

Hirsch, Stanley, Dec'd

COMPUTATION OF BENEFITS

Support provided to dependents (RCW 51.32.050(5))

Since the expenses of maintaining the household were fixed and not reduced by her son's death, the entire amount of the deceased son's contributions, except amounts used for his food and clothing, should have been considered "support" in calculating the benefits payable to the dependent mother of the deceased worker. ...*In re Stanley Hirsch, Dec'd*, BIIA Dec., 20,797 (1964)

Scroll down for order.

1	Utilities - \$7.00 per month	\$ 84.00
2	Heating Oil - Averages \$ 25.00 per mo.	300.00
3	Water, Garbage, Sewer -\$ 5.00 per mo.	60.00
4	Food - \$35.00 per week	1820.00
5	Dental & Medical - \$20.00 per mo.	240.00
6	Clothing	300.00
7	Telephone - \$5.00 per mo.	60.00
8	House Repair	100.00
9	Taxes - At present per year	32.00
10	Fire Insurance - at present per year	12.00
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12		\$3008.00

13 The record further reveals that the deceased and his brother lived with their mother (the
 14 petitioner herein) in their mother's home and since the mother had no income, the deceased and
 15 his brother shared all of the household expenses. In explanation of how the petitioner's award was
 16 computed, the department wrote her a letter dated September 4, 1963, which, after referring to the
 17 total sum of \$3008.00, reads in part as follows:
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19 "This sum was contributed jointly by your deceased son, Stanley, and
 20 his brother, LeRoy, and is the amount that was required to maintain the
 21 home, including maintenance of the home, food, clothing, heating and
 22 so forth for three persons, or \$1,002.67 for each person. It therefore is
 23 indicated that as far as your support is concerned, both of your sons
 24 contributed \$1,002.67 for your support per year and that Stanley
 25 contributed one half of this, or \$501.34 per year, which is equal to
 26 \$41.78 per month for your support."
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28 "The Industrial Insurance Act provides that a dependency pension shall
 29 be paid on the basis of one half of the average monthly support
 30 furnished by the deceased workman for the twelve months immediately
 31 preceding the injury and death, which then is one half of \$41.78, or
 32 \$20.89 per month pension."
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34 The statute providing for monthly benefits, R.C.W. 51.32.050 (5), reads in part as follows:
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36 "...a monthly payment shall be made to each dependent equal to fifty
 37 percent of the average monthly support actually received by such
 38 dependent from the workman during the twelve months next preceding
 39 the occurrence of the injury, but the total payment to all dependents in
 40 any case shall not exceed one hundred dollars per month...."
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42 The statute defining a dependent, R.C.W. 51.08.050, reads in part as follows:
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44 "'Dependent' means any of the following named relatives of a workman
 45 whose death results from any injury and who leaves surviving no widow,
 46 widower, or child, viz: father, mother,, who at the time of the accident
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1 are actually and necessarily dependent in whole or in part for their
2 support upon the earnings of the workman...."

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4 This is a case of first impression in this state. In the case of McIntire v. Department of Labor and
5 Industries, 125 Wash. 370, the court did construe the then existing statutes defining a dependent,
6 and providing benefits to dependents, which statutes were identical in their controlling terms to our
7 present statutes. The specific issues presented in the McIntire case, supra, were whether or not
8 the father and mother were dependents in whole or in part, on the earnings of their son at the time
9 he was killed, and, if so, what was the actual monthly support during the year preceding his death.
10 With reference to the first issue, the court recognized that "the family could have supported life and
11 gotten along some way without contribution from the deceased son," but stated that it was "pretty
12 clearly certain that contributions from the son through his work were looked to, depended and relied
13 on in substantial part by the family for means of reasonable support." The court further stated that
14 "It would be difficult, if not impossible, to lay down a hard and fast rule in the matter of detail,
15 including a standard of living, by which to apply with unerring precision that idea of dependence
16 contemplated by the statute in question." But, after noting that "the statute itself is a liberal one,"
17 the court held that the test to be applied to determine entitlement to benefits thereunder was
18 whether or not the alleged dependents "depended and relied to a substantial extent upon that
19 support for the ordinary necessities of life for persons in their station socially and financially."
20 (Emphasis added). As to the second issue, after quoting the pertinent statute (which was then the
21 same as R.C.W. 51.32.050 (5) except that the maximum payment was twenty dollars per month,
22 rather than one hundred), the court stated:

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33 "...While in this case, because no account was kept between the parties,
34 it is difficult to determine with certainty the amount of the contributions
35 made by the decedent to his parents during the twelve months
36 preceding his death (which of itself is a rather strong suggestion and
37 argument in favor of the finding that the contributions were depended
38 and relied upon by the parties, and made by the son as a member of the
39 family for their necessary support), it does satisfactorily appear that
40 those contributions exceeded \$40 per month during the last twelve
41 months, from which it follows that the amount of \$20, allowed the
42 parents by the judgment in this case, is fully warranted."

