

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) reconsideration decision (the decision) dated 6 May 2022 where the ministry determined that the WorkSafeBC (WBC) disability award the appellant is receiving is not exempt income and must be deducted from the appellant’s disability assistance.

Part D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (EAPWDA) section 1
Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) section 1, 24, Schedule A & B,
Workers Compensation Act (WCA), Part 4, Division 5, and Division 6 sections 191, 192, 193, 194, and 195.

Part E – Summary of Facts

The evidence before the minister at reconsideration included the information below:

- The appellant was a recipient of assistance as of February 2022, is 46 years old and received the PWD designation effective April 2022,
- The appellant's family unit includes the appellant and two dependent children and received income assistance for February and March 2022,
- As a person with the PWD designation, in receipt of disability assistance, the appellant is eligible for an annual exemption on qualifying income,
- A letter from WorkSafeBC dated January 26, 2022, states the appellant's Vocational Rehab benefits ended on January 2, 2022; however, the appellant is currently receiving a monthly disability award from WorkSafeBC (WCB) of \$324.58, with the next payment going out February 19, 2022,
- This letter also reports this monthly disability award will be sent to the appellant monthly until the age of 65 and that it is the only money being received from WCB at this time,
- A copy of a monthly report dated received March 17, 2022, from the appellant to the ministry showed income of \$324.58 received from workers compensation,
- The appellant had stated that all disabled are allowed to make an amount of \$15,000 a year and not pay it back,
- In the appellant's case she is getting paid by WCB and does not think it fair to her and her kids to have this deducted as she already has a hard time meeting her needs.
- Deducting the \$324.58 from her income will exponentially increase her problems.

Hearing

The hearing was held as a videoconference. The appellant had requested a translator and a support person/representative be provided and both attended the hearing. Oral testimony by the appellant was provided throughout the hearing via either the representative or the translator.

Appellant

In the appeal form the appellant states that the WCB has made an imature (sic) decision that she is in the process of appealing.

The appellant testified that she is receiving disability benefits from the WCB however the original decision was premature and has been appealed and has been somewhat modified. Although the time allowance for an appeal had expired the representative has been able to have discussions on changing the original decision. A partial change has been made wherein the appellant will now receive further training and courses with an intention of allowing her to return to work.

The representative suggested the resolution may take until the end of the year.

The appellant stated that she does not believe it fair that the ministry should deduct the WCB disability payment from her assistance as it is not that much money, and she has two children, and she does not have enough for living costs.

In answer to questions from the panel the appellant confirmed she is appealing the WCB decision of permanent disability, is still receiving the WCB payments and intends to return to work. She is unaware of any retirement funds that may be paid by WCB and is going to receive further training but does not know what and when it is to begin. When she came to Canada, she intended to be a productive member of the community.

In an answer to a question from the ministry about receiving any disability payment from her employer the appellant provided some background information on her circumstances. She advised that she was a trained accountant overseas for 20 years and once arrived in Canada found it difficult to receive any work for which she was trained. She began working night shifts in a packaging plant while studying during the day to receive Canadian credentials.

After two months in the plant, she injured her back lifting heavy loads and that changed everything. That was about January to April 2019. She is not receiving any payments from the employer and wants to move ahead and create a safe and peaceful place for her family.

Ministry

The ministry at the hearing relied upon the reconsideration decision. The ministry, while empathizing with the appellant's situation, stated that their hands are tied and not having discretion in these circumstances. The ministry hopes that the appellant can achieve what she wants from the WCB for her and her family.

The ministry explained they have not been in contact with WCB and has relied upon the material submitted by the appellant. Like Canada Pension Plan payments, the ministry is required to treat the WCB permanent disability payments as unearned income and deduct it from the appellant's PWD benefits monthly. If the circumstances change at any time the appellant can inform the ministry and they will consider the information and adjust payments if necessary.

In reply to questions from the panel regarding whether a temporary WCB payment would be deducted the ministry replied that there are several kinds of payments to consider. A temporary payment, intended to replace wages would be treated as earned income and a monthly exemption would apply up to a maximum annual amount.

In some cases, rehabilitation amounts, direct support, and items such as schooling are exempt as they are intended to allow people to re-enter the workforce.

A permanent disability amount, however, is treated as unearned income and is deducted.

The ministry in response to a question confirmed their finding that the WCB payment is indeed a monthly permanent disability payment, which can be paid until the appellant reaches an age of 65 years.

