

**IN THE MATTER OF INSURANCE ACT
R.S.O. 1990, C. I.18, AS AMENDED, SECTION 268 AND
ONTARIO REGULATION 283/95 AND 34/10;**

AND IN THE MATTER OF THE ARBITRATION ACT S.O. 1991, C.17, AS AMENDED;

AND IN THE MATTER OF AN ARBITRATION

BETWEEN:

PEEL MUTUAL INSURANCE COMPANY

Applicant

- and -

NORTHBRIDGE FINANCIAL CORPORATION

Respondent

AWARD

COUNSEL

Sonya Katrycz, counsel for the Applicant, Peel Mutual Insurance Company (hereinafter referred to as "Peel").

Dilenti Warakaulle, counsel for the Respondent, Northbridge Financial Corporation (hereinafter referred to as "Northbridge").

BACKGROUND

This matter comes before me pursuant to s. 268 of the *Insurance Act*, Ontario Regulation 283/95 as amended, and the *Arbitration Act, 1991*.

The parties have chosen me on consent as their arbitrator to determine a priority dispute between two insurers as to which of those insurers is liable to pay statutory accident benefits to the claimant arising out of an accident that occurred on April 28, 2024.

On April 28, 2024 the claimant was a passenger in a bus that was insured by Northbridge. Peel insures the claimant's mother.

The claimant sustained various injuries in this accident and submitted an OCF-1 to Peel. Peel takes the position that the claimant was not principally dependent for financial support or care on his mother. The claimant was otherwise not a named insured or listed driver under the Peel policy. The claimant does not have any access to automobile insurance through other policies

such as with a spouse. Peel therefore takes the position that Northbridge, as the insurer of the vehicle that the claimant was an occupant of when the accident occurred, is the priority insurer pursuant to s. 268 of the *Insurance Act*.

PROCEEDINGS

This was a written hearing. The parties submitted detailed Submissions and Books of Authority. Various books of documents were also submitted which included the following:

1. Application for Accident Benefits dated May 8, 2024;
2. A copy of the claimant's accident benefit file which included various correspondence as well as some clinical notes and records;
3. A copy of the claimant's ODSP statements from January 31, 2024 to May 20, 2025;
4. A Priority Determination Dependency Questionnaire dated June 10, 2024;
5. Transcripts of the EUO of the claimant's mother dated August 18, 2025;
6. Letter from Peel to the insureds enclosing a Notice of Dispute dated June 11, 2024;
7. Response from Northbridge dated June 11, 2024;
8. A copy of the Notice of Commencement for Arbitration June 9, 2025;
9. The TD Bank statements of the claimant's mother and claimant 2021 to 2025; and
10. The parties also submitted a signed Arbitration Agreement.

ISSUE

The Arbitration Agreement broadly states the issue as: Which party is required to pay the claimant's accident benefit?

Based on the submissions, this can be narrowed down to the following question: Was the claimant principally dependent for financial support or care on his mother on the date of loss of April 28, 2024?

DECISION

I conclude, for the reasons outlined below, that the claimant was not principally dependent for financial support on his mother on the date of loss, nor was he principally dependent for care on his mother on the date of loss. Accordingly, Northbridge Financial Corporation is the priority

insurer pursuant to s. 268 of the *Insurance Act*.

FACTS

The claimant was born on January 19, 1984 making him 40 on the date of loss. He is not married. He does not have any children. The claimant has autism spectrum disorder and since the age of 18 has been living in various group homes. He last lived with his mother when he was 18 years of age.

For the past 13 years he has resided in a group home at 63 Alder Street in Orangeville operated by a group called Community Living Dufferin.

The claimant's mother is married (not to the claimant's father). Over the past 13 years, while the claimant lived in the group home, his mother has lived at three different addresses with her husband.

The claimant's mother works full-time as a fleet administrator for a waste management company.

It is agreed that the claimant has no history of employment. Since he turned 18 he has been receiving monthly financial support from the Ontario Disability Support Program (ODSP). In the year prior to the accident his monthly amount from ODSP was \$1,292.

The claimant shared a bank account with his mother. The ODSP was deposited directly into that bank account. A review of the bank accounts confirmed that there were no other deposits made into that account in the year prior to the accident.

