

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction’s (the “Ministry”) decision of December 21, 2021 in which the Ministry determined that the Appellant’s Worker’s Compensation benefits were not exempt from the calculation of disability income pursuant to section 1 & 24 and Schedule B of the *Employment and Assistance for Persons with Disabilities Regulation*.

Part D – Relevant Legislation

EAPWDR – *Employment Assistance for Persons with Disabilities Regulation*, Sections 1, 24 and Schedule B

Part E – Summary of Facts

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

- 1) The Appellant is a sole recipient of disability assistance.
- 2) **Feb 22, 2021** – letter from Worksafe BC regarding an Independence and Home Maintenance Allowance (IHMA) of \$327.65 monthly.
- 3) **May 4, 2021** - letter from Worksafe BC outlining the allowance claim
- 4) **Sept 21, 2021** - email correspondence between the Ministry and the Appellant’s Member of the Legislative Assembly (MLA) regarding the Appellant’s benefit – with clarification provided by Worksafe BC that the IHMA benefit was labeled incorrectly. The MLA advocates that the IHMA is a health benefit under sections 156 and 157 of the Workers Compensation Act and not a wage benefit ordinarily held back by the Ministry.

WORKERS COMPENSATION ACT

Part 4 — Compensation to Injured Workers and Their Dependants

Division 4 — Vocational Rehabilitation, Health Care and Other Assistance

Health care for injured worker

156 (1)In addition to other compensation under this Part, ...

Board powers in relation to provision of health care

157 (1)Health care provided under any of the following provisions must at all times be subject to the direction, supervision and control of the Board:

..

Additional Information

The Appellant had a representative attend the hearing who spoke on the Appellant’s behalf. The Appellant also provided information. A signed Release of Information was in place and dated February 9, 2022.

At the hearing, the issue of repayment was briefly discussed between the Appellant and the Ministry. The Ministry noted that the Appellant may want to consider bringing the issue of repayment up to the Ministry, separate from this appeal.

Part F – Reasons for Panel Decision

The decision under appeal is the reasonableness of the Ministry of Social Development and Poverty Reduction's (the "Ministry") decision on December 21, 2021 in which the Ministry determined that the Appellant's Worker's Compensation benefits were not exempt from the calculation of income pursuant to section 1 & 24 and Schedule B of the *Employment and Assistance for Persons with Disabilities Regulation* Schedule B exemptions/deductions for unearned income were reviewed by the ministry.

Full text of the relevant sections of the EAPWDR is provided at the end of the decision.

Panel Decision

The Ministry's position is that the Appellant's (\$327.65) health benefit received from Workers Compensation is defined as unearned income and is not listed as an exemption under the legislation and is therefore considered unearned income that must be deducted from disability assistance.

The Appellant's position is that his need for a hygienic space is a basic human right, and the IHMA should not be deducted from his disability income. He is not in a position to clean his home or maintain it to an acceptable standard due to his disability that resulted from a workplace accident. The Appellant indicated that both his MLA and Worksafe BC confirmed the IHMA should not be considered income over and above his disability income, and that it is intended to provide cleaning services that he cannot himself do.

Human Rights Code

The panel considered that the decision to be made was restricted to the *Employment and Assistance for Persons with Disabilities Regulation*. Section 19.1 of the Employment and Assistance Act states that section 46.3 of the Administrative Tribunals Act applies to this Tribunal. Section 46.3 provides that this Tribunal does not have the authority to apply the Human Rights Code. Therefore, any alleged human rights violation would not fall under the panel's jurisdiction.

IHMA

Section 1 of the EAPWDR defines unearned income as including any money or value received and includes from workers' compensation benefits. The panel also finds that the evidence establishes the Appellant's Workers Compensation benefit is not one of the listed exemptions under of Schedule B of the *Employment and Assistance for Persons with Disabilities Regulation*. Similarly, the panel finds that the exemptions for certain *Workers Compensation Act* benefits under section 3 of Schedule B do not cover the IHMA as payments under section 191 and 192 of the *Workers Compensation Act* exempted. The panel also finds that the other exemptions for unearned income, those set out in sections 6, 7, and 8 of Schedule B, do not include the IHMA received by the appellant.

The panel considered that while the Appellant's need for house cleaning assistance is obvious, the Ministry and the panel do not have discretion in the matter and must rely solely on what is outlined in the legislation.

As such, the panel finds that the Ministry was reasonable when it determined the Workers Compensation benefit as unearned income under sections 1, 24 and Schedule B of the *Employment and Assistance for Persons with Disabilities Regulation*.

Accordingly, the panel confirms the Ministry's decision, and the Appellant is not successful in this appeal, pursuant to Section 24(1)(a) and (2)(a) of the *Employment and Assistance Act*.

Legislation

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

...

(j) workers' compensation benefits and disability payments or pensions;

...

Amount of disability assistance

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

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:

...

(lii) compensation paid or payable under Division 5 [*Compensation in Relation to Death of Worker*] of Part 4 [*Compensation to Injured Workers and Their Dependants*] or section 225 [*compensation in relation to worker death before July 1, 1974*] of the *Workers Compensation Act* to a dependant, as defined in section 1 of that Act, who is a child, as defined in section 165 (1) of that Act;

....

Annual exemption — qualifying income

3 (1) In this section:

"...

"qualifying income" means

(a) earned income, except the deductions permitted under section 2, and

(b) unearned income that is compensation paid under section 191 [*temporary total disability*] or 192 [*temporary partial disability*] of the *Workers Compensation Act*;

...

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.

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Part G – Order

The panel decision is: (Check one) Unanimous By Majority

The Panel Confirms the Ministry Decision Rescinds the Ministry Decision

If the ministry decision is rescinded, is the panel decision referred back to the Minister for a decision as to amount? Yes No

Legislative Authority for the Decision:

Employment and Assistance Act

Section 24(1)(a) or Section 24(1)(b)

Section 24(2)(a) or Section 24(2)(b)

Part H – Signatures

Print Name

Jennifer Armstrong

Signature of Chair

Date (Year/Month/Day)

2022/03/03

Print Name

Jane Nielsen

Signature of Member

Date (Year/Month/Day)

2022/03/03

Print Name

Donald Storch

Signature of Member

Date (Year/Month/Day)

2022/03/03