Chubb points out that Co-operators in its own submission admitted that the claimant was "voluntarily dependent" on his son while he was in Canada.

Chubb also submits that even if the one year time period is selected as proposed by Co-operators, that from October 14, 2019 to March 12, 2020, a period of five months, that the claimant was in Canada at that time and would have been dependent on his son. He was then dependent for another two months (August to October of 2020), making a total of 7 out of 12 months when he was principally dependent on his son for financial support.

Last, and perhaps most importantly, Chubb relies heavily on the decision of the Court of Appeal in *Security National Insurance Company v. The Wawanesa Mutual Insurance Company*, 2014 ONCA 850. In that case, the Court of Appeal ultimately upheld the decision of Arbitrator Bruce Robinson from April 12, 2012 in which he concluded that an individual who was independent while living in Bangladesh was dependent while he was in Canada. The gentleman in that case was 81 years of age and came to Canada and was living with his son and daughter-in-law on a temporary visitor's permit. As in this case, the son provided for all his father's needs. Arbitrator Robinson found that as the claimant had no source of income in Canada, that while here he was principally dependent upon his son. This was overturned on appeal before Justice Morgan but the Court of Appeal restored the arbitrator's order and concluded that when an insured person who was visiting Ontario and was voluntarily dependent while with his family during the stay, was dependent on that family for the purposes of priority. Chubb submits that I am bound by that decision.

Finally, Chubb submitted that in response to the submissions of Co-operators with respect to "need", that the minute the claimant arrived in Canada that he **needs to be supported by his son irrespective of any cultural factors. There is no evidence that if the claimant left his son's home that he would be able to support himself. There is no evidence he had the ability to be self-sufficient. He was nearly 70, retired and there was no evidence that he had an ability to earn income here in Canada.** Chubb submits that borders do matter and do change status and situations and that position is clear from the Court of Appeal's decision in *Security v. Wawanesa* (*supra*).

CO-OPERATORS' REPLY

Co-operators' reply focused to a large extent on distinguishing the facts in the Court of Appeal decision in *Security v. Wawanesa* (*supra*). Co-operators pointed out that in that case the claimant had been in Canada for nearly two years, having come to Canada in 2006 and the accident occurring in March 29, 2008. There was also no evidence in that case that the claimant intended to go back to Bangladesh. By way of contrast in this case, the claimant had only been in Canada for two months and the evidence supported that he was going to go back to India at some point. Co-operators points to the fact that the Superior Court judge in that case found the arbitrator had made an error of law by failing to consider the voluntary nature of the claimant's dependency on his Ontario family. While that conclusion was overturned by the Court of Appeal, Co-operators submits that that still does not preclude me from considering the claimant's voluntary nature of dependency when assessing the dependency in this case. Co-operators submits that the Court of Appeal only disagreed with the appeal judge's finding that the arbitrator made an error of law by not considering the voluntary nature of the claimant's dependency but that does not mean that I cannot consider it and reach my own conclusions. Co-operators submits that the Court of Appeal decision does not necessarily conclude that if someone's dependency as a visitor is voluntary, that that cannot constitute principal financial dependency in terms of a priority dispute. Co-operators also submits that one of the reasons the Court of Appeal overturned the Superior Court decision was because the wrong standard of review was applied.

Lastly in reply, Co-operators submits that if I were to find that the claimant was dependent on his son in these circumstances, that it would unnecessarily broaden the coverage for the benefits that are payable when an individual is a dependant. Co-operators suggests that it would make little sense that the claimant in this case would qualify for a death benefit if he were in Canada when his son died but would not qualify for the death benefit if he were in India when his son died. Co-operators submits that it does not make any sense to trigger a visitor's entitlement to a death benefit just because they fortuitously happened to be in Ontario when the named insured died and this is therefore not consistent with statutory interpretation.

DECISION AND ANALYSIS

The relevant provision in the legislation is found in the definition of an insured person under the Statutory Accident Benefit Schedule under s. 3. A dependant is defined as someone who is "principally dependent for financial support or care" on another individual.