Community Living Dufferin charged the claimant \$1,167 per month which covered personal care, room, board and clothing. This was deducted directly from the bank account shared by the claimant and his mother. This left a surplus in the bank account of \$125 a month which went to the claimant. He used this to pay his share of Disney Plus and a Netflix subscription, the cost of which he shared with his five roommates in the group home.

The claimant did have a cell phone. The monthly bill was approximately \$75 and this was paid for by his mother.

The claimant did not have a credit card. He did not have any other bank accounts other than the one he shared with his mother. According to his mother's EUO, she kept an eye on the joint account so she could see what money went in and out. If there was anything the claimant needed over and above the payment of the cell phone bill and the \$125 he received per month, his mother would provide it. She might pay for a movie. She would pay for her son's involvement with a hockey team called the Wolves. For example, she paid \$400 for a registration fee to play in the Wolves hockey tournament. However, a company called Passports also provided funding for sporting activities, memberships or programs that the claimant might be involved in. This was paid through the Ontario government. When monies were not available through the Ontario

government, the claimant's surplus of ODSP had run out and it was not covered by the Dufferin monthly fee, then his mother would cover it.

When asked on the EUO to give an estimate as to what extra she may pay for she stated, "I wouldn't say any more than \$100 a month, but it's not every month, right?" She was then asked whether on average it would never be more than \$200 a month. Her response was:

"No. I wouldn't say never, but you know it just - it depends on what his needs are and what's going on, right? Like it's - it's you know, it's, I'm not sure if you have children or not, but it's - their needs vary. And yes, he is a 40-year-old man, but he also functions at an 8 or 9 year level right? So, it depends on what's going on and what we're doing and what his needs are so."

With respect to the claimant's ability to do his personal care his mother advised on her EUO that he was able to do his own dressing, bathing, feeding and cleaning. She described him as self-dependent. However, he could not cook his own meals. He could not manage his own money. However, he could clean, brush his teeth and bathe himself.

With respect to money, his mother oversaw his bank account and describes both herself and the group home as overseeing his money.

She also described providing transportation to her son and taking him out for various activities. This included going to dances, being involved in the Orangeville Wolves hockey team, bowling in Brampton on Monday nights, bocce ball in the winter, year-end banquets for some of the sport teams he plays with, and she would also take him to the chiropractor as they were both using the same chiropractor. However, in the year prior to the accident he had not been attending any chiropractic appointments.

An example of the mother's involvement is in fact the date of the accident. In her EUO she reported that she managed the Orangeville Wolves team and they had, prior to the accident, travelled on a bus to Boston where they had played. They had gone down to Boston on the Wednesday and they were returning from Boston on the Sunday and were on the QEW when the accident occurred. His mother was on the bus and her son was about four seats behind her. While her son sustained injuries, the mother did not.

In terms of the emotional relationship between the mother and son, the evidence suggests some emotional dependence on his mother. She described him as having a hard time articulating what he wants or needs and a hard time asking for it. Even she sometimes has a hard time knowing what he is asking for so sometimes he calls her to get help to explain what it is that he needs. His mother had his power of attorney. She was also his emergency contact. If he had a problem to solve he would also call her and talk about problem-solving. Her evidence on how often her son would approach her to assist with problem-solving is set out below:

"Oh, it could be up to, well, four times a day, seven days a week, or it could be zero

times a week. It depends on where he's at, and what, like, we're having some real issues as we speak right now, and so there is a lot of communication back and forth between him and the house staff and myself. So ... but I could go a whole week and not hear from him. So, it depends on what's going on in his world and what he perceives to be an issue. And ... and it, like it's ... it varies, right?"

With respect to personal contact beside telephone, the mother's evidence was that she would visit him at minimum twice a week. Her evidence was it would depend on what is going on in his world and what extracurricular activities she may take him to.

She was also asked about how well he interacts with others. His mother stated:

"He communicates fairly well, but he does not communicate ... like he is very much lacking in social skills. So, sometimes he needs ... well, sometimes, a lot of the time he needs to be redirected or reminded of, you know, personal space or appropriate interaction, or just reminders."

She described herself as the main support for him in that aspect.

