

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the “ministry”) reconsideration decision of February 9, 2017 that determined the appellant was not eligible for disability assistance for the month of January 2017 as per section 9(2) of the Employment and Assistance for Persons with Disabilities (EAPWDR) because her net income of \$4,305.00 in December 2016 exceeded her monthly disability assistance rate of \$983.43.

The ministry had determined the ICBC settlement payment the appellant received in November 2016 and reported in December 2016 is considered compensation and defined as unearned income under section 1(1)(t) EAPWDR and, is not exempt as an award under Schedule B section 7(1)(c) EAPWDR when calculating the appellant’s net income for the month of December 2016 in accordance with section 24 EAPWDR. Income received in November 2016, reported in December 2016 determines the amount of disability assistance, if any, a person is eligible to receive in January 2017.

## PART D – Relevant Legislation

Employment and Assistance For Persons with Disabilities Regulation (EAPWDR), Definitions section 1, section 9(2), 24, 29 and Schedule B sections 1,2,6,7 and 8

## PART E – Summary of Facts

The evidence before the ministry at the time of reconsideration:

- Monthly report of income for November 2016 to ministry;
- Several medical treatment receipts;
- Letter from ICBC dated November 3, 2016 to appellant with settlement cheque for \$4,280.85 attached.
- Letter from ICBC dated December 16, 2016 confirming the appellant was paid \$4,305.00 as settlement for a motor vehicle accident claim; \$305.00 for out of pocket expenses and \$4,000.00 as compensation for injuries suffered. The letter states “There is no exact dollar value calculated for future medical treatment. It was agreed that you would pay for such treatments out of the \$4,000.00 but this would be up to yourself to manage”;
- Letter from the appellant’s doctor (GP) dated January 10, 2017 stating the appellant will benefit from future physiotherapy and massage treatment and without this treatment it will be a detriment to her health. She estimated her future treatments to be a minimum of \$4,160.00;
- Letter dated January 13, 2017 from the appellant’s physiotherapist stating the appellant will need ongoing physiotherapy for next 6 months;
- Letter from ICBC to appellant dated January 17, 2017 outlining the details of her \$4,305.00 settlement; non-pecuniary damages \$3,500.00, \$500.00 future care and \$305.00 for reimbursement for physiotherapy and massage treatments;
- 6-page submission from the appellant’s advocate dated February 3, 2017. In the submission the advocate stated that she had spoken with an ICBC agent on January 27, 2017 and he stated that the amount of the settlement provided to the appellant for non-pecuniary damages and the amount for future care were coded for internal management purposes and, do not represent the amount of the settlement that was expected to be used for rehabilitation; the submission contains a background information, argument and legal framework argument – *Interpretation Act (IA); Constitution Act 1987 – Section 7 and 15 - equity issues that the appellant is not being treated fairly and having her ICBC settlement deducted from her disability assistance is discriminatory;*
- Request for Reconsideration dated February 2, 2017.

The appellant is a sole recipient of disability assistance at a monthly rate of \$983.43. In July 2016 she was involved in a motor vehicle accident (MVA) suffering whiplash which worsened the chronic arthritis in her spine, shoulder and knee. ICBC provided partial coverage for 20 physiotherapy and 12 massage therapy treatment session with the appellant paying \$305.00 to cover the remaining cost of these treatments. Sometime prior to November 3, 2016 the appellant contacted ICBC advising them she needed more treatments but could not pay the user fee out of her disability assistance because of her limited funds. On November 8, 2016 ICBC contacted the appellant and offered her a settlement of \$4,305.00; the \$305.00 was to cover the user fees she had already paid.

On November 15, 2016 the appellant signed a Full & Final Release – All Claims ICBC form which stated that she was releasing all parties involved in the MVA, that the said payment is not deemed to be an admission of liability on the part of any party, and it is hereby declared the terms of this settlement are fully understood; that the amount stated herein (\$4,280.00) is the sole consideration of this release and that the said sum is accepted voluntarily for the purpose of making a full and final compromise, adjustment and settlement of all claims for injuries, losses and damages resulting from the said accident.

