Neutral Citation: 2001 ONFSCDRS 128

FSCO A99-000586

FINANCIAL SERVICES COMMISSION OF ONTARIO

BETWEEN:

IRENE B. COOK

Applicant

and

CAA INSURANCE COMPANY (ONTARIO)

Insurer

REASONS FOR DECISION

Before: Anne Sone

Heard: April 17, 19, June 12, 13, 14, July 17, 18, October 10 and 11, 2000, at the Offices of the Financial Services Commission of Ontario in Toronto.

Final written submissions were received on January 26, 2001.

Appearances: David S. Wilson for Mrs. Cook

Neil Colville-Reeves for CAA Insurance Company (Ontario)

Issues:

The Applicant, Irene B. Cook, was injured in a motor vehicle accident on December 15, 1993. She applied for and received statutory accident benefits from CAA Insurance Company (Ontario) ("CAA"), payable under the *Schedule.*[1] CAA did not pay the full amount of care benefits claimed by Mrs. Cook. The parties were unable to resolve their

[1] The *Statutory Accident Benefits Schedule — Accidents On or Between June 22, 1990 and December 31, 1993,* Regulation 672 of R.R.O. 1990, as amended by Ontario Regulations 660/93 and 779/93.

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disputes through mediation, and Mrs. Cook applied for arbitration at the Financial Services Commission of Ontario under the *Insurance Act,* R.S.O. 1990, c.I.8, as amended.

The issues in this hearing are:

1. Is Mrs. Cook entitled to receive care-giver benefits for services performed by her daughter, Mrs. Diane Gray, pursuant to paragraphs 7(1)(a), 7(1)(b), or 6(1)(f) of the *Schedule?*

   Mrs. Cook is claiming care-giver benefits for the services performed by her daughter, Mrs. Diane Gray, from December 27, 1997 to October 25, 1999, at the rate of $963.43 per month, and from October 26, 1999 to March 16, 2000, at the rate of $370 per week.

   CAA has paid a total of $3,220.76 for care-giver benefits at the rate of $258.35 per month from December 27, 1997 to April 3, 1999.

2. Is Mrs. Cook entitled to $2,555.64 for care provided by her granddaughter, Ms. Catherine Gray, during the summer of 1998, pursuant to paragraph 6(1)(f) of the *Schedule?*
3. Is Mrs. Cook entitled to a special award under subsection 282(10) of the *Insurance Act,* R.S.O. 1990, c.I.8, as amended, on the basis that CAA has unreasonably withheld or delayed payments?
4. Is CAA liable to pay Mrs. Cook's expenses in respect of the arbitration under subsection 282(11) of the *Insurance Act,* R.S.O. 1990, c.I.8?

Mrs. Cook also claims interest on any amounts owing.

Result:

1. Mrs. Cook is not entitled to receive care-giver benefits, for services performed by Mrs. Diane Gray, pursuant to paragraph 7(1)(a), 7(1)(b), or 6(1)(f) of the *Schedule.*
2. Mrs. Cook is not entitled to $2,555.64 for care provided by Ms. Catherine Gray during the summer of 1998 pursuant to paragraph 6(1)(f) of the *Schedule.*
3. Mrs. Cook is not entitled to a special award under subsection 282(10) of the *Insurance Act,* R.S.O. 1990, c.I.8, as amended.
4. If the parties cannot agree, I may be spoken to on the issue of expenses.

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EVIDENCE AND ANALYSIS:

Background:

On December 15, 1993, at the age of 77, Irene Cook was struck by a car while crossing the street. She lost consciousness. Mrs. Cook sustained a closed head injury, and fractures to her ribs and left leg. She stayed at Scarborough General Hospital until December 24, 1993. She then was transferred to St. John's Rehabilitation Hospital until mid-March 1994. Her daughter, Diane Gray, reported that her mother experienced frequent memory lapses during her stays at both hospitals. Mrs. Cook has amnesia regarding her stay at Scarborough General Hospital. She continues to have difficulties with her memory and ability to learn.

After her return home, CAA retained consultants from Associative Rehabilitation Inc. ("ARI ") who interviewed Mrs. Cook on a regular basis. They wrote reports regarding her activities of daily living, compensatory strategies, vocational tasks and driving. Mrs. Cook discontinued their services on January 16, 1996.

