

**PART C – DECISION UNDER APPEAL**

The decision under appeal is the Ministry's reconsideration decision dated March 27, 2013 which held that the appellant was not eligible for an income exemption for the Worksafe BC payments the appellant receives for a Loss of Function Award, permanent partial disability as a result of a workplace injury because the payments are "unearned income" as defined in Section 1 of the Employment Assistance for Persons with Disabilities Regulation and are neither exempt nor deductible under Schedule B therefore the payments are included as monthly income when calculating disability assistance under Section 24.

**PART D – RELEVANT LEGISLATION****Employment and Assistance for Persons with Disabilities Regulation (EAPWDR)**

Sections 1, 24;

Schedule A Sections 1,2,4;

Schedule B Sections 1,6,7.1

***Workers Compensation Act (WCA)***

Section 23 Permanent partial disability or disfigurement

Section 30 Temporary partial disability

**PART E – SUMMARY OF FACTS**

The appellant had not received Notice of Hearing. The appellant was contacted and agreed to attend the hearing as scheduled, participating by telephone, using the conference call number.

The evidence before the minister at reconsideration was as follows:

- The appellant is a single parent in receipt of disability assistance.
- The appellant received a Loss of Function Award from Worksafe BC as a result of a workplace injury, effective June 25, 2012. This Award was granted under Section 23 Permanent partial disability or disfigurement, of the *Workers Compensation Act*.
- The Award was initially determined to be \$169.79 monthly, subject to cost of living adjustments. As of January 2013 the amount was raised to \$170.06 monthly.
- The appellant is eligible to receive the award until his 65<sup>th</sup> birthday.
- Because of the workplace injury the appellant cannot resume his former part-time job.

There was an additional document submitted by the ministry as part of this appeal.

- A letter addressed to the Ministry of Social Development, sent by fax from Worksafe BC confirming the appellant's Loss of Function award and monthly allowance. The letter is not on letterhead and is unsigned but has the Worksafe BC fax number, time and date record and the signature block of the Disability Awards Officer.

The content of the letter reflects the information before the Ministry at the time of reconsideration. When asked, the appellant said he agrees that the content of the letter is the current status of his Worksafe BC claim, however he disagrees with the legislative reasoning behind his payments from Worksafe BC.

The panel determined the additional documentary evidence was admissible under section 22(4) of the *Employment and Assistance Act (EAA)* as the faxed letter confirmed the information before the minister at reconsideration.

At the hearing the appellant stated he had worked at a part time job, in September or October, 2011, he was injured at work, he received Worksafe BC benefits from the date of the injury. The appellant confirmed that his injury is permanent; he stated his shoulder will never recover.

The appellant stated his problems began when Worksafe BC changed the bank accounts from which he was being paid. Until February 2013 the ministry was not deducting his Worksafe BC payments from this disability assistance allowance.

The ministry confirmed that the appellant's former wage loss claim was converted to a disability status claim under Section 23 of the *WCA* by Worksafe BC as of July 2012. The ministry did not become aware of this change until a file review was done; at that point in February 2013 the ministry started deducting the money received from Worksafe BC from the appellant's disability allowance.

The panel determined the additional oral evidence was admissible under section 22(4) of the *EAA* as it was in support of the records before the minister at reconsideration.

## PART F – REASONS FOR PANEL DECISION

The issue is whether the ministry's decision that the appellant was not eligible for an income exemption for the Worksafe BC payments the appellant receives under Section 23 of the *Workers Compensation Act* for a permanent partial disability under the EAPWDR, Section 1 "unearned income" and Schedules A and B was a reasonable application of the legislation, in the circumstances of the appellant.

The applicable legislations is as follows.

