

Part C - Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) reconsideration decision dated April 3, 2023, which determined that the money the appellant receives from an insurance company is not exempt and must be deducted from the appellant's disability assistance, as per section 24 of the Employment and Assistance for Persons with Disabilities Regulation.

Part D - Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (Regulation) sections 1, 24 and 29, Schedule A, sections 1, 2 and 4 and Schedule B, sections 1, 3, 6, and 7

Relevant sections of the legislation can be found in the Schedule of Legislation at the end of this decision.

Part E – Summary of Facts**Relevant Evidence Before the Minister at Reconsideration****Ministry Records show:**

- The appellant is a sole recipient with a Persons with Disabilities (PWD) designation. His rate of disability assistance is \$1358.50 per month. This amount includes \$983.50 support allowance and \$375 shelter allowance. From this amount, the ministry deducts \$930.00 for an insurance payout the appellant receives from an auto insurance company each month. This amount has been deducted since the appellant began receiving benefits in October 2020.
- On March 6, 2023, the appellant contacted the ministry to dispute the deduction and explained that he was in a motor vehicle accident in another province in 2018.
- He advised that he and his lawyer would be submitting documents to show the type of income he is receiving.
- On March 10, 2023, the ministry spoke with the appellant's lawyer who advised that the appellant receives payments from a private insurance company, similar to Worker's Compensation Board payments in British Columbia.

Request for Reconsideration (March 16, 2023) - summary

The appellant wrote that the ministry decision that considered his unearned income/insurance money is false, since Section B is considered "weekly loss of income payments"/"income replacement".

The appellant states he can earn up to \$15,000 annually while receiving PWD benefits before deductions are considered. With these weekly loss of income payments, he's earned less than \$15,000/year. Such payments are to compensate him for his destroyed working ability asset. Had it not been for the car accident he would have certainly earned this amount.

Since these payments are for his inability to work because of catastrophic mental and physical injuries (which were not present prior to the car accident) they are considered compensation for a destroyed asset (his ability to work, his stable mind state and his stable bodily functionality). His inability to work is his destroyed asset. Therefore, the PWD benefits should be exempt due to these monies being compensation for his inability to work - akin to workers compensation/disability payment and not insurance payments due

to settlement of insurance. The appellant adds that calling this unearned income is beyond insulting; he was comatose for a week post car accident.

Furthermore, the appellant states he has been subject to gross discrimination by the ministry on a recorded phone call and ministry representatives must be retrained after this treatment. He also states he had to deal with a lot of inconvenience due to the ministry's initial error in failing to acknowledge the Section B payments and investigate such payments. The appellant is demanding compensation for all these matters, in addition to the repayment of all falsely deducted monies.

Letter to the Ministry from a Law Firm (March 13, 2023)

The appellant's lawyer writes that this letter is to offer some explanation as to the source and entitlement of the Section B Weekly Indemnity payments being received by the appellant as a result of his automobile/bicycle accident that occurred in another province on August 5, 2018.

The following is a brief explanation of the Section B benefit, taken from their website:

If you were injured in a motor vehicle accident, then you have the right to receive insurance benefits from your own car insurance company, or the insurance company of the other driver, no matter who is at fault for the accident. These benefits are called Accident Benefits (Section B) and include payments, such as weekly loss of income. Accident benefits are meant to immediately help you, while your injury claim is ongoing. If your injuries keep you from working, then you may qualify for weekly loss of income payments. The payments are 80% of your weekly income, up to a maximum of \$250.00.

In order to qualify for weekly loss of income payments, you must meet the following criteria:

1. You were employed at the time of the accident or had arranged to start a new job soon or were employed for six of the 12 months before the accident.
2. Your injuries kept you from working for seven days out of the 30 days following the accident.
3. You have returned to work but are earning less money because of your injuries. If your injuries did not keep you from working for seven out of the first 30 days following the accident, you are not entitled to benefits, even if you later become disabled. No payments will be made for any period in excess of 104 weeks except that if, at the end of the 104 week period, it has been established that the injuries continuously prevent the person from engaging in any occupation or employment reasonably suited for them, based on education, training, and experience. Section B benefits are paid by the private insurance company of the vehicle that you were in at the time of the accident, or, as in the appellant's case, the vehicle that struck a cyclist or pedestrian, regardless of fault. It is one

of four Sections of the other province's Standard Automobile Accident (Sections A, B, C and D), and is legislatively required coverage on all automobile policies in the province.

