

PART C – Decision under Appeal

The decision under appeal is the Ministry's Reconsideration Decision dated March 22, 2012 in which the Ministry determined that \$400.00 of a \$500.00 training allowance received by the Appellant in January 2012 must be deducted from her March 2012 disability assistance. The Ministry determined that the Appellant received the training allowance in the course of a job-training program in January 2012 ("the Program") and that it constituted unearned income as defined by section 1 of the Employment and Assistance for Persons With Disabilities Regulation ("EAPWDR"). The Ministry further determined that as training allowances are not exempt from calculation of net income as provided by Schedule B of the EAPWDR, the amount of the training allowance, less a \$100.00 exemption pursuant to Ministry policy, must be deducted from the Appellant's March disability assistance payment.

PART D – Relevant Legislation

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

PART E – Summary of Facts

The evidence before the Ministry at the time of the Reconsideration Decision consisted of a copy of the Appellant's Request for Reconsideration dated March 7, 2012.

In the Appellant's Notice of Appeal, she states that she disagrees with the Ministry's decision because she feels strongly that the Program was a pre-employment program that was preparing her to return to the job market and not a training course.

At the hearing, the Appellant stated that when she was first accepted into the Program, she was told that it was employment. She had time sheets and if she didn't attend the Program she wouldn't be paid. She says she was told to treat the Program like a job and not training. She says that she was getting prepared to be employed and to be more employable. She said that she is a single mother and that she is trying not to be reliant on the system. She expected that anything over \$500.00 would be deducted but not all of it.

In response to a question, the Appellant stated that the training she received in the Program would allow her to obtain employment. She stated that she has a disability and that she didn't think she'd be able to handle the Program. She stated that since completing the Program she feels more employable, more confident and that she has more ambition and networking opportunities.

In response to a question, the Appellant stated that the Program was 6 weeks in class and 4 weeks of on the job experience. While working in the job experience portion she was paid. In the 6 week class portion of the Program the Appellant says she was paid \$250.00 per week and that she attended from 9:30am until 3:00pm Monday through Friday. The Appellant says during the 6 week class portion of the Program she undertook exercises such as aptitude testing, job readiness preparation, resume writing and speakers attended. The Appellant said that she signed in each day and attendance was required in order for her to receive her \$250.00 per week payment.

The Ministry stated that the Reconsideration Decision was based on the definition of unearned income. The Ministry stated further that the income earned by the Appellant in the Program was unearned income and therefore deductible from the Appellant's disability benefit payment. The Ministry stated that \$100.00 of the \$500.00 received by the Appellant in January 2012 was exempt from calculation of net income due to Ministry policy although a copy of the policy could not be provided to the Panel in the course of the hearing.

PART F – Reasons for Panel Decision

The issue in this appeal is the reasonableness of the Ministry's Reconsideration Decision in which the Ministry determined that \$400.00 of a \$500.00 training allowance received by the Appellant in January 2012 must be deducted from her March 2012 disability assistance. The Ministry determined that the Appellant received the training allowance in the course of a job-training program in January 2012 ("the Program") and that it constituted unearned income as defined by section 1 of the Employment and Assistance for Persons With Disabilities Regulation ("EAPWDR"). The Ministry further determined that as training allowances are not exempt from calculation of net income as provided by Schedule B of the EAPWDR, the amount of the training allowance, less a \$100.00 exemption pursuant to Ministry policy, must be deducted from the Appellant's March disability assistance payment.

Section 1 as it pertains to the definitions of "earned income" and "unearned income" and section 24 of the EAPWDR provide as follows:

"earned income" means:

- (a) any money or value received in exchange for work or the provision of a service,
- (b) tax refunds,
- (c) pension plan contributions that are refunded because of insufficient contributions to create a pension,
- (d) money or value received from providing room and board at a person's place of residence, or
- (e) money or value received from renting rooms that are common to and part of a person's place of residence;

"unearned income" means any income that is not earned income, and includes, without limitation, money or value received from any of the following:

- (a) 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)*.

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.

Sections 1, 6 and 7 of Schedule B 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.

Deductions from unearned income

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;

(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*.

The Ministry argues that the \$500.00 that the Appellant received in January 2012 from the Program was a training allowance and properly defined as unearned income pursuant to section 1 of the EAPWDR. The Ministry argues further that there is no provision in Schedule B of the EAPWDR to exempt the Appellant's training allowance from the calculation of her net income aside from \$100.00 due to Ministry policy which provides that \$100.00 can be exempted from federal government training allowances. The Ministry argues that the remaining \$400.00 of the training allowance is unearned income and deductible from the Appellant's disability assistance.

The Appellant argues that she assumed that since she has Persons with Disabilities designation the \$500.00 she received in January 2012 through the Program would be exempted in the calculation of her net income. She argues that the Program was employment and that the \$500.00 she received in January 2012 was earned income and not subject to deduction from her disability benefits.

Section 1 of the EAPWDR defines unearned income as any income that is not earned income and includes money received from, inter alia, education or training allowances, grants, loans, bursaries or scholarships. Earned income is defined in section 1 of the EAPWDR as meaning any money or value received in exchange for work or the provision of a service. In the present case, the Appellant attended the Program and over its first 6 weeks she engaged in classroom exercises that would prepare her to obtain employment. The exercises included resume writing, networking and aptitude testing. The Panel finds that over this period, the Program was consistent with a training program and that the \$500.00 the Appellant received was in the form of a training allowance and although the Appellant says she was told to treat the Program like a job, the \$500.00 she received in January 2012 was not in exchange for work or the provision of a service. The Panel therefore finds that the Ministry reasonably determined that the \$500.00 received by the Appellant in January 2012 in

the Program was unearned income as defined by section 1 of the EAPWDR.

Sections 1, 6 and 7 of Schedule B of the EAPWDR set out the different types of unearned income that will be exempt in the calculation of net income. As training allowances are not included in the exemptions, the Panel concludes that the Minister reasonably determined that \$400.00 of the \$500.00 received by the Appellant in January 2012 was not exempt in the calculation of the Appellant's net income pursuant to section 24(b) of the EAPWDR. While the Ministry was not able to provide the Panel with the specific policy that allowed for the \$100.00 exemption, no evidence was adduced to indicate that the policy had been improperly applied and as such the Panel concludes that the Ministry was reasonable in exempting \$100.00 from the \$500.00 received by the Appellant in January 2012 pursuant to its policy.

The Panel therefore finds that the Ministry decision to deduct \$400.00 from the Appellant's March 2012 disability assistance was a reasonable application of the applicable enactment in the circumstances of the Appellant and confirms the Ministry decision.