

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the Ministry) Reconsideration Decision (RD) dated June 7, 2022, which determined that the disability benefit (DB) the Appellant receives from the Insurance Corporation of British Columbia (ICBC) is unearned income that is not exempt and must be deducted from her disability assistance (DA).

Part D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Sections 1, 9(2), 24, 29, and Schedule A, Sections 1, 2 and 4, and Schedule B, Sections 1, 6 and 7

The relevant legislation is provided in the Appendix 1

While the following legislation does not directly apply to this Appeal, it is provided in Appendix 2 for reference as it is referred to in the evidence before the Ministry at reconsideration and the Panel Decision section of this Appeal:

EAPWDR Schedule B, Section 3

Insurance (Vehicle) Regulation (pursuant to the *Insurance (Vehicle) Act*), Section 80 and Schedule 3, Section 2

Part E – Summary of Facts

The Appellant is a recipient of DA with one dependent child.

The evidence before the Ministry at reconsideration included:

- A copy of a letter from an ICBC senior customer recovery specialist, addressed to the Appellant and dated February 11, 2021, confirming that the Appellant is receiving a DB in the amount of \$431.34 every two weeks, pursuant to the Insurance (Vehicle) Regulation Section 86(1), and that the first bi-weekly \$431.34 payment was received by the Appellant on August 1, 2020;
- A copy of an email from an ICBC agent dated March 2, 2022 and addressed to a third party recipient (the ICBC email). The ICBC email thanks the third party for their email and says:

“Did the client provide you a prescription from their physician regarding the medication? ICBC does not provide a T4 for Total Temporary Disability benefits. TTD benefits is not to be confused as income as ICBC is not the client’s employer. It is a benefit in the form of monetary value to provide “temporary financial relief” until the client can return to gainful employment.”; and,

- The Appellant’s Request for Reconsideration (RFR), dated January 25, 2022, in which she said that the reason she was asking for reconsideration was that:

“The \$431.34 biweekly payments from ICBC are a benefit only, which is required for day to day costs related to maintaining my health and recovery from motor vehicle collisions (MVC). Considering this as a source of income is significantly impairing my ability to care for myself and my (child), as I am a single mother and currently unable to work due to my injuries from the MVCs. This also directly impacts the health and wellbeing of my (child), as receiving reduced amounts from (DA) makes it difficult to provide stable housing and food. I continue to consistently participate in a comprehensive rehabilitation program in order to recover, and work towards being able to sustain employment and be financially independent in the future. According to Canada Without Poverty, “the most basic standard of living in Canada is calculated at \$18,000 per year for a single person”. With the ICBC benefit deducted, the amount of income that I receive for both myself and my (child) is well below this threshold. Reconsidering your decision to deduct these amounts would greatly reduce my, and my (child’s) risk of living in poverty. In conclusion, please reconsider your decision to deduct my ICBC payments from the (DA) amounts provided.”

Additional Information

The Notice of Appeal (NOA) dated June 7, 2022 restates the reasons set out in the RFR as quoted above, and therefore does not include any new information.

Evidence Presented at the Hearing

The Appellant was represented at the hearing by an Advocate and an Interpreter.

At the hearing, the Appellant said that the RD was not right because she has not been able to work since the MVC. By deducting the ICBC DB from her DA the Ministry had made her life hard. She said she can't afford to pay the rent, and that she had received an eviction notice recently because the house she lives in is being sold. She said she was also unable to pay her living expenses because the deduction of the DB from her DA left her without enough money to live on. She said that she is under a lot of stress and she was appealing the RD in the hope that a favourable decision by the Employment and Assistance Appeal Tribunal "*might help (her) with these challenges*". The Appellant also said that she is unable to find a new home. She argued that if the Ministry's mandate is to eliminate poverty then it "*has a mandate to keep people from poverty*".

