

PART C – Decision under Appeal

The decision under the appeal is the ministry's reconsideration decision dated December 21, 2011, which denied the appellant's request to not have his retro-active family bonus payment deducted from the appellant's November 2011 disability assistance pursuant to Section 1, 9, 24 and 29 of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), Sections 1, 2, 3, 4, and 5 of Schedule A of the EAPWDR, and Sections 1, 6, 7, and 10 of Schedule B of the EAPWDR. The ministry concluded that the retro-active portion of the family bonus of \$353.00 that was paid to the appellant is considered an unearned income and as such must be deducted from the appellant's disability assistance.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation – EAPWDR – Section 1, Unearned Income

Employment and Assistance for Persons with Disabilities Regulation – EAPWDR – Section 9, Limits on Income

Employment and Assistance for Persons with Disabilities Regulation – EAPWDR – Section 24, Amount of disability assistance

Employment and Assistance for Persons with Disabilities Regulation – EAPWDR – Section 29, Monthly reporting requirement

Employment and Assistance for Persons with Disabilities Regulation – EAPWDR – Schedule A, Sections 1, 2, 3, 4, 5,

Employment and Assistance for Persons with Disabilities Regulation – EAPWDR – Schedule B, Sections 1, 6, 7, and 10

PART E – Summary of Facts

The evidence before the ministry at the reconsideration decision included:

- The appellant's bank statement from June 16, 2010 to November 24, 2011;
- A Canada Child Tax Benefit notice dated August 19, 2011;
- A Canada Child Tax Benefit account summary dated August 19, 2011 for the payment period July 2011 to June 2012;
- Two notices of deposit from the Ministry of Social Development dated October 26, 2011 and November 23, 2011;
- Request for Reconsideration dated December 7, 2011.

The appellant in the request for reconsideration stated that his son was born on June 27, 2010 and moved to his home with his common-law wife in August 2010. The appellant stated that in August, September and October 2010, he received \$1524.56 disability assistance + \$167.50 top up for the total of \$1,693.06. The appellant further stated that on November 19, 2010 he received the Federal Child Tax benefit and as a result the ministry stopped paying the top up and he received either \$1,524.56 or \$1,429.26 every month from December 2010 to September 2011. The appellant stated that he was never told and was unaware that he must inform the ministry if he did not file his tax return on time. The appellant stated that he assumed that he would get a top up as he did not file his tax return and as such did not receive any child tax benefit during the time he received the top up. The appellant further stated that he noticed a deduction of \$529.50 from his payment in November 2011. He stated that he did not receive a top up for the amount of \$176.50 from December 2010 to September 2011. The appellant stated that there was a gross accounting error that needed to be reversed for the sum of \$706.00.

At the hearing the appellant submitted a copy of Canada Child Tax Benefit and BC Family Bonus Notice dated November 19 2010 indicating the payment of \$1,145.32 retro-active child tax benefit for the months of July to October 2010. The panel reviewed the information. The ministry did not object to admitting the information. The panel admits the document in support of the information before the ministry at the reconsideration pursuant to Section 24 (4) of the *Employment and Assistance Act EAA*.

The appellant directed the panel to a chart pointing out the amount of disability he received from August 2010 to November 2011. He pointed out that the ministry should have not deducted \$353 from his disability assistance and questioned the reasons for not receiving the same amount of assistance every month.

The ministry stated that the retro-active family bonus is considered an unearned income and therefore must be deducted from the appellant's disability assistance. The ministry stated that only the portion of the overpayment for the months of September and October of 2010 was deductible. Respecting changes in the monthly payment, the ministry said that the appellant initially was receiving \$794.56 disability benefit, \$660.00 shelter, \$70.00 diet allowance, \$45 natal allowance, for his child up to 6 months old and \$123.50 family allowance. The payment for the natal allowance was stopped when the appellant's child reached 6 months old.

The appellant stated the he was not aware that he was receiving natal allowance only up to 6 months. The appellant said that he understood the reasons for the changes in his monthly disability assistance and requested paying the overpayment amount in monthly installments.