The appellant has not been medically fit to work since his motor vehicle accident, and as such, the Section B insurer (in this case, the insurance company), has continued to pay his monthly entitlement. The appellant receives an amount equal to 80% of his earnings prior to the accident, just slightly under the maximum of \$250.00 per week. If it is ever determined that he is medically fit to return to work, the insurer will cease these payments.

The lawyer attached some random sample letters from the insurance company showing the appellant's entitlement.

Letters to the Appellant from an Insurance Company

(all the letters have the same information but cover different time periods)

Dates on letters

- March 12, 2019 (covering March 3 to 16, 2019)
- November 3, 2020 (covering October 25 to November 7, 2020)
- September 8, 2021 (covering August 29 to September 11, 2021)
- November 15, 2022 (covering November 6 to 19, 2022)

The letters state a payment in the amount of \$466.00 is enclosed.

The expense type is shown as: income replacement – employed.

Additional Information

Appellant

Notice of Appeal (April 19, 2023)

The appellant did not provide reasons for the appeal in the Notice of Appeal.

Appellant Submission (April 21, 2023) - summary

The appellant writes that the Section B payments are considered income replacement and not insurance benefits. Furthermore, the compensation for a destroyed asset should not be deducted, and this includes his ability to work, which was destroyed due to a car accident. The ministry has deducted the Section B payments from his PWD benefits, which results in a loss of roughly \$932.00 each month.

The appellant states he understands that the ministry considers destroyed assets as pertaining to property, but the definition is broad and isn't limited to inanimate objects.

For example: a living and breathing thing like a dog or a child can be considered personal property. Similarly, he states, his person, being his own personal property, has been damaged due to a car accident, which has led to the Section B payments he is currently receiving as compensation for his lack of work ability- making them indeed compensation for a destroyed asset.

The appellant states further that he is an employee of his own personal enterprise, where he works as an artist and communications specialist, in addition to managerial duties and similar responsibilities. Therefore, an employee and asset of his business was damaged in the accident, which has caused him to receive the Section B payments.

The appellant is requesting the deductions be removed from his PWD benefits as the compensation he receives is for the loss of his destroyed asset, which is not subject to a deduction from his PWD benefits.

The appellant adds that he faced many obstacles and barriers while accessing ministry services. For example, despite having legal counsel, the ministry would still contact him with important documents.

From October 2020 to April 2023, a period of 31 months, the appellant states he was deducted \$932.00/month. He received an insurance benefit payout of \$5000.00 in Feb 2023 which he declared. The appellant states the ministry may deduct \$1358.50 from his February 2023 funding, but has also deducted \$932.00 from his funding for the remainder of the 31 months. Therefore: $\$932.00 \text{ (Section B deductions)} \times 31 \text{ (months)} = \$28,892.00 - \$1358.50 \text{ (insurance payout)} = \$27,533.50$. If he is accurate and the appeal tribunal rules in his favour, the ministry owes him \$27,533.50 plus damages including appropriate deductions and may not continue to deduct his Section B payments from his PWD payments.

At the hearing, the appellant relied on his written submission and reiterated that the insurance payments he is receiving are Section B, income replacement, and not insurance payments the way the ministry is stating. He added that the \$5,000.00 he received in February 2023 was from the city (where the accident occurred), as an insurance payout. The appellant added that the ministry did not advise him for approximately three years that he could appeal. He also believes he was discriminated against as his accident occurred in another province, so WorkSafe BC does not apply. The appellant also stated that he believes discrimination was a factor; however, it is not part of this appeal.

Ministry

The ministry relied on its record and added that payments from an insurance company, regardless of what they are called, are not exempt. In response to the appellant's statement that the ministry would not reach out to his lawyer, the ministry advised that unless the appellant has a power of attorney in place, the ministry is not able to contact his lawyer. The ministry can speak with his lawyer, but not initiate contact.

The panel determined all the additional information to be argument.

Part F – Reasons for Panel Decision

The issue on appeal is whether the ministry's reconsideration decision was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the appellant.

Specifically, was the ministry reasonable to decide that the the money the appellant receives from an insurance company is not exempt and must be deducted from the appellant's disability assistance, as per section 24 of the Regulation?

