

Davis Martindale Summary

Post-Accident Monies Claimed to be a Gift Considered as Income

If an individual receives post-accident monies from their non-arm's length employer, which they claim to be a gift, would an insurer be able to deduct the amounts from the person's income replacement benefits (IRBs) as post-accident income?

A recent Licence Appeal Tribunal decision provides guidance on the variables to consider when answering this question.

Specifically, the *D.M. and Aviva Insurance Canada (17-006525/AABS)* decision indicates that post-accident monies received by an individual from a non-arm's length employer may be deducted from their IRBs as post-accident income.

In this decision, the adjudicator ruled that the insured (applicant) received post-accident income despite the assertion that the amounts were received as a gift, as the monies received after the accident were consistent with before the accident and were reported as employment income for tax purposes.

In the above decision, the applicant was employed at a restaurant solely owned by their mother before the accident. After the accident, the applicant did not return to work, however, continued to receive their pre-accident earnings as a means of financial support through the payment system that was already in place.

The applicant contends that these post-accident monies were received as a gift as opposed to income as there was no expectation of the amounts being returned or future work performed in exchange for them. As such, the applicant asserts that the amounts were not received as a result of active employment.

The insurer (respondent) counters that the applicant continued to receive these monies in the same manner post-accident as they did pre-accident, including deductions for income taxes, Canada Pension Plan contributions and Employment Insurance contributions. The applicant also reported the amounts as employment income for tax purposes.

Further, the respondent indicates that the applicant's mother did not make her intention of the payments being a gift known at the time the payments were made and points out that when the payments were initially questioned, they were advised that the applicant was still receiving pay from their employment position. The respondent submits that the applicant claiming the amounts were received as a gift and not deductible from their IRBs is an attempt at double recovery.

The respondent argues that, in accordance with *A.S. and Economical Mutual Insurance Company*, active participation in a business after an accident is not required for income to be attributed to the applicant for the purposes of deducting it from their IRBs.

Section 4(1) of the Statutory Accident Benefits Schedule states, "...“gross employment income” means salary, wages and other remuneration from employment, including fees and other remuneration for holding office...”.

The respondent points out that this section does not reference active engagement being required in order for income to be considered from employment. Therefore, the applicant’s post-accident monies received would be considered employment income and deducted when quantifying their IRBs.

The adjudicator agreed that the applicant did not need to be actively engaged in employment in order for the post-accident monies received to be considered income and deducted when calculating their IRBs.

The adjudicator also considered that the applicant and their mother had not discussed that the post-accident monies were intended to be a gift with each other or the business’ accountant and that there was no documentation provided corroborating that the amounts were intended to be a gift as opposed to income.

Accordingly, the adjudicator concluded that the applicant had received post-accident employment income and the amounts were determined to be deductible from the applicant’s IRBs.

Therefore, should an individual claim that they are receiving monies as a gift after an accident from a non-arm’s length employer, one should consider the nature of the amounts being received and whether they differ from the manner in which amounts were received before the accident.

Read the decision in full detail here: [D.M. and Aviva Insurance Canada \(17-006525/AABS\)](#)