I will deal with the question of financial dependency first.

This is not a case where one can look at income versus expenses, apply the 51% rule or look at statistics. There is no doubt that while in Canada the claimant was principally financially dependent on his son. The only question is whether the fact that while he was in India that he was not principally dependent for financial support should be taken into consideration in determining this priority dispute. Part and parcel of that determination to some extent is the appropriate time period to make the dependency determination. I agree with Co-operators'

submissions that this is a case where one must look at the "big picture". The Court of Appeal in the decision *Oxford Mutual Insurance Company v. Co-operators General Insurance Company*, 2006 CanLII 37956 Ontario Court of Appeal (a case I am intimately familiar with) set out in some detail how to approach a determination of a care relationship in the context of a priority dispute. This court's direction has been applied equally to a determination of financial dependency. The court stated (at paragraph 26 of the SABS):

The court stated at paragraph 26:

> "The timeframe chosen will also be influenced by the nature of the relationship between the person providing the care and the person receiving the care. … Relationships change from time to time, perhaps suddenly. Transient changes may alter matters for a short time period, but not change the general nature of the relationship. A momentary snapshot would not yield any useful information about these time dependent relationships. The evaluation should be made by examining a period of time which fairly reflects the status of the parties at the time of the accident."

In this case, I find that the reasonable time period to determine the financial dependency and care relationship between the claimant and his son is the two month period prior to the accident. During that time period, the claimant had no independent means to support himself. He had no money in Canada. He could not access a bank account. He could not go and get a job and become employed. He was fully dependent for all his needs on his son. It is irrelevant, in my view, that the nature of that dependency was voluntary. I agree with Arbitrator Robinson's approach in the *Security v. Wawanesa* case as upheld by the Ontario Court of Appeal.

In that case, Mr. Kibria was involved in an accident on March 29, 2008. He had come to Canada on a temporary visitor's visa in 2006 after which he resided with his son and daughter-in-law. His son and daughter-in-law were the named insured under a policy with Security.

Mr. Kibria had resided in Bangladesh for most of his life. He owned a home. He retired some 8 to 10 years prior to the motor vehicle accident. He received a government pension which was valued at about $150 a month in Canadian funds. However, when he came to Canada that pension ceased.

Mr. Kibria had no source of income in Canada. He made no contribution to the room and board while staying with his son and daughter-in-law.

He had a plot of land in Bangladesh which was owned by his family and it was leased to tenant farmers. When Mr. Kibria came to Canada, he locked up the house and gave the keys to his brother and allowed his brother to collect the income from the farmers. His brother did not send any money to Mr. Kibria while in Canada.

As in this case, when Mr. Kibria came to Canada when he filed his temporary visitor's visa his son had to confirm that they would be "able to support our father in all respects during his stay in Canada." When Mr. Kibria came to Canada he had a return ticket but he allowed that portion of the ticket to expire and he subsequently applied for two renewals of his visitor's visa. The visitor's visa did not permit Mr. Kibria to work when in Canada. The evidence does suggest in that case that Mr. Kibria in fact did not have any intention of going back to Bangladesh. There was also evidence of a number of unsuccessful applications for a visitor's visa before he ultimately came to Canada.

On the issue of dependency, Arbitrator Robinson concluded that from a practical and realistic point of view that Mr. Kibria received all the necessities of life from his son and daughter-in-law and he had no independent means to be self-sufficient or to care for himself or provide himself with the normal necessities of life. The duration of dependency chosen for this analysis was October 2006 to the date of the accident in 2008.

The appeal was heard by Justice Morgan. It was argued before Justice Morgan that it was Mr. Kibria's personal choice to stay in Canada and to become voluntarily dependent on his son and daughter-in-law for financial support. It was argued that Arbitrator Robinson was wrong in failing to address or account for the voluntary nature of Mr. Kibria's dependency and that amounted to an error of law.

