



### PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (ministry) reconsideration decision dated May 1, 2012, which held that:

- the appellant was not entitled to medical services only (MSO) in June 2006 on the grounds that her ineligibility for disability income was due to excess income from a private insurance company and not from any of the sources specifically described under Section 61.1 of the Employment Assistance for Persons with Disability Regulations (EAPWDR);
- the appellant is currently not eligible for disability assistance under Section 24 of the EAPWDR on the grounds that her monthly combined long term disability (LTD) benefits from the Private Insurer and the Canada Pension Plan Disability Benefits (CPPD) amounting to \$1892.00 exceed the maximum aggregate monthly disability rate of \$906.42 permitted under Schedules A and B and Section 9(2) of EAPWDR; and
- The appellant is currently not eligible for hardship assistance, on the grounds that she has no dependants and therefore the appellant does not meet the eligibility criteria prescribed for hardship assistance under Section 39 (c) of EAPWDR.

### PART D – Relevant Legislation

**EAPWDR - Employment and Assistance for Persons with Disability Regulation**–Section 1, 9; 24; 35-42.1; 62;  
-Employment and Assistance for Persons with Disability Regulation -Schedule A and Schedule B.

## PART E – Summary of Facts

The evidence before the ministry at the reconsideration hearing included the following:

- a letter dated March 7, 2012 from Service Canada to the appellant, which confirms that the appellant is eligible for Canada Pension Plan (CPP) Disability benefit;
- a letter dated March 13, 2012 from Service Canada to the appellant, which confirm that CPP has paid \$15,337.54 directly to appellant's private insurance company for the period September 2010 to February 2012;
- *Payment Explanation Statement* that indicates that the CPP Disability payments made for the years 2010, 2011 and 2012 amounted to \$16,214.01 against which a sum of \$15,337.54 was withheld for the payments made by the Private Insurer. The Form also indicates that the appellant is eligible to a CPP payment of \$876.47 per month from March 2012;
- a Canada Revenue Agency Tax Assessment in the name of the appellant for the Year 2010, which assessed taxable income of \$27,271.00 for the Year 2010;
- a Canada Revenue Agency Tax Assessment in the name of the appellant for the Year 2011, which assessed taxable income of \$28,436.00 for the Year 2011; and
- Request for reconsideration dated April 25, 2012.

The appellant in her request for reconsideration submitted that the ministry had made an error in 2006 and in particular, the submitted that:

- when her disability assistance file was closed in June 2006, the appellant should have received at least one year of MSO after she ceased to be eligible to receive disability benefits as provided under BC Regulations 114/2010 (i.e. Section 62 (1) (b) of EAPWDR), since she had previously been receiving premium assistance under the Medicare Protection Act;
- she has had to borrow money from her friends to get the required dental treatment, which has caused her to suffer greatly with infections and pain;
- she feels that the Government should be more empathetic to her as she has lived in BC all her life and contributed through all years of her working life;
- she submitted that, according to her advocate, once she had obtained person with disability designation, she should be eligible for the medical support;
- she had applied at least six times since 2002 before she was finally granted the person with disability status in 2006;
- the appellant requested that her file should be re-opened and she should be provided one year of MSO.

The appellant in the Notice of appeal dated May 11, 2012 stated that:

- the one-year of MSO that she should have received in June 2006, should be provided now to enable her to deal with her current dental issues. She would like this "courtesy" extended at this point in time as it would be extremely helpful towards the cost of her dental work; and



At the hearing, the appellant stated the following:

- that in June 2006, she was receiving long-term disability benefits from a Private Insurer in the amount of \$1892.00 per month. She also acknowledged that she was not eligible for disability benefits in June 2006 as the amount of her long term benefits were higher than the applicable disability rate at that time;
- that her current combined amount of such long-term benefits from the Private Insurer and the CPPD benefits, which she started receiving from March 2012, is \$2000.00 per month. The CPPD benefits that she now receives were backdated by one year to 2010;
- that she is under the age of 65 years and has no dependants;
- that she should have received MSO for one year after her file was closed in June 2006 as prescribed under BC Regulations 114/2010 [i.e. Section 62 of EAPWDR]. She further contended that such one year of MSO should be made available now, which would greatly assist her with her current dental treatment;
- that it is unfair for a person who returns to work to receive such benefits while a person, like herself, with a PWD designation is not granted such benefits; and
- She should now receive MSO benefits as hardship assistance, as per her March 20<sup>th</sup>, 2012 application.