Causation:

It is not disputed that at the time of the accident, Mrs. Cook was driving her car, completing all of her home and community responsibilities independently, and attending social events on a regular basis. She also served as part-time secretary for her church. Mrs. Cook's daughter, Mrs. Gray, along with her family, had moved into an apartment in the basement of Mrs. Cook's home some time prior to the accident.

Mrs. Cook submits that the closed head injury which she suffered in the accident has led to difficulties with her memory and learning ability. As a result, she is claiming care-giver benefits for services provided by her daughter, Mrs. Gray.

CAA submits that Mrs. Cook was improving after the accident, and then suffered dementia unrelated to this accident, which has led to her increasing need for care. For the reasons set out below, I do not agree, and find that the accident was the cause of Mrs. Cook's continuing need for care.

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Mrs. Cook reported to ARI and to her physicians that she was able to return to activities, such as acting as a part-time secretary for her church by May of 1994.[2] This involved typing, preparing correspondence, sending out newsletters, and doing arithmetical calculations to prepare the annual vestry report. However, I find that it was Mrs. Gray and her husband, Gibson Gray, who were actually doing this work. They let Mrs. Cook think she was doing it, so as to help her to feel better about herself. Mrs. Gray testified that Mrs. Cook attempted to do it, but was unable to remember what she had done, and what she had yet to do. She would become upset. She was also unable to do the arithmetical calculations she had previously done. Eventually Mr. and Mrs. Gray persuaded Mrs. Cook to give this job up. It became too onerous carry on the charade.

Although Mrs. Gray's motives were laudatory, this charade caused CAA to believe that Mrs. Cook was able to do a lot more than she was really able to do independently shortly after the accident. I find Mrs. Gray to be a credible witness, and accept her testimony regarding her surreptitious efforts to prop up her mother's self-esteem. There were no significant inconsistencies in her testimony. In short, it was heartbreaking for Mrs. Gray to discuss her mother's lack of memory in front of her, when the consultants from ARI came to the house, or when she accompanied her mother to doctors' appointments. With her busy life, it did not occur to Mrs. Gray to tell these people at other times that she and her husband were, for example, doing all the church work.

In addition, Mrs. Cook drove after the accident. She passed a driving assessment in June of 1994, and was found to be a careful driver. However, in the fall of 1994, she got lost for four and a half hours while out driving, and could not explain what happened, or where she had been. It became apparent that it was not safe for her to drive. Mrs. Gray called Dr. Townsend, the family doctor who said to take the car away from her. After that, Mr. or Mrs. Gray then took the car with them to work every day.

As a result, I find that there was not a significant improvement in Mrs. Cook's cognitive abilities after the accident.

[2] Exhibit 5, tab 17, p.6, Associative Rehabilitation Inc. Report dated May 24, 1994

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Further, the vast majority of the medical evidence supports the conclusion that Mrs. Cook currently has significant cognitive difficulties which are a result of this accident.

On November 2, 1994, Dr. Lorraine McFadden, a treating neuropsychologist, reported to Dr. Townsend, Mrs. Cook's family physician. She said that Mrs. Cook had suffered a moderate to severe closed head injury in this accident, with deficits being noted both in verbal and visual memory function, and visual memory being severely compromised. She opined that her findings were consistent with a coup injury to the left fronto-temporal region and contre-coup injury to the right fronto-temporal region.[3] She noted that with respect to older individuals, recovery could be slow.[4]

Dr. Sandra Black was Mrs. Cook's consulting neurologist. Dr. Black is currently Head of the Division of Neurology at Sunnybrook and Women's College Health Sciences Centre. Her credentials include research on dementia and the cognitive effects of strokes. On April 4, 1995, she reported to the family physician that Mrs. Cook had sustained a moderate to severe closed head injury, as a result of the accident. Mrs. Cook, had, however, been improving significantly. There was evidence of moderate insult to the brain as demonstrated on the MRI. At that point, it was suspected that her deficits were due to the closed head injury and there was no reason to suspect an underlying neurodegenerative disorder. She also was of the opinion that head trauma was known to accelerate the development of Alzheimer's and accordingly, there was a need to follow her progress.[5]

On June 26, 1996, Dr. Black provided a report to Mrs. Cook's counsel. She was of the opinion that Mrs. Cook's deficits were to be attributed to her head injury, sustained in this accident.[6] She had reassessed the insured on March 19, 1996, at which time she noted that there had been some deterioration in her cognitive functioning. On that same page, she noted that the head injury from this accident had left the insured with cognitive and emotional sequelae, her most salient problems being a significant short-term memory deficit and a depressed mood.