In a letter from ICBC dated December 16, 2016 the letter stated, “This letter is to confirm that you were paid a settlement of \$4,305.00, these funds were paid to reimburse your (the appellant) out of pocket expenses to date of \$305.00 and the remainder as compensation for your injuries suffered from the above noted accident. There is no exact dollar value calculated for future treatments. It was

agreed that you would pay for such treatments out of the \$4,000.00 but this would be up to yourself to manage.” The form was witnessed and the appellant signed the form under “Read Before Signing” and under “Claimant Signature”.

In a letter from the appellant’s GP dated January 10, 2016, she confirmed the appellant’s medical condition and stated the appellant’s rehabilitation from her injuries will likely need to continue for another six months at a minimum cost of \$4,160.00. The appellant and the GP’s treatment plan is supported by the appellant’s physiotherapist in a letter dated January 13, 2017.

Prior to the hearing the advocate provided a 31-page submission dated March 28, 2017 to the Tribunal. Much of the information contained in this submission is a repeat of the same information that was contained in the Appellant’s earlier submission dated February 3, 2017 which was before the ministry at Reconsideration. The appellant agreed the 2<sup>nd</sup> submission does not contain any new evidence but is argument provided to support the appellant’s appeal. The following is an overview of the March 28, 2017 submission:

- Pages 1 and 2 cover sheets;
- Page 3 – 10 – Issue under appeal, overview; relevant facts; legal issues, submissions – statutory interpretations to support argument including ministry policy on insurance benefit – provided for medical equipment or medical treatment; that compensation is a type of insurance benefit;
- Alternate argument that the ICBC payment received by the appellant is an “award” and exempt under Schedule B section 7(1)(c) EAPWDR;
- Argument at page 14 “that denying people with disabilities the rehabilitation services that they need is discrimination... and contrary to the *Constitution Act 1987* section 15 and 7”;
- Page 13 and 14 – conclusion and remedy being sought;
- Page 16 and 17 - Appendix A – Applicable EAPWDR legislation; sections 1.1(d) and (f), 12, 24 and Schedule B section 7;
- Page 18 - legislation from *Insurance Corporation Act (1996) Chapter 228* sections 9.2, 12 and 13.1 which addresses appointment of agents, corporation (ICBC) as an agent and corporation (ICBC) is an agent of the government;

Page 18 – legislation from *Insurance (Vehicle) Act (IVA) (1996) Chapter 231* section 1.1 – definition of vehicle insurance; and definition of benefits and section 7.1 – benefits are payable is bodily injury is sustained;

- Page 19 – legislation from *Insurance (Vehicle) Regulation BC Reg 447/83* – section 88(1) in, summary, states the corporation shall pay as benefits all reasonable expenses incurred by the insured as a result of the injury for necessary physical therapy, chiropractic treatment, ...;
- Appendix B - Page 20 – ministry policy on Income Treatment and Expenses – Financial and other Awards which covers insurance benefits for medical equipment or medical treatment;
- Page 22 – 28 – copy of a Tribunal decision for consideration – this appeal addressed the appellant receiving a payment from ICBC for physiotherapy treatments which the appellant first indicated was for loss of wages and then stated the payment was for physiotherapy treatment; in the decision under the panel’s analysis of “award” the panel found that “award” was defined as to give by judicial decree or after careful consideration, i.e. the jury awarded damages to the defendant.

At the hearing the advocate referred to her submission dated March 28, 2017 providing 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 that the ICBC benefits payment should be considered an “insurance benefit” under section 1(1)(d) EAPWDR or under section 1(1)(t) EAPWDR as an “award” and not “compensation”. The advocate stated that an “award” is exempt from unearned

income under Schedule B section 7(1)(c) EAPWDR.

The advocate stated the facts in this appeal are not in dispute and agreed the submission dated March 28, 2017 does not contain any new evidence. The panel accepts the submission, which also contains the Tribunal Decision, as argument. A copy of the submission was provided to the ministry who did not object to the it being received as argument.

Although the panel accepts the previous Tribunal decision in the appellant's submission, the panel notes that *stare decisis* (The policy of courts to abide by or adhere to principles established by decisions in earlier cases) 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 or definitions relied upon by the panel in the case before them, but the panel is not bound to follow the previous Tribunal decisions.

At the hearing the ministry relied on the facts stated in the Reconsideration decision.