The panel finds that:

- The appellant's child tax benefit and BC family bonus is \$286.33 monthly;
- The appellant began receiving child tax benefit on October 30, 2010;
- The Canada Child Tax Benefit and BC family Bonus Notice dated November 19, 2010 indicated the appellant received a retro-active payment of \$1,145.32 for July to October 2010; the appellant does not dispute receiving this amount.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry reasonably denied the appellant's request to not have his retro-active family bonus payment deducted from his November 2011 disability assistance pursuant to Section 1, 9, 24 and 29 of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), Sections 1, 2, 3, 4, and 5 of Schedule A of the EAPWDR, and Sections 1, 6, 7, and 10 of Schedule B of the EAPWDR. The ministry concluded that the retro-active portion of the family bonus that was paid to the appellant is considered an unearned income and as such must be deducted from the appellant's disability assistance.

Pursuant to Section 1 of the EAPWDR "**unearned income**" means any income that is not earned income, and includes, without limitation, money or value received from any of the following:

money, annuities, stocks, bonds, shares, and interest bearing accounts or properties;

(b) cooperative associations as defined in the *Real Estate Development Marketing Act*;

(c) war disability pensions, military pensions and war veterans' allowances;

(d) insurance benefits, except insurance paid as compensation for a destroyed asset;

(e) superannuation benefits;

(f) any type or class of Canada Pension Plan benefits;

(g) employment insurance;

(h) union or lodge benefits;

(i) financial assistance provided under the *Employment and Assistance Act* or provided by another province or jurisdiction;

(j) workers' compensation benefits and disability payments or pensions;

(k) widows' or orphans' allowances;

(l) a trust or inheritance;

(m) rental of tools, vehicles or equipment;

(n) rental of land, self-contained suites or other property except the place of residence of an applicant or recipient;

(o) interest earned on a mortgage or agreement for sale;

(p) maintenance under a court order, a separation agreement or other agreement;

(q) education or training allowances, grants, loans, bursaries or scholarships;

(r) a lottery or a game of chance;

(s) awards of compensation under the *Criminal Injury Compensation Act* or awards of benefits under the *Crime Victim Assistance Act*, other than an award paid for repair or replacement of damaged or destroyed property;

(t) any other financial awards or compensation;

(u) Federal Old Age Security and Guaranteed Income Supplement payments;

(v) financial contributions made by a sponsor pursuant to an undertaking given for the purposes of the *Immigration and Refugee Protection Act (Canada)* or the *Immigration Act (Canada)*.

(2) For the purposes of the Act and this regulation, if a child resides with each parent for 50% of each month under

(a) an order of a court in British Columbia,

(b) an order that is recognized by and deemed to be an order of a court in British Columbia, or

(c) an agreement filed in a court in British Columbia,

the child is a dependent child of the parent who is designated in writing by both parents.

(3) For the purposes of the definition of "special care facility", the minister may approve as a specialized adult residential care setting a place that provides accommodation and care for adults and for which a licence under the *Community Care and Assisted Living Act* is not required.

Pursuant to Section 9 of the EAPWDR) For the purposes of the Act and this regulation, "**income**", in relation to a family unit, includes an amount garnished, attached, seized, deducted or set off from the income of an applicant, a recipient or a dependant.

(2) A family unit is not eligible for disability assistance if the net income of the family unit determined under Schedule B equals or exceeds the amount of disability assistance determined under Schedule A for a family

unit matching that family unit.

Section 24 of the EAPWDR states that Disability assistance may be provided to or for a family unit, for a calendar month, in an amount that is not more than

- (a) the amount determined under Schedule A, minus
- (b) the family unit's net income determined under Schedule B.

Pursuant to Section 29 of the EAPWDR For the purposes of section 11 (1) (a) [reporting obligations] of the Act,

(a) the report must be submitted by the 5th day of the calendar month following the calendar month in which there is a change that is listed in paragraph (b), and

(b) the information required is all of the following, as requested in the monthly report form prescribed under the Forms Regulation, B.C. Reg. 315/2005:

- (i) change in the family unit's assets;
- (ii) change in income received by the family unit and the source of that income;
- (iii) change in the employment and educational circumstances of recipients in the family unit;
- (iv) change in family unit membership or the marital status of a recipient.