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[3] Exhibit 1, tab 1, p.6
[4] Exhibit 1, tab 1, p.7
[5] Exhibit 1, tab 3, p.3
[6] Exhibit 1, tab 5, p.4

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In an updated report to the family physician dated November 24, 1998, Dr. Black noted that there had not been the emergence of any progressive neurodegenerative disorder. She also related the continued memory deficits, difficulties with concentration and attention, and mood changes to the head injury sustained in this accident.[7]

Dr. Black, in her further report of March 14, 2000, repeated certain of her conclusions previously made regarding the accident as the cause of her short-term memory impairment.[8]

On October 18, 1996, CAA's own psychiatric assessor, Dr. Monte Bail, provided a report.[9] Like other assessors, he had received information that she had resumed her work as a church secretary after the accident. Hence it was his understanding that there had been some significant improvement after the accident.

After taking a history and reviewing her status, he stated that the appropriate diagnosis was "Dementia due to Head Trauma."[10] It is his view that such a diagnosis was consistent with findings on earlier neuropsychological examinations. He further opined that any deficits she was displaying were "purely" due to the brain injury[11] sustained in this accident.

In an extensive report to CAA dated January 22, 1997, Dr. David Duncan provided his opinion with respect to the neuropsychological status of Mrs. Cook.[12]

Dr. Duncan had also been informed that Mrs. Cook had returned to her job as church secretary in the summer of 1994.[13]

On page 15 of his report, he expressed the opinion that Mrs. Cook was suffering from severe verbal and visual memory impairments. It was apparent to Dr. Duncan that the changes occurring between 1994 and 1995 represented the beginning of a process of

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[7] Exhibit 1, tab 11
[8] Exhibit 1, tab 13
[9] Exhibit 1, tab 6
[10] D.S.M. Code 294.1
[11] Exhibit 1, tab 6, p. 10
[12] Exhibit 1, tab 8
[13] Exhibit 1, tab 8, p.4

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deterioration in her memory functions.[14] He further opined that her impairments were consistent with the presence of bi-lateral temporal lobe dysfunction attributable to the head injury sustained in December 1993. He saw insufficient evidence to diagnose a dementing process such as Alzheimer's Disease.[15]

He noted that the MRI findings described by Dr. Black, combined with the persistence of her memory deficits suggested that Mrs. Cook had suffered a severe injury and that such an injury could result in deficits in attention, memory and executive functions.[16]

With respect to CAA's concern as to whether a person with such a head injury could improve and then decline, he noted that although improvement and subsequent decline were not common following head injury in younger persons, the effects of head injury in the elderly were less well researched. Further, there was some evidence that head injury in older adults could precipitate a progressive deterioration in cognitive functions. In considering CAA's question, he noted that he had concluded that the cognitive impairment she was displaying at that time was a product of her head injury sustained in this accident.[17]

On January 8, 1996, Dr. Gary Snow, as a treating neuropsychologist, reported to the family physician his findings with respect to Mrs. Cook's cognitive status. He was aware that family members had reported significant cognitive complaints.[18] He also noted, among other matters, that she was unable to remember the location of the reception area at the lunch break, and at the end of the day. Although he thought that her scores were similar to the previous test scores, he did indicate that she was performing a little more poorly on measures of verbal and non-verbal paired associate learning, and also, had greater difficulty in immediate visual recall.

He considered whether her neuropsychological status was based upon normal aging and did not believe that was the case. He was of the view that the head injury she

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[14] Exhibit 1, tab 8, p.15
[15] Exhibit 1, tab 8, p.16
[16] Exhibit 1, tab 8, p.17
[17] Exhibit 1, tab 8, p.18
[18] Exhibit 1, tab 4, p.2

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sustained in this accident was the most likely cause of her memory impairments.[19] Although he considered various possibilities, it was his opinion that her current deficits were compatible with bi-temporal cerebral dysfunction, as a result of her head injury in this accident. There was no other compelling cause of cognitive impairment.

