

Davis Martindale Summary

Eligibility for Income Replacement Benefits not Based on CPP Disability Benefits Received Beyond 104 Weeks

One may assume that a claimant who commences receiving Canada Pension Plan (“CPP”) disability benefits after an accident would be eligible to receive income replacement benefits beyond 104 weeks after an accident. However, a recent Licence Appeal Tribunal decision suggests that this may not always be the case.

Specifically, the *M.A. and Unifund Assurance Company (19-000209/AABS)* decision indicates that a claimant may not be eligible to receive income replacement benefits beyond 104 weeks after an accident despite commencing receiving CPP disability benefits.

In this decision, the adjudicator ruled that the insured (applicant) was not eligible to receive income replacement benefits beyond 104 weeks after the accident (i.e. March 7, 2018) despite commencing receiving CPP disability benefits as they appeared to remain available to work and the medical reasoning for their CPP approval did not appear to relate to the accident.

In the above decision, the applicant had attempted to return to work as a cleaner (their pre-accident occupation) and caregiver during the 104 weeks after the accident, however, had been unable to work consistently. Notwithstanding this, the applicant continued to advertise that they were available to provide caregiver services beyond 104 weeks after the accident.

Given the uncertainty regarding whether the applicant would be able to return to consistent work, they applied for and commenced receiving CPP disability benefits.

Section 5(1) of the Statutory Accident Benefits Schedule (“SABS”) states, “The insurer shall pay an income replacement benefit to an insured person who...was employed at the time of the accident and, as a result of and within 104 weeks after the accident, suffers a substantial inability to perform the essential tasks of that employment.”

Section 6(2) of the SABS states, “The insurer is not required to pay an income replacement benefit,...after the first 104 weeks of disability, unless, as a result of the accident, the insured person is suffering a complete inability to engage in any employment or self-employment for which he or she is reasonably suited by education, training or experience.”

Therefore, in order for a claimant to be eligible to receive income replacement benefits beyond 104 weeks after an accident, they must suffer a complete inability to work in any position that they are reasonably suited by education, training or experience. This is opposed to, during the 104 weeks after an accident, when a claimant simply needs to suffer a substantial inability to perform their pre-accident employment.

The applicant argued that their approval for CPP disability benefits implies that they would be unable to return to similar work beyond 104 weeks after the accident.

The insurer (respondent) argued that the applicant advertising that they are available to work as a caregiver beyond 104 weeks after the accident should prohibit them from entitlement to income replacement benefits during this period.

The adjudicator agreed that the applicant's attempts to return to work and advertisement of their ability to work, fail to demonstrate a complete inability to work in any position that they are reasonably suited by education, training or experience.

In regards to the applicant's post-accident approval for CPP disability benefits, the adjudicator states, "I further note that the mere fact that the applicant is eligible for CPP-disability benefits does not automatically mean she qualifies for IRB beyond the 104 weeks given the different eligibility requirements under these two different benefit schemes. Finally, I observe that in the application for CPP-disability benefits, the applicant's medical condition was listed by Dr. Veenema as spondyloarthropathy with the year 2014 as the date of onset. It would thus suggest that the applicant's CPP-disability application was based on conditions unrelated to the accident."

Accordingly, the adjudicator concluded that the applicant did not meet the test to qualify for income replacement beyond 104 weeks after the accident.

Therefore, approval for CPP disability benefits is not an automatic qualifier when determining a claimant's eligibility to income replacement benefits beyond 104 weeks after an accident. When adjusting claims, one should always review the medical reasons for approval of the CPP disability benefit.

Read the decision in full detail here: [*M.A. and Unifund Assurance Company \(19-000209/AABS\)*](#)