

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the “ministry”) reconsideration decision of May 21st, 2015 wherein the ministry determined that the payment the appellant received from the Insurance Corporation of BC (ICBC) in March 2015, and reported to the ministry in April 2015, is unearned income as defined in section 1(1)(t) Employment and Assistance for Persons with Disabilities (EAPWDR). The ministry determined the ICBC payment to help the appellant pay for her physiotherapy treatments is not exempt under Schedule B EAPWDR when calculating the appellant’s income and in accordance with section 24 EAPWDR must be deducted from her disability assistance for the month of May 2015.

PART D – Relevant Legislation

EAPWDR – section 1, 24 and Schedule B sections 1, 6, 7, and 8

PART E – Summary of Facts

The evidence before the ministry at the time of reconsideration:

- 5 receipts in the appellant's name and in the amount of \$40 each dated between April 1 and April 15 issued to appellant for physio therapy treatments;
- Email dated April 10, 2015 from ICBC claims adjuster to the appellant which states "I did not reimburse you for wage loss yet. What I gave you is an advance to help you pay for physio treatments."
- Letter dated May 5th, 2015 from a medical practitioner which states, "The above patient (appellant) has been followed for injuries sustained in a motor vehicle accident on March 11, 2015. She has been adhering to her treatment plan including medication and regular three day per week physiotherapy until April 15, 2015. She has been seen here on a biweekly basis. ..."
- Request for Reconsideration dated May 6th, 2015;

On April 9th, 2015 the appellant submitted a monthly income stub declaring that she had received \$500 income from a trust or income source. The appellant advised the ministry she had been involved in a motor vehicle accident (MVA) and ICBC made a direct deposit to her bank account to cover wage loss. The appellant was requested to submit information from ICBC to confirm her claim status. The appellant advised the ministry that the money she received was her first payment and that she had not as yet contacted a lawyer. On April 15th, 2015 the appellant submitted the email (as above) received from ICBC to the ministry. On April 17th, 2015 the ministry reviewed the appellant's file and determined the \$500 the appellant received from ICBC to cover medical costs was not exempt income and the funds (\$500) were deducted from the appellant's May disability assistance.

In the Request for Reconsideration the appellant comments that on March 11, 2015 she was in a MVA and received \$500 from ICBC to put towards her physio therapy treatments. The appellant stated she started physio on April 1, 2015 and had to stop on April 15, 2015 as the ministry had deducted the \$500 she was supposed to use for treatment from her monthly allotment. She stated the \$500 was not for wages but for physio treatments as per letter from the ICBC claims adjuster. She stated physiotherapy costs at this time – 8 x \$40.

At the hearing the advocate read from a prepared submission. The advocate provided an overview of the issue before the panel, the relevant facts, relevant legislation, ministry policy, legal issues and a final submission on the appellant's position regarding the ministry's reconsideration decision. Except for the information in the following paragraph the panel accepts the submission as argument.

In the submission, the advocate stated that the appellant is again receiving physiotherapy treatments 3 times weekly which are now being paid by her lawyer directly to the physiotherapist so that she does not receive any money. The panel finds that this information is considered new evidence and provides clarification on how the appellant's physiotherapy treatments are being paid. The panel finds this information 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.

A copy of the submission was provided to the ministry who did not object to it being received as argument.

The advocate also submitted for the panel's consideration a portion of a previous Tribunal decision. The advocate stated that she intended to use this decision as argument to support the appellant's position.

The ministry objected to this Tribunal decision being received stating that a Panel is not bound by previous Tribunal decisions and previous decisions have no jurisdiction at an Appeal Hearing.

The panel accepted the previous Tribunal decision as argument and notes that although a panel can consider

previous Tribunal decisions, *stare decisis* does not apply to administrative decisions. Previous decisions may be persuasive, i.e. may contain reasoning that persuades a panel to use the same interpretation of the law in the case that is before them, but the panel is not bound to follow previous Tribunal decisions.

At the hearing the ministry relied on the facts in the reconsideration decision and provided additional argument which is set out in Part F of the panel's decision.

In addition the ministry stated:

- that the compensation for physiotherapy is an advance on the overall insurance settlement not yet finalized;

PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry's reconsideration of May 21st, 2015 that the payment the appellant received from ICBC in March 2015 and reported in April 2015 is unearned income as defined in section 1(1)(t) EAPWDR and is not exempt when calculating the appellant's net income under Schedule B EAPWDR and therefore must be included when calculating the amount of disability assistance under section 24 EAPWDR for the month of May 2015.

The legislation considered:

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:

...
(t) any other financial awards or compensation;

...

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

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 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; (B.C. Reg. 197/2012)

"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; (B.C. Reg. 197/2012)

"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. (B.C. Reg. 197/2012)

- (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;
- ...

Exemptions – unearned income – cont'd

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.

