

Reasons for Decision:

Order #AP1920-0145

On <date removed>, <name removed> appealed the Director's decision to close their income assistance file. The decision letter was dated <date removed>.

The decision letter stated <name removed>'s file was closed because it was determined their hospital indemnity benefits were an available resource, and therefore could not be exempt in an EIA trust account.

<name removed> attended the hearing by speakerphone and their sibling, <name removed>, was present on their behalf.

At the hearing the department told the Board <name removed> was hospitalized from <dates removed>. While they were in the hospital <name removed> set up a hospital indemnity insurance plan, for which they received benefits of approximately <amount removed>.

When <name removed> received the insurance cheque their home care worker contacted the department to indicate they were going to set up a disability trust account. The department told <name removed>'s home care worker to go ahead and set up the disability trust account in order to shelter the insurance benefits.

Approximately two months later <name removed>'s file was reviewed by the department's program specialists, who caught that <name removed>'s benefits came from an insurance plan and were not eligible to be placed into a disability trust. The department explained to the Board that <name removed>'s hospital indemnity benefits were a form of insurance, similar to WCB or MPI, which are liquid assets that cannot be sheltered. As <name removed>'s benefits were liquid assets, the appellant was expected to use the funds to cover their living expenses as EIA is a program of last resort.

The department noted that as a result of an internal error, <name removed> received two months of assistance, which they did not qualify for, before the mistake was caught. As a result of the departmental error the department decided not to pursue an overpayment for these months between the insurance payment and the program specialists catching the error.

In cases where insurance benefits are less than the liquid asset exemption, they can be sheltered. In the case of >name removed>, as a single assistance recipient, this limit is \$4000. <name removed>'s benefits exceeded this limit by approximately <amount removed>.

<name removed> read a prepared statement for the Board. <name removed> can no longer leave their bed. The appellant used their own funds to pay into the hospital indemnity plan since <year removed>. This insurance is an accident and sickness policy.

Upon receiving the benefits <name removed> was informed by the department that they could place the funds into a disability trust. The department's website indicates that funds which are compensation awards can be sheltered up to a maximum of \$200,000, as long as they are not income replacement. The hospital indemnity benefit received by <name removed> was not income replacement, their only sources of income are CPP and EIA. The hospital indemnity policy states the award received by <name removed> was to compensate them for hospital costs. The appellant incurred costs in the form of rent, food, grooming, and parking for family while they were in the hospital. These costs ran up to \$1000. <name removed>'s family now has the additional costs of their care since they have been released from the hospital. These include parking costs for running errands, such as grocery shopping for <name removed>. Covering the costs associated with their hospitalization and medical condition is what the policy was designed for.

<name removed> told the Board they were required to pay their rent while in the hospital as the department did not know they were hospitalized. Now that they are out of the hospital their family members have to help them with errands, including shopping for their groceries. When they bring the appellant groceries to their suite homecare has to assist putting them away. Prior to their hospitalization they were independent. <name removed> stated they feel mistreated and disrespected as a result of what has happened with the department. The appellant now is being told they have to spend the approximate <amount removed> until it is all gone.

The Board asked the department if <name removed>'s hospital indemnity benefit was considered a lump sum payment. The department responded affirmatively. The Board asked the department if the lump sum payment was the total of a per day benefit. The department replied that <name removed> paid into the plan monthly, and like employment insurance or other forms of insurance it is paid out in a lump sum.

The Board asked the department if <name removed>'s hospital indemnity benefit was replacement income. The department told the Board that it was considered a form of replacement income. The Board asked the department to clarify how life insurance, which is also paid into each month, was not considered income under the regulations, yet the department considers the hospital indemnity insurance as income. The department explained that according to Section 15, lump sums from awards for injury, disability, or life insurance are excluded. For all other awards not listed in Section 15, the department considers them liquid assets if they go above the household liquid asset exemption limit. Any funds which are available above the liquid asset exemption limit are treated as available assets. Insurance awards are provided to cover the costs of

living, whether an individual is working or not.

The Board asked the department what other benefit <name removed>'s hospital insurance indemnity could be outside of replacement income. The department told the Board that the hospital indemnity benefit could be used by <name removed> as a source of income. The department explained that if an individual who was working was hospitalized they would no longer be able to earn their wages. The benefit would then be used to provide for the individual's needs. In <name removed>'s case their income comes from a combination of CPP and EIA, the insurance policy was there to replace their income if they were hospitalized.

The Board asked the department on what basis the original decision to shelter <name removed>'s award in a disability trust was made. The department indicated the decision was an oversight made when <name removed>'s home care worker told the department this had been done before and no reference had been made to either the departmental policies or regulations. The department's leading program specialists then reviewed the matter and determined the award was not eligible for the disability trust as it was an insurance benefit.

