

PART C – Decision under Appeal

The decision under appeal is the Ministry's Reconsideration Decision dated March 5, 2012 in which the Ministry determined:

1. That the Appellant was ineligible for disability assistance for the month of March 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 the EAPWDR and because he had non-exempt assets, the value of which exceeded the maximum amount allowable under section 10(2) of the EAPWDR.
2. That the Appellant was ineligible for disability assistance for the month of April 2012 because he had non-exempt income in February 2012 which exceeded the total monthly support and shelter allowances for his family unit under Schedule A of the EAPWDR

The Ministry found that in January 2012, the Appellant had received mortgage insurance proceeds in the amount of \$8,093.32 which were applied against his mortgage obligation to his financial institution and that he owned a second vehicle valued at \$950.00. The Ministry found further that in February 2012, the Appellant had received mortgage insurance proceeds in the amount of \$963.49 which were applied against his mortgage obligation to his financial institution and that he continued to own the second vehicle valued at \$950.00.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) sections 1, 9, 10, 24 and Schedule A sections 1, 2 and 4 and Schedule B, sections 7 and 9

PART E – Summary of Facts

Prior to the hearing commencing, the Ministry requested that one of its representatives be allowed to sit in on the hearing as an observer for training purposes. The Appellant consented to this request and the Panel allowed it and the hearing proceeded.

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 February 23, 2012;
2. A Promise to Repay signed by the Appellant and dated February 24, 2012;
3. An Application for Income Assistance signed by the Appellant and dated April 6, 2011;
4. A letter from the Ministry to the Appellant dated February 10, 2012 requesting information from the Appellant regarding income assistance eligibility;
5. A letter from the Ministry to the Appellant dated February 23, 2012 advising the Appellant that he is no longer eligible for income assistance;
6. A fax from the Appellant's financial institution addressed to the Ministry dated February 23, 2012 regarding insurance payments to the Appellant;
7. ICBC vehicle ownership status document dated February 10, 2012 for vehicle #1;
8. ICBC vehicle ownership status document dated February 10, 2012 for vehicle #2;
9. Carfax valuation for vehicle #1 dated March 5, 2012;
10. BC Assessment Roll Report dated February 23, 2012 for residential property jointly owned by Appellant; and
11. Title search dated February 23, 2012 for residential property jointly owned by Appellant.

In the Appellant's Notice of Appeal, he states that he does not receive any funds and has nothing. He goes on to say that all lending institutions demand insurance to protect them and that they receive the funds and not him. He says that to say no to him is to say no to homeowners in British Columbia. The Appellant maintains that a mistake must have been made as he has and received no income.

At the hearing, the Appellant stated all lending institutions insist on insurance, it's a mandatory requirement and that it is not reasonable to determine that he is ineligible for disability assistance. He stated that the insurance company paid the debt on his mortgage and that he was not able to take the insurance payments and use them to pay for his living expenses. The Appellant stated that he wanted to leave his home as soon as possible as the cost of living there is too high but he said that he was obliged to stay there until the foreclosure proceedings were complete. He says that when the house is sold, he will receive none of the sale proceeds as those will go to his bank as he owes more than his house is worth and that therefore, the house is not an asset but a debt. The Appellant said that he co-owns his house with his wife and that they are currently separated. The Appellant said that he can't tell the insurance company to stop paying as the bank is entitled to receive the payments. The Appellant said that he likely has about 3 more months until he is able to move out of the house at which time he will move to somewhere that is more appropriate for his income.

With respect to his vehicles, the Appellant said at the hearing that in October 2011, vehicle #2 was parked in the woods near his house and was not operational. He said he was going to junk it due to an array of mechanical problems until he was offered \$300.00 for it by a friend. His friend was not able to insure it so despite having sold vehicle #2 to him, the Appellant left the registration and insurance in his own name although his friend actually paid the insurance. The Appellant said that given its exterior, interior and mechanical condition, vehicle #2 had no value. The Appellant said that when he reported his assets, he only disclosed his ownership of vehicle #1 because he didn't consider vehicle #2 to be an asset given its condition and given that it had sat unused for 5 years. The Appellant said at the hearing he also owns a motorcycle which is not insured and not running.

