

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the “ministry”) reconsideration decision dated December 19, 2017 which determined that the appellant was not eligible for November disability assistance because the appellant’s net income from September exceeded the ministry rate of assistance for the appellant’s family unit size. In particular the minister determined that the appellant’s ICBC settlement met the definition of unearned income under section 1 (t) of the Employment and Assistance for Persons With Disabilities Regulation and was not exempt from disability assistance.

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons with Disabilities Act (EAPWD) section 5
Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) sections 1 (t), 9 (2), 24, 24.1, Schedule A - sections 1, 2 and 4, Schedule B - sections 1, 6, 7, and 8

PART E – SUMMARY OF FACTS

The appellant was injured in a motor vehicle accident on March 21, 2013. As a result the plaintiff made a claim for damages sustained and hired legal counsel in that regard.

The appellant's claim was settled in late 2016. The claim was settled for a certain global amount "plus costs and disbursements to be assessed or agreed". Settlement of the costs and disbursements could not be reached for several months. That issue was resolved by legal counsel in August 2017.

Previously, the appellant's lawyers had received the damages portion of the appellant's settlement in December 2016. The appellant's lawyers paid to the appellant on December 23, 2016 a certain amount from settlement funds and held the balance in trust.

After resolution of the costs and disbursements, the appellant's lawyers held in their trust account for the appellant the sum of \$4,659.95 and that amount was paid to the appellant in late August/early September 2017.

The evidence before the ministry at the time of the reconsideration decision consisted of the following:

- the appellant's monthly report dated October 2, 2017 declaring "all other income or money received" of \$4,659.95;
- the appellant's written submissions;
- a letter dated December 7, 2017 from the appellant's law firm confirming her claim was settled in late 2016, stating that the appellant signed a release on December 23, 2016 and confirming that the law firm's undertakings had been discharged and that they had settlement funds in their trust account belonging to the appellant, that the amount held in trust was subject to a direction to pay a certain amount to a medical treatment provider and was subject to the law firm's statement of account yet to be issued, advising that the appellant's legal costs to be paid to her by ICBC pursuant to the settlement had not yet been resolved, that that issue was resolved in August 2017 wherein ICBC agreed to pay a certain amount to the appellant on account of those costs, that the amount was paid to the law firm in trust in August 2017, that the law firm then issued a statement of account to the appellant, and after all accountings paid the balance of \$4,659.95 to the appellant, the funds being sent to the appellant in late August/early September 2017;

- a letter dated October 23, 2017 from the appellant's law firm confirming settlement details;
- a copy of the full and final release of all claims signed by the appellant on December 23, 2016 in respect of the appellant's claim for damages for injuries sustained in the subject motor vehicle accident;
- a copy of the settlement cheque from ICBC to the appellant's law firm for the principal settlement amount;
- a copy of the settlement cheque from ICBC to the appellant's law firm for the agreed legal costs;
- a copy of a cheque dated August 30, 2017 from the appellant's law firm to the appellant in the amount of \$4,659.95 being the balance owing to the appellant after accounting for the law firm's legal fees, disbursements and taxes.

In the appellant's undated written submissions in her request for reconsideration the appellant stated that the money held in trust by her lawyer was an asset converted from one form to another, paid on demand.

The appellant stated that the monies were held by her lawyers in their trust account to her credit.

The appellant noted that her lawyers paid to her \$30,000 by trust cheque received December 24, 2016, \$1,800 paid to a medical treatment provider pursuant to her instructions in December 2016, and \$4,659.95 by trust cheque received September 19, 2017.

The appellant noted certain provisions of the Employment and Assistance for Persons with Disabilities Act and the EAPWDR.

The appellant argued that the ministry's decision was incorrect. She noted that despite her assertions that the funds were an asset held by her lawyers in trust she was told by the ministry to enter the amount as other income without being properly informed of the implications of listing the funds as directed. She was under the impression from her conversation with the ministry representative that the category of "other money" included both unearned money as well as assets. She did not understand that this would mean that money would be deducted dollar for dollar from her disability assistance, otherwise she would have requested further instructions before proceeding.

The appellant argued that “the ministry decision unfairly penalizes [her] asset and puts [her] in a financially compromised position”. As she is unable to work she does not have the ability to replace those funds with earnings. She argued that the funds were part of her assets prior to going on disability assistance.

The appellant stated that when she first went on benefits she informed the ministry representative who assessed her that there was an additional asset beyond her bank account but that it could not be quantified. The appellant stated that she was told this is not a problem as long as when she could quantify the amount she declared it on her report. The appellant argued that it is unfair to be penalized for obeying the instructions provided.

