

SUPREME COURT OF NOVA SCOTIA

Citation: *Porter v. Co-operators General Insurance Company*, 2014 NSSC 425

Date: 2014-11-28

Docket: SN No. 281987

Registry: Halifax

Between:

Stella Porter

Applicant

and

Co-operators General Insurance Company

Respondent

and

The Board of Trustees of the Nova Scotia Public Service
Long Term Disability Trust Fund

Intervenor

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Judge: The Honourable Justice James L. Chipman

Heard: October 23, 2014, in Halifax, Nova Scotia

Written Decision: November 28, 2014

Subject: Interaction between the S.E.F. No. 44 Family Protection Endorsement (“SEF 44”) and the Nova Scotia Public Service Long Term Disability Plan (“LTD Plan”)

Summary: By consent under Civil Procedure Rule 12, the parties asked the Court to answer five questions.

Issues:

- (1) Is the deduction pursuant to para 4(b) of the S.E.F. No. 44 Family Protection Endorsement (“SEF 44”) for the long term disability benefits (“LTD benefits”) recovered by Porter from the Nova Scotia Public Service LTD Plan Trust Fund (“LTD Fund”) net of the amount that Porter is obligated to reimburse to the LTD Fund from her settlement with Nicholas Rutherford (the “Third Party”)?
- (2) Is the assignment to Co-op (pursuant to para 10 of the SEF 44) of future LTD benefits payable to Porter the LTD benefits net of the LTD Fund’s right of offset pursuant to s. 9(8) of the Nova Scotia Public Service Long Term Disability Plan (“LTD Plan”)?
- (3) Are the above deductions pursuant to para 4(b) of the SEF 44 for LTD benefits and Canada Pension Plan disability benefits (“CPP”) net of income tax payable by Porter on those benefits?
- (4) Are the amounts payable to Porter for LTD benefits and CPP for the period after the trial in this proceeding to be dealt with by way of an assignment pursuant to para 10 of the SEF 44 or are they to be considered in assessing the amount payable to Porter pursuant to para 4(a) of the SEF 44?
- (5) If the amount payable to Porter pursuant to para 4(a) of the SEF 44 is more than the limit of coverage as determined by para 3 of the SEF 44 (\$500,000 in this case), how, if at all, does this affect an assignment pursuant to para 10 of the SEF 44?

Result:

- (1) Yes
- (2) Yes
- (3) Yes
- (4) The amounts payable to Porter for LTD benefits and CPP for the period after the trial in this proceeding are to be dealt with by way of an assignment pursuant to para 10 of the SEF 44.

(5) If the amount payable by Porter pursuant to para 4(c) of the SEF 44 is more than the limit of coverage as determined by para 3 of the SEF 44 (\$500,000 in this case), the assignment pursuant to para 10 of the SEF 44 is not affected.

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