The ministry also confirmed that the appellant receives Canada Pension Plan payments for both the appellant and one of the children. The monies received for the appellant are deducted from the PWD benefits however the monies received for the child are not.

Admissibility of new information

Section 22(4) of the EAA says that a panel may consider evidence that is not part of the record that the panel considers to be reasonably required for a full and fair disclosure of all matters related to the decision under appeal. Once a panel has determined which additional evidence, if any, is admitted under EAA Section 22(4), instead of asking whether the decision under appeal was reasonable at the time it was made, a panel must determine whether the decision under appeal was reasonable based on all admissible evidence.

In this case the appellant provided information on receiving Canada Pension Plan payments and that the WCB will begin providing retraining services.

The panel finds that this information is relevant because it relates directly to the appellant's original testimony discussed in the reconsideration decision regarding her belief the WCB had made a premature finding of permanent decision.

The panel admits the new information under section 22(4) of the Employment and Assistance Act ("EAA") as evidence that is reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

Part F – Reasons for Panel Decision

The issue in this appeal is the reasonableness of the ministry's decision that the WorkSafeBC (WCB) disability award the appellant is receiving is a permanent award and not exempt income, and therefore must be deducted from the appellant's disability assistance.

The relevant legislation is provided in Appendix A.

Appellant Position

At reconsideration and hearing the appellant argues that WorkSafe BC has made a premature decision that she is in the process of appealing, and that all disabled people are allowed to make a certain amount of \$15,000 a year and not pay it back. She further argues that although in her case she is getting paid by WCB she does not think it fair to her and her kids to have this deducted as she already has a hard time meeting their needs. The appellant argues that deducting the \$324.58 from her income will exponentially increase her problems.

In support of this argument the appellant states to having recently persuaded the WCB to reconsider her circumstances and to provide further retraining services. The services and timing are yet undefined.

Ministry Position

The ministry argues that as the appellant was a recipient of assistance in February and that any income received in February must be reported in March which impacts the month of April assistance payment. As a person with the PWD designation, in receipt of disability assistance, the ministry does find that the appellant is eligible for an annual exemption on qualifying income but believes that the current WCB payments are not qualifying income.

The ministry states the letter from WCB reports a current disability award of \$324.58 per month, payable until 65 years of age. As the appellant is only 46 now and will be eligible for the award through until 65, the ministry argues that the award was not issued as a temporary compensation under sections 191 or 192 of the Workers Compensation Act (WCA). As it will be paid through until 65 years, the ministry determines this benefit from WCB is one of their permanent disability awards. The ministry states that as it is not one of the temporary awards, it does not qualify for the annual exemption.

The ministry argues there is no exemption available for permanent disability awards that applicants or recipients are receiving from WCB and as such, this type of income must be deducted from the appellant's disability assistance.

Panel Decision

Section 1 of the EAPWDR defines unearned income as any income that is not earned income, and includes workers' compensation benefits and disability payments or pensions. Both the appellant and the ministry agree that the appellant is receiving a financial disability payment of \$324.58 per month from the WCB. The panel therefore finds the current monthly WCB payment

to be unearned income.

The calculation of monthly disability assistance is defined in section 24 of the EAPWDR and states the amount cannot be more than the amount determined under Schedule A, minus the family unit's net income determined under Schedule B.

The panel notes the arguments by both parties put before it is limited to the eligibility of the WCB payment in the determination of net income.

The legislation provides several exemptions and deductions from income under section 1 of schedule B of the EAPWDR.

The exemptions under section 1(a) include education and training allowances; and compensation paid or payable under Division 5 of Part 4 or section 225 of the Workers Compensation Act (WCA). The panel notes both these sections of the WCA within division 5 and section 225 relate to compensation in relation to a death of a worker.

The panel notes the letter dated 26 January 2022 from the WCB states the appellant's vocational rehabilitation benefits ended on January 2, 2022, and that testimony from the appellant relates to her own injuries and her WCB payments. The panel therefore finds the current WCB payment is not a training allowance and is not related to the death of a worker.

Section 1(c) of the EAPWDR requires that all unearned income must be included in the determination of net income, except the deductions permitted under section 6 and any income exempted under sections 3, 7 and 8.

The panel will review the possible deductions and exemption sections separately.