With respect to his ability to go outside of the home independently, his mother's evidence is that he would not go anywhere without the staff from Dufferin or without her.

Generally, if it's extracurricular activities that are in the evenings or for which the home cannot provide staff to support it, then that's when his mother would step in. She states, "You know - it's - staffing is hard, and if they're down a staff, then they don't have the support for all of them, right? So it's - it's I I - what's the word I help out when I need to and to help support him. He is my kid - right?"

With respect to medical appointments, the mother's evidence is the staff would take him for that and they also manage his medication. Unless there was some serious illness, the doctor would also deal directly with the staff at the home.

The claimant's clinical notes and records from North Dufferin Wellness Centre (his family doctor) were part of the accident benefit file that was produced. It revealed the following relevant facts/entries:

- August 30, 2022: "Here for annual visit - here w/Alison today (caseworker)."
- July 27, 2023: The notes indicate the doctor's office called the home and spoke to the patient's worker, Jen, to discuss a prescription request for Tylenol. Ultimately, they spoke to Nicole at Community Living Dufferin who advised the patient was using this for pain when needed.
- September 11, 2023: "Coaching the Wolves now, enjoying this."

"Working at Alder on weekends - doing gates."

"Eating well."

"No current relationships."

"Here w/worker - Jenn Watson."

The family doctor's records cover the time period of August 30, 2022 to July 15, 2024 with no indication in these records of his mother coming in with him to the doctor or being called or calling to the doctor.

The claimant's mother completed a dependency questionnaire. When asked whether Jason was financially independent, her response was, "No. Jason has autism and lives in a group home."

When asked the name of the person who provides some financial support to Jason, the claimant's mother identified, "Community Living Dufferin" (group home).

When asked whether he was independent in his daily tasks, her answer was, "No. Jason has autism."

Finally, she was asked to provide the name of his primary caregiver and the nature of the relationship. The mom responded, "Jason lives in a group home with many support staff. Jennifer Watson is the main support staff."

A review of the mother and son's bank records confirms that the only monies going into the account were ODSP. The only monies coming out of the account went to Community Living and then the \$125 for the claimant.

RELEVANT STATUTORY PROVISIONS

Section 268 of the *Insurance Act* is the key provision dealing with priority. It sets out a hierarchy relating to priority as between insurers to determine which policy is to respond to an individual who applies for statutory accident benefits arising out of a motor vehicle accident.

There is no dispute between the parties with respect to the applicability of s. 268 of the *Insurance Act* here. In the event that the claimant is not principally dependent for financial support or care on his mother then all parties agree that Northbridge is the priority insurer as the claimant was an occupant of the bus when the accident occurred and there are no other policies he can access.

The second key statutory provision with respect to this priority dispute is s. 3(7)(b) of the Statutory Accident Benefits Schedule which provides a definition of "dependency". That section is set out below:

"A person is a dependent of an individual if the person is principally dependent for

financial support or care on the individual or the individual's spouse."

In this case we are dealing with both financial support and care.

POSITION OF THE PARTIES

SUBMISSIONS OF PEEL

Peel's position is that the claimant is neither principally dependent for financial support nor principally dependent for care on his mother.

(A) Financial Support

Peel starts by submitting that the four criteria set out by the Court of Appeal in *Miller v. Safeco Insurance Company of America*, 1985 CanLII 2022 should be the starting point to analyze financial dependency. The four criteria are:

1. Amount of dependency
2. Duration of dependency
3. Other needs of the alleged dependent
4. The ability of the alleged dependent to be self-supporting.

Peel submits that it is not necessary to look at all four of the *Miller* criteria on an equal basis but an arbitrator should focus on the criteria that is of particular relevance to set of the facts before them.

Peel set out the various ways of calculating financial dependency that have been developed over the years by various arbitrators. In addition to the criteria for *Miller v. Safeco*, this includes the mathematical model, the statistical approach: LICO (low income cut-off) and MBM (market basket measure) and finally the big picture. Peel's position is that it does not matter which of these various different methods of assessing dependency are chosen in this case, that the result is the same.

Peel submits that the claimant's financial circumstances have not changed in over 22 years. He lives in a group home. His only source of income is ODSP. He has not lived with his mother since he was 18.