He referred to Dr. Black's concern that a head injury could precipitate a dementing illness. He thought it would be worthwhile to have Dr. Black see her again to keep an eye on "this possibility."[20]

In a later report dated April 12, 2000, after an insurer's medical assessment done for CAA,

Dr. Snow was the only medical expert out of three neuropsychologists, a psychiatrist and a neurologist to express the view that Mrs. Cook's current cognitive deficits were more probably the result of a dementing illness unrelated to the accident. This view is in direct contrast with the conclusions expressed in his report of January 8, 1996, written as a treating neuropsychologist, where he stated that the head injury she sustained in this accident was the most likely cause of her memory impairments.

By contrast, in his April 12, 2000 report, Dr. Snow states as follows:

> Insofar as we know, Ms. Cook was a woman of normal cognitive abi lities prior to her accident. She sustained a moderate brain injury, with deficits in the early stages which were more prolonged and pronounced than those typical of mild brain injuries. She made a good cognitive recovery and resumed most of her normal activities. She subsequently showed a decline in her neuropsychological abilities, and in her ability to perform those activities she performed both before and after the accident. At present she shows signs of a dementing illness which was not apparent before the accident. One possibility is that her dementing illness is attributable to the remote effects of her brain injury. This would be an uncommon outcome of brain injury. The alternative (and the possibility I view as more probable at present) is that her dementing illness is unrelated to the brain injury, but superimposed on some permanent cognitive deficits attributable to that injury.[21]

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[19] Exhibit 1, tab 4, p.6
[20] Exhibit 1, tab 4, p.6
[21] Exhibit 5, tab 14, p.22F

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However, he also notes that Mrs. Cook's symptoms are not typical of a dementing illness:

> Mrs. Cook's pattern of cognitive impairment is not typical of what one sees in Alzheimer's disease. One other feature of note in Ms. Cook's presentation is that the cognitive decline she has shown has been slow. If she had Alzheimer's disease, it would be unusual to see progression this slow.[22]

Dr. Snow testified that neuropsychologists base their conclusions on two items:

1. neuropsychological testing; and
2. real world (behavioural) problems experienced by the patient.

He was unaware that Mrs. Cook was not performing the secretarial duties at the church, or engaging in the other activities that he had been led to believe she was capable of after the accident. He admitted during an extensive cross-examination that he had relied on the statement that she had returned to her secretarial duties, and that his opinion might change if that were untrue. For this reason, despite his excellent credentials, I give his opinion regarding causation expressed in this report little weight.

In addition, in his conclusion, Dr. Snow refers to "permanent cognitive deficits" attributable to the injury Mrs. Cook sustained in the accident. This would pass the test set out in *Athey* v. *Leonati*[23] which only requires that the head injury sustained in the accident was a "material contribution" to Mrs. Cook's memory impairment, rather than the sole or primary cause.

In *P.S. and Toronto Transit Commission,*[24] Director's Delegate Naylor held (following *Athey* v. *Leonati)*[25] that the accident need not be the sole, nor even the primary cause of the continuing problems; the accident must only contribute to the development or contribution of the condition to a material degree.

[22] Exhibit 12, p.20
[23] [1966] 3 S.C.R. 458
[24] (OIC A-001116, May 4, 1994)
[25] *Supra,* see note # 23

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CAA submitted that Mrs. Cook would have continued to improve had she not terminated ARI's services when she retained counsel in November 1995. Mrs. Gray admitted that ARI did things for her mother's physical well-being. They provided assessments, transportation, and assistive devices such as a cellular phone, microwave oven and a daytimer. However, there is insufficient evidence of a real improvement in Mrs. Cook's condition during the period of their assistance to warrant a finding that terminating ARI was the cause of Mrs. Cook's deterioration.

As a result of my acceptance of Mrs. Gray's testimony that her mother's improvements were illusory, in addition to the bulk of the medical evidence, I find that the accident was a material cause of Mrs. Cook's current problems with memory and learning ability.

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Legal Requirements and Analysis of Care-giver Benefits:

Mrs. Cook questioned whether CAA's Response to the Application for Arbitration was broad enough to cover the defence that care-giving services had been provided by family members rather than professional care-givers. Paragraph 1 of Schedule A to the Response states as follows:

> CAA Insurance Company denies that the claimant, Irene Bessie Cook was entitled to receive supplementary medical and rehabilitation benefits or care benefits under a CAA policy of insurance.