The panel notes that section 19.1 of the *Employment and Assistance Act* states that the provisions of the *Administrative Tribunals Act* (ATA) apply to this Tribunal. Section 45 of the ATA states the Tribunal does not have jurisdiction over Canadian Charter of Rights and Freedoms matters.

The panel also notes that the definitions aside from the EAPWD definitions do not apply to the Tribunal, however, the panel will look to the IA if a word or term is not defined in the EAPWD legislation. The panel did not find a definition for "benefits" in the IA.

## PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry's reconsideration decision of February 9, 2017 that determined the appellant was not eligible for disability assistance for the month of January 2017 as per section 9(2) of the EAPWDR because her net income of \$4,305.00 in December 2016 exceeded her monthly disability assistance rate of \$983.43 is reasonably supported by the evidence or is a reasonable application of the legislation in the circumstance of the appellant.

The ministry had determined the ICBC settlement payment the appellant received in November 2016 is considered compensation and defined as unearned income under section 1(1)(t) EAPWDR and is not exempted as an award under section 7(1)(c) EAPWDR when calculating the appellant's net income for the month of December 2016.

The legislation considered: EAPWDR

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:

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

(t) any other financial awards or compensation;

Limits on income

**9** (1) For the purposes of the Act and this regulation, **"income"**, in relation to a family unit, includes an amount garnished, attached, seized, deducted or set off from the income of an applicant, a recipient or a dependant.

(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.

Amount of disability assistance

**24** Subject to section 24.1 (3), 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.

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

Section 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

(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.

**Monthly support allowance**

Section

(1) A monthly support allowance for the purpose of section 1 (a) is the sum of

(a) the amount set out in Column 3 of the following table for a family unit described in Column 1 of an applicant or a recipient described in Column 2, plus

(a.1) subject to section 24.1 [*disability assistance in the form of transportation support allowance*], the amount set out in Column 4 of the following table for the family unit, plus

(b) the amount calculated in accordance with subsections (2) to (4) for each dependent child in the family unit.

Item	Column 1 <b>Family unit composition</b>	Column 2 <b>Age or status of applicant or recipient</b>	Column 3 <b>Amount of base support</b>	Column 4 <b>Amount of transportation support</b>
1	Sole applicant/recipient and no dependent children	Applicant/recipient is a person with disabilities	\$556.42	\$52.00

### Monthly shelter allowance

#### Section 4

(1) For the purposes of this section:

**"family unit"** includes a child who is not a dependent child and who resides in the parent's place of residence for not less than 40% of each month, under the terms of an order or an agreement referred to in section 1 (2) of this regulation;

(b) the maximum set out in the following table for the applicable family size:

Item	Column 1 <b>Family Unit Size</b>	Column 2 <b>Maximum Monthly Shelter</b>
1	1 person	\$375

### 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,

(a) the following are exempt from income:

(i) any income earned by a dependent child attending school on a full-time basis;

(ii) the basic family care rate paid in respect of a child in care;

(iii) Repealed. [B.C. Reg. 48/2010, Sch. 1, s. 2 (c).]

(iv) a family bonus, except the portion treated as unearned income under section 10 (1) of this Schedule;

(v) the basic child tax benefit;

(vi) a goods and services tax credit under the *Income Tax Act* (Canada);

(vii) a tax credit under section 8 [*refundable sales tax credit*], 8.1 [*low income climate action tax credit*] or 8.2 [*BC harmonized sales tax credit*] of the *Income Tax Act* (British Columbia);

(viii) individual redress payments granted by the government of Canada to a person of Japanese ancestry;

(ix) individual payments granted by the government of Canada under the Extraordinary Assistance Plan to a person infected by the human immunodeficiency virus;

(x) individual payments granted by the government of British Columbia to a person infected by the human immunodeficiency virus or to the surviving spouse or dependent children of that person;

(xi) individual payments granted by the government of Canada under the Extraordinary Assistance Plan to thalidomide victims;

(xii) money that is

(A) paid or payable to a person if the money is awarded to the person by an adjudicative panel in respect of claims of abuse at Jericho Hill School for the Deaf and drawn from a lump sum settlement paid by the government of British Columbia, or

(B) paid or payable to or for a person if the payment is in accordance with the settlement agreement approved by the Supreme Court in Action No. C980463, Vancouver Registry;

(xiii) the BC earned income benefit;

(xiv) money paid or payable under the 1986-1990 Hepatitis C Settlement Agreement made June 15, 1999, except money paid or payable under section 4.02 or 6.01 of Schedule A or of Schedule B of that agreement;

(xv) a rent subsidy provided by the provincial government, or by a council, board, society or governmental agency that administers rent subsidies from the provincial government;

(xvi) Repealed. [B.C. Reg. 197/2012, Sch. 2, s. 11 (a).]