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44 It is not clear from the above-quoted holding of the court whether the "contributions" of the
45 decedent therein referred to, were contributions made toward the support of the entire family or
46 contributions computed after deducting therefrom the cost of maintenance of the decedent who
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1 lived at home as a member of the family. However, as no accounts were maintained, it is quite
2 obvious that the amount of contributions of the decedent to his parent's support was not computed
3 on the theory used by the department in the instant case.
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5 The statutes of the state of Oregon defining dependency, and benefits to dependents, are
6 identical to the Washington statutes in their controlling provisions. In Paul v. Industrial Accident
7 Commission, 272 Pac. 267 (Oregon 1928) the court stated:
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10 "Dependents are not required to live on the bare necessities of life. The
11 rule as stated by most of the authorities is that the surviving dependents
12 are entitled to continue to live as they had been living prior to the
13 accident, the basic idea of the statute is compensation. Surviving
14 relatives within the class named in the statute, to whose living decedent
15 contributed, and upon whom they relied partially or wholly for support,
16 are beneficiaries. The statute does not require destitution in order to be
17 dependents. The statute should not be so construed as to encourage
18 extravagance. In order for relatives to be dependents to an unmarried
19 decedent, they must be dependent in fact on his contribution in order to
20 continue to live in comfort according to the manner of living of people in
21 their class and condition in life." (Emphasis supplied). Citing the
22 McIntire case, supra.
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24 Admittedly, as in the McIntire case, supra, the primary issue presented in the Paul case, supra, was
25 whether certain relatives, otherwise qualified, were wholly or partially dependent upon the
26 deceased workman. However, the rationale of the case, and the rationale implicit in the language
27 of the court in the McIntire case, supra, is that the purpose of the statute providing for
28 compensation to dependents is (within the limits of the statutory benefits) that the dependents may
29 continue to live in their same station in life socially and financially.
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32 The only case in any other jurisdiction which we have been able to find directly in point
33 concerning the specific issue as to the correctness of the method of computation used by the
34 department in the case here under consideration, is Delanoy v. New Jersey Dairy Laboratories, 33
35 A. (2d) 348, 130 N.J.L 407 (1943) where the sole question involved was the extent of the
36 dependency of the petitioner, the mother of the deceased employee. In that case, the particular
37 household consisted of three persons, the decedent, and his father and mother. The father earned
38 \$30.00 a week, \$26.00 of which he contributed to the common fund for the support of the
39 household. The decedent earned \$18.00 a week and contributed a minimum of \$16.00 each week
40 to the petitioner for household expenses. The Workmen's Compensation Bureau found that the
41 cost of maintaining the decedent just prior to his death was \$6.00 per week, that the petitioner
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1 therefore had a contribution from him for the balance of \$10.00 a week and allowed compensation
2 to the mother on that basis. This determination was affirmed by the Court of Common Pleas and
3 the employer, on review by writ of certiorari to the Supreme Court, contended that this method of
4 computation was erroneous on the ground that the total stated expenses of the household each
5 week amounted to \$45.05 and reasoned (as did the department in this case) that this amount was
6 used in common for the general well-being of the three members of the household; that the
7 decedent's salary should bear one-third of this expense or \$15.00, and on this premise, the
8 decedent's contribution to the mother was one, or at the most, two dollars each week, and
9 compensation to the petitioner should be estimated on that figure. In answering this contention, the
10 court stated:

11 "We think otherwise, there are items in the weekly budget that should
12 not be charged against the decedent. It is patent that upon the son's
13 death, the expenses of the household each week would not be reduced
14 one-third. It costs just as much for rent and heat, charities, medicines,
15 household expenses after his death as it did before. The testimony
16 supports the inferences as found by the Bureau and the Pleas."
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18 We find the reasoning of the Delanoy case, supra, to be persuasive. It is our opinion that to apply
19 the rationale of the case to the facts herein would be in accord with the construction given by the
20 court to the controlling statutes in the McIntire case, supra, and in accord with the long established
21 rule of statutory construction that the Industrial Insurance Act should be liberally construed in favor
22 of those who came within its terms, Olympia Brewing Company v. Department of Labor and
23 Industries, 34 Wn. (2d) 498.
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25 In reviewing the record and the itemized household expenses listed therein and accepted by
26 the department as the basis for its computation, in light of the reasoning in the Delanoy case, supra,
27 we note that there is no evidence that the medical and dental expenses itemized were chargeable
28 to the deceased son. On the contrary, it affirmatively appears that the petitioner suffered cancer
29 and arthritis which required regular treatments and that the sons shared these medical expenses
30 equally. We conclude, therefore, that the decedent's death did not reduce the medical and dental
31 expenses of the household. It also appears that the only expenses of maintaining the household
32 that would be reduced by the son's death would be for food and possibly clothing. There is no
33 direct evidence in the record just how much these expenses were reduced. The record reveals that
34 the decedent earned approximately \$4600.00 during the twelve months preceding his fatal injury
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1 out of which he contributed \$1504.00 to his mother. While it would appear unlikely that the \$300.00
2 item for clothing in the list of household expenses included the decedent's own clothing, we note
3 that the statement of exceptions filed by the petitioner concedes that her expenses were reduced
4 by one-third of the food and clothing expense itemized in the list of household expenses. In any
5 event, in the absence of any evidence in the record that the reduction was any less, it is our opinion
6 that it is reasonable and proper to infer that these items of expense were reduced one-third by the
7 son's death.
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11 Therefore, this would reduce the contribution made by the decedent to his mother's support,
12 namely, \$1504.00, by one-third of the itemized expenses of the household for food and clothing,
13 namely, \$706.67, leaving a net contribution made by the deceased of \$797.33 upon which to base
14 an award to the petitioner. This would be equal to \$66.44 a month. Pursuant to the provisions of
15 R.C.W. 51.32.050 (5) the petitioner should have been awarded a monthly pension of \$33.22 a
16 month.
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21 We conclude, therefore, that the supervisor's order of September 4, 1963, should be
22 reversed and that this claim should be remanded to the department of labor and industries with
23 direction to award the petitioner a dependency pension in the sum of \$33.22 per month, effective
24 May 6, 1963, less the amount previously paid.
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FINDINGS OF FACT