### Employment and Assistance for Persons with Disabilities Regulation

#### Definitions

1 (1) In this regulation:

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

- (j) workers' compensation benefits and disability payments or pensions;

#### Amount of disability assistance

24 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 A Disability Assistance Rates (section 24 (a))

#### Maximum amount of disability assistance before deduction of net income

1 (1) Subject to this section and sections 3 and 6 to 9 of this Schedule, the amount of disability assistance referred to in section 24 (a) [*amount of disability assistance*] of this regulation is the sum of (B.C. Reg. 197/2012)

- (a) the monthly support allowance under section 2 of this Schedule for a family unit matching the family unit of the applicant or recipient, plus
- (b) the shelter allowance calculated under sections 4 and 5 of this Schedule.

### SCHEDULE B Net Income Calculation (section 24 (b))

#### Deduction and exemption rules

1 When calculating the net income of a family unit for the purposes of section 24 (b) [*amount of disability assistance*] of this regulation,

- (a) the following are exempt from income: (i) - (xlii)
- (b) any amount garnished, attached, seized, deducted or set off from income is considered to be income, except the deductions permitted under sections 2 and 6,
- (c) all earned income must be included, except the deductions permitted under section 2 and any earned income exempted under sections 3, 3.1 and 4, and (B.C. Reg. 332/2012)
- (d) all unearned income must be included, except the deductions permitted under section 6 and any income exempted under sections 7, 7.1, 7.2 and 8. (B.C. Reg. 332/2012) (B.C. Reg. 123/2013)

**Exemptions - unearned income****Deductions from unearned income**

- 6 The only deductions permitted from unearned income are the following:
- (a) any income tax deducted at source from employment insurance benefits;
  - (b) essential operating costs of renting self-contained suites.

**Exemptions – workers compensation**

7.1 (1) Subject to subsection (2), unearned income that is compensation paid under section 29 or 30 of the *Workers Compensation Act* is exempt for a family unit.

(2) If an application for disability assistance (part 2) form is submitted to the minister, the family unit may not claim an exemption under this section in relation to the first calendar month for which the family unit becomes eligible for disability assistance unless

- (a) a member of the family unit who is designated as a person with disabilities previously received disability assistance under the Act or a former Act, or
- (b) a member of the family unit received income assistance under the *Employment and Assistance Act* for the calendar month immediately preceding that first calendar month.

**Workers Compensation Act****Permanent partial disability or disfigurement**

23 (1) Subject to subsections (3) to (3.2) and sections 34 and 35, if a permanent partial disability results from a worker's injury, the Board must

- (a) estimate the impairment of earning capacity from the nature and degree of the injury, and
- (b) pay the worker compensation that is a periodic payment that equals 90% of the Board's estimate of the loss of average net earnings resulting from the impairment.

(2) The Board may compile a rating schedule of percentages of impairment of earning capacity for specified injuries or mutilations which may be used as a guide in determining the compensation payable in permanent disability cases.

(3) Subject to sections 34 and 35, if

- (a) a permanent partial disability results from a worker's injury, and
- (b) the Board makes a determination under subsection (3.1) with respect to the worker, the Board may pay the worker compensation that is a periodic payment that equals 90% of the difference between
- (c) the average net earnings of the worker before the injury, and
- (d) whichever of the following amounts the Board considers better represents the worker's loss of earnings:
  - (i) the average net earnings that the worker is earning after the injury;
  - (ii) the average net earnings that the Board estimates the worker is capable of earning in a suitable occupation after the injury.

(3.1) A payment may be made under subsection (3) only if the Board determines that the combined effect of the worker's occupation at the time of the injury and the worker's disability resulting from the injury is so exceptional that an amount determined under subsection (1) does not appropriately compensate the worker for the injury.

(3.2) In making a determination under subsection (3.1), the Board must consider the ability of the worker to continue in the worker's occupation at the time of the injury or to adapt to another suitable occupation.

(4) Where permanent partial disability results from the injury, the minimum compensation awarded under this section must be calculated in the same manner as provided by section 29 (2) for temporary total disability but to the extent only of the partial disability.