Speaking on behalf of the Appellant, the Advocate said that the Appellant has some of her rehabilitation and medical equipment supplied with additional funding from ICBC that is not part of her bi-weekly DB. The additional funding includes money for the cost of a caregiver in her home to assist with her rehabilitation. The Advocate said that the DB is temporary and is only available until she returns to work, which she is eager to do as soon as she is able. The Advocate also said that the Appellant and her child are at high risk of being homeless within the next month.

The Advocate also explained that the Appellant had had two MVCs; one on March 31, 2020 and another one on May 11, 2021. In response to a question from the Panel, it was confirmed that the ICBC DB was awarded as a result of the first MVC.

In response to another question from the Panel, the Appellant confirmed that she was working at the time of the first MVC but had to stop working as a result of the MVC and was on "*medical employment insurance (EI)*" for a short time. She said she did not receive "*regular EI*" and was advised to apply for some form of assistance from the Ministry. She then applied for and was granted a PWD designation and began receiving DA.

In response to another question from the Panel, the Appellant said that her child goes to school and that the caregiving assistance she receives with funding from ICBC covers her rehabilitation and housekeeping (cooking and cleaning) only, and that she does not require childcare for her child.

At the hearing, the Ministry relied on its RD, stressing that its RD was based on the requirements and limitations set out in the legislation. The Ministry explained that recipients are required to report income monthly, and at the time that the Appellant declared the ICBC DB income the Ministry reviewed the legislation carefully and determined that the ICBC DB was non-exempt unearned income for which a deduction was not permitted. The Ministry also said that if the DB had been provided as a single lump sum payment or as a payment to cover medical treatment "*it is sometimes exempt*", but because it was a regular bi-weekly payment it

was not exempt or deductible. The Ministry explained that while ICBC refers to the money as a DB the Ministry considers it insurance.

The Appellant asked the Ministry whether if the DB were determined by the Ministry to be medical treatment would she be able to avoid a deduction from her DA. The Ministry said that no evidence had been provided to indicate that the DB was payment for medical treatment. The Advocate said that payment for the Appellant's medical treatments relating to the MVC are accounted for separately from the DB payments and billed directly to ICBC. The Ministry then explained that, under Ministry policy, if an insurer provides funds for medical treatment or equipment, and the payment is a lump sum and not recurring, the Ministry may consider the funds to be exempt income. However, a disability benefit that is a recurring payment is treated as an insurance benefit even if it used to pay for rehabilitation expenses.

The Advocate said that 104 weeks after the date that the Appellant started receiving the DB (which will be in the near future) the benefits will transition from an ICBC DB to a Canada Pension Plan (CPP) disability benefit, and asked the Ministry if that would change the deduction and exemption rules. The Ministry's response was that CPP benefits are also considered unearned income and are neither deductible nor exempt.

In response to a question from the Appellant, the Ministry said that there was no possibility of an exemption "*on a case-by-case basis*" because the Ministry has no discretion around this decision and there is "*no room to go beyond what the legislation allows*".

In response to another question from the Appellant, the Ministry confirmed that the Appellant would be able to take advantage of the annual earnings exemption when she returned to work.

The Panel asked the Ministry if it was accurate to say that if the Appellant was able to work she would be eligible for an annual earnings exemption but if she is unable to work because she has a disability, and she receives insurance benefits to replace her earnings, those benefits are not exempt. The Ministry's response was that while it seems inconsistent, that is correct.

Admissibility of New Evidence

Section 22(4) of the Employment and Assistance Act (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 the requirements set out in the legislation and on all admissible evidence.

The new verbal evidence presented at the hearing was that the Appellant also receives money over and above the bi-weekly DB payment from ICBC for some costs relating to rehabilitation or other necessary medical treatments and equipment resulting from her injuries associated with the MVC, and that these payments are considered by the Ministry to be exempt for the purpose of calculating the Appellant's monthly DA entitlement.