Schedule A of the EAPWDR deals with Disability Assistance Rates and states:

Maximum amount of disability assistance before deduction of net income

1 Subject to sections 3 and 6 to 9 of this Schedule, the amount of disability assistance referred to in section 24 (a) [amount of disability assistance] of this regulation is the sum of

(a) the monthly support allowance under section 2 of this Schedule for a family unit matching the family unit of the applicant or recipient, plus

(b) the shelter allowance calculated under sections 4 and 5 of this Schedule.

Monthly support allowance

2 (0.1) For the purposes of this section, "warrant" has the meaning of warrant in section 14.2 [consequences in relation to outstanding arrest warrants] of the Act.

(1) A monthly support allowance for the purpose of section 1 (a) is the sum of

(a) the amount set out in Column 3 of the following table for a family unit described in Column 1 of an applicant or a recipient described in Column 2, plus

(b) the amount calculated in accordance with subsections (2) to (5) for each dependent child in the family unit.

Item	Column 1 Family unit composition	Column 2 Age or status of applicant or recipient	Column 3 Amount of support
1	Sole applicant/recipient and no dependent children	Applicant/recipient is a person with disabilities	\$531.42
2	Sole applicant/recipient and one or more dependent children	Applicant/recipient is a person with disabilities	\$672.08
3	Two applicants/recipients and no dependent children	One applicant/recipient is a person with disabilities, the other is not a person with disabilities and is under 65 years of age	\$700.56
4	Two applicants/recipients and no dependent children	Both applicants/recipients are persons with disabilities	\$949.06
5	Two applicants/recipients and no dependent children	One applicant/recipient is a person with disabilities, the other is not a person with disabilities and is 65	\$949.06

		or more years of age	
6	Two applicants/recipients and one or more dependent children	One applicant/recipient is a person with disabilities, the other is not a person with disabilities and is under 65 years of age	\$794.56
7	Two applicants /recipients and one or more dependent children	Both applicants/recipients are persons with disabilities	\$1 043.06
8	Two applicants/recipients and one or more dependent children	One applicant/recipient is a person with disabilities, the other is not a person with disabilities and is 65 or more years of age	\$1 043.06
9	Sole applicant/recipient and one or more dependent children	Applicant/recipient is a person with a disability and a warrant has been issued for the applicant/recipient	\$572.08
10	Two applicants/recipients and no dependent children	One applicant/recipient is a person with a disability, and the other is under 65 years of age, and a warrant has been issued for one	\$531.42
11	Two applicants/recipients and no dependent children	One applicant/recipient is a person with a disability, and the other is 65 years of age or older and a warrant has been issued for that applicant/recipient	\$531.42
12	Two applicants/recipients and no dependent children	One applicant/recipient is a person with a disability and a warrant has been issued for that applicant/recipient, and the other is 65 years of age or older	\$531.42
13	Two applicants/recipients and no dependent children	Both applicants/recipients are persons with a disability and a warrant has been issued for one	\$531.42
14	Two applicants/recipients and one or more dependent children	One applicant/recipient is a person with a disability, and the other is under 65 years of age and a warrant has been issued for that applicant/recipient	\$694.56
15	Two applicants/recipients and one or more dependent children	One applicant/recipient is a person with a disability and a warrant	\$694.56

		has been issued for that applicant/recipient, and the other is under 65 years of age	
16	Two applicants/recipients and one or more dependent children	One applicant/recipient is a person with a disability and the other is under 65 years of age, and a warrant has been issued for both	\$644.56
17	Two applicants/recipients and one or more dependent children	One applicant/recipient is a person with a disability, and the other is 65 years of age or older and a warrant has been issued for that applicant/recipient	\$943.06
18	Two applicants/recipients and one or more dependent children	One applicant/recipient is a person with a disability and a warrant has been issued for that applicant/recipient, and the other is 65 years of age or older	\$943.06
19	Two applicants/recipients and one or more dependent children	One applicant/recipient is a person with a disability and the other is 65 years of age or older, and a warrant has been issued for both	\$893.06
20	Two applicants/recipients and one or more dependent children	Both applicants/recipients are persons with a disability and a warrant has been issued for one	\$943.06
21	Two applicants/recipients and one or more dependent children	Both applicants/recipients are persons with a disability and a warrant has been issued for both	\$893.06

