

D. PIP Benefit #4: Survivor's Loss Benefits

Where a motor vehicle accident results in death, dependents of the decedent are entitled to recover “*survivor's loss benefits*” under §3108 and funeral and burial expenses under §3107(1)(a) of the No-Fault Statute. Survivor's loss benefits are payable for three (3) years and are subject to the same maximum monthly benefit ceiling which is applicable to work loss claims. Survivor's loss benefits are comprised of several components including after-tax income, lost fringe benefits and replacement service expenses. Survivor's loss benefits are defined in Section 3108 as compensation for the “*loss . . . of contributions of tangible things of economic value . . . that dependents of the deceased . . . would have received for support during their dependency . . . if the deceased had not suffered the accidental bodily injury causing death and expenses, not exceeding \$20 per day, reasonably incurred by these dependents during their dependency . . . in obtaining ordinary and necessary services in lieu of those that the deceased would have performed for their benefit if the deceased had not suffered the injury causing death.*” Important principles regarding survivor's loss benefits are summarized below:

- 1. Multiple Elements of the Claim** — The courts have held that the survivor's loss benefit is a multifaceted benefit that includes several important and distinct elements, including: (1) the after tax income earned by the decedent; (2) the value of fringe benefits that were available to the decedent but are now lost or diminished because of his/her death; (3) any other activity that resulted in the production of “*contributions of tangible things of economic value*” (i.e., exchanging services with neighbors); and (4) the same type of replacement service expense benefit payable in non-death cases. The courts have also held that survivor's loss benefits are not to be reduced by amounts attributable to the personal consumption of the decedent. See *Miller v State Farm Mut Auto Ins Co*, 410 Mich 528 (1981).
- 2. A Single Monthly Ceiling** — Unlike non-death cases where it is possible to recover work loss benefits up to the monthly maximum plus the additional amount of \$20 per day in replacement service expenses, all elements of survivor's loss benefits are capped by the monthly maximum limitation, including the replacement service component. Therefore, the sum total of all elements of the survivor's loss claim cannot exceed the monthly maximum cap applicable to no-fault work loss benefits under §3107(1)(b).
- 3. Eligible Claimants** — Only those persons who are classified as a “*dependent*” of the decedent may make a claim for survivor's loss benefits. Section 3110 of the statute states that spouses and children under 18 are conclusively presumed to be dependents of the deceased. In addition, children over 18 but physically or mentally incapacitated from earning are considered to be a dependent of a parent with whom the child lives or from whom the child was receiving support regularly at the time of the parent's death. Dependency

continues for children over the age of 18 if they are engaged “*full time in a formal program of academic or vocational education or training.*” In all other cases, questions of dependency and the extent of dependency are to be determined in accordance with the facts as they exist at the time of death. The statute also states that the dependency of the surviving spouse terminates upon death or remarriage.

4. Funeral and Burial Expenses — Section 3107(1)(a) provides for a separate “*funeral and burial expense*” benefit which shall not be less than \$1,750 or more than \$5,000, depending upon the type of coverage the accident victim was carrying at the time of the accident. These benefits apply to the charges of a funeral home, grave site and related expenses.