Appellant Position

The appellant argues that the decision that considered his unearned income/insurance money is false, since Section B is considered "weekly loss of income payments"/"income replacement". Since these payments are made due to his inability to work because of catastrophic mental and physical injuries they are considered compensation for a destroyed asset (his ability to work, his stable mind state and his stable bodily functionality). His inability to work is his destroyed asset. The appellant argues further that the definition is broad and isn't limited to inanimate objects.

Therefore, the PWD benefits should be exempt due to these monies being compensation for his inability to work - akin to workers compensation/disability payment and not insurance payments due to settlement of insurance.

The appellant also argues he can earn up to \$15,000 annually while receiving PWD benefits before deductions are considered. With these weekly loss of income payments, he's earned less than \$15,000/year. Such payments are to compensate him for his destroyed working ability asset. Had it not been for the car accident he would have certainly earned this amount.

Ministry Position

The ministry argues that the documents the appellant submitted show that the Expense Type for these payments is "Income Replacement – Employed". It determined that the payments the appellant receives from the insurance company are considered insurance benefits. The ministry noted that insurance benefits, except insurance paid as compensation for a destroyed asset, are considered unearned income and therefore must be deducted from disability assistance.

The ministry also argues that under the Regulation, "asset" is defined as "equity in any real or personal property that can be converted to cash, a beneficial interest in real or personal

property held in trust, or cash assets". As per the documents the appellant submitted from the insurance company, the weekly indemnity payments are for Accident Benefits (Section B) paid as the result of a motor vehicle accident. The letter from the appellant's lawyer confirms that these benefits are paid by a private insurance company. Therefore, the ministry argues the benefits are not paid for destruction of an asset as defined by Section 1 of the Regulation and this exemption does not apply.

The ministry provides the following argument regarding the calculation of PWD benefits.

- Section 24 of the Regulation states that the minister calculates the amount of disability assistance provided to a family unit by subtracting the family unit's net income (under Schedule B) from the rate of income assistance (under schedule A) and section 29 states that a person must report income by the 5th of the month after the month it's received. The ministry uses this information to calculate the appellant's net income and eligibility for his next month's disability assistance.

- Sections 2 and 4 of Schedule A outline the maximum allowable rate of support and shelter for the size of the family unit before net income deductions.

- Schedule B of the Regulation shows the ministry how to calculate net income:

- Section 1 says a family's net income includes all earned income, except for the specified deductions and exemptions.

Section 3 explains the annual exemption for "qualifying income." The ministry argues that private insurance benefits are not listed as a source of qualifying income that can be applied against an Annual Earnings Exemption. This section permits an earnings exemption if the appellant's unearned income is for compensation paid under section 191(temporary total disability) or 192 (temporary partial disability) of the Workers Compensation Act. However, this section does not apply to the appellant as his income is not for compensation from WorkSafeBC.

Section 6(a) states the only deductions permitted from unearned income are any income tax deducted at the source from employment insurance benefits.

Section 7 lists unearned income that is exempt for the purposes of calculating net income. Private insurance benefits are not exempt as income.

Finally, the ministry argues as there are no deductions or exemptions permitted for this type of income, the money the appellant receives from the insurance company must be deducted from his disability assistance in accordance with Section 24 of the Regulation.

Panel Analysis

Section 1, Regulation – definitions

Section 1 of the Regulation states, asset means equity in any real or personal property that can be converted to cash, a beneficial interest in real or personal property held in trust, or cash assets.

The appellant argues his inability to work is his destroyed asset. The ministry argues the letter from the appellant's lawyer confirms that these benefits are paid by a private insurance company, and the benefits are not paid for destruction of an asset as defined by Section 1 of the Regulation. Therefore, this exemption does not apply.

The panel finds the definition of asset as per section 1 of the Regulation, does not include the inability to work. The inability to work cannot be considered equity in any real or personal property that can be converted to cash, a beneficial interest in real or personal property held in trust, or cash assets. As well, the panel notes the letters from the insurance company show the expense type as income replacement, which is not included in the definition under Section 1 of the Regulation. Therefore, the panel finds the ministry reasonably determined that the monies the appellant receives from the insurance company cannot be considered an asset.