The claimant pays Community Living Dufferin who provides him with housing, food, clothing and personal care.

His mother may pay for his cell phone (\$75/month), some movie tickets and there was evidence that at one point she paid for an iPad. These are merely expenses for incidentals and recreational activity and could in no way support a finding of principal financial dependency. Peel combined the claimant's monthly fee with Community Living Dufferin and the expenses paid for by his mother, which Peel assumed would be \$200, resulting in a total monthly expense of \$1,395 in

the year prior to the accident. Peel points out that the claimant's monthly income from ODSP of \$1,292 was sufficient to cover 92.6% of those expenses.

If one used the LICO model and assumed the low income cut-off for a single individual in Orangeville in 2023 was \$21,196 and the claimant's annual income from ODSP was \$15,504, then the claimant's available income exceeded 51% of the required threshold to establish financial independence.

Therefore, Peel submits that there is no evidence to support that the claimant was principally dependent for financial support on his mother. He was financially independent based on his monthly amount from ODSP, taking into consideration his limited expenses/needs.

(B) Care

Peel acknowledges that while the principles set out in *Miller v. Safeco* are still relevant in looking at dependency for care, one must acknowledge that the same sort of mathematical precision or analysis that one applies to financial dependency cannot be applied to care.

Peel makes reference to the decision of Arbitrator Densem in *Aviva Canada Inc. v. State Farm Mutual Insurance* (Densem, May 14, 2013). In that case, Arbitrator Densem suggested that care cannot be determined with the same mathematical precision as financial dependency. He stated,

"Both the quality as well as the quantity of care must be examined. One must determine the claimant's need for social, emotional and physical care, and decide whether the claimant is more dependent on another person for such care than on himself or herself based on all the circumstances of the case. It is not sufficient that care is provided because of love, affection or the existence of familial relationship alone."

Peel made reference to a number of cases where there were similar situations to the claimant in that they were living in an institutional setting such as a nursing home or group home and at the same time receive some care from a family outside of that setting.

Peel asserts in reviewing those cases that arbitrators have consistently held that claimants are not principally dependent on family members for personal care where they (1) reside separately from the family member in an institution, (2) the claimant is capable of some of his own personal care, and (3) where the institution provides personal care support for the claimant.

The cases that the appeal relies on are *Co-operators and Aviva Insurance Company* (Arbitrator Scott, March 27, 2024), *Dominion of Canada General Insurance Company v. MVACF* (Arbitrator Samis November 10, 1997), *Northbridge General Insurance Company v. RBC General Insurance Company* (Arbitrator Cooper, September 2016) and *Co-operators v. Aviva Insurance Company* (Arbitrator Scott, March 27, 2024).

Peel pointed out that Arbitrator Scott in his decision in *Co-operators v. Aviva* noted that where an individual is living in an assisted living situation one must consider not only the claimant's own ability to care for themselves and the care provided by the insured person to the claimant, but also the care provided by the assisted living facility.

In Arbitrator Samis's decision in *Dominion v. MVACF* Peel notes that in that case the claimant had been living in an assisted living component in an apartment building for over 20 years. His brother provided him some care including assistance with hygiene, laundry, emotional support, taking him to appointments and purchasing some clothes. Arbitrator Samis concluded that the claimant was able to perform many of these tasks independently and the assisted living residence staff would have helped him with other of the tasks. He concluded that where the claimant's brother was providing assistance out of love and familial obligation, that there was no dependency.

Arbitrator Cooper in *Northbridge v. RBC* concluded that where the claimant was elderly with dementia living in a residential home and her needs were chiefly met by the staff at the retirement home which provided constant care, that while her daughter's interactions were important including have a power of attorney, visiting and providing emotional support, this did not result in the claimant being principally dependent on her daughter.

In this case Peel submits that there is no doubt that the claimant's mother was loving, caring and provided emotional support to her son. She took him out for extracurricular activities. She helped him navigate difficult social situations. However, much of that was as a result of love and familial obligation. The claimant was otherwise able to handle his own self-care and where he was unable to, the staff at the home were responsible. They took him to his doctor. They took him out during the day. They monitored his needs during the day in the home. They worked together with his mother to sort out various issues. Peel submits that the sole task that the mother undertook for the claimant was to monitor his banking which was largely automated. Many of the other roles as noted above were shared with employees from the group home.

