

**PART C – Decision under Appeal**

The decision under appeal is the Ministry of Social Development's (Ministry) reconsideration decision dated 26 June 2012, which deducted of the amount of \$500 received from ICBC from the Appellant's disability assistance monthly funds for the month of June 2012 pursuant to Section 24 of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) because the ICBC payment was unearned income as defined in Section 1 (d) of the EAPWDR and was not exempt.

**PART D – Relevant Legislation**

Employment and Assistance for Persons with Disabilities Act , Section 5  
Employment and Assistance for Persons with Disabilities Regulation, Section 1, 9, 24, Schedule B

## PART E – Summary of Facts

The evidence before the Ministry was:

1. Letter dated the 26 June 2012 from the Reconsideration Office, advising the Appellant that the Request for Reconsideration Decision dated 18 June 2012 ,was denied.
2. The Reconsideration Decision dated the 26 June 2012 with attached Appendix A- Reasons for Decision; Appendix B – Applicable Legislation; Appendix C – ICBC Settlement receipt dated the 16 April 2012; Assisting Clients with Reconsideration – Checklist.
3. Application for Reconsideration dated the 18 June 2012 , signed by the Appellant. Included is a letter, written by the Appellant's parent and signed by the Appellant with an attached copy of ICBC's Insurance (Vehicle) Regulation, Section 60.

The evidence provided by the Ministry :

1. A Letter dated the 27 July 2012 , 'Written Submission for Appeal' stating that 'It is the minister's position that the EAPWD Act and regulations are not binding to those making decisions under the Income Tax Act and vice versa.' The Ministry also states that ' The appellant states that she is being discriminated against because the Appellant is a Person with Disabilities. It is the Minister's position that the appellant's position that the appellant's PWD designation has no bearing on this decision, other than the fact that it is made under the EAPWDA and EAPWDR.

The evidence provided by the Appellant is:

1. Release of Information document signed on the 23 July 2012.
2. Letter dated the 23 July 2012 to the Employment and Assistance Appeal Tribunal stating the Appellants position. That the amount of \$500 from ICBC was a payment for pain and suffering. That the BCEA PWD Information Help Sheet , given by the Ministry did not clearly outline that earnings and income are two different things. The Appellant stated that the monthly report was filled out in accordance with the information received through telecommunication with the Ministry's Office. The Appellant further states that the documentation provided by the Ministry is ' *misleading or confusing* ' in terms of ' *what is income is, earned or otherwise when applying* ' concerning people with disabilities. And believed that the amount of \$500 would be allowed. The Appellant also indicates that due to the Appellants designation of PWD there has been some discrimination on this issue.
3. Copy of the *Information Help Sheet – BCEA Persons with Disabilities Benefits*.
4. Copy of Canada Revenue Agency – *Amounts that are not taxed*.
5. Copy of Canada Revenue Agency – *Income Tax Interpretation Bulletin, Damages*,

*Settlements and Similar Receipts*

6. Copy of Ministry of Social Development – Monthly Report ( Blank form)
7. Letter dated the 8 August 2012, to the Appellant with respect to the Ministry's July 27, 2012 submission concerning this appeal from the Tribunal Office.
8. Admission of new evidence under the Employment and Assistance Act pursuant to Section 22(4).

## PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry reasonable determined that settlement amount of \$500 received by the Appellant through an ICBC Claim for pain and suffering, is unearned income in accordance with the Legislation and therefore deducted from the Appellant's disability assistance.

The relevant legislation is :

## EAPWD Regulation

Section 1 (1) In this regulation:

"earned income" means

- (a) Any money or value received in exchange for work or the provision of a service,
- (b) Tax funds,
- (c) Pension plan contributions that are refunded because of insufficient contributions to create a pension,
- (d) Money or value received from providing room and board at a person's place of residence, or
- (e) Money or value received from renting rooms that are common to and part of a person's place of residence;

"unearned income" means any income that is not earned income, and includes without limitation, money or value received from any of the following:

- (a) Money, annuities, stocks, bonds, shares, and interest bearing accounts or properties;
- (b) Cooperative associations as defined in the *Real Estate Development Marketing Act*; (BC Reg. 518/2004)
- (c) War disability pensions, military pensions and war veterans' allowances;
- (d) Insurance benefits, except insurance paid as compensation for a destroyed asset;
- (e) Superannuation benefits;
- (f) Any type or class of Canada Pension Plan benefits;
- (g) Employment insurance;
- (h) Union or lodge benefits;
- (i) Financial assistance provided under the *Employment and Assistance Act* or provided by another province or jurisdiction;
- (j) Worker's compensation benefits and disability payments or pensions;
- (k) Widows' or orphans' allowances;
- (l) A trust or inheritance;
- (m) Rental of tools, vehicles or equipment;
- (n) Rental of land, self-contained suites or other property except the place of residence of an applicant or recipient;
- (o) Interest earned on a mortgage or agreement for sale;
- (p) Maintenance under a court order, a separation agreement or other agreement;
- (q) Education or training allowances, grants, loans, bursaries or scholarships;
- (r) A lottery or a game of chance;
- (s) Awards of compensation under the *Criminal Injury Compensation Act* or awards of benefits under the *Criminal Victim Assistance Act*, other than an award paid for repair or replacement of damaged or destroyed property: (BC Reg. 345/2004)
- (t) Any other financial awards or compensation;
- (u) Federal Old Age Security and Guaranteed Income Supplement payments.

- (v) Financial contributions made by a sponsor pursuant to an undertaking given for the purposes of the *Immigration and Refugee Protection Act (Canada)* or the *Immigration Act (Canada)*.

Schedule B – *Net Income Calculations* ( section 24(b))

Deductions and exemption rules

Exemptions – unearned income

7(1) the following unearned income is exempt: (BC Reg. 83/2012)

(c) a criminal injury compensation award or other award, except the amount that would cause the family unit's assets to exceed, at the time the award is received, the limit applicable under section 10 (*asset limits*) of this regulation;

The Appellant argues that ICBC settlement for \$500 should be considered exempt because it is not an 'insurance benefit' but it is an 'Ex Gratia' payment. The Appellant further states that the documentation provided by the Ministry, upon application does not clearly as defined in what is considered *income earned or otherwise when applying* where persons with disability are concerned. The Appellant states that Income Tax Canada regards this amount to be non-taxable due to the fact the settlement was compensation by ICBC for pain and suffering. The Appellant also alleges the Ministry has discriminated against the appellant because she has PWD designation.

The Ministry argues that despite the Appellant's position that the settlement payment from ICBC was not an insurance benefit but an 'ex gratia payment', the payment must be considered as 'unearned income' as defined in both EAPWD Act and Regulation. Further, the Appellant has not provided sufficient documentation or evidence to confirm that the \$500 was not an insurance benefit, therefore it is not exempt income and must be deducted fully from disability assistance benefits. It is the minister's position that the EAPWD Act and Regulation are not binding to those making decisions under the Income Tax Act and vice versa. In response to the appellant's claim that she has been discriminated against because she is a PWD, the ministry takes the position that the appellant's designation as a PWD had no bearing on the decision other than the decision being made under the EAPWD Act and EAPWD Regulation.

Therefore, it is the ministry's decision that the \$500 received, by the Appellant, from ICBC on the 16 April 2012 is not exempt income and; therefore, must be fully deducted from the Appellant's disability assistance benefits.

The Panel finds that the ICBC settlement for \$500, received by the Appellant on the 16 April 2012 to be unearned income due to the fact that it was not earned income as defined in Section 1 (1) (a to e) '*earned income*' of the EAPWD Regulation; but is considered '*unearned income*' as defined in Section 1(1) of the EAPWD Regulation. The Panel took into consideration the matter of "ex gratia" settlement payment from ICBC and found that under Section 1 – 'unearned income' subsection (d) – Insurance benefits, except insurance paid as compensation for a destroyed asset: of the EAPWD Regulation apply in this matter therefore the ICBC settlement was not earned income nor exempt as defined in Section 7 (1) of Schedule B.

Therefore, the Panel finds the Ministry's decision was reasonable and confirms the ministry's decision which is reasonably supported by the evidence.