28 After review of the entire record, the Board makes the following findings of fact:
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- 30 1. On May 17, 1963, the department of labor and industries received a
31 report of fatal injury from the employer, Weyerhaeuser Company, stating
32 that Stanley G. Hirsch had sustained a fatal injury on May 6, 1963, in the
33 course of his employment with the Weyerhaeuser Company. On May
34 17, 1963, the petitioner, mother of the deceased workman, filed a claim
35 "for any benefits which I might be entitled to as a dependent of my son,
36 Stanley G. Hirsch, who died in an industrial injury on May 6, 1963."
37 Thereafter, on June 10, 1963, the supervisor of industrial insurance
38 entered an order finding that Stanley G. Hirsch sustained a fatal injury
39 on May 6, 1963, while engaged in an employment covered by the act
40 and ordered that the claim be approved and that any payments which
41 may be due thereunder shall be made as provided by statute. On July
42 1, 1963, the petitioner, at the request of the department, filed a further
43 claim for a dependency pension on a printed form furnished by the
44 department and provided additional information as requested. On
45 September 4, 1963, the supervisor entered an order finding that the
46 petitioner was partly dependent on the deceased workman for support,
47 and awarding her a pension of \$20.89 per month. On September 24,

1 1963, the petitioner filed a notice of appeal to this Board alleging that the
2 supervisor's order of September 4, 1963, was erroneous for the reason
3 that the amount of the monthly pension was incorrectly computed and
4 was not computed according to law.

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6 2. On June 5, 1964, a hearing examiner for this Board issued an order
7 sustaining the supervisor's order of September 4, 1963, and there-after,
8 within the time required by law, the claimant filed a statement of
9 exceptions thereto.
- 10 3. The petitioner lived in her own home with the deceased son and another
11 son, and since she had no income, the deceased son and his brother
12 shared equally in all of the household expenses, which totaled \$3008.00
13 during the twelve month period immediately preceding the date of the
14 deceased son's fatal injury.
- 15 4. The total amount contributed by the deceased son for household
16 expenses during the twelve months' period immediately preceding the
17 date of his fatal injury, was \$1504.00.
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19 5. There is no evidence in the record that the medical and dental
20 expenses, as itemized in the above-mentioned total amount for
21 household expenses, were chargeable to the deceased son. To the
22 contrary, the record discloses that the petitioner suffered from cancer
23 and arthritis, which required regular treatment, and her sons shared
24 these medical expenses equally.
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26 6. The only itemized expenses in the above-mentioned total expenses for
27 maintaining the household which were reduced by the son's death were
28 for food and clothing.
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30 7. In the absence of any evidence in the record that the reduction was any
31 less, the itemized expenses in the record for food and clothing were
32 reduced one-third by the son's death, namely, in the sum of \$706.67,
33 leaving a net yearly total for support contributed to the petitioner by the
34 deceased son during the twelve month period immediately preceding
35 the date of his fatal injury of \$797.33, or \$66.44 per month.

36 **CONCLUSIONS OF LAW**

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38 Based on the foregoing findings of fact, the Board concludes:

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40 1. This Board has jurisdiction of the parties and subject matter of this
41 appeal.
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43 2. The supervisor's order of September 4, 1963, should be reversed and
44 this claim should be remanded to the department with direction to award
45 the petitioner a dependency pension of \$33.22 per month effective May
46 6, 1963, pursuant to the provisions of R.C.W. 51.32.050 (5), less the
47 amount previously paid.

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3 **ORDER**

4 Now, therefore, it is hereby ORDERED that the order of the supervisor of industrial
5 insurance dated September 4, 1963, be, and the same is hereby, reversed and this claim is
6 remanded to the department of labor and industries with direction to reopen the claim to pay the
7 petitioner a dependency pension of \$33.22 per month, effective May 6, 1963, pursuant to the
8 provisions of R.C.W. 51.32.050 (5), less the amount previously paid.
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10 Dated this 23rd day of November, 1964.

11 BOARD OF INDUSTRIAL INSURANCE APPEALS

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15 /s/
16 J. HARRIS LYNCH Chairman

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19 /s/
20 R. H. POWELL Member

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23 /s/
24 HAROLD J. PETRIE Member

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