Taking into consideration the claimant's level of independence, the care provided by the home and the mother's duties and responsibilities as a mother, Peel submits that the relationship between her and her son and the degree of care she provided does not rise to the level of principal dependency for care.

Peel therefore asks that I find that Northbridge is the primary priority insurer with respect to the claimant's accident benefit claim.

SUBMISSIONS OF NORTHBRIDGE

Northbridge's position is that the claimant is principally dependent for financial support on the mother and is also principally dependent for care.

(A) Financial Support

Northbridge's primary position in this regard appears to be that the onus of proof is on Peel and that they have failed to meet their onus of proof. They note that her support to the claimant extends beyond monitoring his ODSP funds and that she regularly supplements his needs when ODSP falls short. They suggest that the mother's evidence suggested that there was no agreement that the cap on the money she provided to her son was \$200 a month. They point to her evidence where she stated when asked whether she would never pay more than \$200 a month, "No I wouldn't say never but you know - it just depended on what his needs are and what's going on right." Northbridge submits that I should review this in a holistic manner and evaluate their actual financial autonomy. Northbridge points to the following facts:

1. His mother oversees his finances.
2. The majority of his ODSP funds pay for his residence at Dufferin leaving minimal discretionary funds.
3. His mother plays a central role in facilitating his extracurricular and social activities.
4. She transports him to various activities and pays out-of-pocket expenses relating to that.
5. The precise quantum of these expenditures remain unclear but her evidence was that her contributions are not fixed or predictable.

Northbridge therefore submits that the Applicant has failed to establish that the claimant was financially independent prior to the accident.

(B) Dependency for Care

Northbridge submits that the following facts support a principal dependency for care:

1. The claimant's mother is listed as his emergency contact.
2. She is his first point of contact when he needs problem-solving or has difficulty articulating his needs.
3. He may contact her up to four times a week, seven days a week depending on his needs.
4. His mother is actively and consistently involved in his daily life including visits at minimum twice a week, involving him in various activities such as bocce ball, hockey and taking him to dances, banquets and bowling.
5. She assists with social cueing while taking him to these various activities so her role is not solely with respect to transportation.

In terms of the law, generally Northbridge does not disagree with principles of the law around dependency for care that were set out by Peel.

Northbridge agrees that one cannot use mathematical precision. It is a qualitative and quantitative assessment. The factors that must be considered include social support, emotional support, companionship, protection and various services. No one single factor is determinative and the weight assigned to each must be assessed in light of the unique facts of each case.

Northbridge references the decision in *Aviva Canada Inc. v. State Farm Mutual Automobile Insurance Company* (Arbitrator Densem, May 14, 2023). Northbridge submits that the central enquiry is whether the alleged caregiver provides meaningful companionship and a sense of security such that the claimant can reasonably rely on their ongoing availability for support when needed. Co-residence with the caregiver is not a prerequisite nor a sole determinative factor.

Northbridge referenced a number of cases which they submit supports their position that in issues of dependency for care that emotional care is an important component (*Economical Mutual Insurance Company v. York Fire & Casualty Insurance Company* (Arbitrator Samworth, January 2013), *Belair Insurance Company Inc. v. Aviva Insurance Company of Canada* (Arbitrator Bialkowski, May 4th, 2021)).

In the case of *Economical v. York Fire*, Northbridge points to the fact that I rejected the argument that a legal custodial relationship alone can establish dependency for care. In that case, while the claimant was physically separated from her parents while studying in Canada and living with custodial family, the evidence established that her parents remained actively engaged and provided emotional support, guidance and discipline. In that case it was concluded that the claimant continued to be principally dependent for financial support for care on her family in China despite the distance.

Northbridge also relies on that case to support their position that a custodian in those circumstances acted merely as an agent of the parents within a temporary arrangement and did not displace a substantive caregiving relationship.

In *Belair v. Aviva* Arbitrator Bialkowski found that a separation from the claimant's mother did not affect the care argument. Despite the fact that they were separated, the mother remained the primary care provider in the form of guidance and emotional support.