The new evidence provides additional information about the purpose of the funds received from ICBC and the ministry's policy around deduction of insurance monies. Therefore, the Panel considered the new verbal evidence presented at the hearing to be evidence that is reasonably required for a full and fair disclosure of all matters relating to the decision under appeal, pursuant to Section 22(4) of the EAPWDA.

General principles of weighing evidence require that the evidence be considered based on its credibility and its probative value. The probative value of evidence is the degree to which the information is useful in answering the question which must be addressed. The Panel considers the new evidence to be credible because the Ministry said it was aware that the Appellant was receiving additional payments from ICBC towards rehabilitation and other necessary medical expenses resulting from injuries suffered in the MVC. However, the Ministry also said at the hearing that these additional payments were not considered income and were not at issue in this appeal. As a result, the Panel assigns little weight to the new evidence.

Part F – Reasons for Panel Decision

The issue under appeal is whether the Ministry's RD, which determined that the DB the Appellant receives from ICBC is unearned income that is not exempt and must be deducted from her DA, was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the Appellant. Was it reasonable for the Ministry to determine that she has been receiving non-exempt unearned income in the form of the ICBC DB?

Position of the Parties

The Appellant's position is that the Ministry's reconsideration is not right because she has been unable to work since the MVC and because the DB is deducted from her DA she is unable to pay her rent or expenses and will be homeless within a month without the additional money.

The Ministry's position is that the DB the Appellant receives from ICBC is defined as unearned income, there are no permitted deductions or exemptions for this type of income, and the legislation does not allow for discretion when calculating the net income amount.

Panel Decision

EAPWDR Section 1 says that unearned income includes money received from insurance benefits, except money from compensation paid for a destroyed asset. The ICBC DB is insurance according to the ICBC email and is not, in the Appellant's circumstances, compensation paid for a destroyed asset.

EAPWDR Schedule B Section 1 lists sources of income that are exempt from income and ICBC DB payments are not listed in that section. Section 6 of Schedule B says that the only deductions permitted from unearned income are income taxes deducted at source from employment insurance payments and essential operating costs of renting self-contained suites. Section 7 of Schedule B lists sources of unearned income that are exempt. The list includes payments made from a trust to a PWD if the payment is used exclusively for disability-related costs, but not payments made exclusively for disability-related costs coming directly from an insurer.

The Panel finds that the legislation requires that the ICBC DB payments be considered unearned income and that the DB is neither exempt from nor deductible from income or unearned income.

The Panel very much sympathizes with the Appellant in this Appeal. At the hearing, the Ministry stated that the Appellant would have been able to receive income up to an annual exemption amount without having had it deducted from her DA if it had been "*earned income*" as defined in the legislation.

There is an annual earnings exemption for *unearned income* under the legislation where another form of disability insurance qualifies. While EAPWDR Section 1 says that Workers Compensation Board (WCB) disability payments are considered unearned income, under

EAPWDR Schedule B Section 3 the Ministry can provide some relief in the form of an annual earnings exemption if the unearned income was compensation paid in the form of either a temporary total DB or a temporary partial DB under the *Workers Compensation Act*. However, because the DB in this case is paid under the *Insurance (Vehicle) Act* rather than the *Workers Compensation Act*, it is not considered income that can go towards the Appellant's annual qualifying unearned income exemption amount, even though it is also money paid to the Appellant because she is unable to work. The only difference is that in this case the Appellant is unable to work because of a motor vehicle accident rather than due to a workplace injury.

The Panel empathizes with the apparent unfairness that one type of DB provided because a person is unable to work can result in an unearned income exemption while another type of DB provided because a person is unable to work cannot. However, because no exemption is provided in the legislation for a DB paid under the *Insurance (Vehicle) Act*, the Ministry does not have the authority to exercise discretion in this case.

Conclusion

Having considered all the evidence, the Panel finds the Ministry's RD, which determined that the DB the Appellant receives from ICBC is unearned income that is not exempt and must be deducted from her DA, to be a reasonable application of the applicable enactment in the circumstances of the Appellant. Accordingly, the Panel confirms the Ministry's decision. Consequently, the Appellant is not successful in her appeal.

