

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry's) reconsideration decision of August 1, 2017 that determined the appellant was provided disability assistance for the months from February 2012 to December 2012 for which she was not eligible because she received income from an ICBC insurance claim that was not exempt under Schedule B of the *Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR) and that under section 18(1) of the *Employment and Assistance for Persons with Disabilities Act* (EAPWDA) she is liable to repay to the ministry the amount of disability assistance that she is not eligible to receive.

PART D – Relevant Legislation

EAPWDA Section 18
EAPWDR Section 1, Section 24, Schedule A and B

PART E – Summary of Facts

The appellant is a sole recipient of disability assistance.

The information before the ministry at the time of reconsideration included the following:

- January 27, 2017 – the ministry received information that the appellant had received an ICBC settlement of \$10,000 for a vehicle and \$60,000 for injuries.
- February 9, 2017 – the ministry mailed the appellant a letter advising of an eligibility review and requesting documents to verify the appellant's past eligibility for assistance.
- April 3, 2017 – the ministry forwarded a release of information to ICBC requesting information on the appellant's ICBC claims.
- April 7, 2017 – the ministry received an ICBC payment report confirming an overpayment of benefits for March/April 2013 due to the appellant having assets in excess from an ICBC payout of \$9,070. The ministry determined the new ICBC payment report confirms the appellant had received other ICBC payments dating back to 2012 and that these additional payments would be reviewed.
- May 1, 2017 – the ministry mailed the appellant a letter advising she had received assistance for which she was not eligible for February – December 2012 because she failed to accurately declare her income from ICBC. The letter advised the overpayment of \$2,424.50 must be repaid to the ministry.
- June 29, 2017 – the ministry received the appellant's Request for Reconsideration; a request for an extension to the reconsideration period, copies of four ICBC cheque statements confirming the appellant was reimbursed for physiotherapy and user fees. The extension allowed the appellant to submit additional information until July 28, 2017.
- July 28, 2017 – the appellant's advocate submitted additional information. The ministry communicated with an ICBC representative to receive clarification on the meaning of "Reason for Payment" comments on the ICBC payment report received by the ministry on April 7, 2017.
- August 1, 2017 – the minister completed the review of the appellant's Request for Reconsideration which included a confirmation from ICBC that the appellant had received ICBC payments totalling \$11,494.50 comprised of:

Bodily Injury (General Damages)	\$ 9,000.00
Bodily Injury (General Damages) – was paid on Dec 21, 2011	500.00
Accident Benefits (care-medical & homemaker)	132.00
Bodily Injury (special damages)	70.00
Bodily Injury (special damages)	1,265.00
Bodily Injury (general damages)	<u>527.50</u>
Total	<u>\$11,494.50</u>

The ministry determined that these payments were identified as:

General Damages	\$ 9,000.00
General Damages – was paid as an advance	500.00
Housekeeping reimbursement	132.00

Snow shoveling reimbursement	70.00
Reimbursement of user fees for medical treatment	1,265.00
Past Wage Loss	<u>527.50</u>
Total	<u>\$11,494.50</u>

Included in the \$11,494.50 the appellant received from ICBC was \$9,070.00 received in 2013 and is not considered a part of this ministry reconsideration decision. The balance of \$2,424.50 for the period under review meets the definition of unearned income because it is money the appellant received from insurance benefits or as compensation for damages, pain and suffering, or wage loss. Ministry policy allows an exemption, up to the appellant's asset limit of \$5,000, for insurance benefits provided for medical equipment or medical treatment. Therefore, the \$1,265 in ICBC payments the appellant received to reimburse her for medical treatment expenses was exempt and did not have to be deducted from her disability assistance.

The ministry notes that there is no exemption available in Schedule B for the other ICBC insurance benefits or compensation the appellant received. Therefore, the balance of \$1,159.50 in ICBC payments the appellant received is not exempt and should have been deducted from her disability assistance. Therefore, the appellant must repay this overpayment amount to the ministry in accordance with Section 18 of the EAPWDA.

Notice of Appeal dated August 16, 2017, the appellant stated the following:

- The ministry failed to allow a full and fair review of the alleged overpayments.