- (2) If the family unit includes one or more dependent children, the monthly support allowance under subsection (1) is adjusted as follows:
- (a) for each dependent child, by an additional \$123.50 for the calendar month in which the dependent child is born;
 - (b) for each dependent child in the family unit who is not referred to in paragraph (a) or (c) and for whom a person in the family is entitled to the BC basic family bonus, by the result of
 - (i) \$123.50, minus
 - (ii) the amount of the family bonus payable to the person for that dependent child for the calendar month preceding the calendar month for which the allowance is paid;
 - (c) for each dependent child who has reached 18 years of age,
 - (i) for the calendar month following the calendar month in which the dependent child reached that age, by the result of \$123.50 minus the amount of family bonus payable to a person in the family unit for that dependent child for the calendar month in which the dependent child reached that age, and
 - (ii) for each subsequent calendar month, by an additional \$123.50.

(3) In calculating the adjustment under subsection (2) (b) or (c) (i), an amount that, under the *Income Tax Act* (British Columbia) or the *Income Tax Act* (Canada), is deducted or set off from the family bonus must be treated as if it was paid to a person in the family unit.

(4) The monthly support allowance under subsection (1) is not adjusted under subsection (2) (b) or (c) (i) if
 (a) payment of the family bonus for the preceding calendar month is delayed, cancelled or suspended for any of the reasons listed in section 59 [*advance for delayed or suspended family bonus*] of this regulation, or
 (b) a person in the family unit refuses to accept or apply for the family bonus for the preceding calendar month.

(5) If a family unit includes a person who

- (a) immediately before reaching 19 years of age was a dependent child in the family unit, and
- (b) reached that age while attending secondary school,

the base monthly support allowance is increased by \$123.50 for each calendar month until the end of the school year in which that person reaches that age as long as he or she is still in attendance.

Prorating of support allowance

3 In the calendar month that contains the date of the applicant's submission of the application for disability assistance (part 2) form, the monthly support allowance is prorated based on the number of days remaining in that calendar month, beginning with the date of that submission.

Monthly shelter allowance

4 (1) For the purposes of this section:

"family unit" includes a child who is not a dependent child and who resides in the parent's place of residence for not less than 40% of each month, under the terms of an order or an agreement referred to in section 1 (2) of this regulation;

"warrant" has the meaning of warrant in section 14.2 [*consequences in relation to outstanding arrest warrants*] of the Act.

(2) The monthly shelter allowance for a family unit to which section 14.2 of the Act does not apply is the smaller of

(a) the family unit's actual shelter costs, and

(b) the maximum set out in the following table for the applicable family size:

Item	Column 1	Column 2
	Family Unit Size	Maximum Monthly Shelter
1	1 person	\$375
2	2 persons	\$570
3	3 persons	\$660
4	4 persons	\$700
5	5 persons	\$750
6	6 persons	\$785
7	7 persons	\$820
8	8 persons	\$855
9	9 persons	\$890
10	10 persons	\$925

(2.1) The monthly shelter allowance for a family unit to which section 14.2 of the Act applies is the smaller of

(a) the family unit's actual shelter costs, and

(b) the maximum set out in the following table for the applicable family unit composition:

Item	Column 1 Family Unit Composition Size	Column 2 Maximum Monthly Shelter
1	Two applicants/recipients and no dependent children and a warrant has been issued for one	\$375
2	Family with dependent children, family unit size = 2 persons	\$570
3	Family with dependent children, family unit size = 3 persons	\$660
4	Family with dependent children, family unit size = 4 persons	\$700
5	Family with dependent children, family unit size = 5 persons	\$750
6	Family with dependent children, family unit size = 6 persons	\$785
7	Family with dependent children, family unit size = 7 persons	\$820
8	Family with dependent children, family unit size = 8 persons	\$855
9	Family with dependent children, family unit size = 9 persons	\$890
10	Family with dependent children, family unit size = 10 persons	\$925

(3) For a family unit of more than 10 persons, the maximum monthly shelter allowance is calculated by adding an extra \$35 for each person by which the family unit size exceeds 10.

