

PART C – Decision under Appeal

The decision being appealed is the Ministry's February 17, 2012 reconsideration decision which determined that in accordance with section 9(2) of the Employment and Assistance for Persons with Disabilities Regulation the Appellant, a Person With Disabilities (PWD), was not eligible for support and shelter allowances for the month of February 2012 because he had non-exempt income in January 2012 which exceeded the total monthly support and shelter allowances for his family unit under Schedule A of that regulation.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Section 9, and Schedule A and B.

PART E – Summary of Facts

For its reconsideration decision the Ministry had the following evidence:

1. Information from the Ministry's records as follows:

- Appellant receives disability assistance for a family unit of 4 (married with 2 children) consisting of \$794.56 support allowance and \$700 shelter allowance.
- Appellant receives Canada Pension Plan (CPP) disability benefits of \$1,049.47 a month.
- Appellant's January 2012 income included \$1,049.17 CPP disability benefits, \$254.54 January 2012 family bonus, \$1,176.42 retro-active family bonus, \$97.00 Child Tax Benefit and \$58.87 provincial Earned Income Benefit.
- In January 2012 the Appellant received a retroactive family bonus top-up supplement of \$1430.96. \$254.54 from that lump sum was applied to his January 2012 income as family bonus for January 2012. The retroactive family bonus payment was paid because of an error in the calculation of his child tax benefit.
- From the Appellant's February 2012 assistance eligibility amount, the Ministry deducted \$1176.42 (retro-active family bonus lump sum) and the monthly \$1,049.17 CPP disability benefit. Because these amounts exceeded the assistance the Appellant was eligible for, the Appellant received no disability assistance from the Ministry for February 2012.

2. Copies of the Ministry's payment records.

3. Appellant's request for reconsideration in which he wrote that the family bonus error was not caused by him. It was a government error that miscalculated his monthly exempt child tax benefits. He stated that his family has a right to those benefits and they count on every penny they receive to survive. The Appellant also wrote that he is severely disabled and cannot work. It was not his wish to have the miscalculated amount awarded to him in the form of a lump sum. He stated that they should not be penalized by this gross injustice and application of this seriously flawed act. It should not be applied to his circumstances or anyone else who falls prey to a governmental error. The Appellant indicated that they would have received the child tax benefits as a normal exemption from his monthly CPP disability benefits and the Ministry's top up assistance benefits. The method of repaying him his rightfully owed child tax benefit becomes and is adjudicated as a malicious act, and is theft of his children's money. The Appellant requested that this injustice and invasion of his human rights be corrected.

At the hearing the Appellant said he received no explanation for the lump sum family bonus payment. The stub he received only stated - child tax benefits retroactive. He also said a Ministry representative called him to explain that the lump sum payment meant he would not receive any disability benefits for February 2012. He understands that the Ministry has a mandate; however, he should not be penalized for something that was not his error. The Appellant said he does his taxes properly and this money should go to his children. He accounts for every penny because his mandate is to look after his children, to make sure they have a roof over their heads. The Appellant also said he has tremendous medical bills related to his disability and those bills are not covered. He stated that he would much rather be working than be on disability and have to deal with stressful situations like the financial problems caused by the lump sum payment and this appeal. He did not ask for a lump sum payment of retroactive child benefits. That amount should have been paid monthly for his children.

The Panel finds that the Appellant's testimony is related to information about the Appellant's income that the Ministry had when it made its reconsideration decision. Therefore the Panel admits that

testimony as being in support of the Ministry's reconsideration decision pursuant to section 22(4) of the Employment and Assistance Act.

At the hearing the Ministry reviewed the income the Appellant received in January 2012 as well as what the Ministry considers to be exempt income. The Ministry indicated that regular family bonus payments are considered to be exempt in the month they are received. That is why in the Appellant's case, \$254.54 of the \$1430.96 lump sum was considered an exempt amount for January 2012. The balance was considered as non-exempt unearned income. The Ministry reaffirmed its reconsideration decision.

The Panel makes the following findings of fact:

1. The Appellant is eligible for shelter and support benefits for a family unit of 4.
2. In January 2012 the Appellant received shelter and support benefits, CPP disability benefits and a lump sum child tax benefit of \$1,176.42.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the Ministry reasonably determined that in accordance with section 9(2) of the EAPWDR the Appellant was not eligible for support and shelter allowances for the month of February 2012 because he had non-exempt income in January 2012 which exceeded the total monthly support and shelter allowances for his family unit under Schedule A of that regulation.

The following sections of the EAPWDR apply to the Appellant's circumstances in this appeal: 9 (1) 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 dependent.

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

Schedule A

2 (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.

Column 1 Family Unit Composition	Column 2 Age or status of applicant or recipient	Column 3 Amount of support
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	\$700.56

4(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 Family Unit Size	Column 2 Maximum Monthly Shelter
4	4 persons	\$700

Schedule B

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

(a) the following are exempt from income ..(iv) a family bonus, except the portion treated as unearned income under section 10(l) of this Schedule; (v) the basic child tax benefit.

Backdated family bonus treated as unearned income

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 of 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 income (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 advance 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 stole cheque was issued.

The Ministry's position is that it reviewed all the information relevant to the Appellant's request for February 2012 assistance. The Ministry also reviewed the Appellant's January 2012 income and noted that Schedule B of the EAPWDR sets out the types of earned income which are exempt and which are not exempt. The Ministry noted that in January 2012 the Appellant's income included a \$1,049.47 CPP payment, \$254.54 in family bonus and a \$1,176.42 retro-active family bonus payment. The Ministry determined that the CPP payment and the retro-active family bonus are not exempt income. The Ministry also reviewed the allowances the Appellant is eligible for under Schedule A of the EAPWDR and determined that the Appellant's non-exempt income for January 2012 exceeded the total allowances he is eligible for under Schedule A. Therefore the Ministry decided that the Appellant was not eligible for February 2012 assistance.

The Appellant submitted that he was not responsible for whatever error resulted in him receiving a lump sum family benefit payment. He should not be penalized because of some government error especially when he is trying to look after his children. He also should not be penalized because the government decided to pay him in a lump sum instead of paying money that belongs to his children in a regular monthly sum. If the child benefits had been paid normally they would have been a normal exemption from his income. This January 2012 payment resulted in a gross injustice to his family.

The Panel notes that for some reason the EAPWDR does not treat regular family bonus payments in the same way as backdated family bonus payments. Under Schedule B section 1(a)(iv) family bonus payments, except for backdated family bonus payments, are exempt from income for the purposes of calculating assistance eligibility. However, under Schedule B section 10, backdated payments are not exempt and are treated as unearned income. In January 2012 the Appellant received a lump sum payment of \$1,176.42 as retro-active family bonus payments. The Ministry had to apply the applicable regulation and treat that amount as unearned income. When the Ministry added the \$1,176.42 to the Appellant's other non-exempt income in January 2012 it reasonably determined that the Appellant's January 2012 non-exempt income exceeded the total shelter and support allowances he was eligible for. Therefore under section 9(2) of the EAPWDR the Ministry reasonably determined that the Appellant was not eligible for February 2012 shelter and support allowances.

The Panel finds that the Ministry's reconsideration decision was reasonably supported by the evidence and was a reasonable application of the applicable enactments in the Appellant's circumstances. The Panel confirms that decision.