Under Section 1 of the Regulation, unearned income means any income that is not earned, and includes money received from insurance benefits, except insurance paid as compensation for a destroyed asset and any other financial awards or compensation. The panel notes, the letter from the appellant's lawyer states that the appellant has not been medically fit to work since his motor vehicle accident, and the insurance company has continued to pay his monthly entitlement. The panel finds that as the appellant's lawyer confirmed the monthly payments are from an insurance company, the ministry reasonably determined the payments to be unearned income received from insurance benefits.

Section 24, Regulation – amount of disability assistance

Section 24 states disability assistance may be provided to 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.

Section 29, Regulation – reporting obligations

Section 29 of the Regulation states the report must be submitted by the 5th day of the month following the month in which there is a change in income received by the family unit and the source of that income. The panel notes there were no arguments presented concerning reporting obligations.

Sections 1, 2 & 4, Schedule A, Regulation – disability assistance rates

The panel notes Schedule A shows the monthly support rate for a sole applicant (PWD) as \$983.50 and the monthly shelter allowance as \$375, for a total of \$1,358.50. Ministry records state the appellant is a sole recipient with PWD designation and his rate of disability assistance is \$1,358.50 per month. Therefore, the panel finds the ministry reasonably determined the appellant's assistance rate as \$1,358.50.

Sections 1, 3, 6 & 7, Schedule B, Regulation – deductions and exemption rules

The panel notes the appellant's lawyer confirmed the monthly payments are made from an insurance company for a motor vehicle accident, which resulted in the appellant not being medically fit to work. The panel notes this insurance payment is not listed as an exemption under section 1 of Schedule B. The panel reviewed the exemptions and none appeared to apply to the appellant's circumstances.

Section 3 of Schedule B refers to an annual exemption and defines qualifying income as unearned income that is compensation paid under section 191 [*temporary total disability*] or 192 [*temporary partial disability*] of the *Workers Compensation Act*. The panel notes the appellant did not present any arguments or evidence to suggest that the payments he is receiving from the insurance company are paid under the *Worker's Compensation Act* which is B.C. legislation.

The panel also notes the only deductions permitted from unearned income under section 6 are any income tax deducted at source from employment insurance benefits and essential operating costs of renting self-contained suites and therefore finds section 6 does not apply to the appellant.

The panel notes within section 7 of Schedule B, "compensation or award" pertains to a criminal injury compensation award or other award.... As the panel finds the payments received by the appellant are "insurance" payments, the panel finds the ministry reasonably concluded that the insurance payments the appellant received cannot be considered an "award".

Conclusion

In conclusion, the panel finds the ministry decision, which determined the money the appellant receives from an insurance company is not exempt and must be deducted from the appellant's disability assistance, as per sections 24 of the Regulation was a reasonable application of the legislation in the circumstances of the appellant.

The appellant is not successful on appeal.

Schedule of Legislation

Employment and Assistance for Persons with Disabilities Regulation

Part 1 — Interpretation

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;

"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;...
- (j) workers' compensation benefits and disability payments or pensions;...
- (t) any other financial awards or compensation;

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:

...

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

- (i) change in the family unit's assets;
- (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)Subject to this section and sections 3 and 6 to 8 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.

...

Monthly support allowance

2 (0.1)For the purposes of this section:

...

(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...

Item	Column 1 Family unit composition	Column 2 Age or status of applicant or recipient	Column 3 Amount (\$)
1	Sole applicant / recipient and no dependent children	Applicant / recipient is a person with disabilities	\$983.50

Monthly shelter allowance

4 (1)For the purposes of this section:

...

(2)The monthly shelter allowance for a family unit other than a family unit described in section 14.2 (1) of the Act is the greater of

(a)the minimum set out in the following table for the family unit, and

(b)the lesser of

(i)the family unit's actual shelter costs, and

(ii)the maximum set out in the following table for the family unit.

Item	Column 1 Family Unit Size	Column 2 Minimum	Column 3 Maximum
1	1 person	\$75	\$375

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:

...

(iv) 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;

(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:

"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*;

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:...

(1) The following unearned income is exempt:

...

(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;

...

APPEAL NUMBER 2023-0109

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

Connie Simonsen

Signature of Chair

Date (Year/Month/Day)

2023/05/04

Print Name

Peter Mennie

Signature of Member

Date (Year/Month/Day)

2023/05/04

Print Name

Bill Farr

Signature of Member

Date (Year/Month/Day)

2023/05/04