(4) Repealed. [B.C. Reg. 62/2010, s. (b).]

(5) Despite subsection (2) (a) or (2.1) (a), if the actual shelter costs of a recipient increase as a result of the recipient remortgaging his or her place of residence, the amount of the mortgage payments is deemed, for the term of the new mortgage, to equal the amount before the remortgaging unless

- (a) the remortgaging was necessary because of the expiry of the mortgage term, and
- (b) the amount borrowed under the mortgage is not increased.

(6) Despite subsection (2) or (2.1), the maximum monthly shelter allowance for a person who

- (a) is a sole recipient without dependants, and
 - (b) provides confirmation of pregnancy from a medical practitioner, nurse practitioner or a registrant of the College of Midwives of British Columbia
- is increased by up to \$195 per month for the duration of the pregnancy.

How actual shelter costs are calculated

5 (1) For the purpose of this section, utility costs for a family unit's place of residence include only the following costs:

- (a) fuel for heating;
- (b) fuel for cooking meals;
- (c) water;
- (d) hydro;
- (e) garbage disposal provided by a company on a regular weekly or biweekly basis;

- (f) rental of one basic residential single-line telephone.
- (2) When calculating the actual monthly shelter costs of a family unit, only the following items are included:
 - (a) rent for the family unit's place of residence;
 - (b) mortgage payments on the family unit's place of residence, if owned by a person in the family unit;
 - (c) a house insurance premium for the family unit's place of residence if owned by a person in the family unit;
 - (d) property taxes for the family unit's place of residence if owned by a person in the family unit;
 - (e) utility costs;
 - (f) the actual cost of maintenance and repairs for the family unit's place of residence if owned by a person in the family unit and if these costs have received the minister's prior approval.
- (3) If utility costs fluctuate, they may be averaged over the periods
 - (a) beginning on October 1 and ending on March 31, and
 - (b) beginning on April 1 and ending on September 30.
- (4) If 2 or more family units share the same place of residence, the actual shelter costs of any one of them are the smaller of
 - (a) the amount calculated by
 - (i) dividing the actual shelter costs for all the family units by the number of persons occupying that place of residence, and
 - (ii) multiplying the result by the number of persons in that one family unit, and
 - (b) the amount declared by the family unit as the shelter costs for that family unit.

Schedule B of the EAWPDR deals with deduction and exemption rules and states:

1- When calculating the net income of a family unit for the purposes of section 24 (b) [*amount of disability assistance*] of this regulation,

(a) the following are exempt from income:

- (i) any income earned by a dependent child attending school on a full-time basis;
- (ii) the basic family care rate paid for foster homes;
- (iii) Repealed. [B.C. Reg. 48/2010, Sch. 1, s. 2 (c).]
- (iv) a family bonus, except the portion treated as unearned income under section 10 (1) of this Schedule;
- (v) the basic child tax benefit;
- (vi) a goods and services tax credit under the *Income Tax Act* (Canada);
- (vii) a tax credit under section 8 [*refundable sales tax credit*], 8.1 [*low income climate action tax credit*] or 8.2 [*BC harmonized sales tax credit*] of the *Income Tax Act* (British Columbia);
- (viii) individual redress payments granted by the government of Canada to a person of Japanese ancestry;
- (ix) individual payments granted by the government of Canada under the Extraordinary Assistance Plan to a person infected by the human immunodeficiency virus;
- (x) individual payments granted by the government of British Columbia to a person infected by the human immunodeficiency virus or to the surviving spouse or dependent children of that person;
- (xi) individual payments granted by the government of Canada under the Extraordinary Assistance Plan to thalidomide victims;
- (xii) money that is
 - (A) paid or payable to a person if the money is awarded to the person by an adjudicative panel in respect of claims of abuse at Jericho Hill School for the Deaf and drawn from a lump sum settlement paid by the government of British Columbia, or
 - (B) paid or payable to or for a person if the payment is in accordance with the settlement agreement approved by the Supreme Court in Action No. C980463, Vancouver Registry;
- (xiii) the BC earned income benefit;
- (xiv) money paid or payable under the 1986-1990 Hepatitis C Settlement Agreement made June 15, 1999, except money paid or payable under section 4.02 or 6.01 of Schedule A or of Schedule B of that agreement;
- (xv) a rent subsidy provided by the provincial government, or by a council, board, society or governmental agency that administers rent subsidies from the provincial government;
- (xvi) an income tax refund, or part of an income tax refund, that arises by reason of a payment made by the government of British Columbia to the government of Canada on behalf of a person who incurred a tax liability