Section 6 of the schedule provides the only deductions permitted from unearned income are income tax deducted at source from employment insurance benefits and essential operating costs of renting self-contained suites. The panel notes no information has been presented on income tax or operating costs for rental suites, and that the WCB payment is a disability award. The panel therefore finds there are no eligible deductions available to the appellant under this section relating to the WCB award.

Section 3 allows for an annual exemption for qualifying income, which includes unearned income that is compensation paid under section 191, for *temporary total disability*, or section 192, for *temporary partial disability* of the WCA.

The legislation relating to compensation to injured workers within the WCA is Part 4, Division 5. Sections 191 and 192 relate to temporary disability and section 194 and 195 discuss permanent disability. Section 193 discusses compensation payable when a temporary condition recurs within a period of three years. The panel notes there is no discussion in the legislation as to the period a worker may suffer from a temporary disability however it concludes it is evident there is a distinction between a temporary and permanent disability.

The panel notes the letter from WCB states the appellant's vocational rehabilitation services

ended on 2 January 2022 and she currently receives a disability award of \$324.58 per month which “will be sent to her monthly until her age of 65.” The letter does not state under what legislative criteria the award is being provided.

The panel notes the appellant has argued that the WCB decision was premature, that she wishes to return to work at some point and that all disabled people are allowed to make \$15,000 a year, while the ministry has argued the WCB payment is not temporary. The panel recognizes that the appellant could have an available annual exemption of \$15,000 of income that qualifies under EAPWDR, Schedule B, section 3.

The panel notes it has not been provided with medical or physiotherapy reports to provide an indication as to the type of injury sustained by the appellant, whether total or partial, nor did it receive a history of rehabilitation services or a prognosis as to whether there is any likelihood of full recovery for the 46-year-old appellant. Coupled with the vagaries of the WCB letter the panel notes it has not been clearly defined as to whether the appellant suffers from a permanent disability.

The panel notes the lack of any further information on the WCB’s agreement to a review and intention to provide further retraining other than the appellant’s oral testimony. This testimony must be compared to the certainty of the statement in the WCB letter regarding the cessation of vocational benefits and a stated length of benefit payment until the age of 65. Based on the available evidence the panel finds that the ministry reasonably determined that the WCB monthly disability award was not issued as temporary compensation under sections 191 or 192 of the Workers Compensation Act. As it is not a temporary award, the panel finds it does not qualify for the annual exemption under section 3.

Section 7 of schedule B provides a list of unearned income which is exempt from the calculation of net income and includes:

- the portion of interest from a mortgage;
- a portion of monthly Federal Department of Veterans Affairs benefits;
- a criminal injury compensation award or other award;
- a payment made from a trust;
- a portion of Canada Pension Plan Benefits
- a tax refund;
- a benefit paid under section 22, 23 or 23.2 of the *Employment Insurance Act* (Canada).

The panel finds the monthly WCB disability payment is not one of the listed exemptions.

Section 8(2) of Schedule B states that 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.

The appellant has testified to having attended school during the day in 2019 to gain a Canadian equivalency to her academic credentials obtained overseas. The panel has found that the WCB payment is a disability payment and not an education allowance. The panel finds the payment is not student financial assistance, and therefore finds section 8(2) does not apply in the

circumstances of the appellant.

Summary

The panel finds there are no deductions or exemptions available to the appellant to reduce the net income calculation for the current WCB monthly disability award. As such, this income must be deducted from the disability assistance in accordance with the requirements of section 24(b) of the EAPWDR.

Conclusion

Based on all available evidence the panel finds that the ministry's reconsideration decision, where the ministry determined that the WorkSafeBC (WBC) disability award the appellant is receiving is not exempt income and must be deducted from the appellant's disability assistance, to be supported by the evidence and a reasonable interpretation of the legislation in the circumstances of the appellant.

The ministry's reconsideration decision is confirmed. The appellant is not successful on appeal.

Appendix A

EMPLOYMENT AND ASSISTANCE FOR PERSONS WITH DISABILITIES REGULATION

Definitions

1 (1) In this regulation:

"earned income" means

(a) any money or value received in exchange for work or the provision of a service,

(b) Repealed. [B.C. Reg. 197/2012, Sch. 2, s. 1 (a).]

(c) pension plan contributions that are refunded because of insufficient contributions to create a pension,

(d) money or value received from providing room and board at a person's place

of residence, or

(e) money or value received from renting rooms that are common to and part of a person's place of residence;

"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

Net Income Calculation

(section 24 (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:

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

(ii) 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;

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

(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.