Justice Morgan concluded that Mr. Kibria had the resources to be entirely self-supportive when he lived in Bangladesh. He was voluntarily coming to Canada and choosing to be dependent on his son and that should have been taken into consideration. It was a matter of personal choice. Justice Morgan stated (paragraph 71):

> "The failure to account for the voluntary nature of Mr. Kibria's dependency on his son and daughter-in-law amounts to an error of law. The accident victim's visa status in Canada is not a new and definitive criteria to be added to the *Miller v. Safeco* list and to treat it that way was a legal error. However, even if it is seen as an error in the application rather than the formulation of the *Liberty Mutua*l and *Miller v. Safeco* test, and thus one of mixed fact and law, it is an unreasonable interpretation and application of the *Insurance Act* and SABS that is reversible on appeal."

The Court of Appeal's decision was heard and released on November 20, 2014 and overturned the decision of Justice Morgan.

The Court of Appeal held that the issue of principal financial dependency is a question of fact and absent palpable and overriding error, the finding is entitled to deference on appeal. The court states:

> "It is clear from paragraph 10 of his Reasons that Arbitrator Robinson applied the *Safeco* test. First he considered the duration and amount of dependency and he

> found that that was from the time Mr. Kibria came to Canada in October of 2006 to the date of the motor vehicle accident. He then turned to Mr. Kibria's needs and found that Mr. Kibria relied on his son and daughter-in-law for his personal needs and financial needs. He considered Mr. Kibria's ability to earn income, the fact he was 81 years of age and the fact that he looked after his grandchildren. He knew and was aware of the fact that Mr. Kibria had lived in Bangladesh and he had property there."

The court went on to say at paragraph 8:

> "In our view, the Arbitrator made a factual determination of principal financial dependency premised on the unique circumstances of this case. In our view, it was open to him to do so and his finding was a reasonable one. We do not agree that the Arbitrator considered the VISA status in Canada as a new criteria to be added to the *Safeco* test."

While I agree with Co-operators that there are some distinguishing facts between the *Security v. Wawanesa* case and the case before me, I do not find that those facts result in my disagreeing with the approach taken by Arbitrator Robinson and supported by the Court of Appeal. In Arbitrator Robinson's case, the claimant had been in Canada for 18 months before the accident. In the case before me, the claimant, while only in Canada for two months just prior to the accident had been in Canada for five months within the same year and for another period of time the year prior to that. I agree with Chubb that it is not relevant whether the claimant in this case was or was not going to return to India in the next six months or whether he would renew his visa. I find that Chubb is correct that the Court of Appeal in *Intact v. Allstate* (*supra*) clearly directed arbitrators with dependency priority disputes not to apply a permanence test. As the court points out, determination of dependency is never a one size fits all approach and a careful analysis of each case and its relevant facts is required. However, that does not include applying a permanency requirement in order to find dependency.

Also relevant is the decision of Justice Faieta in *Allstate Insurance Company of Canada v. Intact Insurance Company*, 2016 ONSC 5443. This was an appeal from a decision of Arbitrator Shari Novick. A 76-year-old widow lived with her daughter, son-in-law and two children. She was hit as a pedestrian. She did not pay any expenses to her daughter. Her daughter covered everything for her although the claimant in that case did help look after the children.

The claimant received a pension from China which was deposited into a bank account in China. As in this case, that claimant was not able to access the money but she did report the income on her Canadian tax returns. The claimant would go back to China every other year for a few months and use the money that had collected in her bank account to cover her living expenses. One of the issues to be determined was whether the claimant's pension from China that she could not access in Canada could be included in the determining principal financial dependency. Arbitrator Novick felt that she was bound by the decision of the Court of Appeal in *Security v. Wawanesa*. She stated at paragraph 69;

> "I am bound by the ruling of the Court of Appeal on this point. In any event, I agree that assets that are not available to a person while living in Canada should not affect the outcome of a dependency analysis undertaken to consider whether they are principally dependent for financial support upon another person for the purpose of determining priority among insurers in Ontario."

Justice Faieta found that Arbitrator Novick was correct and concluded at paragraph 25:

> "There was no evidence that the pension income in question was available to Yan in Canada. In assessing financial dependency, it is my view that foreign income that is unavailable to that person should not be included. Accordingly, I find that the arbitrator's decision to exclude Yan's pension income from the dependency analysis was not only reasonable but also correct."

