

TAC Insights – Income Benefits

March 2010

It is March already and the holiday season is a distant memory. We welcome Emma Hughes to our Personal Injury team as a junior lawyer.

This briefing focuses on “hot spot” issues for TAC income benefits.

Should you wish to discuss this or any other compensation matter, please do not hesitate to contact us.

Tim Adam
Principal

- TAC pay loss of income benefits based on 80% of a person’s pre-accident weekly earnings up to a maximum of \$1,035.00 per week.
- Loss of earnings are paid in the first 18 months (no payment for the first 5 days) after an accident. It is a gross amount with tax deducted by TAC.
- At 18 months, payments change to loss of earning capacity benefits. The benefit is based on 80% of a person’s pre-accident earning capacity up to a maximum of \$875.00 net per week. Income tax is no longer deducted and the benefit is not included as part of your income for tax purposes.

Issues to watch (and challenge TAC)

Part time workers

At the time of the accident, the injured person may have been a part-time worker. If this was not a long term plan, the loss of earnings capacity benefit at 18 months may arguably be assessed and paid on the basis of full time employment. TAC will keep paying at the part-time rate and not advise otherwise.

About to start a new job

If, at the time of the accident, you had accepted a new job but had not started, the loss of income benefits should be assessed on the basis of the new job.

The Unemployed

If you were unemployed at the time of the accident, you may still qualify for loss of income benefits if the following applies:

- You had worked at any time in the previous 8 weeks;
- You had worked at least 13 weeks in the preceding 12 months;
- You had worked at least 26 weeks in the preceding 2 years;
- Had accepted a job offer but not started work;
- Had arranged to commence work as a self-employed person.

Changing circumstances in employment

Pre-accident earnings are usually based on the average over the 12 months preceding the accident. A change of circumstances can however, be taken into account. This means for example if a person has increased their hours or been promoted, then the earnings should be assessed and averaged from the date of the higher earnings. The payslips from the period immediately prior to the accident is excellent evidence.

Students about to graduate / leave school

A final year university student is injured. The first question is whether they are an earner (maybe because of a summer or part-time job). If so, they are paid loss of income based on the student work until the completion of their studies. Thereafter, their income is assessed on the potential graduate income.

If the student had never worked, they do not qualify for loss of income (even if it is a day before completing university) unless they had accepted a job. The student will be able to claim loss of earning capacity benefits at 18 months based on graduate income

The same applies to secondary school students. The TAC will however need to be satisfied the student would have entered the workforce and not continued on to further study.

Apprentices and Trainees

There are increments in income for apprentices and trainees from year to year or when a qualification has been achieved. The loss of income benefits should be re-assessed and increased to reflect the increases.

Arguments can be made for many professionals (such as the early years of nursing and in the police force) for the increments to apply when there are wage increases based on years of experience.

Self-employed

The loss of earnings are calculated on the income earned in self employment in the 3 years immediately preceding the accident.

The TAC may average the income over 3 years. This is simplistic and not a requirement. If there was an improvement in the most recent year, more weight may be given to that year. If there were unusual events causing a fall in earnings, that could be a consideration.

The calculation is usually made on net profit or taxable income after deduction of expenses. If there are unusual expenses in one year, then arguments can be made to exclude or reduce their impact.

Reviewing TAC Decisions

There is a strict 12 month appeal period to review a TAC decision in the Victorian Civil & Administrative Tribunal.

An alternative dispute resolution process is available by way of the No Fault Dispute Resolution Protocols. Your lawyer can assist you with this review and if successful the TAC pay legal costs. In many cases there would be no need for the injured person to contribute to the costs.

The Moores Legal Personal Injuries Team:

For further advice and guidance in this area, contact the Personal Injuries team at Moores Legal.

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