Annual exemption — qualifying income

3 (1) In this section:

"base amount" means

(b) \$1 500, in the case of a family unit that includes two recipients, only one of whom is designated as a person with disabilities, and

"initial qualifying month", in respect of a family unit and a calendar year, means the calendar month specified for the family unit under subsection (5);

"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*;

"qualifying month", in respect of a family unit and a calendar year, means

(a) the initial qualifying month for the family unit in the calendar year, and

(b) any subsequent calendar month in the calendar year that is a calendar month for which the family unit is eligible to receive disability assistance under the Act;

"recognized family unit", in respect of a calendar year, means a family unit that

(a) forms during the calendar year, and

(b) includes at least one person who

(i) is designated as a person with disabilities, and

(ii) was previously a recipient in another family unit that was eligible to receive disability assistance under the Act for a calendar month in the calendar year.

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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;

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.

WORKERS COMPENSATION ACT

Part 4 — Compensation to Injured Workers and Their Dependants

Division 5 — Compensation in Relation to Death of Worker

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Division 6 — Compensation for Worker Disability

Temporary total disability

191 (1) Subject to subsection (2), if a temporary total disability results from a worker's injury, the Board must pay the worker compensation that is a periodic payment of an amount that equals 90% of the worker's average net earnings.

(2) Compensation to be paid under this section

(a) must not be less than an amount that equals \$446.17 per week if the worker's average earnings per week are greater than or equal to that amount, and

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(b) must be an amount that equals the worker's average earnings if the worker's average earnings per week are less than the amount referred to in paragraph (a).

Temporary partial disability

192 (1) Subject to subsection (2), if a temporary partial disability results from a worker's injury, the Board must pay the worker compensation that is a periodic payment of an amount that equals 90% of the difference between

(a) the worker's average net earnings before the injury, and

(b) whichever of the following amounts the Board considers better represents the worker's loss of earnings:

(i) the average net earnings that the worker is earning after the injury;

(ii) the average net earnings that the Board estimates the worker is capable of earning in a suitable occupation after the injury.

(2) The minimum compensation to be paid under this section must be calculated in accordance with section 191 (2) but to the extent only of the partial disability.

Recurrence of temporary disability more than 3 years after injury

193 (1) This section applies if there is a recurrence of temporary total disability or temporary partial disability of a worker after a lapse of 3 years following the occurrence of the injury to the worker.

(2) For the purpose of determining the amount of compensation payable to the worker, the Board may calculate the compensation as if the date of the recurrence was the date of the injury if the Board considers that, by doing so, the compensation payable would more closely represent the percentage of actual loss of earnings of the worker by reason of the recurrence of the injury.

(3) Subject to subsection (4), if

(a) a worker receives compensation for permanent partial disability for the original injury, and

(b) compensation for recurrence of temporary total disability under subsection (2) is calculated by reference to the average earnings of the worker at the date of the recurrence,

the compensation under this section must be calculated without deduction of the compensation payable for the permanent partial disability.

(4) The total compensation payable under this section must not be greater than the maximum payable under this Part at the date of the recurrence.

Permanent total disability

194 (1) Subject to subsection (2), if a permanent total disability results from a worker's injury, the Board must pay the worker compensation that is a periodic payment of an amount that equals 90% of the worker's average net earnings.

(2) Compensation to be paid under this section must not be less than \$1,933.73 per month.

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Permanent partial disability: general rules

195 (1) Subject to section 196, if a permanent partial disability results from a worker's injury, the Board must

(a) estimate the impairment of the worker's earning capacity from the nature and degree of the injury, and

(b) pay the worker compensation that is a periodic payment of an amount that equals 90% of the Board's estimate of the worker's loss of average net earnings resulting from the impairment.

(2) The minimum compensation to be paid under this section must be calculated in accordance with section 191 (2) [*compensation for temporary total disability*] but to the extent only of the permanent partial disability.

(3) The Board may compile a rating schedule of percentages of impairment of earning

capacity for specified injuries or mutilations that may be used as a guide in determining the compensation payable in permanent partial disability cases.

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

Donald Stedeford

Signature of Chair

Date (Year/Month/Day)

2022/06/12

Print Name

Dawn Martin

Signature of Member

Date (Year/Month/Day)

2022/06/12

Print Name

Robert Kelly

Signature of Member

Date (Year/Month/Day)

2022/06/12