

PART C – Decision under Appeal

The decision under the appeal is the ministry's reconsideration decision dated March 21, 2012 which denied the appellant's request to not have the appellant's full amount of \$725 family maintenance deducted from the her disability assistance pursuant to Section 1, 24 and 29 (1) of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), Sections 1, 2, 3, and 4 of Schedule A of the EAPWDR, and Sections 1, 6, and 7 of Schedule B of the EAPWDR. The ministry concluded that the appellant's full amount of the family maintenance income 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 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, and 4
Employment and Assistance for Persons with Disabilities Regulation – EAPWDR – Schedule B, Sections 1, 6, and 7

PART E – Summary of Facts

The evidence before the ministry at the reconsideration decision included:

- A copy of a financial payments and estimate for the appellant's son from an orthodontic centre dated January 14, 2009;
- An invoice for a pair of prescription glasses dated November 10, 2009;
- A copy of the Claimant's Explanation of Benefits from an insurance company dated July 14, 2010;
- Supreme Court Order dated January 31, 2011;
- A statement of payment from B.C. Family Maintenance Enforcement Program for the period of January 2011 – February 2012;
- Request for reconsideration dated March 3, 2012.

The appellant in the request for reconsideration stated that the ministry erred when it deducted an additional \$150 a month from her disability payment. The appellant submitted that the \$150 a month is specifically allocated for special child medical expenses. The appellant stated that she paid \$3,950 to the orthodontist from January 1, 2009 to February 24, 2010 for her son's treatment and \$230 towards the child's eyeglasses. The appellant stated that she received \$1,870 on January 31, 2011 towards the amount she paid for her son's treatment and she has been receiving \$150 per month towards the remainder of the expenses that she has already paid.

The appellant in a written submission dated April 18, 2012 stated that the \$150 payment represents reimbursement to her for the money that she has already spent on extraordinary expenses for her child's orthodontics and eye glasses. The appellant further submitted that the order of the Supreme Court clearly stated that the child support is \$575 per month.

At the hearing the appellant's advocate submitted a copy of the Tribunal decision stating that the tribunal in its decision found that the payments received for a kilometer driven during the course of employment was not considered earned income. The panel reviewed and analyzed the tribunal's previous decision and took note of the previous panel's reasoning with respect to the issues of the "definition of income" and the "reimbursement of expenses". The panel informed the parties that it is not bound by the previous decision of the tribunal and will make its decision based on the legislation and evidence before the panel.

The appellant stated that pursuant to paragraph 6 of the Supreme Court Order, she received \$1,870 reimbursement for the first phase of her son's orthodontic expenses. The appellant said that the ministry did not deduct this amount from her disability assistance. The appellant submitted that the \$150 monthly that she is currently receiving is no different than the \$1,870 reimbursement which was not deducted by the ministry and was not considered an unearned income.

The ministry stated that the family maintenance income is considered an unearned income and therefore must be deducted from the appellant's disability assistance. The ministry further stated that although she did not have access to the file to confirm that the \$1,870 was not deducted from the appellant's assistance, the ministry accepted the appellant's and her advocate's statements, stating that if this amount would have been deducted from the appellant's disability assistance, the appellant would have not had received any assistance for that month. The ministry further stated that she could not say how the ministry interpreted the Supreme Court Order and the fact that in the Order, the amount of family allowance is \$575 and not \$725.