due to income received under the Forest Worker Transition Program;

(xvii) money paid or payable to a person in settlement of a claim of abuse at an Indian residential school, except money paid or payable as income replacement in the settlement;

(xviii) post adoption assistance payments provided under section 28 (1) or 30.1 of the Adoption Regulation, B.C. Reg. 291/96;

(xix) a rebate of energy or fuel tax provided by the government of Canada, the government of British Columbia, or an agency of either government;

(xx) money paid by the government of British Columbia, under a written agreement, to a person with disabilities or to a trustee for the benefit of a person with disabilities to enable the person with disabilities to live in the community instead of in an institution;

(xxi) payments granted by the government of British Columbia as Interim Early Intensive Intervention Funding;

(xxii) payments granted by the government of British Columbia under section 8 of the *Child, Family and Community Service Act* [agreement with child's kin and others];

(xxiii) payments granted by the government of British Columbia under the Ministry of Children and Family Development's At Home Program;

(xxiv) payments granted by the government of British Columbia under the Ministry of Children and Family Development's Extended Autism Intervention Program;

(xxv) payments granted by the government of British Columbia under an agreement referred to in section 93 (1) (g) (ii) of the *Child, Family and Community Service Act*, for contributions to the support of a child to a person other than a parent of that child;

(xxvi) a loan that is

(A) not greater than the amount contemplated by the recipient's business plan, accepted by the minister under section 70.1 of this regulation, and

(B) received and used for the purposes set out in the business plan;

(xxvii) payments granted by the government of British Columbia under the Ministry of Children and Family Development's

(A) Autism Funding: Under Age 6 Program, or

(B) Autism Funding: Ages 6 — 18 Program;

(xxviii) that portion of the maintenance paid for and passed on to a person with disabilities or a person aged 19 or older under a maintenance order or agreement filed with a court;

(xxix) payments made by a health authority or a contractor of a health authority to a recipient, who is a "person with a mental disorder" as defined in section 1 of the *Mental Health Act*, for the purpose of supporting the recipient in participating in a volunteer program or in a mental health or addictions rehabilitation program;

(xxx) a refund provided by the Fair PharmaCare program of the Ministry of Health Services;

(xxxi) payments provided by Community Living BC to assist with travel expenses for a recipient in the family unit to attend a self-help skills program, or a supported work placement program, approved by Community Living BC;

(xxxii) a Universal Child Care Benefit provided under the *Universal Child Care Benefit Act* (Canada);

(xxxiii) money paid by the government of Canada, under a settlement agreement, to persons who contracted Hepatitis C by receiving blood or blood products in Canada prior to 1986 or after July 1, 1990, except money paid under that agreement as income replacement;

(xxxiv) money withdrawn from a registered disability savings plan;

(xxxv) a working income tax benefit provided under the *Income Tax Act* (Canada);

(xxxvi) Repealed. [B.C. Reg. 180/2010, s. 2 (b).]