In response to a question, the Appellant stated that he no longer lives in his house but rather in a shack on the same property given the high cost of living in the house. He stated further that he has another 3 months until he moves out of the house. In response to a question regarding the two vehicles, the Appellant stated that vehicle #1 broke down in January 2012 and is currently not running and not insured. The Appellant further confirmed that vehicle #2 is currently registered and insured in his name although the purchaser is paying the insurance while attempting to repair it.

The Ministry stated that in the present case, a person who is designated as a Person With Disabilities can own a home as long as that person reports changes to their income and assets. The Ministry stated that the Appellant's bank received the insurance proceeds on the Appellant's behalf and applied them against the mortgage. The Ministry stated that the insurance proceeds were properly defined as unearned income for the purposes of the EAPWDR. Once the Appellant's house is foreclosed upon and sold, the Ministry commented that if the Appellant demonstrates that the sale proceeds go to the bank and not him, he will still be eligible for disability benefits although he still has to continue reporting his income and assets as required by the legislation. The Ministry stated that on January 3, 2012, the Appellant received insurance payments totaling \$8,093.32 which were applied by his bank against his mortgage and line of credit and as he did not declare that as he was required to he was determined to be ineligible for disability benefits in March 2012.

With respect to the two vehicles, the Ministry stated that they are technically both owned and insured by the Appellant. The Ministry stated that it had asked the Appellant to provide proof of the condition of the vehicles and proof of the sale of vehicle #2 but he failed to do so and as such it had to proceed on the information that it had access to such as the ICBC records. The Ministry advised that in determining the value of vehicle #2, as it did not have any information as to its actual condition, it applied that which fell in the middle ground.

In response to a question, the Ministry said that the Appellant was not eligible for disability assistance in March 2012 due to his unearned income being in excess of his monthly disability assistance amount. In response to another question, the Ministry said that the Appellant received further mortgage insurance proceeds that were paid to his bank in February 2012 totaling \$963.49 and that this was also unearned income as it was applied against the Appellant's mortgage. The Ministry stated that this amount of unearned income received in February 2012 resulted in the Appellant being ineligible for disability assistance in April 2012.

In response to a further question, the Ministry said that because the Appellant owned vehicle #2, it was a non-exempt asset and that even if the Appellant had not received the mortgage insurance proceeds in February 2012, he would still have been ineligible on the basis of having assets with a total value in excess of more than \$3000.00.

PART F – Reasons for Panel Decision

The issue in this appeal is the reasonableness of the Ministry's Reconsideration Decision 2012 in which the Ministry determined:

1. That the Appellant was ineligible for disability assistance for the month of March 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 the EAPWDR and because he had non-exempt assets, the value of which exceeded the maximum amount allowable under section 10(2) of the EAPWDR.
2. That the Appellant was ineligible for disability assistance for the month of April 2012 because he had non-exempt income in February 2012 which exceeded the total monthly support and shelter allowances for his family unit under Schedule A of the EAPWDR

The Ministry found that in January 2012, the Appellant had received mortgage insurance payments in the amount of \$8,092.32 which were applied against his mortgage obligation to his financial institution and that he owned a second vehicle valued at \$950.00. The Ministry found further that in February 2012, the Appellant had received mortgage insurance payments in the amount of \$963.49 which were applied against his mortgage obligation to his financial institution and that he continued to own a second vehicle valued at \$950.00.

Section 1 as it pertains to the definition of "unearned income", section 9, section 10 and section 24 of the EAPWDR provide as follows:

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

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

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 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.

10 (1) The following assets are exempt for the purposes of subsection (2):

- (a) clothing and necessary household equipment;
- (b) one motor vehicle generally used for day to day transportation needs;
- (c) a family unit's place of residence;

(2) A family unit is not eligible for disability assistance if any of the following apply:

- (a) a sole applicant or recipient has no dependent children and has assets with a total value of more than \$3 000;
- (b) an applicant or recipient has one or more dependents and the family unit has assets with a total value of more than \$5 000.

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, 2 and 4 of Schedule A of the EAPWDR provide as follow:

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

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 Family Unit Size	Column 2 Maximum Monthly Shelter
1	1 person	\$375

Sections 7 and 9 of Schedule B of the EAPWDR provide as follows:

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*.