(xvii) money paid or payable to a person in settlement of a claim of abuse at an Indian residential school, except money paid or payable as income replacement in the settlement;

(xviii) post adoption assistance payments provided under section 28 (1) or 30.1 of the Adoption Regulation, B.C. Reg. 291/96;

(xix) a rebate of energy or fuel tax provided by the government of Canada, the government of British Columbia, or an agency of either government;

(xx) money paid by the government of British Columbia, under a written agreement, to a person with disabilities or to a trustee for the benefit of a person with disabilities to enable the person with disabilities to live in the community instead of in an institution;

(xxi) Repealed. [B.C. Reg. 85/2012, Sch. 2, s. 7.]

(xxii) payments granted by the government of British Columbia under section 8 [agreement with child's kin and others] of the *Child, Family and Community Service Act*;

(xxiii) payments granted by the government of British Columbia under the Ministry of Children and Family Development's At Home Program;

(xxiv) Repealed. [B.C. Reg. 85/2012, Sch. 2, s. 7.]

(xxv) payments granted by the government of British Columbia under an agreement referred to in section 93 (1) (g) (ii) of the *Child, Family and Community Service Act*, for contributions to the support of a child;

(xxvi) a loan that is

(A) not greater than the amount contemplated by the recipient's business plan, accepted by the minister under section 70.1 of this regulation, and

(B) received and used for the purposes set out in the business plan;

(xxvii) payments granted by the government of British Columbia under the Ministry of Children and Family Development's

(A) Autism Funding: Under Age 6 Program, or

(B) Autism Funding: Ages 6 — 18 Program;

(xxviii) Repealed. [B.C. Reg. 148/2015, App. 2, s. 1 (a).]

(xxix) payments made by a health authority or a contractor of a health authority to a recipient, who is a "person with a mental disorder" as defined in section 1 of the *Mental Health Act*, for the purpose of supporting the recipient in participating in a volunteer program or in a mental health or addictions rehabilitation program;

(xxx) a refund provided under Plan I as established under the Drug Plans Regulation;

(xxxi) payments provided by Community Living BC to assist with travel expenses for a recipient in the family unit to attend a self-help skills program, or a supported work placement program, approved by Community Living BC;

(xxxii) a Universal Child Care Benefit provided under the *Universal Child Care Benefit Act (Canada)*;

(xxxiii) money paid by the government of Canada, under a settlement agreement, to persons who contracted Hepatitis C by receiving blood or blood products in Canada prior to 1986 or after July 1, 1990, except money paid under that agreement as income replacement;

(xxxiv) money withdrawn from a registered disability savings plan;

(xxxv) a working income tax benefit provided under the *Income Tax Act (Canada)*;

(xxxvi) Repealed. [B.C. Reg. 180/2010, s. 2 (b).]

(xxxvii) the climate action dividend under section 13.02 of the *Income Tax Act*;

(xxxviii) money paid or payable to a person under the *Criminal Injury Compensation Act* as compensation for non-pecuniary loss or damage for pain, suffering mental or emotional trauma, humiliation or inconvenience that occurred when the person was under 19 years of age;

(xxxix) money that is paid or payable to or for a person if the payment is in accordance with the settlement agreement approved by the Supreme Court in Action No. S024338, Vancouver Registry;

(xl) payments granted by the government of British Columbia under the Ministry of Children and Family Development's Family Support Services program;

(xli) payments granted by the government of British Columbia under the Ministry of Children and Family Development's Supported Child Development program;

(xlii) payments granted by the government of British Columbia under the Ministry of Children and Family Development's Aboriginal Supported Child Development program;

(xliii) money paid or payable from a fund that is established by the government of British Columbia, the government of Canada and the City of Vancouver in relation to recommendation 3.2 of the final report of the Missing Women Commission of Inquiry;