In addition, paragraph 3 states:

> CAA Insurance Company states that the benefits claimed by the claimant are not reasonable but are excessive and remote.

The Response does not specifically target this point. However, it is quite general in nature and covers a lot of ground. Proceedings at the Commission are designed to be efficient and inexpensive. They are not intended to mirror civil actions brought in the courts. It is not necessary for either party to be as specific in the Application for Arbitration or Response as would be required in a civil pleading. In addition, I note that Mrs. Cook was aware of CAA's defence from the outset of the hearing, had a reasonable opportunity to respond, and therefore, did not suffer any prejudice.

Accordingly, I find that CAA's Response is sufficient for the purposes of pursuing its defence.

Paragraphs 7(1)(a), 7(1)(b), and 6(1)(f) of the *Schedule* set out the statutory provisions regarding care-giver benefits. Pursuant to paragraph 7(1)(a), the insurer will pay with respect to each person who sustains physical, psychological or mental injury as a result of an accident, for care required by the insured person, the reasonable cost of a **professional care-giver.** Alternatively, the insurer will pay the amount of gross income reasonably lost by a person in caring for the insured person. (My emphasis).

Pursuant to paragraph 7(1)(b), the insurer will pay all reasonable expenses (within the statutory limits) resulting from the accident in caring for the insured person after the accident.

Pursuant to paragraph 6(1)(f), the insurer will pay for other goods and services, whether medical or non-medical in nature, which the insured person requires because of the accident.

In a number of cases at the Commission,[26] arbitrators have provided compensation to family members who did not lose any income, based on paragraphs 7(1)(a) or 7(1)(b). However, the Ontario Court of Appeal recently came to a different conclusion in *Monochino* v. *Liberty Mutual Fire Insurance Company and AXA Home Insurance Company.*[27] Director's Delegate Draper found this case instructive in dealing with a different fact situation under a more recent Regulation in *Co-operators General Insurance and Moons.*[28]

In *Monochino,* a university student suffered severe injuries in a motor vehicle accident. Following the accident, he was in a coma for four days, and was hospitalized for six weeks. There was no dispute that he had sustained significant brain damage. He was left with cognitive deficits that would never allow him to lead an independent life.

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[26] *Ferreyra et al and Royal Insurance Company of Canada* (OIC A-000301, OICA-000325, and OIC A-000384, July 9, 1992); *Long and Personal Insurance Company of Canada,* (OIC A-003302, October 20, 1995) and *Offeh and Allstate Insurance Company of Canada* (OIC A-006494, October 25, 1994)
[27] (2000), 47 O.R. (3d) 481
[28] *Co-operators General Insurance Company and Moons* (FSCO P00-00033, May 28, 2001)

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The student's mother, who did not work outside the home, cared for him.

The trial judge held that there were no professional care-givers in this case. In his view, the *Schedule* only covered the cost of a professional care-giver, income lost by a non-professional care-giver and out-of-pocket expenses.

On appeal, the majority held that "care-giving services by members of a loving family are not an expense, or a cost in the contemplation of this statutory framework." They can sometimes be compensated for in other areas, such as under the *Family Law Act,*[29] in a proper case, but they do not fit within the language of the sections of this *Schedule.*

They dismissed the contention that the insured can be said to have incurred the cost of care giving services as a result of the provision of these services by his family, such that they could be recovered under paragraphs 7(1)(b) and 6(1)(f), as "expenses," within the meaning of the *Schedule.*

Mrs. Cook sought to distinguish this case based on the following reasons.

Monochino dealt solely with care-giving services. Mrs. Cook argues that CAA in this case has recognized an obligation to continue to pay for housekeeping services performed by Mrs. Cook's granddaughter, Catherine Gray. By so doing, Mrs. Cook argues that CAA has obligated itself to pay family members for services they perform. I do not agree. The arrangements that CAA previously made for paying for housekeeping services do not bind it to make payments to family members for care-giving services where recent case-law does not support such an obligation.

