

PART C – Decision under Appeal

The decision under appeal is the Ministry's Reconsideration Decision dated January 9, 2012 which found that the retro-active portion of the Appellant's Family Bonus payment must be deducted from her December 2011 income assistance benefits pursuant to section 24 and Schedule B, section 10 of the Employment and Assistance for Persons with Disabilities Regulation ("EAPWDR").

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) section 24 and Schedule B sections 1, 6, 7 & 10

PART E – Summary of Facts

The evidence before the Ministry at the time of the Reconsideration Decision consisted of copies of the following:

1. The Appellant's Request for Reconsideration dated December 12, 2011;
2. A Consent for Release of Information dated December 20, 2011 and signed by the Appellant in favor of an advocacy group; and
3. A document entitled "FB/NCB Information (Query)" dated January 17, 2012 in reference to the Appellant's Family Bonus payment;

No new evidence was submitted by the Appellant or the Ministry. The Ministry relied on the Reconsideration Decision.

The Appellant has been designated as a Person With Disabilities and she has been in continuous receipt of income assistance as a single parent since October 2004.

For the benefit month of December 2011, the Appellant received a Family Bonus payment of \$706.00. Of that amount, \$176.50 represented her current payment and the balance of \$529.50 represented a retro-active payment on account of the Appellant filing her income taxes late. The retro-active portion of the Family Bonus payment was considered by the Ministry to be unearned income for the purposes of the EAPWDR and was deducted from the Appellant's December 2011 income assistance payment.

In the Request for Reconsideration, the Appellant states that she has no source of income and that she requires the additional funds to pay rent and bills. She asks that the decision be rescinded and that benefits be issued.

In the Appellant's Notice of Appeal, she states that she believes she is entitled to benefits.

PART F – Reasons for Panel Decision

The issue in this appeal is the reasonableness of the Ministry's Reconsideration Decision which found that the retro-active portion of the Appellant's Family Bonus payment must be deducted from her December 2011 income assistance benefits pursuant to section 24 and Schedule B, section 10 of the Employment and Assistance for Persons with Disabilities Regulation ("EAPWDR").

Section 24 of the EAPWDR provides as follows:

24. 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.

Schedule B, sections 1, 6, 7 and 10 of the EAPWDR provide as follows:

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.

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;

(e) the portion of Canada Pension Plan Benefits that is calculated by the formula $(A-B) \times C$, where

A = the gross monthly amount of Canada Pension Plan Benefits received by an applicant or recipient;

B = (i) in respect of a family unit comprised of a sole applicant or a sole recipient with no dependent children, 1/12 of the amount determined under section 118(1)(c) of the *Income Tax Act* (Canada) as adjusted under section 117.1 of that Act, or

= (ii) in respect of any other family unit, the amount under subparagraph (i), plus 1/12 of the amount resulting from the calculation under section 118(1)(a)(ii) of the *Income Tax Act* (Canada) as adjusted under section 117.1 of that Act;

C = the sum of the percentages of taxable amounts set out under section 117(2)(a) of the *Income Tax Act* (Canada) and section 4.1(1)(a) of the *Income Tax Act*.

10 (1) 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,

(c) Repealed. [B.C. Reg. 48/2010, Sch. 1, s. 2 (d).]

The Appellant argues that she is entitled to her disability assistance benefits as she has no source of income and requires the additional funds to pay rent and bills.

The Ministry's position is that the retro-active portion of the Appellant's Family Bonus payment is to be treated as unearned income and therefore it must be deducted from the Appellant's December 2011 income assistance payment pursuant to section 24 and Schedule B, section 10 of the Employment and Assistance for Persons with Disabilities Regulation ("EAPWDR").

Section 24 of the EAPWDR provides that income assistance may be provided to or for a family unit for a calendar month in an amount that is not more than the amount determined under Schedule A minus the family unit's net income determined under Schedule B.

Schedule B of the EAPWDR provides for the calculation of net income. Section 1 lists income that is exempt for the purpose of this calculation and similarly, section 7 lists unearned income that is also exempt. With respect to a Family Bonus payment, section 10 provides that if the portion of a child benefits cheque attributable to family bonus 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. Section 6 of the EAPWDR limits deductions from unearned income to income tax deducted at source from employment insurance benefits and essential operating costs of renting self-contained suites.

In the present case, the Appellant received a Family Bonus payment for the December 2011 benefit month in the amount of \$706.00. Of that amount, \$529.50 was paid to the Appellant as a retro-active Family Bonus because the Appellant had filed her income tax return late. The Panel finds that the Ministry reasonably determined that the \$529.50 portion of the Appellant's Family Bonus payment was retro-active in nature and that it was therefore to be treated as unearned income pursuant to Schedule B, section 10 of the EAPWDR and in the calculation of the Appellant's disability assistance as provided for by section 24 of the EAPWDR.

The Panel finds that the Ministry's determination that the retro-active portion of the Appellant's Family Bonus payment must be deducted from her December 2011 income assistance was a reasonable application of the applicable enactment in the circumstances of the Appellant and the Panel therefore confirms the Ministry's decision.