(xliv) payments granted by the government of British Columbia under the Temporary Education Support for Parents program;

(xlv) a BC early childhood tax benefit;

(xlvi) child support;

(xlvii) orphan's benefits under the *Canada Pension Plan Act (Canada)*;

(xlviii) money or other value received, by will or as the result of intestacy, from the estate of a deceased person;

(xlix) gifts;

(l) education and training allowances, grants, bursaries or scholarships, other than student financial assistance;

(li) money withdrawn from a registered education savings plan;

(lii) compensation paid or payable under section 17 [compensation in fatal cases] or 18 [addition to payments] of the *Workers Compensation Act* to a dependant, as defined in section 1 of that Act, who is a child, as defined in section 17 of that Act;

(liii) money that is paid or payable by or for Community Living BC to or for a person if the payment is in accordance with an award in a legal proceeding or with a settlement agreement in respect of a claim for injury, loss or damage caused by Community Living BC, an employee of Community Living BC or a person retained under a contract to perform services for Community Living BC;

(liv) money that is paid or payable by the government of British Columbia to or for a person if the payment is in accordance with an award in a legal proceeding or with a settlement agreement in respect of a claim for injury, loss or damage caused by the minister, the ministry, an employee of the ministry or a person retained under a contract to perform services for the ministry,

(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 and 4, and

**(d) all unearned income must be included, except the deductions permitted under section 6 and any income exempted under sections 3, 7 and 8.**

**Section 3 – does not apply to this appeal.**

### **Deductions from unearned income – does not apply to this appeal**

#### 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:

- (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;**

### **Ministry's position**

The ministry's position is that the ICBC settlement of \$4,305.00 the appellant received in November 2016 is considered unearned income as per section 1(t) EAPWDR must be included when calculating the appellant's net income for December 2016 and is not exempt from disability assistance. The ministry's position is the settlement payment is considered compensation and not a financial award which is also set out in section (1)(t) EAPWDR. The ministry argued the payment is paid on behalf of a 3<sup>rd</sup> party insurer as indicated in the Full and Final Release document the appellant signed on November 15, 2016 indicating that she fully understood the terms of the settlement.

The ministry argued the ICBC settlement is not considered an award because the amount was agreed upon by both the appellant and ICBC (on behalf of the 3<sup>rd</sup> party insurers). The ministry argued that an "award" is an amount awarded by someone of authority, i.e. a Judge and the settlement was not awarded by a person with this authority and therefore is not subject to the exemptions listed for Schedule B section 7(1)(c) EAPWDR.



The ministry argued that a Full and Final Release of all claims form was sent to the appellant on November 2, 2016 with a letter requesting her to sign the form having her signature witnessed, then return the form in the enclosed self-addressed envelope and then she could cash the enclosed cheque. The letter also invited her to call the ICBC adjuster any time if she wished to discuss the matter otherwise the adjuster was looking forward to receiving the form and concluding the matter.

### **Appellant's Position**

The appellant's position is that on her Monthly Report for December 2016 she informed the ministry about the MVA in July and that there was never a cash settlement. She stated ICBC offered her 20 physiotherapy sessions and 12 massage treatments but she had to pay a portion of the cost for the treatment.

In November, she called ICBC to see if she could hand in some receipts and get paid as she could not afford to pay partial payments because she was on disability assistance. She was informed no. She stated a few minutes later ICBC called her back offering her \$4,000.00 plus what I had already paid, totaling \$4,305.00. She accepted the offer and ICBC sent her a cheque so she would have money to continue with the physiotherapy and massage treatments.

The appellant argued that ICBC did not contact the GP to get any medical information or to determine the cost of the future treatments. The appellant received a letter dated December 16, 2016 which stated that "There is no exact dollar value calculated for future treatments. It was agreed that you would pay for such treatments out of the \$4000 but this would be up to yourself to manage. The advocate then received a letter from ICBC dated January 17, 2017. The letter detailed how the settlement was determined - non-pecuniary damages, \$3,500.00; future care, \$500.00; and reimbursement for physiotherapy and massage treatments, \$305.00 totaling the \$4,305.00 - was broken down. The advocate argued that when she contacted ICBC on January 27, 2017 she was informed that the breakdown of the settlement was coded for internal management purposes, and do not represent the amount of the settlement that was expected to be used for rehabilitation.

