

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation's (the ministry's) reconsideration decision of July 24, 2013 in which the ministry determined that the funds the appellant received from ICBC are not exempt from income. The ministry determined that the funds do not constitute a "structured settlement annuity" payment as defined in the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), Schedule B(7)(2) but rather must be considered "insurance benefits" under unearned income as defined in the EAPWDR, Section 1 and therefore must be deducted from the appellant's disability assistance in accordance with the EAPWDR, Section 24.

PART D – Relevant Legislation

- The Employment and Assistance for Persons with Disabilities Regulation, Schedule B(7)
- The Employment and Assistance for Persons with Disabilities Regulation, Sections 1 and 24.

PART E – Summary of Facts

The evidence includes;

- the ministry's reconsideration decision of June 24, 2013, in which the ministry states that the appellant is currently receiving disability assistance. The ministry also states that the appellant submitted documents from a life assurance company [hereafter referred to as the life assurance company] to support her claim that the ICBC payments the appellant receives are structured settlement annuity payments.
- A 6-page life assurance company's "Single Premium Annuity Policy, with a policy date of August 2, 2011. Under the heading "Single Premium Annuity" the policy is described as "a legal contract between the owner and [the life assurance company]." Under the heading "Payment Schedule," ICBC is the "Owner and Annuitant (Beneficiary)." The payee is noted as "designated in the application."
- A 1-page Structured Settlement Annuity Application signed February 25, 2011 by a person authorized by the owner of the policy, ICBC. In the application the appellant is indicated as "the measuring life," i.e., the payee.
- A 1-page document headed "Endorsement." The line under the heading reads "Structured Settlement Annuity." Although not included in the 6 pages of the policy above, the document states: "This endorsement is in addition to and forms and integral part of the ... numbered Structured Settlement Annuity Policy." The endorsement states that "this policy is assignable, commutable and transferable." The endorsement is signed September 13, 2011, by an authorized representative of the life assurance company. The owner of the policy is indicated as ICBC.
- A letter from ICBC to the Ministry dated May 28, 2013 advising that:
 - "1) The benefits [the appellant] receives on a monthly basis are called Temporary Total Disability (TTD) benefits. These are wage loss benefit and are NOT damages paid to the customer. TTD would not be paid out in a lump sum.
 - 2) ICBC would only receive the remaining funds should [the appellant] pass away or be deemed competitively employable (which is not likely [—] therefore we purchased the annuity)."
- A 1-page letter submitted by the appellant's advocate on June 24, 2013 with the appellant's Reason for Request for Reconsideration. The letter states that because the policy is described as a structured settlement annuity, the income from the policy should not be deducted from the appellant's benefits. It also states that the money from the policy is used for disability-related costs or to promote independence and should therefore be considered exempt.

After the reconsideration decision, the following information was received:

- The appellant's Notice of Appeal, July 29, 2013. In her Reasons for Appeal, the appellant restates her position, as given by her advocate on June 24. The appellant writes that she disagrees with the Ministry's reconsideration decision "because it states in the legislation that structured settlements are exempt and what I get from [the life assurance company] is a structured settlement." The panel

accepts the information as argument rather than new evidence.

• At the hearing the appellant provided the following documents:

1. A disability benefits payment schedule dated August 11, 2011 for the appellant from the life assurance company.

2. A letter to the appellant dated August 6, 2013 from ICBC that reads in part:

“ . . . in order to make the payment of your . . . Disability Benefits easier for you, we have purchased an annuity in reference these benefits.” . . . [A financial structured settlement firm] will be in contact [with you].

3. A document dated August 7, 2013 from a controller with the financial structured settlement firm (referenced in 2 above) copied to the appellant and addressed “To whom it may concern” confirming that the appellant is in receipt of a guaranteed monthly annuity income from the life assurance company.

The panel finds that items 1-3 contain information in support of the information and records that were before the minister when the decision being appealed was made; and therefore the panel finds that the items are admissible as evidence in accordance with the Employment and Assistance Act (EAA), Section 22 (4).

PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry's determination that the funds the appellant received from ICBC are not exempt from income was a reasonable application of the legislation in the circumstances of the appellant or was reasonably supported by the evidence. The ministry determined that the funds do not constitute a "structured settlement annuity" payment as defined in the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), Schedule B(7)(2) but rather must be considered "insurance benefits" under unearned income as defined in the EAPWDR, Section 1 and therefore must be deducted from the appellant's disability assistance in accordance with the EAPWDR, Section 24.

Employment and Assistance for Persons with Disabilities Regulation

• Section 1 – Definitions

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

(d) insurance benefits, except insurance paid as compensation for a destroyed asset

• Section 24 Amount of disability assistance

Disability assistance may be provided to or for a family unit, for a calendar month, in an amount that is not more than

(a) the amount determined under Schedule A, minus

(b) the family unit's net income determined under Schedule B.

• Schedule B Net Income Calculation

Deduction and exemption rules . . .

Exemptions — unearned income

7 (0.1) In this section:

"disability-related cost" means a disability-related cost referred to in paragraph (a), (b), (c) or (e) of the definition of disability-related cost in section 12 (1) [*assets held in trust for person with disabilities*] of this regulation;

"disability-related cost to promote independence" means a disability-related cost referred to in paragraph (d) of the definition of disability-related cost in section 12 (1) of this regulation;

"intended registered disability savings plan or trust", in relation to a person referred to in section 12.1 (2) [*temporary exemption of assets for person with disabilities or person receiving special care*] of this regulation, means an asset, received by the person, to which the exemption under that section

applies;

"structured settlement annuity payment" means a payment referred to in subsection (2) (b) (iii) made under the annuity contract referred to in that subsection.

