

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) reconsideration decision dated September 15, 2017 which denied the appellant's request to exempt her July 2017 income as per the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) section 24. Specifically, the appellant's request to exempt the \$3660 insurance payment was denied as there are no specific exemptions for insurance benefits and there is not enough information provided to determine any other exemptions that might be available. The ministry determined the \$3660 received in July is unearned income and must be deducted from the appellant's September 2017 assistance.

## PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) sections 1, 9, 24, Schedule A and B

## PART E – Summary of Facts

A request for adjournment made by the appellant due to scheduling conflicts and availability of an advocate was granted by the Tribunal Chair October 11, 2017 and that hearing was rescheduled for November 6, 2017.

August 4, 2017

- The appellant submitted her monthly report for July including the following attachments: cheque statement, a written note of explanation, confirmation of the GST tax credit and her employment income.

August 24, 2017

- The appellant attended a ministry office to inquire about her September 2017 disability assistance.
- The appellant was informed she was not eligible for disability assistance for September 2017 due to her ICBC unearned income.

August 31, 2017

- The ministry received the appellant's signed request for reconsideration with a submission from her advocate

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

A Letter from the appellant's advocate dated August 31, 2017 which stated:

- The appellant completed her monthly report which included an amount of \$3660 she received from ICBC from an automobile accident in July 2015.
- The appellant argues that the ministry did not apply the appropriate exemption under schedule B subsection 7 (1)(c) which states that a criminal injury compensation award or other award is exempt for the purpose of calculating a PWD recipient's monthly income.
- The money was used for dental work, physiotherapy, and administrative fees related to the appellant's bankruptcy.
- That the advocate believes a similar case to her client's found that in Schedule B, subsection 7 (1) (c) there are exemptions available for these types of awards and that the ministry must ensure they are applying the Act and Regulations in a consistent manner.
- The appellant wishes to receive the Reconsideration Supplement immediately as the withholding of her benefits puts her in danger of not being able to pay rent and a possible eviction.

A Letter from the appellant's advocate dated August 23, 2017 which notes:

- The appellant received a PWD (Person With Disability) payment of \$52 and that she hadn't received any advance notice that her cheque would be reduced.
- The advocate questioned what the deduction was based upon, what the appellant was entitled to and what options for making the appellant's rent payment at the end of the month were.

ICBC letter dated April 18, 2017 which stated:

- Claim was to be settled.
- The claim was based on the information obtained and that a fair, all-inclusive settlement would be \$7965.00.
- A cheque for \$3660.00 was enclosed with a release to be completed and returned.

ICBC Full and Final Release form dated May 19, 2017

- Notes Previously paid- 4,305.00 and New money \$3,660.00

Canada Revenue Agency letter dated July 17, 2017 confirming an authorized representative.

Form 65 (Bankrupt and Family Unit Information) dated July 12, 2017

September monthly report Dated August 4, 2017 which notes:

- Employment income-\$370.89
- Other income or money received- \$3660.00
- Tax credits- \$135.62

ICBC pay stub dated June 13, 2017

- Total amount \$3660.00
- Hand written note by the appellant which states:
  - In March, she attended a tribunal over a claim cheque form ICBC and during the discussion she gave her advocate permission to request more funds
  - The advocate convinced the appellant to declare bankruptcy and ICBC sent a cheque she could cash and use for health costs
  - The appellant paid huge interest bills, credit cards, bought some teeth, and paid the trustee 1,300.
  - The appellant still goes to physio as she can't function without it.

GST Credit Notice issued dated July 5, 2017 which notes:

- Total annual entitlement is \$542.50.

Employment Paystubs Pay Period Ended date:

- 2017/07/28- Net pay 261.58 Current, 4241.64 Year to date.
- 2017/07/22- Net pay 109.31 Current, 3980.06 Year to date.
- 2017/07/08- Net pay 0.00 Current, 3870.75 Year to date.