At the hearing

The appellant's advocate argues that:

- a) The appellant was a victim of an automobile accident in 2011, and
- b) The appellant was awarded compensation from ICBC IN 2012 and 2013, and
- c) The total amount awarded from ICBC was \$11,494.50 and not the \$70,000 that the ministry had alleged, and
- d) The total amount awarded to the appellant from December 2011 to December 2012 is \$2,424.50, and
- e) The appellant cooperated with the ministry to provide all the necessary information, however she found it very difficult to obtain ICBC information on a file that is over four years old, and
- f) The legislation states that these types of insurance awards are compensation for victims by others that have resulted in costs or losses for the person awarded compensation. If the ministry's decision in this instance is applied and expanded, it would mean the victim in such a claim, depending on their need for supports, could be faced with not obtaining such compensation or losing basic food and shelter benefits. We must raise the question of whether the legislators intended that someone who required supports because of injuries could lose essential benefits; as well whether the loss of such supports could result in much larger expenses to the taxpayer because of larger costs to the health system down the road. The appellant submits that the whole overpayment allegation should be exempt and the ministry decision rescinded, and

- g) The appellant submits that the argument to exempt all ICBC payments included in this overpayment calculation per Schedule B s.7(1)(c) should prevail. This section states that “the following unearned income is exempt: (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.” This is an insurance award by ICBC and, as the ministry states in the reconsideration decision, the appellant’s asset limit of \$5,000 was not exceeded by the \$1,265 ICBC medical treatment expense payments she received in 2012.
- h) ICBC in its own rigorous process is unlikely to pay any costs it does not deem necessary and directly related to the injury that is the subject of this claim.

The ministry’s submission at the hearing was the reconsideration summary provided in the Record of Ministry Decision.” In addition, the ministry reviewed the schedule of payments that ICBC paid to the appellant and the items that were included in the overpayment calculation. The ministry further stated that the reconsideration decision was made based on all applicable legislation and information in their possession. The appellant received income from ICBC and failed to report that income to the ministry as required.

The panel admitted the submissions as evidence of the appellant and the ministry, which either substantiated or further explained information already before the ministry, as being in support of the information and records before the ministry at reconsideration. The panel admitted the testimony in accordance with section 22(4) of the *Employment and Assistance Act*.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry's reconsideration decision of August 1, 2017 was a reasonable application of the applicable legislation in the circumstances of the appellant or was reasonably supported by the evidence. The ministry determined that the appellant was provided disability assistance for the months from February 2012 to December 2012 for which she was not eligible because she received income from an ICBC insurance claim that was not exempt under Schedule B of the *Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR) and that under section 18(1) of the *Employment and Assistance for Persons with Disabilities Act* (EAPWDA) she is liable to repay the amount of disability assistance that she is not eligible to receive to the ministry.

The relevant legislation is from the EAPWDR:

Amount of disability assistance

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;*

Asset limits

Section 10(2)

(a) *a sole applicant or recipient has no dependent children and has assets with a total value of more than \$3 000; BC Reg 197/2012, effective October 1, 2012.*

Section 10(2)

(a) *a sole applicant or sole recipient has no dependent children and has assets with a total value of more than \$5 000; BC Reg 204/2015, effective December 1, 2015*

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.*

Schedule B

Net Income Calculation (section 24 (b))

Section 1 - 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) *any income earned by a dependent child attending school on a full-time basis;*

(ii) *Repealed. [B.C. Reg. 96/2017, App. 2, s. 2 (a).]*

(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;*

(iv.1) *the Canada child benefit, 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;

(lv) a disabled contributor's child's benefit paid or payable under the Canada Pension Plan;

(lvi) payments granted under an agreement referred to in section 94 of the Child, Family and Community Service Act;

(lvii) money that is paid or payable, in respect of a child, from property that comes into the control of, or is held by, the Public Guardian and Trustee,

(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.

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 — unearned income

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;

(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) any of the following if applied exclusively to or used exclusively for disability-related costs to promote independence:

(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;

(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;

(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 that 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;

(g) a benefit paid under section 22, 23 or 23.2 of the Employment Insurance Act (Canada) to any person in the family unit.

(2) Subsection (1) (d.1) and (d.3) (ii) applies in respect of a person only if

(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) Repealed. [B.C. Reg. 204/2015, App. 2, s. 4 (b).]

(3) Repealed. [B.C. Reg. 197/2012, Sch. 2, s. 13 (f).]