The Board asked the department to clarify why it determined that <name removed>'s hospital indemnity was considered replacement income as the rationale was not clear from the department's policy. The department indicated based on the policy the nature of the award was insurance, which is provided to provide for one's basic needs. The Board asked the department how all forms of insurance could be considered replacement income as those who are unemployed can still purchase insurance. The department explained that insurance benefits are considered as unearned income, examples of this are CPP benefits or child support. These benefits are provided for a person's basic needs and is therefore considered income by the department.

The appellant's sibling stated the appellant's medical needs are currently unknown . If they require additional medications or multiple ambulance trips their award was to be used to cover these costs.

<name removed> stated the hospital indemnity was set up to provide for medical needs if something happened to them later in life. The appellant did not purchase the policy to replace their income.

The Social Assistance Regulation ("The Regulation"; states in part:

Calculating Financial Resources

8(1) In calculating the financial resources of an applicant's or recipient's household, the director shall exempt

(xiii) assets as set out in section 8.1;

Trust property exemption

- 8.1(2) Subject to section 8.2 and subsection (2.1), in calculating the financial resources of an applicant or recipient, the director must exempt
- (a) contributions to a trust for an eligible person, to a maximum of \$200,000; and
 - (b) any growth or interest on those contributions.

No exemption for real property

- 8.1(2.1) The director must not exempt any real property that is held in trust for an eligible person, or any growth in the value of real property held in trust.

Eligible persons

- 8.1(3) An exemption for property held in trust referred to in subsection (2) can be claimed by an applicant or recipient as follows:
- (a) for the applicant or recipient who applies, or is enrolled, under clause 5(1)(a) of the Act, by reason of physical or mental ill health or physical or mental incapacity or disorder;

Limit on sources of property held in trust

- 8.1(4) Property held in trust is not exempt from the calculation of financial resources if it is directly or indirectly derived from money that is
- (a) compensation for loss of any type of income for an eligible person;
 - (b) replacement of any type of income for an eligible person; or
 - (c) a supplement to any type of income for an eligible person;
- even if the person's entitlement to the money accrued before, but the money was received after enrollment under the Act.

Combined contribution limit for RDSP and trust

- 8.2 If a Canada Registered Disability Savings Plan referred to in subclause 8(1)(a)(xx) and a trust under section 8.1 have been established for an eligible person, the combined value of contributions to the Canada Registered Disability Savings Plan and the trust must not exceed \$200,000 in order to be exempted from the calculation of the financial resources of an applicant or recipient.

In order to determine if the hospital indemnity award received by <name removed> can be considered exempt in accordance with section 8(1)(xiii) of The Regulation, the Board must be satisfied that the award meets the requirements of section 8.1.

In the verbal and documentary evidence presented to the Board, it is clearly established that <name removed> intended to contribute the total value of their hospital indemnity award, <amount removed> into a trust account. It is also clear from the evidence that

the award which <name removed> intended to place into trust was not real property. Furthermore <name removed> was enrolled under clause 5(1)(a) of The Act at the time they received the award and intended to place it into the trust account, therefore making them eligible to have an exempted trust fund.

Finally, the Board must determine whether or not <name removed>'s hospital indemnity award was derived from money that was compensation for lost income, replacement income, or a supplement to their income. In considering <name removed>'s hospital indemnity award within the parameters of 8.1(4) the board pays special attention to the documentary information provided about the hospital indemnity insurance policy purchased by <name removed>. In it the information clearly states the appellant was being insured to recuperate the costs associated with hospitalization, such as in hospital expenses, additional medical expenses, and costs incurred by their family. The information about the policy does not provide any detail that would suggest the benefit was provided to compensate or replace their income in any way or to otherwise provide a supplement to their income while hospitalized. The Board is also mindful of the verbal evidence presented to it, in which both the appellant and their sibling provided an explanation that the awarded benefits were to be placed into the trust account to cover the costs of <name removed>'s medical expenses and any related needs after their discharge from the hospital.

In its presentation to the Board, the department suggested that lump sum insurance awards, such as the hospital indemnity award paid out to <name removed>, are a source of unearned income, which is available to cover the costs of daily life. The department however did not provide any evidence to suggest that <name removed>'s hospital indemnity award was received in compensation for lost income or replaced either the income they received from CPP or EIA while hospitalized, or was to otherwise supplement their income. Rather, when asked directly about what income the hospital indemnity award was compensating or replacing, the department was unable to provide a clear response.

When weighing the evidence before it on a balance of probabilities, the Board is satisfied that <name removed>'s hospital indemnity award was provided in order to compensate their hospital costs and related expenses, and was not a compensation for lost income, replacement for income or a supplement to their income.

After carefully reviewing the verbal and written evidence presented to it, the Board determines that <name removed> is eligible to have a disability trust and their hospital indemnity award qualifies as an exempt resource in accordance with the legislation and regulations if placed into the trust. The Board rescinds the Director's decision to close <name removed>'s assistance file, and directs the Department to enrol <name removed> under Section 5(1)(a) of The Manitoba Assistance Act effective <date removed>. The Board further directs the department to provide <name removed> the

option to contribute the total amount of their hospital indemnity award, <amount removed> into a disability trust, to be managed in accordance with the legislation and regulations.

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