Similarly, Mrs. Cook claims that since CAA has already paid for some of the services that Mrs. Gray provided to her mother, that this constitutes an admission, and it is bound to continue paying for such services. I do not agree. Prior to the *Monochino* decision, some cases had held that family members could be reimbursed under section 7 of the *Schedule.* Once the Court of Appeal decision clarified the law on this point, CAA is not bound by its prior payments made in good faith. In addition, in a letter dated

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[29] R.S.O. 1990, c.F.3

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February 2, 1998 from Ms. Bonnie McLaughlin, an accident benefits adjuster at CAA, to counsel for Mrs. Cook, the adjuster states as follows:

> Since there has obviously been some confusion, in good faith we will cover the attendant care expenses submitted up to the week of December 26th without a breakdown. However, all future attendant care expenses will be submitted as incurred and we will require a breakdown on a daily basis of the assistance that was provided to Ms. Cook.[30]

No further breakdown was provided to CAA until February 25, 1999.[31] This breakdown only covered the period from October 19 to November 21, 1998. A further diary for the periods from October 25 to November 7, and from December 6 to 19, 1999 was attached to a letter dated March 15, 2000.[32] Mrs. Gray considered it too onerous to keep up this breakdown on a daily basis. Since there was no breakdown for the majority of the time claimed, I find that CAA was not bound to continue to pay care-giver benefits.

The trial judge in *Monochino* noted a problem with the sufficiency of the record of what was claimed. Mrs. Cook argued that there is no such problem in this case. I disagree. There is some problem with the sufficiency of the record in this case. For example, Mrs. Cook is seeking payment for care-giver benefits over a 27- month period based on detailed records kept for specific services provided during two discrete one-month periods. In addition, there are claims for reimbursement for housekeeping services. CAA is already paying Ms. Gray for these services.

Mrs. Cook also submits that there was an expectation of payment by her daughter, Mrs. Gray, which was not the case in *Monochino.* Mrs. Cook did not provide any evidence that she had paid her daughter, Mrs. Gray, for care-giving services, beyond what was paid by CAA. In addition, even if there was an expectation of payment for services rendered between Mrs. Cook and her daughter, this would not bind CAA, who only must comply with the terms of the *Schedule.*

[30] Exhibit 1, tab 27
[31] Exhibit 1, tab 31
[32] Exhibit 1, tab 35

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Diane Gray was a long-time high school Family Studies teacher. Apart from a period while she was retired, she continued to work full time while she was providing care to her mother. Since she did not lose any gross income as a result of her mother's accident, CAA is not required to pay any benefits under the second alternative set out in section 7(1)(a).

Mrs. Gray attempted to get around the constraints imposed by *Monochino,* by testifying extensively regarding her qualifications as a "professional care-giver." If proven, this would permit entitlement to care-giver benefits pursuant to the first alternative in section 7(1)(a) of the *Schedule.* Mrs. Gray did not persuade me that she was a professional care-giver.

Mrs. Gray has a Certificate from Ryerson in Home Economics and a Teaching Certificate from the University of Toronto. Certain portions of the courses she taught dealt with aspects of caring for an elderly parent or grandparent, in theory. However, there was no cogent evidence that she purported to be a professional care-giver in any other way. By extension, one could make the argument that every student who took her course was a professional care-giver. I do not find this argument persuasive. In addition, I do not find that her well-developed communication and organization skills derived from being a teacher make her a professional care-giver. While all this life experience may have assisted her in dealing with her mother, she never, for example, actually cared for other elderly people or received payment for it.

I admire Mrs. Gray's devotion to her mother. There is no doubt that Mrs. Cook has benefited greatly from the care, patience and love provided by her daughter and her family. I also sympathize with the sacrifices that this has meant for them, in terms of giving up their time and freedom to do things they wished to do, such as build a cottage, take university or other courses, or go to the theatre, socialize or travel. Nevertheless, for the reasons set out above, I find that Diane Gray does not meet the requirement set out in paragraph 7(1)(a) of the *Schedule* of being a professional care-giver.