The appellant argued that the funds should not be taken into account when calculating her disability assistance benefits for November 2017 because the amount is exempt unearned income pursuant to Schedule B, section 7(1)(c) of the EAPWDR and/or the amount is an asset as defined in section 1 of the EAPWDR.

The appellant argued that the funds were a nonrecurring award and do not exceed her asset limit at the time received. Therefore the amount is an exemption and should not be included in the calculation of her disability assistance benefits for November 2017.

The appellant argued that the definition of asset in section 1 of the EAPWDR includes cash assets. She argued that “cash assets” is further defined in section 1 as” including money standing to the credit of the person that must pay it to the person on demand and the amount of an immediately negotiable cheque payable to the person”.

The appellant argued that the funds were held in her lawyers’ trust account to her credit. Once her lawyers’ fees and disbursements were deducted the remaining balance belonged to her. The balance must be paid to her on demand. The funds were paid to her on demand. The funds were paid to her by her lawyers’ trust check dated August 30, 2017 and received by her September 19, 2017. She argued that therefore the funds were an asset and should not be included in the calculation of her disability assistance benefits for November 2017.

In her notice of appeal dated January 5, 2018 the appellant states:

“I disagree with the ministry’s reconsideration decision regarding the classification of my money. The money in question was awarded to me prior to my being on benefits. The money was held in trust and payable to me on demand. This was an asset converted from one form to another.”

The appellant did not attend the hearing and, having confirmed that the appellant had been notified of the hearing date and time, the hearing proceeded under section 86(b) of the Employment and Assistance Regulation.

At the hearing, the ministry reiterated its reliance upon the sections of the EAPWDR referred to in the reconsideration decision and, additionally, the sections referred to in the reconsideration decision from Schedule A and Schedule B of the EAPWDR.

In particular the ministry referred to the definition of “unearned income” in section 1 of the EAPWDR. The ministry indicated that in respect of the underlying facts upon which it relied in making the reconsideration decision, it relied on the evidence of the appellant’s lawyers regarding the identification and categorization of the funds at issue. The ministry argued that based upon the information from the appellant’s lawyers the funds were properly categorized as “compensation”.

In response to a question from the panel, the ministry indicated that it often sees circumstances similar to the appellant’s where a recipient has received compensation in respect of a motor vehicle accident. The ministry advised that in those cases it obtains clarification as to the nature of the payment; in particular what type of loss the payment is meant to compensate for, to ensure the type of loss is not one of the type where the compensation is exempt or deductible such as income loss or the loss of a vehicle.

PART F – REASONS FOR PANEL DECISION

The relevant sections of the EAPWDR are as follows:

Definitions

1 (1) In this regulation:

"asset" means

- (a) equity in any real or personal property that can be converted to cash,
- (b) a beneficial interest in real or personal property held in trust, or
- (c) cash assets;

"cash assets" in relation to a person, means

- (a) money in the possession of the person or the person's dependant,
- (b) money standing to the credit of the person or the dependant with
 - (i) a savings institution, or
 - (ii) a third party

that must pay it to the person or the dependant on demand,

- (c) the amount of a money order payable to the person or the dependant, or
- (d) the amount of an immediately negotiable cheque payable to the person or the dependant;

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

- (t) any other financial awards or compensation;

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.

[am. B.C. Reg. 175/2016, App. 1, s. 4.]

Disability assistance in the form of transportation support allowance

24.1 (1) The minister may provide to or for a family unit, for a calendar month, in respect of each applicant or recipient who is designated as a person with disabilities in the family unit, one of the following forms of transportation support allowance:

- (a) in money, in the amount of \$52;
- (b) in kind, in the form of a monthly pass for the personal use of the person with disabilities to use a public passenger transportation system in a transit service area established under section 25 of the *British Columbia Transit Act*, or in a transportation service region as defined in the *South Coast British Columbia Transportation Authority Act*, which is deemed to have a value in the amount of \$52 for the purposes of this regulation.

(2) If an applicant or recipient who is provided a transportation support allowance under either paragraph (a) or (b) of subsection (1) gives the minister notice that the recipient wishes to be provided the other form of transportation support allowance provided under that subsection, the minister may provide that other form of transportation support allowance for a subsequent month.

(3) If the amount of disability assistance calculated in respect of a family unit under section 24 is less than the applicable amount for the family unit's transportation support allowance, disability assistance may be provided in accordance with this section up to an amount equal to the applicable amount for the family unit's transportation support allowance.

[en. B.C. Reg. 175/2016, App. 1, s. 5.]

Schedule A

Disability Assistance Rates

Maximum amount of disability assistance before deduction of net income

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.