The panel finds that:

- The appellant's child support payment was increased to \$575 per month retroactive to December 1, 2010 pursuant to the Supreme Court Order dated January 31, 2011;
- The father of the child is responsible to pay 100% of extraordinary expenses being the orthodontic treatment and eyeglasses for the appellant's child;
- The appellant paid \$230 for her child's eyeglasses;

- The appellant paid \$3,950 for her child's orthodontic treatment;
- The appellant received \$1,870 as additional Court Ordered Expenses on January 31, 2011;
- The BC Family Maintenance Enforcement Program FMEP's statement indicates the appellant has been receiving \$725 maintenance as of August 25, 2011;
- The FMEP's statement indicates \$2,310 as additional Court Ordered Expenses on September 7, 2011;
- The appellant's total expenses for her child's eyeglasses and orthodontic treatment is \$4,180;
- The appellant received \$1,870 towards the orthodontic treatment;
- Pursuant to the Supreme Court Order, the child's father must pay 100% of the child's expenses that is the difference between what the appellant has expended and the amount of \$1,870 that she received in January 2011 which is \$2,310;
- There is no evidence before the panel indicating that the ministry deducted any of the \$1870 additional Court Ordered expenses from the appellant's monthly disability assistance.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry reasonably denied the appellant's request to not have the appellant's full amount of family maintenance deducted from the her disability assistance pursuant to Section 1, 24 and 29 (1) of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), Sections 1, 2, 3, and 4 of Schedule A of the EAPWDR, and Sections 1, 6, and 7 of Schedule B of the EAPWDR.

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 license under the *Community Care and Assisted Living Act* is not required.

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 or more years of age	\$949.06
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	Both applicants/recipients are persons	\$1 043.06

	one or more dependent children	with disabilities	
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 has been issued for that applicant/recipient, and the other is under 65 years of age	\$694.56
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	\$644.56

		has been issued for both	
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	Column 2
	Family Unit Composition Size	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

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.

The appellant argued that prior to the order of the Supreme Court, she spent significant amounts on orthodontic treatment for her child. The Court ordered that the appellant's ex-husband is responsible for 100% of extraordinary expenses and as such, the appellant is receiving \$150 monthly for the money that she has already paid in addition to \$1,870 that the appellant received in January 2011. The appellant argued that reimbursement for out of pocket expenses that are someone else's legal responsibility are not considered income according to the legislation.

The ministry's position is that the total monthly payment is considered unearned income and must be included in the calculation of the appellant's net income. The ministry further submitted that the family maintenance intended to cover exceptional orthodontic or medical cost and this is not included in the exemptions of the legislation.

In respect to the family maintenance, the panel notes that pursuant to Section 1 (p) of the EAPWDR maintenance under a court order, a separation agreement or other agreement is considered unearned income. However, the panel notes that the appellant's family maintenance pursuant to the Supreme Court Order is \$575 and not \$725 per month. The panel also notes that pursuant to the Supreme Court Order the father of the appellant's child is 100% responsible for extraordinary expenses and the Court specified them as the orthodontic treatment and eyeglasses for the appellant's child. The panel notes that the appellant has already paid these expenses that the child's father is responsible for and as such, pursuant to the Court Order the child's father must pay the amount to the appellant.

The panel considered the issue of whether the \$150 per month received by the appellant is reimbursement for the expenses she has already paid. When considering the ministry's reconsideration decision that the \$150 is

part of the family maintenance and as such must be deducted from the appellant's disability assistance, the panel considered the Supreme Court Order and the legislation of unearned income. The Supreme Court Order stated that the child support payment was increased to \$575 per month and found that the father of the child pay 100% of the orthodontic treatment and eyeglasses expenses to the appellant. The Court further ordered that the father of the child forthwith pay to the appellant the insurance reimbursement money of \$1,870 received for the first phase of the orthodontic expense of the child.

The panel finds that the Court accepted that the appellant paid for the first phase of the orthodontic treatment and further ordered the father of the child to pay the remainder of the expenses for the orthodontic treatment and eyeglasses. The panel finds that receipt of reimbursement for the orthodontic treatment and eyeglasses are not considered income and or unearned income. Therefore, the panel finds that the ministry unreasonably determined that the payments received for additional Court Order expenses are unearned income as defined in Section 1 of the EAPWDR.

The panel finds that the ministry's reconsideration decision was not reasonably supported by the evidence and was not a reasonable application of the legislation in the circumstances of the appellant and rescinds the ministry's decision in favour of the appellant.