(1) The following unearned income is exempt:

(a) the portion of interest from a mortgage on, or agreement for sale of, the family unit's previous place of residence if the interest is required for the amount owing on the purchase or rental of the family unit's current place of residence;

(b) \$50 of each monthly Federal Department of Veterans Affairs benefits paid to any person in the family unit;

(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;

(d) a payment made from a trust to or on behalf of a person referred to in section 12 (1) *[assets held in trust for person with disabilities]* of this regulation if the payment is applied exclusively to or used exclusively for

(i) disability-related costs,

(ii) the acquisition of a family unit's place of residence,

(iii) a registered education savings plan, or

(iv) a registered disability savings plan;

(d.1) subject to subsection (2), a structured settlement annuity payment made to a person referred to in section 12 (1) of this regulation if the payment is applied exclusively to or used exclusively for an item referred to in subparagraph (i), (ii), (iii) or (iv) of paragraph (d) of this subsection;

(d.2) money expended by a person referred to in section 12.1 (2) *[temporary exemption of assets for person with disabilities or person receiving special care]* of this regulation from an intended registered disability savings plan or trust if the money is applied exclusively to or used exclusively for disability-related costs;

(d.3) subject to subsection (2.1),

(i) a payment made from a trust to or on behalf of a person referred to in section 12 (1) of this regulation,

(ii) a structured settlement annuity payment that, subject to subsection (2), is made to a person referred to in section 12 (1) of this regulation, or

(iii) money expended by a person referred to in section 12.1 (2) of this regulation from an intended registered disability savings plan or trust

if the payment, structured settlement annuity payment or money is applied exclusively to or used exclusively for disability-related costs to promote independence . . .

(f) a tax refund.

(2) Subsection (1) (d.1) and (d.3) (ii) applies in respect of a person only if

(a) the person has entered into a settlement agreement with the defendant in relation to a claim for damages in respect of personal injury or death, and

(b) the settlement agreement requires the defendant to

(i) make periodic payments to the person for a fixed term or the life of the person,

(ii) purchase a single premium annuity contract that

(A) is not assignable, commutable or transferable, and

(B) is designed to produce payments equal to the amounts, and at the times, specified in the settlement agreement,

(iii) make an irrevocable direction to the issuer of the annuity contract to make all payments under that annuity contract directly to the person, and

(iv) remain liable to make the payments required by the settlement agreement.

(2.1) The maximum amount of the exemption under subsection (1) (d.3) is \$8 000 in a calendar year, calculated as the sum of all payments, structured settlement annuity payments and money that, during the calendar year, are applied exclusively to or used exclusively for disability-related costs to promote independence.

(3) Repealed. [B.C. Reg. 197/2012, Sch. 2, s. 13 (f).]

With respect to EAPWDR, Schedule B(7)(2), the appellant's position is that the income she receives from ICBC through the life assurance company is a structured settlement annuity payment. The reasons for her position are:

- in the annuity policy, on the page entitled "Endorsement," and in the annuity application form, the annuity is described as a "structured settlement annuity."

- a letter of August 7, 2013 copied to the appellant from a structured settlements firm indicates the

benefits are administered by the firm.

- the benefits the appellant receives are used for disability-related costs and to promote independence and therefore should be considered exempt.

The ministry acknowledges that ICBC applied for a structured settlement annuity through the life assurance company, that ICBC receives funding through the life assurance company and that ICBC uses these funds to pay the appellant monthly. The ministry's position is that the income the appellant receives from ICBC does not satisfy the definition in the legislation of a "structured settlement annuity payment" and are in fact insurance benefits. The ministry writes:

"Schedule B(7)(2) [EAPWDR] explains how the minister defines a structured settlement annuity payment. Specifically, it is for a person who has entered into a settlement agreement with the defendant in relation to a claim for damages and the settlement agreement requires the defendant to, in part, make periodic payments. It is the minister's position that [the appellant] did not enter into a settlement agreement. [The appellant] did not have an underlying settlement agreement in relation to a claim for damages. As per the letter from ICBC, dated May 28, 2013, [the appellant] is receiving wage loss benefits and NOT benefits for damages, and it was ICBC that purchased the annuity. [The appellant] is not involved in any structured settlement."

Regarding the nature of the benefits, the position of the ministry is that:

"ICBC is an Insurance corporation and ... the appellant's monthly payments meet the definition of "insurance benefits . . . as defined in (d) under the definitions of unearned income in Section 1 of the EAPWDR."

The panel finds that with respect to EAPWDR, Schedule B(7)(2)(a) the evidence shows that ICBC, not the appellant, entered into a structured settlement agreement with the life assurance company. As indicated in the Structured Settlement Annuity Application, ICBC as an insurance corporation is the owner and annuitant of the structured settlement agreement, not the appellant. Further, the evidence shows that the income the appellant receives is not "in relation to damages in respect to personal injury or death" but are "wage loss benefits and are not damages" as stated in the letter of May 28, 2013 to the appellant from ICBC.

Further, the panel finds that with respect to EAPWDR, Schedule B(7)(2)(b)(ii)(A), the evidence shows that the appellant is the payee of a policy that is assignable, commutable and transferable, as stated in the September 13, 2011 endorsement of the policy.

Given the evidence above, the panel finds that the ministry's determination that the funds the appellant received from ICBC are not a structured settlement annuity payment but rather are insurance benefits which are not exempt from income and must be deducted from disability assistance is reasonable. The panel therefore confirms the ministry's decision.