

### PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (ministry) reconsideration decision of August 20<sup>th</sup>, 2013 wherein the ministry determined the insurance benefit that the appellant received in June 2013 has to be considered as unearned income as defined in section 1(1)(d) Employment and Assistance for Persons with Disabilities (EAPWDR) and therefore is not exempt from calculating the family unit's net income under Schedule B EAPWDR for the month of August 2013.

### PART D – Relevant Legislation

Employment and Assistance For Persons with Disabilities Regulation (EAPWDR), section 1, 9, 24, Schedule B

## PART E – Summary of Facts

The evidence before the ministry at the time of reconsideration:

- MSDSI monthly report for June 2013 which indicates the appellant received an ICBC insurance payment of \$893.73;
- Cheque from ICBC dated June 11, 2013 payable to the appellant in amount of \$893.73;
- 9 pages of receipts, some in the appellant's name, for undisclosed purchases.
- Request for reconsideration dated August 6<sup>th</sup>, 2013 with a 3 page submission dated August 1<sup>st</sup>, 2013 attached.
- Letter dated March 5<sup>th</sup>, 2013 from ICBC to appellant regarding her motor vehicle accident.

The appellant is a single recipient of disability assistance, with no dependents. The appellant's disability rate is \$906.42. On June 11<sup>th</sup>, 2013 the appellant received an insurance benefit from ICBC as a result of a motor vehicle accident. The appellant described the insurance cheque to be wage-loss benefits.

On August 6<sup>th</sup>, 2013 the ministry received the appellant's Request for Reconsideration. The appellant submits that she is desperate because she cannot live off \$12.69 for an entire month; that she needs money for rent, car insurance, gasoline for her car, food, household expenses and medication. In the appellant's submission dated August 1<sup>st</sup>, 2013 she outlined the many troubling situations she has had to address lately; her concerns with her local ministry office and staff; her concerns with the EAPWDR legislation and the changes that are needed; and the problems her friends are addressing. The ministry informed the appellant that insurance benefits are considered unearned income and there are no exceptions for insurance benefits except insurance paid as compensation for a destroyed asset. The appellant was advised the income (insurance benefit) the appellant received in June is reported in July and affects the August disability assistance. The deduction is dollar for dollar and therefore the \$893.73 insurance payment must be deducted from her August disability assistance.

The appellant made two submissions; the first submission on October 10<sup>th</sup>, 2013 contained the documents listed 1 to 5 and 9 below, and the second submission on October 11<sup>th</sup>, 2013 which contained the documents listed in 6 to 8 below. The second submission was required as these documents were not included in the 1<sup>st</sup> submission.

The appellant's written submission dated October 4<sup>th</sup>, 2013 contained the following:

- 1) 2 page letter wherein the appellant addresses the ministry's Summary of Facts and what she was told by the ministry regarding the ICBC cheque;

The panel finds that the information in item #1 contains information relevant to the issue under appeal and that this document contains information that is in support of the information and record that was before the ministry at the time the reconsideration decision was made and therefore is admissible as evidence under section 22(4) Employment and Assistance Act (EAA).

- 2) 21 pages providing an overview of her life and information relating to her application for assistance and her PWD designation;
- 3) 2 page overview of the circumstances surrounding her motor vehicle accident;
- 4) Letter dated February 28<sup>th</sup>, 2011 from a medical specialist to a physician regarding the appellant's headaches, treatment and Canada Pension Plan (CPP) application;
- 5) Letter (incomplete) dated November 22<sup>nd</sup>, 2011 from a medical specialist regarding the appellant's headaches and her CPP application.
- 6) 2 page letter dated December 7<sup>th</sup>, 2006 from a medical specialist to the appellant's physician regarding the appellant's migraines.
- 7) 2 page letter dated August 5<sup>th</sup>, 2005 from medical specialist to a lawyer regarding the appellant's

migraine headaches.

- 8) 2 emails dated September 19<sup>th</sup>, 2013 and October 11<sup>th</sup>, 2013 from the appellant to the Employment and Assistance Appeal Tribunal (EAAT) regarding her written appeal.

The panel finds that the information contained in number 2 to 8 does not contain information relevant to the issue under appeal (that is, that the insurance benefit that the appellant received is considered unearned income and deducted from her monthly disability assistance) and, that these documents do not contain information that is in support of the information and record that was before the ministry at the time the reconsideration decision was made and therefore are not admissible as evidence under section 22(4) Employment and Assistance Act (EAA).