In this case Northbridge submits that the claimant functions at a level of an 8 or 9-year-old child and it is self-evident that he requires ongoing support, care and guidance from a parent which in this case is his mother.

Northbridge acknowledges that the client can perform some basic care tasks such as bathing, brushing his teeth and dressing, that does not diminish his dependency on his mother from an emotional and social aspect. This latter includes navigating social situations, assisting in

responding to social cues and handling calls when the claimant is in distress.

Northbridge submits that this is reinforced by the fact that the claimant's mother remains his primary emergency contact and is his substitute decision maker.

With respect to the role of the Community Living Dufferin, Northbridge submits that their role is institutional and limited in scope. It simply provides housing, meals and transportation which can be limited depending on staffing constraints. The evidence, Northbridge submits, is that the claimant does not have a dedicated staff that only supports him. Rather, the staff supports the other members living in the home as well.

Northbridge submits that the relationship between the claimant and Dufferin is contractual and administrative in nature and does not reflect a genuine caregiving relationship that is grounded in emotional support, guidance or personal investment. In any event, the claimant's mother exercises control over these arrangements.

Northbridge submits that while the institutional setting may have provided a degree of comfort and routine, it was the mother's involvement that rendered his life stable and meaningful and that that level of reliance constitutes a significant and substantial dependence.

Therefore Northbridge submits that I should find that the claimant was principally dependent on care from his mother and accordingly Peel would be the priority insurer.

REPLY BY PEEL

Peel's reply was primarily directed towards some factual statements made by Northbridge in their materials relating to principal dependency.

With respect to Northbridge's assertion that the claimant functions as a "8 or 9-year-old", Peel submits that that was not the claimant's mother's evidence. Rather, it was only in reference to what his financial needs were in order to illustrate they were varied and how it was difficult for her to substantiate what financial care she may provide to him from time to time. The question was directed to financial needs and not to personal care or cognition.

Peel also submits that there was no evidence that the claimant lacked the capacity to make decisions independently.

Peel also submitted that the comments by Northbridge with respect to the institutional role of Dufferin community housing is not supported by any evidence. Peel submits that there is no evidence that there was a scope of care limited to housing, meals or transportation. Peel suggests this is inconsistent with the evidence of the mother who reported that Dufferin covers "anything else he needs". She also confirmed that they are providing care for her son 24/7.

Lastly, Peel submits that there was no evidence to support Northbridge's assertion that the

claimant's mother was in control of the contract or arrangements with the group home. She was not asked under oath if she could terminate the agreement. She in fact indicated that she was "unfamiliar with the inner workings" of the group home.

With respect to the case law submitted by Northbridge In support of their position relating to care, Peel submits that the case law is exclusively with respect to the care of non-disabled minors in non-institutional environments and that the facts of those cases and the ratio are not helpful and are non-analogous to the issue in this case.

DECISION AND ANALYSIS

A. FINANCIAL DEPENDENCY

In my view, there is no evidence to support that the claimant was principally dependent for financial support on his mother. This is the case whether or not I look at a big picture analysis, a mathematical analysis or a statistical analysis.

In reaching this conclusion I have carefully reviewed the four criteria set out by the Court of Appeal in *Miller v. Safeco (supra)* that is to be relied upon in determining dependency. I recognize that the mathematical side of dependency is only part of the equation and that an arbitrator must look at all relevant facts to ensure that whichever analysis is chosen, that it accurately reflects the claimant's circumstances on the date of loss.

The facts in this case are that the claimant has not lived with his mother for over 22 years. For 13 years he has resided in a group home, Community Living Dufferin. He receives monthly income from ODSP and just prior to the accident that was \$1,292. From that money he was completely able to cover the cost of Community Living Dufferin's monthly expenses of \$1,167. In addition, he was able to cover his share of the expenses for Disney Plus and Netflix.

This is a gentleman with limited needs. His needs for personal care, room and board and clothing were all taken care of through the payments he made to Community Living Dufferin. His other modest expenses were paid out of the surplus of \$125.00 a month. To the extent that there were any additional needs and expenses flowing from those, they were covered by his mother. That included his cell phone bill of \$75 and monies for extracurricular activities.