The appellant argued that the ICBC payment should have been considered an "insurance benefit" under section 1(d) EAPWDR and that 'compensation' is a type of insurance benefit. The appellant argued that the EAPWDR legislation does not define "insurance benefits" and if there is no definition in the legislation, words are to be read according to their ordinary meaning in common language.

The appellant noted that in the Reconsideration decision it asserts that the "settlement payment is on behalf of a third-party insurer as indicated on the full and final release statement ... and as such is considered "compensation" not an insurance benefit".

In response, the appellant provided a definition for "benefits" from Merriam -Webster which states it's "a payment or service provided for under an annuity, pension or insurance policy" and since the cost of medical treatment is a payment provided for under an insurance policy the appellant argued it is a type of insurance benefit under the ordinary and common sense definition of the word. The appellant argued that "benefits" is defined in section 88 of the *Insurance (Vehicle) Regulation (IVR)* which states that "the corporation shall pay as benefits all reasonable expenses incurred as a result of the injury for necessary medical...or necessary physical therapy, {or} chiropractic treatment" are insurance benefits for the purposes of the definition of "unearned income" in the EAPWDR.

The appellant also argued that compensation is a type of benefit and the ministry provided no reasons or reference to law or policy to support its bare assertion that a settlement is payment on behalf of a third-party insurer is not considered an insurance benefit under EAPWDR legislation. The

appellant argued that ICBC is not a third-party insurer; that ICBC is an agent of the government as stated in section 13(2) of the *Insurance Corporation Act*.

The appellant argued that the ICBC payment is exempt as income under Schedule B section 7(1)(c) EAPWDR as it is provided for medical treatment, namely physiotherapy and massage.

The appellant stated that the ICBC payment is exempt as an “other award” under Schedule B section 7(1)(c) EAPWDR for the following reasons:

- That the Policy and Procedure Manual of the Ministry specifically states that “other awards” include insurance benefits provided for medical equipment or medical treatment;
- That the plain language interpretation of the word “award” is cited in the Tribunal decision as “is a one-time event, such as a payment made at the end of a negotiated settlement, both support such a finding;
- Black’s legal dictionary defines “award” as “the decision or determination rendered by arbitrators or commissioners or other private or extrajudicial deciders.
- Merriam-Webster dictionary defines “award” as “to give judicial decree or after careful consideration, i.e. the jury awards damages to the defendant”.
- The Oxford dictionary defines “award” as “to make official decision to give something to someone as payment or prize”.
- The appellant argued that under these plain language definitions of award, an official settlement provided by ICBC would be construed “an award”.
- The appellant argued that it is irrational that a negotiated insurance settlement is automatically excluded from exemption in section 7(1)(c) EAPWDR while an insurance award which went to trial would be included (as it would be “awarded” by a Judge). This would mean that any person with disabilities who has any insurance claim must go to trial if they wish to have an insurance benefit provided for medical treatment considered exempt under the legislation;
- The appellant argued that insurance agents have the same delegated power as a Judge and they are a person in authority with the ability to award the amount of insurance benefits a person is entitled to; with the difference that if the individual is not satisfied they go to Court.

#### **Panel Decision**

The appellant’s position is that the ICBC payment should have been considered an “insurance benefit” under section 1(d) EAPWDR and that “compensation” is a type of insurance benefit. The reconsideration decision denied the appellant her disability assistance for January 2017 because she received a settlement payment from ICBC which the ministry determined was unearned income and defined as “compensation” under section 1(1)(t) EAPWDR.

The issue before the panel is whether the ministry was reasonable in determining that the ICBC payment to the appellant in November 2016 is “compensation” set out under unearned income in section 1(1)(t) of the EAPWDR not an “insurance benefit” under section 1(1)(d) EAPWDR and then exempt from unearned income as an “other award” under Schedule section 7(1)(c) EAPWDR. As there is no definition for the term “award” or for the term “compensation” in the legislation, the starting point for statutory interpretation is to consider the plain language meaning for the term “award”, the term “compensation” and the term “settlement”.

The panel finds that the plain language definition of the term “award” is something granted by a court or tribunal following a trial or structured hearing or something given to someone to honor or reward them for their actions. The term “compensation” is giving something to someone to make up for a loss or compensate them for an expense that was not their responsibility; and settlement is an issue or matter that is settled or decided between two or more people or parties.

