

# Pharmacare Benefits Non-Deductible From Cost Of Future Care Award

Ministry of **Health**

## Fair PharmaCare

Reasons for judgement were released last week by the BC Supreme Court, Vancouver Registry, addressing whether a Plaintiff's award for cost of future care in a personal injury claim should be reduced by the availability of Pharmacare benefits. In short the Court held that these benefits are non-deductible.

In last week's case ([Harrington v. Sangha](#)) the Plaintiff suffered severe and disabling injuries following a collision with a tractor-trailer. Her injuries resulted in future care costs of \$488,495 including medication costs of \$118,000. The Defendant argued that this portion of the award should be reduced because British Columbia's Pharmacare program may cover some of the expenses. Mr. Justice Willcock rejected this argument and in doing so provided the following useful reasons:

*[158] The short answer to that argument is that where the benefit in question is not available to individuals, because they have a remedy against a tortfeasor, where there is a provision in the plan for subrogation, or where there is an obligation on the recipient of the benefit to repay the benefit from the proceeds of litigation, an award will not result in double recovery. The availability of benefits paid on such terms should not reduce the award.*

*[159] As this court noted in MacEachern v. Rennie, 2010 BCSC 625 at para. 422:*

*Medication costs required as a result of a motor vehicle accident must be paid for by a motor vehicle insurer, and in such a case, PharmaCare is the insurer of last resort.*

*[160] It was the evidence of Mr. Moneo that the PharmaCare programme is not intended to be available to persons who have a tort claim for the cost of their medications. Counsel seeking to have the deduction made from the award was reduced to arguing that there will be double recovery if the plaintiff recovers an award for the cost of her medications and conceals the award from PharmaCare or if she squanders her award and again becomes dependent on the state to pay for her drug expenses.*

*[161] The award in this case is made in the expectation that Ms. Harrington will report the outcome and use the award as intended. The judgment cannot be founded upon the presumption that the plaintiff will make a fraudulent PharmaCare claim. In any event, PharmaCare will be aware of this judgment, having made submissions and having been given standing to address the issue.*

*[162] There is no real risk of double recovery in this case and no basis for an award other than that which is necessary to ensure the plaintiff will be in a position, without relying upon the state, to pay the cost of the drugs she requires.*