(xxxvii) the climate action dividend under section 13.02 of the *Income Tax Act*;

(xxxviii) money paid or payable to a person under the *Criminal Injury Compensation Act* as compensation for non-pecuniary loss or damage for pain, suffering mental or emotional trauma, humiliation or inconvenience that occurred when the person was under 19 years of age,

(xxxix) money that is paid or payable to or for a person if the payment is in accordance with the settlement agreement approved by the Supreme Court in Action No. S024338, Vancouver Registry,

(b) any amount garnished, attached, seized, deducted or set off from income is considered to be income, except the deductions permitted under sections 2 and 6,

- (c) all earned income must be included, except the deductions permitted under section 2 and any earned income exempted under sections 3 and 4, and
- (d) all unearned income must be included, except the deductions permitted under section 6 and any income exempted under sections 7 and 8.

6 The only deductions permitted from unearned income are the following:

- (a) any income tax deducted at source from employment insurance benefits;
- (b) essential operating costs of renting self-contained suites.

Exemptions — unearned income

7 The following unearned income is exempt:

- (a) the portion of interest from a mortgage on, or agreement for sale of, the family unit's previous place of residence if the interest is required for the amount owing on the purchase or rental of the family unit's current place of residence;
- (b) \$50 of each monthly Federal Department of Veterans Affairs benefits paid to any person in the family unit;
- (c) a criminal injury compensation award or other award, except the amount that would cause the family unit's assets to exceed, at the time the award is received, the limit applicable under section 10 [*asset limits*] of this regulation;
- (d) a payment made from a trust to or on behalf of a person referred to in section 12 (2) [*assets held in trust for person with disabilities*] of this regulation if
 - (i) the payment is applied exclusively to or used exclusively for disability-related costs as defined in section 12 (1) of this regulation, and
 - (ii) the amount of the exemption under subparagraph (i) for all payments that, during a calendar year, are applied exclusively for the costs referred to in paragraph (d) of that definition does not exceed \$5 484.

Pursuant to Section 10 of the Schedule B of the EAPWDR the backdated family bonus treated as unearned income and states: If that portion of a child benefits cheque attributable to family bonus, the payee of which is a person in the applicant's or recipient's family unit, includes an amount attributable to family bonus for one or more calendar months preceding the calendar month in which the cheque was issued, the amount for each preceding calendar month must be treated as unearned income.

(2) For the purposes of subsection (1), an amount that, under the *Income Tax Act* (British Columbia) or the *Income Tax Act* (Canada), is deducted or set off from a family bonus is considered to have been paid to a person in the applicant's or recipient's family unit.

(3) Subsection (1) does not apply to an amount included in that portion of a child benefits cheque attributable to family bonus

- (a) to replace a lost or stolen cheque for which an amount was advanced under section 58 [*advance for lost or stolen family bonus cheque*] of this regulation, or
- (b) to replace a cheque for which no amount was advanced under section 58 [*advance for lost or stolen family bonus cheque*] of this regulation if the replacement is received in the calendar month following the calendar month for which the lost or stolen cheque was issued,

The appellant stated that he was confused regarding the different amounts of benefit he had received. He did not dispute that in November 2010 he received a sum of \$1,145.32 child tax benefit for July to October 2010. He requested that the ministry does not deduct the \$353.00 he owes in one transaction.

The ministry's position is that the retro-active family bonus is considered unearned income and must be deducted from the appellant's disability assistance. The ministry further stated that the amount owing will be deducted monthly based on \$20 a month.

In respect to the retro-active family bonus payment, the panel notes that pursuant to Section 10 of the Schedule B of the EAPWDR and Section 1 of the EAPWDR, backdated and retro-active family bonus are treated as unearned income. The appellant did not dispute that he received retro-active family bonus and

submitted a document confirming this. Furthermore, pursuant to Section 24 of the EAPWDR, family bonus payments are not exempted from the calculation of monthly income. Therefore, it was reasonable for the ministry to determine that the retro-active portion of the family bonus of \$353.00 that was paid to the appellant was considered an unearned income and is not exempted from the calculation of monthly income and as such must be deducted from the appellant's disability assistance.

The panel finds that the ministry's reconsideration decision is reasonably supported by the evidence and was a reasonable application of the legislation in the circumstances of the appellant and confirms the ministry's decision.