(5) Where the worker has suffered a serious and permanent disfigurement which the Board considers is capable of impairing the worker's earning capacity, a lump sum in compensation may be paid, although the amount the worker was earning before the injury has not been diminished.

### Temporary partial disability

30 (1) Subject to sections 34 (1) and 35 (1), (4) and (5), if a temporary partial disability results from a worker's injury, the Board must pay the worker compensation that is a periodic payment that equals 90% of the difference between

- (a) the worker's average net earnings before the injury, and
- (b) whichever of the following amounts the Board considers better represents the worker's loss of earnings:
  - (i) the average net earnings that the worker is earning after the injury;
  - (ii) the average net earnings that the Board estimates the worker is capable of earning in a suitable occupation after the injury.

(2) Where temporary partial disability results from the injury, the minimum compensation awarded under this section must be calculated in the same manner as prescribed by section 29 (2) for temporary total disability but to the extent only of the partial disability.

The ministry argues the appellant's wage loss benefits were converted to disability benefits under section 23 of the *Worker's Compensation Act* as of June 25, 2012. These payments fall within the definition of "unearned income" for the purposes of calculating net income. The ministry then points to Schedule B, section 6 and notes that the payments made to the appellant do not fall within the categories that can be deducted from unearned income. What remains, argues the ministry, are the exemptions. In Schedule B, section 7.1 there are exceptions for workers' compensation payments made under the *Workers' Compensation Act*, section 29, Temporary total disability, and/or section 30 Temporary partial disability. The ministry argues that because appellant's Award was made under the *WCA* section 23, Permanent partial disability or disfigurement, and it is clear that the money paid to the appellant does not fall within the specific parameters of the EAPWD Regulation, it is not an allowable exemption. Therefore, the payment made to the appellant must be reduced dollar for dollar from the appellant's support and shelter allowances.

The appellant argues first that the whole matter should be thrown out because the ministry has not met their own timelines.

The appellant then argues that the money paid to him is a subsidy for wage loss and, from his perspective nothing has changed, as it continues to be a subsidy for wage loss paid to him because he can no longer work at his job as a result of a workplace injury. He sees his problem being caused by Worksafe BC since that organization changed the bank account from which he is being paid. The appellant stated that he knows that the legislation is against him but believes that this payment is wage loss and should be considered as part of his allowable earnings. If it were considered part of his allowable earnings then he would be able to have his full support and shelter allowance and the Worksafe BC payment.

With respect to the appellant's argument that the ministry had not met their own timelines, it has been established through the courts that the provisions setting out the timelines are directory rather than mandatory in nature as there are no consequences set out in the legislation for failure to meet the timelines. Therefore, the panel makes no finding on this matter.

The appellant's status with respect to his WorksafeBC claim changed as of June 25, 2012 however he continued to receive funds from WorksafeBC and his full support and shelter allowances. It was not until a ministry review was done some 7 months later that the

ministry determined the appellant was no longer eligible for an income exemption for the Worksafe BC payments as a result of a workplace injury because the payments are "unearned income" as defined in Section 1 of the Employment Assistance for Persons with Disabilities Regulation and are neither exempt nor deductible under Schedule B. Therefore the payments made to the appellant by Worksafe BC are included as monthly income when calculating disability assistance under Section 24.

While the appellant acknowledges the legislation to be against him, he is frustrated because from his perspective nothing has changed. Unfortunately that is not the case, once WorksafeBC determined that the appellant would not recover from his injury, a fact the appellant agrees with, Worksafe BC changed his claim status to that of permanent partial disability under section 23 of the *WCA*. In doing so the payments made by WorksafeBC no longer fall within an exempt category for the calculation of support and shelter under Section 24 of the EAPWD Regulation.

The panel finds the ministry's determination that the appellant was not eligible for an income exemption under the EAPWDR, Schedule B for the WorksafeBC payments he receives for a permanent partial disability under Section 23 of the *Workers Compensation Act* was a reasonable application of the applicable enactment in the circumstances of the appellant and therefore confirms the decision.