Reasons for Decision

Ministry's Position

The ministry argued that the ICBC payment was to assist the appellant with her costs for physiotherapy treatment and is compensation as defined under section 1(1)(t) EAPWDR. The ministry argued that initially the appellant stated the ICBC payment was for wage loss compensation and then she advised it was to assist her with the cost for her physiotherapy treatments. The ministry argued the ICBC payment is not considered insurance benefits as stated in section 1(1)(d) EAPWDR because the payment was not received from her own insurance, but a third party insurer for another person and there is no evidence the appellant had a destroyed asset. At the hearing the ministry argued the ICBC payment is compensation for the physiotherapy treatment(s) which is only a negotiated piece of the overall settlement that has not been determined, it is not an award. The ministry argued because the \$500 ICBC payment is only a part of a bigger settlement that has not been determined the payment should not be not considered a financial award as set out in section (1)(t) EAPWDR nor should it be considered an "other award" as set out in Schedule B, section 7(c) EAPWDR because it is not a one-time award as referred to in ministry policy, with the ministry noting that policy is only a guideline and the decision is based on the legislation. The ministry argued an award is usually a one-time payment and when the appellant's lawyer settles the matter she may receive an award which may be divided into several parts, i.e. medical care, pain and suffering, etc. but that matter has not been determined.

The ministry stated that Schedule B section 6 EAPWDR sets out specific deductions that may be made from unearned income and sections 7 and 8 (education) set out specific exemptions to unearned income, which, the ministry argued the insurance benefit do apply. The ministry submitted that the ICBC payment is not set out in

section 6, 7, or 8 as being exempted. Therefore, the non-exempt unearned income received in March, reported in April, affects May disability assistance and the \$500 received by the appellant must be deducted from her May disability assistance.

Appellant's Position

The appellant argued that the ICBC payment was to assist her with her recovery and the cost of physiotherapy treatment. The appellant argued she attended 5 physiotherapy treatments between April 1st and April 15th, 2015 at a cost of \$40 per session and that without this assistance she could not afford to have the treatment she needs. The appellant argued that the ICBC payment should not be considered "compensation" but rather as "any other financial award" as set out in section 1(1)(t) EAPWDR and as an "other award", as set out in Schedule B section 7(c) EAPWDR. The appellant stated Schedule B, section 7(c) states that a criminal injury compensation award or other award is exempt for the purposes of calculating a recipient's net income, except the amount that would cause the person's assets to exceed the allowable limit at the time the award is received. The appellant argued legislation itself does not define what constitutes "other award" and any ambiguity arising from the legislation can be resolved by looking at Ministry policy regarding income and exemptions. The appellant argued ministry policy cites examples of "other awards", including land claim settlements, eviction compensation, criminal injury, insurance settlements and other lump sum payouts. The appellant argued that while her claim is yet to be resolved, the money provided to her from ICBC was an advance on the settlement intended to address her immediate treatment needs, and therefore disbursed as a one-time payment to her to pay for necessary physiotherapy treatment as part of the insurance settlement process. The appellant also relies on the previous Tribunal decision and section 8 of the Interpretation Act as supporting the position that the ICBC payment is an "other award".

Panel's Analysis

The definition for unearned income is set out in section 1(1) EAPWDR and is quite specific in separating "insurance benefits" in section 1(d) from any other financial awards or compensation set out in section 1(t).

The evidence before the panel is that both the ministry and the appellant agree that the \$500 ICBC payment is under section 1(1)(t) EAPWDR. However, the ministry's position is that the ICBC payment is "compensation" to assist the appellant with the cost of her physiotherapy treatments while the appellant's position is that the ICBC payment should be considered a financial award. As set out above, the ministry's position is that an award is a one-time payment and not part of an ongoing settlement and the appellant argues the ICBC payment is an award because there is no definition in the EAPWDR legislation and is therefore exempt from unearned income as set out in Schedule B section 7(c) EAPWDR.

As there is no definition for the term financial award or other award in the legislation, the starting point for statutory interpretation is to consider the plain language meaning of the word "award."

The panel finds that a plain language interpretation of "award" is a one-time event, such as a payment made at the end of a negotiated settlement. This interpretation is supported by dictionary definitions of "award" which include, the Merrimam-Webster dictionary which defines award as to give by judicial decree or after careful consideration, i.e. the jury "awarded" damages to the defendant and, the Oxford dictionary which defines "award" as to make an official decision to give something to somebody as a payment, prize. Consequently, as the meaning of the term "award" is understandable based on a plain reading of the legislation, the panel finds that the term "other award" is not ambiguous.

The evidence before the panel supports the ministry's position that the expense of the appellant's physiotherapy treatment is ongoing and is only part of a settlement that is to be determined because the appellant's lawyer is now paying the cost of the appellant's physiotherapy treatment so the appellant will not be in receipt of cash payments.

As there is no evidence to support that the ICBC payment is a criminal injury compensation award, the panel finds that the ministry reasonably determined that the ICBC payment is not exempt under Schedule B section 7(c) of the EAPWDR.

There is no evidence to support that the \$500 ICBC payment is exempt elsewhere under Schedule B of the EAPWDR.

The panel finds that the ministry reasonably determined that the \$500 ICBC payment for physiotherapy expenses is unearned income and as per Schedule B section 1(d) all unearned income that is not exempt must be included in calculating the person's net income under section 24(b) EAPWDR. The panel notes that for all recipients of disability assistance, income received is to be reported by the 5th day of the following month which affecting the next month's disability assistance (for example, March income reported in April affects May's disability assistance).

The panel finds that the ministry's decision that the \$500 ICBC payment received by the appellant in March 2015, reported to the ministry in April 2015 must be deducted from the appellant's May 2015 disability assistance as per section 24 of the EAPWDR was reasonable.

Conclusion

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

The ministry decision is confirmed and the appellant is not successful on appeal.