Repealed

7.1-7.2 Repealed. [B.C. Reg. 226/2014, s. 4.]

Minister's discretion to exempt education related unearned income

8 (1) In this section:

"day care costs" means the difference between a student's actual day care costs and the maximum amount of child care subsidy that is available under the Child Care Subsidy Act to a family unit matching the student's family unit;

"education costs", in relation to a student and a program of studies, means the costs, including the costs of tuition, student fees, books, equipment, supplies and transportation, that, in the opinion of the minister, are reasonably required for the student to participate in the program of studies.

(2) *The minister may authorize an exemption for a student up to the sum of the student's education costs and day care costs, for a period of study, from the total amount of student financial assistance received by the student for the period of study.*

Appellant's position:

The appellant argues that the ICBC payments totalling \$1,159.50 is exempt and should not be deducted from the appellant's disability assistance. Schedule B s.(7)(1)(c) EAPWDR states: *the following unearned income is exempt: - (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.* The ministry acknowledges that the appellant has not exceeded the \$5,000 asset limits in accordance to Section 10 EAPWDR with their statement in the reconsideration decision that the \$1,265 ICBC medical treatment expenses the appellant received in 2012 were exempt because they did not exceed the asset limit of \$5,000.

Ministry's position:

The ministry argues that the appellant received unearned income from an ICBC claim between February and December 2012 totalling \$1,159.50 and there are no exemptions listed in Schedule B for insurance benefits or compensation. The payments were comprised of \$500.00 for General Damages plus \$132.00 for Housekeeping reimbursement plus \$527.50 for Past Wage Loss. Ministry policy allows an exemption, up to a family's asset limit, for insurance benefits provided for medical equipment or medical treatment. In accordance with Section 18 EAPWDA, the appellant received disability assistance which she was not eligible for, and must repay the ministry the amount of the overpayment.

Panel's decision:

The issue the panel must consider is the reasonableness of the ministry's reconsideration decision that the appellant received income assistance for which she was not eligible. In this case, the appellant received ICBC insurance claims totalling \$11,494.50. Of this amount, \$9,070 was received in 2013 and considered as part of a separate ministry decision that is not currently under review. The balance of \$2,424.50 was received by the appellant between December 2011 and December 2012.

The ministry has determined that this amount is unearned income because it is money the appellant received from insurance benefits. "Unearned Income" is defined in section 1(1)(d) of the EAPWDR as "...any income that is not earned income and includes ...money from insurance benefits". The panel finds the ministry's decision that the funds are "unearned income" is a reasonable application of the legislation.

The appellant argues that the funds should be exempted from disability assistance pursuant to Schedule B s.(7)(1)(c) EAPWDR which states: *the following unearned income is exempt: - (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.*

The Ministry argues there is no exemption available under Schedule B.

An "award" is something that is granted by a court or tribunal following a judicial or quasi-judicial decision. The Concise Oxford defines "award" in part as an "order to be given as payment, penalty" and as a "judicial decision". An award does not encompass a "settlement" which is a contractual agreement to resolve a dispute. The panel finds the ministry's determination that there is no

exemption available under Schedule B to be reasonable as an ICBC payment is not an “award” or “any award” as argued by the appellant.

Included in the \$2,424.50 is a reimbursement for user fees for medical treatment in the amount of \$1,265.00 which the ministry has determined is exempt in accordance with its policy which exempts user fees for medical treatment up to the person’s asset limit (in this case, \$5,000). The balance of \$1,159.50 includes \$500.00 for Bodily Injury (general damages), \$132.00 for Accident Benefits (care – medical & homemaker) and \$527.50 for Bodily Injury (general damages) is insurance benefits or compensation and not exempted by its policy and therefore should have been deducted from the disability assistance paid to the appellant between February and December 2012 pursuant to Section 24 EAPWDR.

The panel finds that the ministry determination that the appellant received \$1,159.50 in ICBC payments which were not exempt under legislation or policy and therefore the appellant received \$1,159.50 in disability assistance from February 2012 to December 2012 that she was not eligible to receive was a reasonable application of the legislation in the circumstances of the appellant. As required in section 18(1) EAPWDA, overpayments must be repaid to the ministry. The panel therefore confirms the ministry decision pursuant to s.24(2)(a) EAA.

The appellant is not successful in her appeal.