APPENDIX 1 - LEGISLATION

Employment and Assistance for Persons with Disabilities Regulation

Definitions

1 (1) In this regulation:

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

(d) insurance benefits, except insurance paid as compensation for a destroyed asset ...

Limits on income

9 (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 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.

Reporting requirement

29 For the purposes of section 11 (1) (a) [*reporting obligations*] of the Act,

(a) the report must be submitted by the 5th day of the calendar month following the calendar month in which one or more of the following occur:

(i) a change that is listed in paragraph (b) (i) to (v); ...

(b) the information required is all of the following, as requested in the monthly report form specified by the minister: ...

(ii) change in income received by the family unit and the source of that income; ...

Schedule A

Disability Assistance Rates

(*section 24 (a)*)

Maximum amount of disability assistance before deduction of net income

1 (1) ... 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 ...

Monthly support allowance

2 (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

(b) the amount calculated in accordance with subsections (2) to (4) for each dependent child in the family unit.

| Item | Column 1 Family unit composition | Column 2 Age or status of applicant or recipient | Column 3 Amount (\$) |
|------|---|---|-------------------------|
| 2 | Sole applicant / recipient and one or more dependent children | Applicant / recipient is a person with disabilities | \$1,133.50 |

Monthly shelter allowance

4 (2) The monthly shelter allowance ... 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:

| Item | Column 1 Family Unit Size | Column 2 Maximum Monthly Shelter |
|------|------------------------------|-------------------------------------|
| 2 | 2 persons | \$570 |

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

- (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 [*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;
- (xii.1) money that is paid or payable to or for a person if the payment is in accordance with the settlement under the Final Settlement Agreement and Supplementary Agreement approved by the Federal Court June 22, 2018 in Court File No. T-370-17, *Todd Edward Ross et al. v. Her Majesty the Queen*;
- (xii.2) money that is paid or payable to or for a person if the payment is in accordance with the settlement under the Final Settlement Agreement approved by the Federal Court January 30, 2019 in Court File No. T-1068-14, *Raymond Michael Toth v. Her Majesty the Queen*;
- (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;
- ...
- (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;
- (xvii.1) money that is paid or payable to or for a person if the payment is in accordance with
 - (A) the Sixties Scoop Settlement made November 30, 2017, or
 - (B) the Federal Indian Day Schools Settlement made March 12, 2019, as amended May 13, 2019;
- (xviii) financial assistance payments provided under Part 6 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; ...
- (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; ...
- (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; ...

(xxix) payments made by a health authority or a contractor of a health authority to a recipient, who is a "person with a mental disorder" as defined in section 1 of the *Mental Health Act*, for the purpose of supporting the recipient in participating in a volunteer program or in a mental health or addictions rehabilitation program;

(xxx) a refund provided under Plan I as established under the Drug Plans Regulation;

(xxxi) payments provided by Community Living BC to assist with travel expenses for a recipient in the family unit to attend a self-help skills program, or a supported work placement program, approved by Community Living BC;

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

(xxxiii) money paid by the government of Canada, under a settlement agreement, to persons who contracted Hepatitis C by receiving blood or blood products in Canada prior to 1986 or after July 1, 1990, except money paid under that agreement as income replacement;

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

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

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

(xxxviii) money paid or payable to a person under the *Criminal Injury Compensation Act* as compensation for non-pecuniary loss or damage for pain, suffering mental or emotional trauma, humiliation or inconvenience that occurred when the person was under 19 years of age;

(xxxix) money that is paid or payable to or for a person if the payment is in accordance with the settlement agreement approved by the Supreme Court in Action No. S024338, Vancouver Registry;

(xl) payments granted by the government of British Columbia under the Ministry of Children and Family Development's Family Support Services program;

(xli) payments granted by the government of British Columbia under the Ministry of Children and Family Development's Supported Child Development program;