- 9) 3 pages outlining her arguments supporting her arguments against the ministry's reconsideration decision.

The appellant's submission is that when she first spoke to a ministry worker about Part 7 ICBC compensation that she was waiting to receive, she was told she would be able to keep \$800 per month, as that is all she would be allowed to earn if she was physically capable of working. The appellant submitted that when she received the cheque from ICBC and inquired again with the ministry office a different worker advised her that insurance benefits are considered unearned income and are deducted dollar for dollar from her monthly disability assistance. The appellant submits that Part 7 ICBC benefits should be exempt from being considered income; that ICBC benefits are for injury compensation; compensation for the amount of physical and emotional suffering that she had to endure. The appellant submits that the EAPWDR legislation is ambiguous since the ICBC benefit could be an insurance benefit or an award. The appellant submits the ICBC benefit could also be considered a financial award or other compensation as set out in paragraph (t) of section 1(1) EAPWDR for a definition of unearned income; that based on the plain meaning of the words, the ICBC benefit may clearly be financial compensation. The appellant submits that to determine whether it may also be a financial award this term should be examined in conjunction with the exemption for 'criminal injury compensation award or other award' provided in section 7(c) of Schedule B, EAPWDR and relies on an appeal 2012-0360 to support her position. The appellant submitted that in appeal 2012-0360 the ministry said the ICBC benefit is a "financial award or compensation" within the meaning of paragraph (t) of the definition of "unearned income" set out in section 1(1) EAPWDR. The appellant also submits the EAPWDR legislation is ambiguous that the ICBC benefit could reasonably be considered exempt under Schedule B section 7(c) EAPWDR as the ICBC benefit should be considered an injury compensation award.

In the reconsideration decision of August 20<sup>th</sup>, 2013 the ministry submits that the appellant stated the ICBC benefit is a wage-loss benefit. The ministry submits that insurance benefits are unearned income and there are no exemptions for insurance benefits except insurance paid as compensation for a destroyed asset. The ministry submits that income received in June, reported in July affects August disability assistance and therefore the \$893.73 received by the appellant had to be deducted from the August disability assistance.

The ministry submitted that on June 11<sup>th</sup>, 2013 the appellant received a cheque from ICBC for what the appellant described as wage loss benefits. The ministry argued that all income must be reported. The ministry submitted that Schedule B section 1 EAPWDR states that when calculating the net income of a family unit for the purposes of section 24 (b) [*amount of disability assistance*] of this regulation, section 1(d) sets out that all unearned income must be included, except the deductions permitted under section 6 and any income exempted under sections 7, 7.1 (Worker's Compensation) and 8 (education). The ministry submitted that unearned income, as defined in section 1(d) EAPWDR means any income that is not earned income, and includes, without limitation, money or value received from insurance benefits, except insurance paid as compensation for a destroyed asset. The ministry submitted that the appellant told the ministry that the insurance benefit paid was for wage loss compensation and was not compensation for a destroyed asset. Therefore, the ministry submitted the ICBC income must be included in the calculation of the family's net income. The ministry stated the appellant's net income for the month of June 2013 will impact on the amount of

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disability assistance the appellant may be eligible to receive in August 2013. The ministry stated that in August 2013 the appellant was eligible to receive \$906.42 in disability assistance but since her net income in June 2013 was \$893.73 that she (the family unit) was only eligible to receive \$12.69. The ministry further submitted that the ICBC insurance benefit is not set out in section 6, 7, 7.1 or 8 as being exempted when calculating a person's net income.

## PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry's reconsideration wherein the ministry determined the insurance benefit that the appellant received in June 2013 had to be considered as unearned income as defined in section 1(1)(d) EAPWDR and therefore is not exempt when calculating the family unit's net income, for the month of August 2013, under Schedule B EAPWDR.

The legislation considered: EAPWDR

### Definitions

Section 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:

- (a) money, annuities, stocks, bonds, shares, and interest bearing accounts or properties;
- (b) cooperative associations as defined in the *Real Estate Development Marketing Act*;
- (c) war disability pensions, military pensions and war veterans' allowances;
- (d) insurance benefits, except insurance paid as compensation for a destroyed asset;

...

### SCHEDULE B Net Income Calculation (section 24 (b)) - Deduction and exemption rules

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

...