These interpretations are support by dictionary definitions found in Black’s Law dictionary:

- The term “award” is defined as judicial or quasi-judicial decision as a judicial decree or deliberate judgment, i.e. Person A was awarded damages or something given as due or merited; to assign or bestow.
- The term “compensation” is the act or state of compensating, as by rewarding someone for service or by making up for someone’s loss, damage, or injury by giving the injured party an appropriate benefit.
- The term “settlement” is the act or state of settling or the state of being settled; in terms reached in this agreement.
- The term “benefit” is financial assistance in time of need

And, in Merriam-Webster and Oxford dictionary “award” is defined as to give by judicial decree and Webster’s definition is, to make an official decision rendered by a Judge of the Court.

The panel noted that in Merriam-Webster a synonym for the word settlement is compensation and is considered payment for loss or injury; award is not included.

The evidence before the panel supports the ministry’s position that the ICBC settlement payment of \$4,000.00 is compensation for her injuries suffered in the accident on July 16, 2016. The appellant’s position is that the settlement should be considered an “award” because it is for future medical treatment, however, there is no evidence before the panel that the payment was given “with conditions” and that the money had been allocated to future medical treatment. The ministry did acknowledge the evidence from the appellant’s GP and her physiotherapist that she will likely require additional treatments because of the MVA, however, she would be expected to manage her medical treatment(s) on her own. Also, in ICBC’s letter of December 16, 2016, there was no exact dollar value calculated for future medical treatment(s) and the figures shown in ICBC’s letter of January 17, 2017 were for ICBC administrative purposes only. The ministry’s position is that the payment is a settlement of the appellant’s claim and the payment made by ICBC is made on behalf of a 3<sup>rd</sup> party insurer to settle that claim which does not support the appellant’s position that the ministry should have considered the settlement payment as “insurance benefits” and not “compensation”. The evidence is that the appellant needed money at the time to continue with her medical treatment and ICBC offered her \$4,000.00 to settle her claim and she accepted the offer which the panel finds meets the definition of a “settlement” and not the appellant’s position of an “award” or “other award”.

The ministry’s position is that there is no legislation that allows for discretion when calculating net income and as such, is not permitted to consider what the appellant will use her settlement funds for. The appellant’s position is that she will need medical treatments in the future and the funds provided in the settlement will be utilized for that purpose. The panel finds the Full and Final Release signed by the appellant does not stipulate how the appellant is to allocate or spend the funds provided. The Full and Final Release simply releases the third-party, the person who was driving the vehicle and the owner of that vehicle that struck the appellant’s vehicle, from any current or future claims. In her evidence the appellant did state that she utilizes her ‘line of credit’ to pay for her medical treatments and other expenses when she doesn’t have funds and the ICBC payment would help manage that account. There is no evidence before the panel that the appellant had committed these funds to future medical treatment and there is no evidence that the appellant was compelled to spend this money on future medical treatment. The evidence is the appellant had the liberty to spend the money however she deemed necessary. The panel finds that even had there been an agreement between the parties (ICBC and her) and given the definition of the term compensation, which the panel finds includes benefits, the ICBC payment is considered “compensation” and not “insurance benefits”.

The panel finds the definitions provided by the appellant and cited by the panel do not support that the ICBC payment should be considered as an “other award” and be an exemption to unearned

income set out in Schedule B section 7(1)(c) EAPWDR. The appellant did not make an argument that the ICBC payment should be considered under the other provisions in this subsection - compensation under the *Criminal Injury Compensation Act* or awards of benefit under *Crime Victim Assistance Act* as they do not apply to this appeal.

The panel finds the ministry's decision that the ICBC settlement payment is not an "other award" as set out in Schedule B section 7(1)(c) EAPWDR was reasonable.

The panel finds the ministry's decision that the ICBC settlement payment the appellant received is unearned income and should be considered "compensation" as defined under section (1)(t) EAPWDR was reasonable.

### **Conclusion**

The panel finds that the ministry's reconsideration decision, which determined that the appellant was not eligible for disability assistance for the month of January 2017 was reasonably supported by the evidence, and therefore confirms the decision. The appellant is thus not successful on appeal.