

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

OMG MIDWEST INC., d/b/a HALLET
MATERIAL AND LIBERTY MUTUAL
INSURANCE,

File No. 5052790

Petitioners,

vs.

APRIL TAYLOR AS MOTHER AND
NEXT FRIEND OF H.B., A MINOR,
AND L.B., A MINOR, MELISSA
SNYDER AS MOTHER AND NEXT
FRIEND OF T.B., A MINOR,

Respondents.

EQUITABLE APPORTIONMENT

DECISION

Head Note No.: 1203

STATEMENT OF THE CASE

On July 21, 2015, OMG Midwest, d/b/a Hallet Material, and Liberty Mutual Insurance (Liberty), (petitioners), filed their petition for equitable apportionment of death benefits. Respondents in this case are April Taylor, as mother and next friend of H.B., and L.B., both minors; and Melissa Snyder as mother and next friend of T.B.

On May 26, 2016 the parties filed a joint stipulation seeking apportionment of benefits to be paid to the respondents. That stipulation was not approved and the matter was reassigned for hearing.

On February 15, 2017, the parties submitted stipulations of facts, signed by all the parties, and exhibits. This matter was submitted on the record with no hearing. This matter was considered fully submitted on February 15, 2017.

Rene Lapierre represents petitioners. Paul Thune represents April Taylor. T.J. Pattermann represents Melissa Snyder and T.B.

ISSUE

The sole issue in this matter is for determination of the equitable apportionment of death benefits payable under Iowa Code sections 85.31, 85.42, and 85.43.

FINDINGS OF FACT

Tadd Bainum (Bainum) died in an accident that arose out of and in the course of his employment with OMG Midwest, d/b/a Hallet Materials. (Stipulations, paragraph 1))

At the time of his death, Bainum was married to April Bainum (now April Taylor). They had two children, H.B. (born April 17, 2003), and L.B. (born October 22, 2005). Both children reside with their mother, April Taylor. (Stipulations, paragraph 2)

On June 29, 1998, Bainum and Melissa Hogrefe entered into a stipulation and agreement regarding paternity and child support. They had one child together, T.B., born on August 8, 1996. (Stipulations, paragraph 4; Exhibits 1 and 2)

On August 1, 2000 that stipulation was modified increasing the amount of Bainum's monthly child support to \$469.00 per month. (Stipulations, paragraph 5; Ex. 3)

On May 7, 2009 petitioner Liberty notified Melissa Hogrefe, and April Bainum, that Tadd Bainum had an average weekly wage of \$1,381.15, resulting in an average workers' compensation rate of \$867.37 per week. Tadd Bainum was paying \$469.00 per month for support of his minor child, T.B. \$469.00 was 7.8 percent of Tadd Bainum's gross monthly income. 7.8 percent of Tadd Bainum's rate is \$67.65 ($\$867.37 \times 7.8\%$). Based on this, Liberty, as of May 7, 2009, began paying T.B. \$67.65 per week. The remaining \$799.72 was payable to April Bainum and her two minor children. (Stipulations, paragraphs 7 and 8; Ex. 4)

The May 7, 2009 letter regarding apportionment and payment of benefits, advised all parties that ". . . if this apportionment is not acceptable, any party can petition the court for an apportionment." No one contacted Liberty to indicate the apportionment of benefits was not acceptable. (Stipulations, page 10; Ex. 4)

After the July 29, 1998 stipulation (Ex. 1), T.B. lived with Melissa Hogrefe. Ms. Hogrefe married Nathan Snyder on October 6, 2000. Ms. Hogrefe and Mr. Snyder have provided support to T.B. (Stipulations, paragraph 12)

The July 17, 2015 petition for equitable apportionment was filed by petitioners based on the remarriage of April Bainum, (now April Taylor). (Stipulations, paragraph 13)

The parties wish to have T.B. receive \$75.00 a week until he reaches 25, graduates from college, or is no longer enrolled full time as a college student, whichever comes first. (Stipulations, paragraph 13)

T.B. is represented by T.J. Pattermann. T.B. has reached the age of majority and is enrolled full time in college. T.B. indicates a desire to resolve the apportionment

of benefits under the terms detailed above and believes it is in his best interest to do so.
(Stipulations, paragraph 13)

CONCLUSIONS OF LAW

The sole issue in this case is equitable apportionment of the benefits of Tadd Bainum to his dependents.