(2) Despite subsection (1), disability assistance may not be provided in respect of a dependent child if support for that child is provided under section 8 (2) or 93 (1) (g) (ii) of the *Child, Family and Community Service Act*.

Monthly support allowance

2 (0.1) For the purposes of this section:

"deemed dependent children", in relation to a family unit, means the persons in the family unit who are deemed to be dependent children under subsection (5);

"warrant" has the meaning of warrant in section 14.2 [*consequences in relation to outstanding arrest warrants*] of the Act.

(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.

[TABLE OMITTED]

Monthly shelter allowance

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;

"warrant" has the meaning of warrant in section 14.2 [*consequences in relation to outstanding arrest warrants*] of the Act.

(2) The monthly shelter allowance for a family unit to which section 14.2 of the Act does not apply is the smaller of

- (a) the family unit's actual shelter costs, and
- (b) the maximum set out in the following table for the applicable family size:

[TABLE OMITTED]

Schedule B

Net Income Calculation

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;

(xxxii) 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;

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

(xxxiv) 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;

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

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

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

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

(xxxix) 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;

(xl) 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;

(xli) 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;

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

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

(Iii) 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;

(Iiii) 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;

(lviii) money that is paid or payable from a settlement in respect of Treaty No. 8 agricultural benefits,

(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).]

Discussion and Decision

Section 24 of the EAPWDR provides that disability assistance may be provided to or for a family unit for a calendar month in an amount that is not more than the family unit's net income determined under Schedule B.

In respect of limits on income, section 9(2) of the EAPWDR provides that 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.

“Unearned income” means, under the definitions in section 1 of the EAPWDR, income that is not earned income and includes any “other financial awards or compensation”.

Schedule B of the EAPWDR sets out exemptions from unearned income. Exempt unearned income includes “a criminal injury compensation award or other award...” (section 7(1)(c)).

There is no issue that the net income of the family unit determined under Schedule B equals or exceeds the amount of disability assistance determined under Schedule A. The issue is whether the income is exempt.

The appellant argues that the unearned income is exempt under Schedule B, section 7(1)(c). That section exempts “a criminal injury compensation award or other award”. The appellant’s unearned income is not an “other award”. The panel accepts that an “award” is an amount awarded by someone of authority, for example a judge. In this case the funds received by the appellant are compromised settlement funds subsequent to an injury from a motor vehicle accident. This is made clear by the letters from the appellant’s lawyers and the disclosed documentation including the release executed by the appellant upon settlement of the claim.

The appellant also argued that the funds received by her “is an asset as defined in section 1 of the EAPWDR”. In particular the appellant argued it is a “cash asset” as defined i.e. money standing to her credit with a third party that must pay it to the person on demand.

The panel concludes that the funds were not held to the appellant’s credit and payable on demand. No funds were payable to the appellant until the issue of “costs and disbursements” were resolved with ICBC. The resolution of that issue took several months. During that time the funds were held in trust by the appellant’s lawyers on conditions; in particular as security for the lawyers’ fees, disbursements and taxes. The appellant was unable to demand payment of funds from her lawyers until those issues were resolved and until the lawyers rendered their final account to the appellant and the account was paid from trust i.e. the trust/settlement funds.

Section 24 of the EAPWDR states that a person’s income, calculated under Schedule B, must be deducted from their disability assistance, calculated under Schedule A.

Section 9(2) of the EARWDR states that a family unit is not eligible for assistance if the net income of the family determined under Schedule B equals or exceeds the amount of income assistance is determined under Schedule A for a family unit matching that family unit.

Unearned income must be deducted from disability assistance except that which meets the exemption criteria in the legislation. Sections 1, 6, 7, and 8 list the deductions and exemptions from unearned income that are permitted for the purposes of calculating income. The ICBC settlement income is not included as income that is exempted or which might be deducted for the reasons noted above.

The relevant payment to the appellant, the sum of \$4659.95 received by the appellant in September, meets the definition of unearned income under section 1 (t) of the EAPWDR and is not exempt from disability assistance. The rate of disability assistance for a sole recipient under Schedule A is \$706.42 support, \$375 shelter, and a transportation support allowance of \$52 for a total of \$1,133.42. As a result the appellant is not eligible for November disability assistance because her net income of \$4,659.95 exceeds the \$1,133.42 amount of assistance determined for her family unit size under Schedule A.

On a review of all of the evidence and relevant legislation, the panel finds that the reconsideration decision was a reasonable application of the EAPWDR in the appellant's circumstances and was reasonably supported by the evidence. In the result the panel confirms the ministry's decision and the appellant is not successful in the appeal.