There is nothing in the monies that the mother spent to provide her son support for these extras that would establish a principal financial dependency.

I agree with the calculations conducted by Peel set out earlier in this decision that clearly points out the claimant had well over 51% of the funds available to cover his needs. His mother's contribution was modest.

I find that Peel met their onus of proof by providing clear evidence that the claimant was not principally dependent for financial support on his mother and was in fact able to be financially

independent considering the monthly income from ODSP and his limited needs based on his living arrangements on the date of loss. Therefore, on this point I find in favour of Peel.

B. DEPENDENCY FOR CARE

Having carefully considered the thoughtful arguments presented by Northbridge and Peel, I conclude that while the claimant's mother was committed to her son's wellbeing, was actively involved in his life and provided companionship and support, that it did not reach the degree that established a principal financial dependency for care. In addition, much of what the claimant's mother did was because, "he was her kid." She did what any mother would do for a son disabled through autism and was done out of the significant love and affection she had for her child. I am mindful in reaching this decision that the analysis for determining care should be qualitative and quantitative and that no effort should be made to try to look at this issue on a statistical or mathematical basis, and I have not done so.

As directed by Justice Feldman in *State Farm Mutual Automobile Insurance Company v. Non-Marine Underwriters, Lloyd's London* (1997 CanLII 26904), I have looked at not only the *de facto* physical care arrangements, but I have looked at the care situation and the relationship in order to make my decision with respect to dependency. I have looked at whether the claimant is a dependent or independent person. I have looked at whether he was able to provide for his own care even though somebody else may be catering to some of their needs. As noted by Northbridge, I have considered social support, emotional support, companionship, protection and various services. Despite the claimant's mother being involved in providing her son social support, emotional support, companionship, protection and various services with extracurricular activities, I simply cannot find on the evidence that the claimant is principally dependent for care on his mother.

I find this case is more consistent with the line of cases that were submitted by Peel. I found the following facts to be particularly relevant:

- For the last 13 years, the claimant had resided in his group home. The group home provided him with 24-hour care while in the home including personal care, social companionship, direction, assistance with medication, taking him out into the community, taking him to doctors' appointments and assisting the claimant in negotiating through difficult social situations or communications that arose as a result of his autism.
- The claimant's mother worked with the home to provide similar assistance for her son in terms of communicating and working through his needs. This was varied from multiple times a week to not at all during a week. She escorted him to extracurricular activities in the evenings as staff would not be available from the home to do so. While she may be his first contact for some emergency, in the year prior to the accident she was not involved with any doctors' visits.
- His mother worked full-time in the year prior to the accident.

- The claimant was independent in many aspects of his care. He was able to dress himself, bathe himself, feed himself and clean himself. He could not cook his own meals which was done by the staff at the group home. He could not manage his own money and that was overseen primarily by his mother.
- There was a strong emotional relationship between the mother and son with her providing help when her son asked for it to work through his needs and she would visit him a minimum of twice a week.

In looking at dependency for care, not only must I look at the care provided by the mother, but I must also look at to what extent the claimant was independent in some aspects of his care and to what degree care was provided by the group home. Overwhelmingly in this case, I find that the majority of the claimant's care in its broadest sense was provided by the group home. In addition, while the claimant was independent in many aspects of his personal care, there is no doubt that this loving mother supplemented what the group home did and provided emotional support as a loving mother to her son, but this does not reach the threshold required to find him principally dependent for financial care as per the Statutory Accident Benefits Schedule.

I found the decision of Arbitrator Densem in *Aviva and State Farm (supra)* to be helpful and consistent with my conclusions in this case.

Arbitrator Densem pointed out that when assessing care one must look at the nature of emotional and physical care provided and whether the claimant was principally dependent on the insured for care having regard to the amount and duration of the dependency for care, the needs of the claimant and the ability of the claimant to be self-supporting. Arbitrator Densem directed that in looking at this one must assess the claimant's need for social, emotional and physical care and determine whether the claimant is more dependent on another person for care than on himself based on the circumstances of the case. Arbitrator Densem stated:

"It is not sufficient that care is provided because of love, affection or the existence of a familial relationship alone. There must be a need on the part of the claimant for the care, however it is provided."

