

The decision under appeal is the Reconsideration Decision of the Ministry of Social Development and Social Innovation (the ministry) dated June 19, 2015, denying the appellant assistance for the month of June 2015. The ministry determined that the appellant's net income calculated under Schedule B exceeded assistance rates for that month under Schedule A as net income includes all unearned income minus any applicable deductions and exemptions. The ministry determined an insurance payment of over \$100,000 received by the appellant was unearned income under Section 1(t), a financial award or compensation, and exempt under section 7(1)(c) of Schedule B except the amount that would cause the family unit's assets to exceed, at the time the award is received, the limit under section 10, which in this case is \$5,000.

This decision only concerns excess income; this decision does not pertain to the appellant's Trust.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Section 1, 9, 10, 29, Schedule A Sections 1, 2, and 4, and Schedule B sections 1, 6 and 7

PART E – Summary of Facts

The panel reviewed the following evidence in the appeal record:

1. The appellant is a recipient of disability assistance as a sole recipient without dependents.
2. In 2013 the appellant was the victim of an accident and after lengthy negotiations obtained an insurance settlement in April 2015.
3. A letter from the appellant's lawyer and a copy of the cheque dated April 22, 2015 in the amount of over \$100,000 issued by the lawyer and being the amount left for the appellant.
4. A letter from the appellant's lawyer and a copy of a new trust agreement created on April 27, 2015.
5. A letter from the appellant's lawyer dated May 26, 2014 advising that the limitation date to commence a legal action is June 22, 2015 and confirming that the appellant has not received any advances.
6. A trust account statement and confirmation of signing authority for the account, dated May 29, 2015, which confirmed that the total amount of the cheque was deposited to the account on May 21, 2015.
7. Request for reconsideration dated June 9, 2015, where the appellant states that he cannot revoke the trust fund and take or use the money to pay rent, the trust fund is legal and valid and the appellant's rent for June has not yet been paid.
8. A letter written by the appellant and submitted with the Notice of Appeal of the Reconsideration Decision advising that at no time did he handle or see the cheque, and the cheque was made out to the trust fund not himself. The trust is set up as a discretionary trust so he has no control over the money in the trust or how it is spent. The appellant states that the total settlement was much higher than indicated, but the amount deposited is the amount that remains after legal fees.
9. The Reconsideration Decision dated June 19, 2015 upholding the original decision to deny assistance for June 2015.

At the appeal tribunal both parties agreed upon the following facts:

- The Appellant is a single person with Person With Disabilities (PWB) status.
- The Appellant was in an accident and retained a lawyer to help negotiate a settlement with the other parties' insurance company.
- The insurance settlement was in an amount slightly over \$100,000, after legal fees had been deducted.
- The insurance settlement was paid directly to the Appellant's lawyer in April 2015, and those funds were placed in a trust fund which had been pre-arranged by the lawyer and Appellant.
- The Appellant did not directly receive cash or a cheque from the insurance provider; payment was made via the Appellant's lawyer.

In addition to the facts above, the Appellant's lawyer also advised the panel that the Appellant did not instruct him to open a trust account for the insurance settlement– the lawyer made this suggestion to the Appellant and the Appellant agreed.

The Appellant states that the insurance settlement should not be regarded as income because it was converted to a trust the same month it was issued by the insurance company, and he did not directly receive any funds from the settlement. The appellant argues that he could not be in possession of cash because he had never seen or handled the cheque, and he does not even have a bank account.

The ministry advised the panel that it does not dispute the fact that the Appellant did not see or handle the cheque. The ministry notes that the Appellant had control of the funds, and *chose* to have the settlement placed in a trust fund. This was not a condition of the settlement and the Appellant could have opted to receive the settlement as cash. Because he was in control over whether the settlement was placed in a trust, he did receive value.

The panel finds that the Appellant did receive value from the settlement through his lawyer.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry decision denying the appellant assistance for the month of June 2015 was reasonably supported by the facts or a reasonable application of the legislation in the circumstances of the appellant. The ministry determined that the appellant's net income calculated under Schedule B exceeded assistance rates for that month under Schedule A as net income includes all unearned income minus any applicable deductions and exemptions. The ministry determined that an insurance payment of over \$100,000 received by the appellant was unearned income under Section 1(t), which is a financial award or compensation, and exempt under section 7(1)(c) of Schedule B except the amount that would cause the family unit's assets to exceed, at the time the award is received, the limit under section 10, which in this case is \$5,000.