Dental bill dated July 17, 2017 which notes:

- Clasp/Rests- patient amount 18.25
- Lab- Denture- patient amount 604.50
- Balanced carried forward 10.66
- Total amount owing \$633.41

Appellant Submission dated November 3, 2017 which contained the following:

- **Issue-** a summary the reasonableness of section 1(d) and Schedule B s. 7(1)(c) of the EAPWDR.
- **Overview-** (items 1-9)- a summary of the appellant's status, her ICBC payment following a car accident, the loss of a tribunal appeal in March 2017 where the ministry deemed the ICBC monies as unearned income. The appellant requests that the March 2017 appeal not prejudice or bias the current review.
- **Relevant facts-** (items 10-24)- are details related to the appellant and her appeal, they note:
  - Age, employment, and work performance.
  - That her additional income supplements her disability income.
  - That the additional 3,660 from ICBC was for future care costs.

- Letters and other documentation found in the appeal booklet.
  - Financial difficulties with debts, dental issues, administration costs and continued physiotherapy.
  - That the appellant has received a Reconsideration supplement and if not successful will have to pay back the funds at 20 per month.
- **Legal Issue-** (Items 25-63)- these are the appellant's arguments on the issue of whether the ministry reasonably concluded that the \$3,660 received from ICBC unearned income. Points made included:
    - **Statutory Interpretation (26-27)**
      - Rizzo and Rizzo Shoes Ltd- Words of an Act must be read in their entire context.
      - The appellant's advocate stated the supreme court held "the EAPWDR has a benevolent purpose and that the legislation must be interpreted in a broad and generous manner".
    - Insurance Corporation of BC- ICBC (28-38)
      - Revenue collected goes mostly towards paying insurance benefits.
      - Insurance is a contractual relationship.
      - Monies received by the appellant fall under s,1(d) "insurance benefits".
      - The EAPWDR does not define "insurance benefits" and therefore should be read in their ordinary meaning in common language.
      - Meriam-Webster defines- benefit-act of kindness, and a payment or service provided.... Therefore, the appellant feels the payment is a type of insurance benefit under the ordinary and common language sense of the definition of the word.
      - Insurance benefits are not defined under the EAPWDA or EAPWDR; they are in the insurance (vehicle) Act
      - The payment to the appellant was to satisfy her entitlement to insurance benefits.
      - The advocate states "most importantly, these monies were included for future care which the appellant has consequently been denied".
      - The advocate submits, "the benefits provided to an insured or medical and rehabilitation costs, and as payment provided for bodily injury under insurance coverage, are insurance benefits for the purposes of the definition of "unearned income" in the EAPWDR.
    - ICBC payment is an insurance benefit or financial award that is exempt as unearned income (items 39-51)
      - The advocate respectfully submitted that the ICBC payment constitutes insurance benefits which are defined as unearned income under s. 1(d) of the EAPWDR and she argues the payment is included under s 1(t) of the definition of unearned income as it is a financial award. In either case the payment is exempt as unearned income under section 7(1)(c) of the EAPWDR as insurance benefits provided for medical treatment, or as an award.
      - The advocate notes clear policy of the ministry interpreting section 7 (1)(c) of the EAPWDR which states "insurance benefits provided for medical equipment or medical treatment" is "exempt up to the asset level for the family unit. (item 44)
      - In terms of s 7(1)(c) of the EAPWDR- the ministry has a clear policy as "non-recurring awards that are not specifically defined in regulation as exempt can be considered "other awards" under schedule B, section 7 and exempt up to the family's asset level. The ministry did not consider the payment to be an "award".
      - The advocate notes, that ICBC is not a third-party insurer.

- Payment is Exempt income as insurance benefits to pay for medical treatment (item 52-61)
  - Examples of sections used in the EAPWDR to consider benefits are used for medical treatment- Schedule B, s 7(1)(c), (d), (d.1), (d.3)
  - The advocate states ICBC did not calculate an exact dollar amount for future medical treatments but there was an agreement that any amount which was necessary would come out of the \$3660 and would be up to the appellant to manage.
  - In reaching the settlement medical evidence was not obtained by ICBC for future care so the advocate states the entire amount was provided to pay for medical treatment as needed.
  