Based on the reasoning in *Monochino,* I find that Mrs. Cook does not meet the requirements for benefits under paragraphs 6(1)(f) and 7(1)(b) of the *Schedule.*

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Claim for care services during the summer of 1998:

Mrs. Cook is claiming $2,555.64 in travel expenses incurred by her granddaughter, Catherine Gray, pursuant to section 6(1)(f) of the *Schedule.* These expenses relate to a trip to England in August 1998, Ms. Gray took with her grandmother, Mrs. Cook, and her great-uncle, Mrs. Cook's elderly brother-in-law. Initially, Mrs. Cook and her brother-in-law were to be cared for by a younger cousin in England. However, that fell through, and the trip either had to be cancelled, or someone else had to be found to care for Mrs. Cook. The elderly brother-in-law was unable to do so. As a result, rather than cancel the trip, Catherine Gray accompanied them on the trip.

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Mrs. Gray testified that traditionally her mother had enjoyed travelling. However, if this trip was just for Mrs. Cook, she would have cancelled it, because Mrs. Cook would not have retained any memory of it anyway. She admitted that the trip was done for the benefit of Mrs. Cook's brother-in-law. Paragraph 6(1)(f) of the *Schedule* provides benefits for "other goods and services, whether medical or non-medical in nature, which **the insured requires** because of the accident." (My emphasis.) Since this trip was not done for Mrs. Cook's benefit, I find that Catherine Gray's expenses are not covered under this paragraph, and that Mrs. Cook is not entitled to them.

Calculation of Care-giver Benefits:

In view of my finding that Mrs. Cook is not entitled to care-giver benefits for services provided by her daughter, Diane Gray, I will not make any findings regarding the amounts claimed. However, I make the following findings based on the evidence:

1. Mrs. Gray continued to work full time during the period for which benefits are claimed with the exception of the time when she was retired from September to December of 1999, or on summer vacation from her job as a high school teacher. Mrs. Cook was home alone for most of the school day from December 1995 to March 2000, except when family members were able to check on her at lunchtime.
2. Mrs. Gray only submitted breakdowns of her time (albeit very detailed) for two months out of the entire period she was claiming - from October 19 to November 21, 1998, and from October 25 to November 7 and December 6 to 19, 1999. She felt it was too onerous to keep diaries, but it is easy to

understand why the insurer was reluctant to pay for time periods where there was no breakdown whatsoever.

3. Mrs. Gray's records were very detailed and done in a conscientious manner. I find that there was no exaggeration of the amount of time she spent.
4. Due to her memory loss, Mrs. Cook cannot remember whether she has taken her medication. Since she can't remember whether she has turned the stove on or off, it is also unsafe for her to cook. Accordingly, I find that the time Mrs. Gray spent organizing medication and preparing meals for Mrs. Cook was justifiable.
5. Mrs. Gray claimed 12.5 hours in the first recorded month for watching television with her mother. She claimed 30.5 hours for watching television and talking with her mother in the second recorded month. While Mrs. Gray could justify some time spent discussing items such as her finances with Mrs. Cook, I would not have ordered payment for all of this time.
6. There was some housekeeping items such as laundry and clean-up that Mrs. Gray claimed which would have already been covered by the housekeeping benefits being paid to Mrs. Cook's granddaughter, Catherine Gray.

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SPECIAL AWARD:

In view of my findings regarding the claim for care-giver benefits, I find that CAA did not unreasonably delay or withhold benefits to Mrs. Cook. Accordingly, Mrs. Cook is not entitled to a special award under subsection 282(10) of the *Insurance Act,* R.S.O. 1990, c.I.8, as amended.

EXPENSES:

I thank both counsel for their able assistance in this case. If the parties cannot agree, I may be spoken to on the issue of expenses.

______________________	September 6, 2001
Anne Sone Arbitrator	Date

Neutral Citation: 2001 ONFSCDRS 128

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FINANCIAL SERVICES COMMISSION OF ONTARIO

BETWEEN:

IRENE B. COOK

Applicant

and

CAA INSURANCE COMPANY (ONTARIO)

Insurer

ARBITRATION ORDER

Under section 282 of the *Insurance Act,* R.S.O. 1990, c.I.8, as amended, it is ordered that:

1. Mrs. Cook is not entitled to receive care-giver benefits for services performed by Mrs. Diane Gray.
2. Mrs. Cook is not entitled to $2,555.64 for care provided by Ms. Catherine Gray during the summer of 1998.
3. If the parties cannot agree, I may be spoken to on the issue of expenses.

Anne Sone
Arbitrator

September 6, 2001
Date

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