Relevant Legislation:

Section 1 of the EAPWDR states that "**unearned income**" means any income that is not earned income, and includes, without limitation, money or value received from any of the following:

- (d) insurance benefits, except insurance paid as compensation for a destroyed asset;
- (t) any other financial awards or compensation;

Exemptions - unearned income

Schedule B section 7 (1) The following unearned income is exempt: (B.C. 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;

Asset levels – Section 10 of the EAPWDR indicates that assets with a total value of up to \$5000 are exempt for a sole recipient of disability assistance.

Limits on Income: 9 (2) A family unit is not eligible for disability assistance if the net income of the family unit determined under Schedule B equals or exceeds the amount of disability assistance determined under Schedule A for a family unit matching that family unit.

Section 10– Asset Limits

(2) A family unit is not eligible for disability assistance if any of the following apply:

- (a) a sole applicant or sole recipient has no dependent children and has assets with a total value of more than \$5 000;
- (b) an applicant or recipient has one or more dependants and the family unit has assets with a total value of more than \$10 000.

Monthly reporting requirement – Section 29 of the EAPWDR indicates that recipients must declare, in a monthly report due on the 5th of each month, any change in income received and the source of that income in order to calculate eligibility for the following month.

Schedule A - Disability Assistance Rates indicates that a sole recipient who is a person with disabilities is eligible for a maximum of \$375 shelter and \$531.42 support each month.

Schedule B - Net Income Calculation (section 24 (b))

(A) 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,

(d) all unearned income must be included, except the deductions permitted under section 6 and any income exempted under sections 7 and 8. (B.C. Reg. 332/2012) (B.C. Reg. 123/2013) (B.C. Reg. 226/2014)

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.

7 (1) Exemptions — unearned income

(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;

The Appellant argues that ministry policy states that a person will not be disqualified from receiving disability assistance just because the person has a trust. The ministry argues it has not yet made a decision regarding whether the trust would qualify as an exempt asset, and that this decision pertains only to whether the Appellant received unearned income in excess of his income assistance rates for June 2015.

The Ministry argues that the insurance settlement is unearned income, specifically a financial award. The Appellant argues that the settlement is not an award, it is compensation for pain and suffering and being left with a physical and mental handicap which leaves him permanently unable to work or play sports or contribute anything to Canada.

Section 1 of the EAPWDR states that "unearned income" means any income that is not earned income, and includes, without limitation, money or value received from any of the following:

- (d) insurance benefits, except insurance paid as compensation for a destroyed asset;
- (t) any other financial awards or compensation.

The panel finds that the insurance settlement falls under the s.(1)(t), and that the Appellant received value

from the settlement, and thus the ministry decision that the settlement is unearned income is reasonably supported by the facts.

Section 7 of Schedule B lists exemptions to unearned income. Section 7(1)(c) states an award is exempt except the amount that would cause the family unit's assets to exceed, at the time the award is received, the asset exemption level for that family unit. Section 10(2)(a) EAPWDR states a family unit is not eligible for disability assistance if a sole applicant or sole recipient has no dependent children and the family unit has assets with a total value of more than \$5,000. A cheque dated April 22, 2015 in the amount over \$100,000 was issued by the lawyer. The panel finds the ministry decision that only \$5,000 of the settlement is exempt from the total unearned income is a reasonable application of the legislation.

Section 9 of EAPWDR states that a family unit is not eligible for assistance if the net income of the family unit calculated under Schedule B exceeds the amount of disability assistance calculated under Schedule A; the appellant's assistance rate is \$906.42 / month and as only \$5000 of the ICBC settlement is exempt and there are no other exemptions the panel finds that the ministry decision that appellant's net income exceeds the amount of disability assistance for the month the settlement was received is a reasonably supported by the facts.

Panel Decision:

For the reasons stated above, the Panel finds that the ministry's Reconsideration Decision denying the Appellant assistance for the month of June 2015 is a reasonable application of the legislation in the circumstances of the appellant and confirms the ministry's decision.