- The advocate submitted (item 62 points a-j), the ICBC payment is an award that is exempted as “other award” in section 7 (1)(c) of Schedule B of the EAPWDR noting the following reasons:
  - The Policy and Procedure Manual of the Ministry(PPMM) effective July 18, 2016 states “other awards” includes “insurance benefits provided for medical equipment or medical treatment”.
  - PPMM states “non-recurring awards that are not specifically defined in regulations as exempt can be considered “other awards”
  - The advocate believes that the plain language definition of award would have included an official settlement provided by ICBC.
  
- The advocate notes, (item 63, points a-e), the ministry is correct in asserting that an award is an amount awarded by a person in authority and contends ICBC insurance agents are persons in authority.
- Equitable Consideration Items 64-71)
  - The advocate questioned the equity issue of the reconsideration decision as the ministry has denied the appellant access to the insurance benefits she is entitled to, benefits intended to facilitate her rehabilitation at present and the future.
  
- Conclusion (items 72-77)
  - The appellant’s insurance benefit is exempt as unearned income as it is provided for medical treatment.
  - If the payment is not an insurance benefit then it is an award.
  - The payment to the appellant was an insurance benefit paid to provide medical treatment.
  - As Section 7(1)(c) of schedule B of the EAPWDR exempts as income insurance benefits provided for medical equipment or medical treatment, as well as “other awards”: The appellant’s payment is exempt as unearned income whether it is labeled “insurance benefit” or a “financial award”.
  - There are serious equity issues in this case. It is important that people with disabilities have access to funds intended for rehabilitation.
  - The payment from ICBC is an “insurance benefit” included in the definition of unearned income in Section 1(1)(d) of the EAPWDR. In alternative, it is included in “unearned income” under section 1(1)(t) under “financial award”.
  
- Remedy (items 78-79)
  - Rescind the Reconsideration Decision; the appellant is entitled to receive benefits for September, 2017.
  - The appellant should no longer be responsible for the repayment of the Reconsideration Supplement.

At the hearing, the appellant's advocate referred to the submission dated November 2, 2017 to argue her appeal.

At the hearing, the ministry confirmed that, if insurance benefits are specifically identified for medical purposes, they are considered exempt from unearned income.

#### Admissibility of New Information

Section 22(4) of the *Employment and Assistance Act* states that the panel is empowered to admit as evidence only "the information and records that were before the minister when the decision being appealed was made" and "oral or written testimony in support of" the record of the ministry decision. If the additional evidence substantiates or corroborates the information and records before the minister at the reconsideration stage, the evidence should be admitted; if it does not, then it does not meet the test of admissibility under s. 22(4)(b) of the *Employment and Assistance Act* and should not be admitted.

In her submission, the advocate stated the document included new evidence of the appellant's financial struggle. The ministry did not object to the submission made by the appellant's advocate. The panel accepts that evidence shared in reference to the financial difficulties of the appellant and her need for financial assistance corroborates the information and records before the minister at the reconsideration stage and therefore meets the test of admissibility under s. 22(4)(b) of the *Employment and Assistance Act* and therefore will be admitted.

## PART F – Reasons for Panel Decision

### Panel Decision

The issue on appeal is whether the ministry's reconsideration decision, dated September 15, 2017, which denied the appellant's request to exempt her July 2017 income as per the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) section 24 was reasonably supported by the evidence or was a reasonable application of the applicable regulation in the circumstances of the appellant.

The relevant legislation is as follows:

**Employment and Assistance for Persons with Disabilities Regulation** sections 1, 9, 24, Schedule A and B

### 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:

- (a) money, annuities, stocks, bonds, shares, and interest bearing accounts or properties;
- (b) cooperative associations as defined in the *Real Estate Development Marketing Act*;
- (c) war disability pensions, military pensions and war veterans' allowances;
- (d) insurance benefits, except insurance paid as compensation for a destroyed asset;
- (e) superannuation benefits;
- (f) any type or class of Canada Pension Plan benefits;
- (g) employment insurance;
- (h) union or lodge benefits;
- (i) financial assistance provided under the *Employment and Assistance Act* or provided by another province or jurisdiction;
- (j) workers' compensation benefits and disability payments or pensions;
- (k) surviving spouses' or orphans' allowances;
- (l) a trust or inheritance;
- (m) rental of tools, vehicles or equipment;
- (n) rental of land, self-contained suites or other property except the place of residence of an applicant or recipient;
- (o) interest earned on a mortgage or agreement for sale;
- (p) maintenance under a court order, a separation agreement or other agreement;
- (q) education or training allowances, grants, loans, bursaries or scholarships;
- (r) a lottery or a game of chance;
- (s) awards of compensation under the *Criminal Injury Compensation Act* or awards of benefits under the *Crime Victim Assistance Act*, other than an award paid for repair or replacement of damaged or destroyed property;
- (t) any other financial awards or compensation;
- (u) Federal Old Age Security and Guaranteed Income Supplement payments;
- (v) financial contributions made by a sponsor pursuant to an undertaking given for the purposes of the *Immigration and Refugee Protection Act (Canada)* or the *Immigration Act (Canada)*;

(w) tax refunds;

(x) gifts of money, annuities, stocks, bonds, shares, and interest bearing accounts or properties;

(y) gifts in the form of payment by another person of a debt or obligation.

### 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 dependent.

(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.

### Schedule B

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;

## **Positions**

The ministry notes this review is specific to how the appellant's July ICBC income was treated and does not include jurisdiction to review the November payment. The appellant acknowledges that the November 2016 ICBC monies are not within the scope of the current appeal. The advocate states, "in no way should the March appeal determine prejudice or bias the current review".

The ministry's position is the appellant is ineligible for income assistance for September 2017 due to the ICBC income received in July 2017. Section 1(d) EAPWDR states that insurance benefits, except insurance paid as compensation for a destroyed asset is "unearned income" and while there are exemptions to the calculation of a family unit's net income, there is no exemption for insurance benefits. Although the Ministry's policy states, "insurance benefits provided for medical equipment or medical treatment is exempt up to the asset level for the family unit", there is insufficient evidence provided from ICBC to explain the reason for the settlement of \$3660.

The appellant's advocate argues Schedule B section 7 (1)(c) includes the following applicable exemption to 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. Alternatively, if the settlement is not an insured benefit, the appellant believes it is an award under section 1(t) of the EAPWDR. The appellant's advocate also stated the concern of the serious equity issues in this case as it is important that people with disabilities have access to funds intended for rehabilitation. She states, the legislation shows an intention not to include as benefits paid for medical treatment.

The ministry's position is the ICBC settlement is not considered an award as the amount was agreed upon by both the appellant and ICBC (on behalf of the 3<sup>rd</sup> party user). An "award" is an amount awarded by someone in authority, i.e. a judge and the settlement was not awarded by a person with this authority. As it is not deemed by the ministry as an award, Schedule B section 7 (1)(c) "a criminal injury compensation award or other award" cannot qualify the appellant for an exemption.

## **Panel Decision**

The panel found the ministry decision that the ICBC settlement meets the definition of “unearned income” as per section 1(d) was a reasonable application of the legislation.

The ministry takes the position 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. 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 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 panel finds the ministry’s decision that the ICBC settlement payment is not an “award” as per section 1(t) or Schedule B section 7(1)(c) of the EAPWDR to be a reasonable application of the legislation.

However, the ministry policy presented by the appellant stated that insurance benefits provided for medical equipment or treatment can be exempt up to the asset level for the family unit.

The appellant argued her ICBC payment should be exempt under the policy as it will be used for medical treatment. The panel found the ministry’s decision not to exempt either the total amount (\$3660) or any part of that amount from the family unit’s net income to be a reasonable at this time as there was no statement as to what the amount was for, lost wages, medical equipment or treatment or compensation for injury.

As per section 24 EAPWDR, disability assistance may be provided to or for a family unit, for a calendar month, in an amount that is not more than the amount determined in Schedule A, minus the family unit’s net income determined under Schedule B. As the ICBC payment exceeded the appellant’s assistance rate, the ministry decision that she was ineligible for assistance for the month of July was a reasonable application of the legislation.

## **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 July 2017, was reasonably application of the legislation and confirms the decision. The appellant is not successful on her appeal.