(xlii) payments granted by the government of British Columbia under the Ministry of Children and Family Development's Aboriginal Supported Child Development program;

- (xliii) money paid or payable from a fund that is established by the government of British Columbia, the government of Canada and the City of Vancouver in relation to recommendation 3.2 of the final report of the Missing Women Commission of Inquiry;
- (xliv) payments granted by the government of British Columbia under the Temporary Education Support for Parents program;
- (xlv) a BC early childhood tax benefit;
- (xlv.1) a BC child opportunity benefit;
- (xlvi) child support;
- (xlvii) orphan's benefits under the *Canada Pension Plan Act* (Canada);
- (xlviii) money or other value received, by will or as the result of intestacy, from the estate of a deceased person;
- (xlix) gifts;
- (l) education and training allowances, grants, bursaries or scholarships, other than student financial assistance;
- (li) money withdrawn from a registered education savings plan;
- (lii) compensation paid or payable under 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;
- (liii) money that is paid or payable by or for Community Living BC to or for a person if the payment is in accordance with an award in a legal proceeding or with a settlement agreement in respect of a claim for injury, loss or damage caused by Community Living BC, an employee of Community Living BC or a person retained under a contract to perform services for Community Living BC;
- (liv) money that is paid or payable by the government of British Columbia to or for a person if the payment is in accordance with an award in a legal proceeding or with a settlement agreement in respect of a claim for injury, loss or damage caused by the minister, the ministry, an employee of the ministry or a person retained under a contract to perform services for the ministry;
- (liv.1) 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 of Children and Family Development, that ministry, an employee of that ministry or a person retained under a contract to perform services for that ministry;

- (liv.2) money that is paid or payable by the government of British Columbia to or for a person because the person was a resident of Woodlands School;
- (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;
- (lviv) money that is paid or payable from a settlement under
- (A) the Cadboro Bay Litigation Settlement Agreement, dated for reference November 1, 2017, between the Esquimalt Nation and Canada, or
 - (B) the settlement agreement, dated for reference October 30, 2017, between the Songhees Nation and Canada;
- (lx) money that is paid or payable under the Memorial Grant Program for First Responders established under the authority of the *Department of Public Safety and Emergency Preparedness Act (Canada)*;
- (lxi) money, or goods or services in kind, received or to be received by a participant in the Ministry of Social Development and Poverty Reduction's Work Experience Opportunities Grant program from a grant under the program;
- (lxii) a rebate of all or part of a premium paid to the Insurance Corporation of British Columbia under the *Insurance (Vehicle) Act* and the plan operated under that Act;
- (lxiii) an amount that is paid or payable, as a single payment or series of payments, as follows:
- (A) the amount is paid or payable by a person who is or was a landlord, owner or manager, or a person who holds or held a similar position, in relation to leased, rented or licensed residential premises, whether or not the *Residential Tenancy Act* or the *Manufactured Home Park Tenancy Act* applies to that premises;
 - (B) the amount is paid or payable to a person who is or was a tenant, lessee, licensee or occupant, or a person who has or had a similar right or permission to use the premises for residential purposes;
 - (C) the amount is paid or payable as full or partial compensation for loss of the residential use of the premises, including for eviction, relocation, demolition,

temporary displacement during repair, renovation or redevelopment, or as an inducement to cease or suspend residential use;

(D) the amount is paid or payable under an enactment, a policy or a contract, or voluntarily or at the discretion of the person referred to in clause (A);

(lxiv) money that is paid or is payable to or for a person from a settlement under the Williams Treaties Settlement Agreement signed August 22, 2018;

(lxv) money that is paid or is payable to or for a person from a settlement under the Missanabie Cree First Nation Treaty Land Entitlement Settlement Agreement signed April 24, 2020;

(lxvi) money that is paid or is payable to or for a person from a settlement under the Peepeekisis Cree Nation File Hills Colony Specific Claim Settlement Agreement signed March 23, 2021;

(lxvii) money that is paid or is payable to or for a person from a settlement under an agreement to settle claims relating to the transfer of the Seabird Island Indian Reserve in 1959 by the Government of Canada to the Seabird Island Band and the distribution of shared trust funds on a per capita basis, ...