Arbitrator Densem also suggested that when looking at social or emotional support, one must look at whether the caregiver provides companionship and a sense of security so that the claimant knows help is readily accessible. In regards to the latter in this case, while certainly the claimant's mother provided some companionship, particularly when staff from the group home was not available, it was primarily the group home that provided daily companionship and the sense of security to the claimant and readily accessible help on a daily basis should he have any needs.

I also find helpful and instructive the decision of Arbitrator Samis in *Dominion and MVACF (supra)*. In that case Arbitrator Samis was looking at a 56-year-old man and was asked to make a

determination as to whether he was principally dependent for care on his brother and his brother's spouse. The claimant had not been employed for a number of years. Some 20 years before the accident he had suffered a nervous breakdown and had been in a mental health facility. At the time of the accident the claimant was living in an assisted living arrangement. His brother visited regularly and would help with some hygiene and grooming. He handled his monthly social assistance cheque and gave him pocket money. He would attend doctors' appointments with him. However, the claimant was able to access in the community independently. He visited friends on his own. His meals and laundry were taken care of by the assisted living home.

Arbitrator Samis concluded that in those circumstances, while clearly the claimant's brother provided some significant care, it did not reach the level of principally dependent for care.

Arbitrator Samis noted that the claimant in that case fed himself, dressed himself and attended to his own toileting. Despite the care and attention provided by the brother and his spouse being considered important and significant, Arbitrator Samis felt that the claimant's needs were being taken care of primarily by the staff at the assisted living residence and considering that and the level of the claimant's own level of independence for care, dependency was not found on the brother.

I also reviewed the decision of *Co-operators and Aviva* (Arbitrator Jarvis Scott, *supra*). In that case the claimant was involved in a program with Peel Youth Village. Prior to that he had lived for some time in various Airbnbs. He received monies through ODSP which his mother looked after for him. He was on a waiting list to have the Public Guardian and Trustee assume management of his financial affairs.

Peel Youth Village provided food on a weekly basis. They would take him to appointments. They had social workers to assist him. The claimant could also bathe, clothe, cook and feed himself.

The claimant's mother provided him a weekly allowance. She and her spouse would travel twice a week to visit him or bring him back to the home. She would take him grocery shopping. They were working together on trying to help him manage his own finances. She checked on whether he would take his medication.

Arbitrator Scott found that the evidence clearly established that the mum was providing care to her son at the time of the accident. He describes her as a committed mother whose concern for her son's wellbeing over time was evident. She provided almost complete control and care of his finances, provided some food, clothing and shelter, even after he was with the Peel Youth Village. She provided him with a sense of security over the years.

However, Arbitrator Scott concluded that the claimant was not principally dependent for financial care on his mother. He noted:

"The case law directs me to consider all of the claimant's care requirements and

in this case his requirements in the context of the ability to care for himself, the care provided by mother and the care provided by the Peel Youth Village program."

In reviewing Arbitrator Scott's decision, it appears that he concluded that when looking at the level of independence of the claimant in that case and the support provided by Peel Youth Village, that there was no principal dependency for care on the mother.

I do note that there were some distinct factual differences between Arbitrator Scott's case and the one before me. In his case, the evidence did not establish a significant degree of companionship between the son and the mother nor was there a significant degree of social interaction. In this case, I recognize that clearly the claimant's mother provided a significant degree of companionship taking her son out, for example, for hockey games in the US, bowling and other activities. There certainly was a social interaction. However, it is not enough to establish principal dependency for care. I therefore find in favour of Peel on this issue.

AWARD

The claimant was not principally dependent financially or for care on his mother on April 28, 2024 and accordingly Northbridge Financial Corporation is the priority insurer in accordance with s. 268 of the *Insurance Act*.

COSTS

As Peel was entirely successful in this matter, I find that the costs of the arbitration are payable by Northbridge. I also find Northbridge is responsible to pay for the legal costs and disbursements of Peel on a partial indemnity scale.

I have not fixed the amount of costs but if the parties are not able to agree, then they should notify me and we will schedule a further pre-hearing.

DATED THIS 8th day of June, 2026 at Toronto.



Arbitrator Philippa G. Samworth
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