9 (1) The deductions and exemptions in this Schedule apply only in the calendar month in which the income is actually received, despite any of the following:

(a) the date the income is payable;

(b) the period for which the income is payable;

(c) the date the income is reported to the minister;

(d) the date the minister receives notice of the income.

(2) Despite subsection (1), income that is received before the date that subsection (1) comes into force is subject to the application of section 9 of this regulation as it read immediately before subsection (1) came into force.

The Ministry's position is that the Appellant was in receipt of mortgage insurance proceeds in the amount of \$8,093.32 on January 3, 2012 and \$963.49 on February 10, 2012 and that these insurance proceeds constitute unearned income pursuant to section 1 of the EAPWDR and that further, this unearned income is not exempt from the calculation of the Appellant's net income. Further, the Ministry argues that in January 2012 and February 2012, the Appellant was the registered owner of a second motor vehicle with an estimated value of \$950.00. The Ministry submits that the Appellant is ineligible for disability benefits in March 2012 because his non-exempt income in January 2012 exceeded the total monthly support and shelter allowances for his family unit under Schedule A of the EAPWDR and because he had non-exempt assets, the value of which exceeded the maximum amount allowable under section 10(2) of the EAPWDR. Further, the Ministry

submits that the Appellant is ineligible for disability benefits in April 2012 because his non-exempt income in February 2012 exceeded the total monthly support and shelter allowances for his family unit under Schedule A of the EAPWDR.

The Appellant argues that he did not personally receive the mortgage insurance proceeds in January and February 2012 but rather, they were paid directly to his bank. He argues that his home has no value given that the amount owed to the bank exceeds the value of the home and as such, it is not an asset. The Appellant argues further that he does not own a second vehicle because he sold it to a friend. He says that his name is listed as its registered owner because the friend he sold it to wasn't able to register it or insure it in his own name.

Section 1 of the EAPWDR defines unearned income as including any income that is not earned income, and includes, without limitation, money or value received from, inter alia, insurance benefits, except insurance paid as compensation for a destroyed asset. In the present case, the Appellant received mortgage insurance proceeds which were applied directly against his obligation to his financial institution. Despite the fact that the Appellant did not personally have access to the mortgage insurance payments, they represent a value received and as such, the Panel finds that the Ministry reasonably determined that the January 2012 and February 2012 mortgage insurance proceeds satisfied the definition of unearned income.

Section 7 of Schedule B of the EAPWDR lists unearned income that is exempt from the calculation of a family unit's net income. As insurance proceeds are not included in section 7, the Panel finds that the Ministry's determination that the unearned income received by the Appellant in the form of mortgage insurance proceeds in January 2012 and February 2012 is not exempt from the calculation of his net income was reasonable.

Section 24 of the EAPWDR provides that disability assistance may be provided to 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. In the present case, as a sole applicant/recipient with no dependent children and as a person with disabilities, the Panel finds that the Appellant is entitled to support in the amount of \$531.42 and shelter in the amount of \$375.00 for a total monthly disability benefit of \$906.42. As the Appellant received unearned income in January 2012 and February 2012 that exceeded his monthly disability benefit, the Panel finds that the Ministry reasonably determined that the Appellant was not eligible for disability assistance in March 2012 and April 2012 pursuant to section 24 of the EAPWDR.

Section 10(1) of the EAPWDR provides that one motor vehicle generally used for day to day transportation needs is an exempt asset for the purposes of subsection 2. Under section 10(2) of the EAPWDR, a family unit is not eligible for disability assistance if a sole applicant or recipient has no dependent children and has assets with a total value of more than \$3,000.00. Given the receipt of mortgage insurance proceeds in January 2012 totaling \$8,093.32, the Panel finds the Ministry's determination that the Appellant was not eligible for disability assistance in March 2012 due to having assets with a total value more than \$3,000.00 pursuant to section 10(2)(a) of the EAPWDR to be reasonable.

The Panel therefore finds that the Ministry decision that the Appellant was not eligible for disability assistance in March 2012 and April 2012 was a reasonable application of the evidence and the Panel confirms the Ministry decision.