(d) all unearned income must be included, except the deductions permitted under section 6 and any income exempted under sections 7, 7.1 (Worker's Compensation) and 8 (education)

### Deductions from unearned income

Section 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 - unearned income

Section 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: (B.C. Reg. 83/2012)
- (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;
- (e) the portion of Canada Pension Plan Benefits that is calculated by the formula  $(A - B) \times C$ , where
- A = the gross monthly amount of Canada Pension Plan Benefits received by an applicant or recipient;
  - B =
    - (i) in respect of a family unit comprised of a sole applicant or a sole recipient with no dependent children, 1/12 of the amount determined under section 118 (1) (c) of the *Income Tax Act* (Canada) as adjusted under section 117.1 of the Act; or
    - (ii) in respect of any other family unit, the amount under subparagraph (i), plus 1/12 of the amount resulting from the calculation under section 118 (1) (a) (ii) of the *Income Tax Act* (Canada) as adjusted under section 117.1 of that Act;
  - C = the sum of the percentages of taxable amounts set out under section 117 (2) (a) of the *Income Tax Act* (Canada) and section 4.1 (1) (a) of the *Income Tax Act*.
- (f) a tax refund. (B.C. Reg. 197/2012)
- (2) Subsection (1) (d.1) and (d.3) (ii) applies in respect of a person only if (B.C. Reg. 197/2012)
- (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. (B.C. Reg. 197/2012)

(3) Repealed (B.C. Reg. 83/2012) (B.C. Reg. 197/2012)

### **Exemptions – unearned income – cont'd**

Section 7.1 - workers compensation;

Section 8 - Minister's discretion to exempt education related unearned income

### **Amount of disability assistance**

Section 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.

The ministry argued that the ICBC cheque the appellant received on June 11<sup>th</sup>, 2013 is unearned income as defined under Section 1(1) EAPWDR – unearned income sub-section (d) which states that any income that is not earned income, and includes, without limitation, money or value received from insurance benefits, except insurance paid as compensation for a destroyed asset is considered unearned income. The ministry argued the appellant stated the insurance benefit paid was for wage loss compensation and was not compensation for a destroyed asset therefore the ICBC income must be included in the calculation of the family's net income. The ministry stated Schedule B section 1 EAPWDR states that when calculating the net income of a family unit for the purposes of section 24 (b) [*amount of disability assistance*] of this regulation, section 1(d) EAPWDR sets out that all unearned income must be included in the calculation. The ministry stated that section 6 EAPWDR sets out specific deductions that may be made from unearned income and sections 7, 7.1 (Worker's Compensation) and 8 (education) set out specific exemptions to unearned income, which, the ministry argued the insurance benefit does not apply.

The appellant argued that the ICBC payment could be considered either an insurance benefit or an award and that the EAPWDR legislation is ambiguous; that it could be considered a financial award or other compensation as set out in paragraph (t) of the definition of unearned income; that the "award" should be examined in conjunction with the exemption for a "criminal injury compensation award or other award" as provided in Schedule B section 7(c) EAPWDR.

The panel finds there is no evidence the appellant was the victim of a criminal offence and that the money she received from ICBC was a criminal injury compensation award.

The panel finds the definition for unearned income set out in section 1(1) EAPWDR is quite specific in separating an insurance benefit, sub-section (d), from any other awards or compensation set out in sub-section (t). The ministry's position is that the ICBC cheque is an insurance benefit and not compensation for a destroyed asset and falls under sub-section (d) and the appellant's position is that the ICBC benefit should be considered an "award or compensation" as set out in sub-section (t). The panel finds that in either situation

sub-section (d) or sub-section (t) that the appellant's income would still be considered as unearned income; and, in compliance with Schedule B section 1(d) must be considered in calculating the appellant's net income for that month. The panel finds that the ICBC cheque to the appellant is an insurance benefit, paid from the appellant's motor vehicle insurance policy as a result of a motor vehicle accident that the appellant was involved in.

The panel also finds there is no evidence to support that the ICBC payment was for educational purposes as set out in section 8 EAPWDR.

The panel finds the ministry's decision to determine the ICBC cheque dated June 11<sup>th</sup>, 2013 in the amount of \$893.73 payable to the appellant was an insurance benefit and therefore was considered unearned income was reasonable.

Therefore, the panel finds that based on the evidence, the ministry's decision was a reasonable application of the applicable enactment in the circumstances of the person appealing the decision and confirms the decision pursuant to section 24(1)(b) and section 24(2)(a) of the Employment and Assistance Act.