(d) all unearned income must be included, except the deductions permitted under section 6 and any income exempted under section ...7.

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 (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.

APPENDIX 2

INSURANCE (VEHICLE) REGULATION

Disability benefits for employed persons

80 (1) Where, within 20 days after an accident for which benefits are provided under this Part, an injury sustained in the accident totally disables an insured who is an employed person from engaging in employment or an occupation for which the insured is reasonably suited by education, training or experience, the corporation shall ... pay to the insured for the duration of the total disability or 104 weeks, whichever is shorter, the lesser of the amounts determined under paragraphs (a) and (b):

- (a) the applicable amount of disability benefits set out in section 2 of Schedule 3;
- (b) in respect of an accident that occurred ...
 - (iii) on or after January 1, 1991 an amount per week calculated by taking 75% of the insured's gross earnings for the 12 month period immediately preceding the accident and dividing by the number of weeks and fractions of weeks actually worked during that period.

Schedule 3

Limits of Coverage

Disability benefits

2 The amount of any disability benefits

- (a) payable under section 80 in respect of an accident is \$740 a week ...

EMPLOYMENT AND ASSISTANCE FOR PERSONS WITH DISABILITIES REGULATION

Schedule B

Net Income Calculation

(section 24 (b))

Annual exemption — qualifying income

3 (1) In this section:

"base amount" means ...

- (a) \$1 250, in the case of a family unit that includes only one recipient ...

"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 ...

(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 ...

(2) For the purposes of section 1 (c) and (d), the lesser of the following amounts is exempt income of a family unit for a qualifying month:

(a) the qualifying income of the family unit for the qualifying month;

(b) the exemption limit of the family unit for the qualifying month calculated in accordance with subsection (3).

(3) The exemption limit of a family unit for a qualifying month for the family unit in a calendar year is the following:

(a) in the case of the initial qualifying month for the family unit in the calendar year, the amount calculated in accordance with subsection (4);

(b) in the case of any other qualifying month for the family unit in the calendar year, the amount calculated in accordance with subsection (7).

(4) For the purposes of subsection (3) (a), the exemption limit of a family unit for the initial qualifying month for the family unit in a calendar year is calculated as follows:

(a) ... the exemption limit is the product of

(i) the base amount for the family unit, and

(ii) 12 minus the number of calendar months in the calendar year that are before that initial qualifying month ...

(5) For the purposes of subsection (4), the initial qualifying month for a family unit is the following:

(a) in the case of a family unit described in subsection (4) (a), the initial qualifying month is

(i) the first calendar month for which the family unit is eligible to receive disability assistance under the Act, if

(A) a member of the family unit who is designated as a person with disabilities previously received disability assistance under the Act or a former Act, as a person with disabilities ...

(7) For the purposes of subsection (3) (b), the exemption limit of a family unit for any other qualifying month (an "index qualifying month") for the family unit in the calendar year is the greater of

(a) nil, and

(b) the exemption limit of the family unit for the last qualifying month for the family unit before the index qualifying month, adjusted as follows:

(i) by deducting the qualifying income of the family unit in that last qualifying month ...

(iv) by deducting the product of

(A) the base amount for the family unit, as the family is composed in that last calendar month ... and

(B) the number of calendar months after that last qualifying month and before the index qualifying month.

APPEAL NUMBER 2022-0118

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
Simon Clews

Signature of Chair

Date (Year/Month/Day)
2022/06/30

Print Name
Susan Ferguson

Signature of Member

Date (Year/Month/Day)
2022/06/30

Print Name
David Handelman

Signature of Member

Date (Year/Month/Day)
2022/06/30