Iowa Code section 85.31(1) indicates when death results from a work-related injury, the employer shall pay dependents who were wholly dependent on the earnings of the employee for support at the time of the injury. Under the statute, dependents include a surviving spouse, children, and dependents as defined under Iowa Code section 85.44.

A dependent is defined under Iowa Code section 85.44 as:

... one actually dependent or mentally or physically incapacitated from earning. Such status shall be determined in accordance with the facts as of the date of the injury. In such cases if there is more than one person, the compensation benefit shall be equally divided among them. If there is no one wholly dependent and more than one person partially dependent, the compensation benefit shall be divided among them in the proportion each dependency bears to their aggregate dependency

In Murphy v. Franklin County, 259 Iowa 703, 145 N.W.2d 465 (1966), the Iowa Supreme Court indicated that the calculation for determining the degree of dependency, under Iowa Code section 85.31(3), is related to the percentage of wages determined to have been contributed to the dependent's welfare. In Murphy, the evidentiary record indicated a seventeen year old minor son contributed at least fifty percent of two paychecks toward his family. Based on that evidence, the court upheld an award of fifty percent under the statutory formula found in Iowa Code section 85.31(1).

Bainum had monthly gross earnings of \$5,984.98. Bainum has a workers' compensation rate of \$867.37. Bainum was paying \$469.00 per month in support of T.B. \$469.00 is 7.8 percent of Bainum's gross monthly income. 7.8 percent of \$867.37 is \$67.65.

The parties have stipulated that T.B. shall receive \$75.00 per week until he is no longer a full-time college student, graduates from college, or reaches the age of 25, whichever event occurs first. T.B. has reached the age of majority. T.B. is represented by counsel. He indicates a desire to resolve this matter as detailed above and believes this is in his best interest to do so.

Based on the facts detailed above, T.B. shall receive a benefit of \$75.00 per week until he reaches the age of 25, graduates from college, or is no longer enrolled as a full-time college student, whichever event occurs first. The remaining \$792.37 per

week shall be paid to the minor children, H.B., and L.B., in equal shares under Iowa Code sections 85.31, 85.42, and 85.43.

ORDER

THEREFORE IT IS ORDERED:

That Liberty shall pay T.B. seventy five and 00/100 dollars (\$75.00) per week until he is no longer a full-time college student, graduates from college, or reaches the age of twenty five (25), whichever event occurs first.

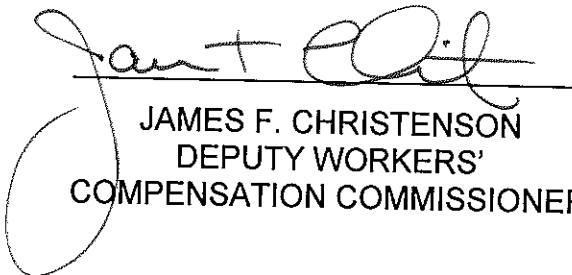
T.B. shall provide written documentation confirming his status as a full-time college student in August and January of each school year.

The remainder of seven hundred ninety-two and 37/100 dollars (\$792.37) per week shall be paid to the minor children, H.B., and L.B. in equal shares.

It is further ordered that this matter is subject to modification by further petitions to this agency.

Defendants shall file claimant activity reports as required or requested by this agency under rule 876 IAC 3.1(2).

Signed and filed this 22nd day of February, 2017.


JAMES F. CHRISTENSON
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

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JFC/sam

Right to Appeal: This decision shall become final unless you or another interested party appeals within 20 days from the date above, pursuant to rule 876-4.27 (17A, 86) of the Iowa Administrative Code. The notice of appeal must be in writing and received by the commissioner's office within 20 days from the date of the decision. The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday. The notice of appeal must be filed at the following address: Workers' Compensation Commissioner, Iowa Division of Workers' Compensation, 1000 E. Grand Avenue, Des Moines, Iowa 50319-0209.