Following the direction of the Court of Appeal in *Security v. Wawanesa* and Justice Faieta in *Allstate v. Intact* I conclude that the claimant in this case was principally dependent for financial support on his son at the time of the accident. He could not access any income that he may have in India. The fact that he voluntarily chose to come to Canada and be dependent on his son is irrelevant in determining dependency. His son committed to Immigration Canada that he would provide for his father. His father had no independent means in Canada. The test of dependency is met.

I now turn briefly to the issue of care. I have concluded that the claimant was not principally dependent for care on his son at the time of the accident. I have looked at the same time period: the two month period prior to the accident for that determination. I have carefully reviewed the cases that were submitted by Chubb and none of those cases included an individual who was physically fit and capable of looking after himself. In all those cases, while qualitative factors were looked at, each individual had some level of physical disability that was being addressed through the care as well as some social and emotional support.

I particularly reviewed the case of *The Wawanesa Mutual Insurance Company v. Lloyds London Insurance Company*, 2004 CanLII 22694. This was an appeal from a decision of Arbitrator Jones. The claimant in that case had Parkinson's. He received care on a daily basis from an individual: Mr. Hales. Mr. Hales looked after him somewhere between 14 to 28 hours per week. It was therefore alleged that Mr. Cooper was principally dependent for care on Mr. Hales. There were however other people providing assistance, CCAC, a massage therapist and a nurse. In addition, the care would vary depending upon the waxing and waning of the Parkinson's symptoms.

Arbitrator Jones concluded that Mr. Cooper could not have lived on his own without significant support. Mr. Hales provided significant physical support such as meal preparation, dressing, housekeeping and running personal errands. In addition, he provided social emotional support and some companionship. It was agreed that the cumulative effect of both those quantitative and qualitative factors justified a conclusion of dependency for care.

Similarly, in the decision of Arbitrator Novick in July of 2011 in *Echelon General v. State Farm Mutual*, the claimant in that case suffered from schizophrenia and was developmentally delayed. He was 32 years old at the time of the accident and lived with his mother and brother. The arbitrator focused on the physical, emotional and social needs and to the extent that the individual in question provided for those needs. While the claimant could dress and bathe himself, his mother provided meals, did laundry, housekeeping, purchased medication, drove him places, attended medical appointments, made decisions and had control over his finances. It was held that she provided supervision on a level of oversight that was critical as the claimant had poor judgment due to his illness and developmental deficits. There were references in the records to him previously abusing alcohol or drugs and being exploited by others. He was participating in a supported employment program and he could go out on some days on his own while his mother was at work. However, overall the arbitrator found that he was principally dependent for care on his mother as she provided him with security and a supervisory oversight.

I find that in the case before me the claimant's son provided no care whatsoever in the manner outlined by Arbitrator Novick and Arbitrator Jones. It was simply the love and support of a son to father. There was no evidence that the claimant needed supervisory care, a level of unusual emotional support and certainly there is no evidence that he needed physical care.

I therefore conclude that the claimant was not principally dependent for care on his son at the time of the accident of October 14, 2020.

AWARD

Co-operators is the priority insurer to provide statutory accidents to the claimant as a result of the accident of October 14, 2020 as the claimant was principally dependent for financial support on Co-operators' insured on the date of loss.

COSTS

The Arbitration Agreement provides that the expenses of the arbitration and arbitrator as well as the legal costs are to be determined by the arbitrator taking into account the success of the case, any offers to settle and the conduct of the proceedings as well as any other principles generally applied in litigation before the courts in Ontario.

As Chubb was successful in this arbitration, I conclude that the arbitrator's expenses and costs are payable by Co-operators. Similarly, I conclude that Co-operators is responsible for the legal costs of Chubb. I will give the parties 30 days to reach an agreement on costs and if they cannot do so, I ask them to contact me and we will move forward with scheduling a costs hearing.

DATED THIS 8th day of April, 2024 at Toronto.

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