

Reasons for Decision:

Order # AP1819-0548

On <date removed>, <name removed> appealed the Director's decision to treat their Worker Compensation Board (WCB) payments as unearned income. The date of decision was <date removed>.

The Department stated its work incentive scheme is set out in Section 8(4) and 8(5) of *The Manitoba Assistance Act Regulation*, which states

8(4) In calculating the financial resources of an applicant or recipient, the following earnings are not to be included:

- (a) up to \$200 of net monthly earnings, plus 30% of net monthly earnings in excess of \$200 for each employed or self-employed person in a household who has been enrolled for one month or longer;
- (b) up to \$200 of net monthly earnings for each employed or self-employed person in a household who has been enrolled for less than 30 days.

8(5) In subsection (4), "net monthly earnings" means

- (a) monthly employment earnings less compulsory payroll deductions; or
- (b) monthly self-employment earnings less self-employment expenses approved by the director.

Net monthly earnings for wage earners is defined in Section 8(5) as employment earnings less deductions. The term "employment earnings" does not appear anywhere else in the *Act* or *Regulation*.

The Department's EIA Administrative Manual classifies all income as earned or unearned, even though those terms are not used in the *Act* or the *Regulation*. The Department defined earned income as the return on work done or services rendered from labour. Employment earnings are defined as earned income derived from salaried employment or wages

The Department noted Section 8(4)(a) refers to employed persons, and <name removed> was not employed while receiving WCB benefits. Section 8(5) refers to employment earnings, and the meaning of employment earnings is income a person earns from work.

The Department stated WCB benefits are an insurance payment, not earned income. This interpretation applies to all insurance payments, including Employment Insurance, Income Replacement Indemnities from Manitoba Public Insurance, and private sector disability plans.

<name removed> asserted that the WCB benefit is causally related to employment, and therefore should be treated as earned income. The appellant cited Section 8(1) of the *Manitoba Assistance Act Regulation*, which lists a number of compensation payments that are exempt from the calculation of financial resources.

<name removed> asserted that the WCB payment replaced income that was eligible for the work incentive, but was not treated as earned income. The Department's decision resulted in a loss of income at a vulnerable time.

The Department noted none of the sources of exempt compensation listed in the *Regulation* apply to WCB benefits.

The Board recently heard a similar appeal about the treatment of Income Replacement Indemnity payments from Manitoba Public Insurance. In that hearing, the Board determined it must address three questions:

1. Are the payments employment earnings within the meaning of the *Regulation*?
2. Does the Department's current treatment of the payments negate the intended incentive effects of Section 8(4) and 8(5) of the *Regulation*?
3. Is the Department's treatment of the payments contrary to statutory interpretation principles and Charter values?

The Board will adopt the same approach in this appeal. As neither party made arguments based on statutory interpretation principles and Charter values, only the first two questions will be considered.

While WCB payments arise because a person has been employed, that connection is insufficient to establish that the payments are employment earnings. It is necessary to look at the nature of the payments and how they are funded.

The Worker's Compensation Board is funded through assessments on employers. Each employer's premium is based on a number of factors, but the risk profile of the industry the employer is part of, as well as the employer's claims experience, are important factors. Premiums are not based on an individual worker's wage, and are pooled by WCB. Any claims for compensation are paid out of the premium pool.

As a result, WCB payments have the following characteristics:

1. The source of the payments is pooled insurance premiums, not revenues generated by business-like activity;
2. Premiums paid by employers for WCB coverage are not based on the income of the injured worker; and
3. The terms of payment are governed by legislation, not by employment.

While only individuals who have been employed are eligible for WCB payments, the same is true for all benefits arising from employment, including Income Replacement Indemnity payments, CPP and EI benefits. The Department does not treat any of these payments as employment earnings.

After carefully considering the written and verbal evidence presented to it, the Board finds that WCB payments do not have any of the characteristics of wages or salaries, and therefore are not employment earnings within the meaning of the *Regulation*.

The Board notes that injured workers receive WCB payments because they cannot work. Since they cannot work, the Department's current treatment of WCB payments does not negate the intended incentive effects of Section 8(4) and 8(5) of the *Regulation*, and therefore is not contrary to the intent of the *Act* or *Regulation*.

In summary, after carefully considering the written and verbal evidence presented to it, the Board finds that WCB payments are not employment earnings within the meaning of the *Regulation*, and that the Department's treatment of WCB payments is consistent with the intent of the work incentive scheme. The Board confirms the decision of the Director to include WCB payments as unearned income when calculating <name removed>'s financial resources.

DISCLAIMER

These are electronic copies of the Reasons for Decision issued by the Social Services Appeal Board. These written reasons have been edited to protect the personal information of individuals by removing personal identifiers.