



**BRAIN INJURY ASSOCIATION OF QUINTE DISTRICT**

Friday, February 10, 2012

**“RIPPLE EFFECT”**  
**HOW FAMILIES AND SURVIVORS**  
**COPE WITH RELATIONSHIPS**

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*“Ripple Effect” – How Families and Survivors Cope with Relationships*

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# HOW THE STATUTORY ACCIDENT BENEFITS CAN BE USED TO ASSIST FAMILIES IN CRISIS

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# MEDICAL /REHABILITATION BENEFITS

## s. 15 Medical Benefits:

- As a result of an accident an Insurer is liable to pay medical/rehab benefits to any “insured person”

## s. 3 (a) (i) of the SABS defines an “Insured Person” as:

Any of the following people if involved in an accident that involves the insured vehicle

- The named insured on the policy
- The spouse of the named insured
- A dependant of the named insured or of his or her spouse

However in s. 3 (a) (ii) “Insured Person” also includes:

(ii) If the named insured, specified driver, spouse or dependant is not involved in an accident but suffers psychological or mental injury as a result of an accident in or outside Ontario that results in physical injury to his or her spouse, child, grandchild, parent, grandparent, brother, sister, dependant or spouse’s dependant

***•Therefore, each family member has an independent claim for benefits, if they suffer psychological injury arising from the injury to any of their immediate family members.***

# What Benefits Are Available to a Psychologically Injured Family Member?

- *The full range of benefits which would be available to them as if they were physically injured in the accident*

## **MEDICAL BENEFITS:**

- Medical, surgical, dental, optometric, hospital, nursing, etc., etc.
- Chiropractic, psychological, OT, Physio
- Medication
- Prescription Eyewear
- Dental Devices
- Mobility Devices
- Transportation to Therapy
- Other goods and services of a medical nature which are required

# What Benefits Are Available to a Psychologically Injured Family Member? *(Cont'd)*

## **REHABILITATION BENEFITS:**

•Treatment which is reasonable and necessary to reduce or eliminate the effects of any disability arising from the impairment, or to facilitate the person's reintegration into his or her family, the rest of society or the labour market

- Anything necessary to assist the person in leading as normal a work life as possible
- Life skills training
- Family counselling
- Social rehabilitation counselling
- Financial counselling
- Employment counselling
- Vocational assessments
- Vocational or academic training
- Workplace modifications
- Home modifications or devices
- Vehicle modifications
- Transportation to treatment sessions
- Other goods and services the person requires

## INCURRED AS DEFINED UNDER THE NEW REGULATIONS

3(7)(e) Subject to subsection (8), an expense in respect of goods or services referred to in this Regulation is not incurred by an insured person unless,

i.the insured person has received the goods or services to which the expense relates,

ii.the insured person has paid the expense, has promised to pay the expense or is otherwise legally obligated to pay the expense, and

## INCURRED AS DEFINED UNDER THE NEW REGULATIONS

- iii. The person who provided the goods or services,
  - a) Did so in the course of the employment, occupation or profession in which he or she would have ordinarily been engaged but for the accident.
  - b) sustained an **economic loss** as a result of providing the goods or services to the insured person;

## INCURRED UNDER THE OMPP LEGISLATION

7. (1) The insurer will pay with respect to each insured person who sustains physical, psychological or mental injury as a result of an accident, for the care, if any, required by the insured person,

- a) **The reasonable cost of a professional caregiver or the amount of gross income reasonably lost by a person other than the insured person as a result of the accident in caring for the insured person; and**
- b) All reasonable expenses resulting from the accident in caring for the insured person after the accident. R.R.O. 1990, Reg. 672, s. 7(1).

## INCURRED AS DEFINED BY THE COURT

Three guiding principles:

First, incurred has a wider meaning = “run into”, “render oneself liable to”, “bring upon oneself”, or “be subject to”.

Second, the provision should be construed “contra proferentem”, (the coverage interpreted broadly and the time limitation narrowly).

Third, a remedial and purposive interpretation suggests that unfairness would result from a narrow interpretation.

## INCURRED AS DEFINED BY THE COURT

“...if the Defendant’s position were correct it would allow those persons who could pay for services in advance to be in a much better position to recover than those who could not. This, as a matter of policy, would be totally unfair.”

*Wawanesa Mutual v. Smith*

## AFFECTED SECTIONS

The definition of incurred applies to:

Sections 15 +16 Medical and Rehabilitation Expenses

Section 17 Case Manager Services

Section 19 Attendant Care Benefits

Section 21 - Education Expenses

Section 23 Housekeeping Benefits

## A SAVING PROVISION

3(8) “If in a dispute to which sections 279 to 283 of the Act apply, a Court or arbitrator finds that an expense was not incurred because the insurer **unreasonably withheld or delayed payment** of a benefit in respect of the expense, the Court or arbitrator may, for the purpose of determining an insured person’s entitlement to the benefit, **deem** the expense to have been incurred.”

## PRACTICAL STRATEGIES

- 1) Recruit a family member who meets the ‘**usual occupation**’ definition for provision of a particular service;
- 2) Be creative in demonstrating the “economic loss”
- 3) Seek an advance payment from tort defendants where a viable tort action exists;
- 4) Negotiate partial deferral of payment for professional attendant care providers pending resolution of tort claim.
- 5) Negotiate litigation financing *in appropriate cases* to fund the provision of goods and services;

## MIND THE GAP!

Non-Catastrophic Attendant Care Claims are capped at \$3,000 per month to a maximum of \$36,000 = 12 months

A client who is declared catastrophic after the second anniversary of the accident will have a 12 to 18 month gap in attendant care benefit payment

Unless steps have been taken to 'incur' expenses at the \$6000 level (if appropriate) **from the outset** to the date of Catastrophic declaration there will be a retroactive loss of the catastrophic benefit ( $\$3\text{k}/\text{mos} \times 12 + \$6\text{k}/\text{mos} \times 18 = \$144,000$ )