The ministry submitted that:

- the law and the eligibility criteria that were applicable to the appellant's situation in June 2006, as a person with disability status, are the same as those that apply currently;
- the appellant's long-term disability benefits from a Private Insurer in June 2006 amounting to \$1892 exceeded the appellant's disability of \$902.42. Therefore, her file was closed in June 2006. With the closure of her file, her MSO also came to an end automatically at that time;
- in June 2006, the minister had a discretion, under one of the exceptions prescribed under Section 61.1 of EAPWD, to "re-categorize" and "recode" the appellant's file as a MSO file provided that she had ceased to be eligible for disability assistance due to her excess income from employment income, a pension or other payments under the Canada Pension Plan or a settlement agreement described in Section 62 (1) (b). However, since her excess income in June 2006 was from a Private Insurer, the ministry had no discretion under the law to provide the appellant with such MSO;
- the appellant's current combined disability benefits from the Private Insurer and CPPD are in excess of the eligible amount of disability rate of \$906.42 per month. Therefore, under the income and asset tested program of the applicable law, the appellant is not eligible for disability benefits (including related medical services benefits); and
- the appellant has not met all the criteria for hardship assistance prescribed under Section 39 (c) of the EAPWD (i.e. the appellant has no dependent children)

Based on the foregoing, the Panel makes the following findings of facts, which are not disputed by either the appellant or the ministry:

- The appellant was designated, and continues to be recognized, as a person with disability since June 23, 2006;

- The appellant is below the age of 65 years having been born in 1955 and that she has no dependant children;
- The eligible disability benefits (support and shelter) for the appellant in June 2006 amounted to \$906.42 per month;
- At the same time (in June 2006), the appellant was receiving long term disability benefits from a Private Insurer in the amount of \$1892.00 per month;
- the appellant has been approved for Canada Pension Plan Disability benefits retroactive to 2010, which reduce her long-term disability benefits from the Private Insurer. However, the aggregate amount of the benefits for the appellant from the Private Insurer and the CPPD remain at the level of \$1892.00 per month. The appellant confirmed at the hearing that this combined monthly amount is now \$2000.00;

## PART F – Reasons for Panel Decision

### Issue No One:

The issue on appeal is whether the following three determinations of the ministry are reasonably supported by the evidence or a reasonable application of the applicable legislation in the circumstances of the appellant:

1. the appellant was not entitled to MSO in June 2006 on the grounds that her ineligibility for disability income was due to excess income from a private insurance company and not from any of the sources specifically described under Section 61.1 of the Employment Assistance for Persons with Disability Regulations (EAPWDR) (First Issue);
2. the appellant is currently not eligible for disability assistance under Section 24 of the EAPWDR on the grounds that her monthly combined long term disability (LTD) benefits from the Private Insurer and the Canada Pension Plan Disability Benefits (CPPD) amounting to \$1892.00 exceed the maximum aggregate monthly disability rate of \$906.42 permitted under Schedules A and B and Section 9(2) of EAPWDR (Second Issue); and
3. The appellant is currently not eligible for MSO, as a part of hardship assistance, on the grounds that she has no dependants and therefore does not meet the eligibility criteria prescribed for hardship assistance under Section 39 (c) of EAPWDR (Third Issue).

In the context of the First Issue, the relevant applicable law is set out in Section 1 (Definition of “Unearned income”), Section 9 (“Limits of Income”); Section 24 (“Amount of Disability Assistance”) and Schedule A and Schedule B of EAPWDR, and Section 61.1 (General Health Benefits) of EAPWDR [and in particular Section 39 (c)], which read as follows:

### *Definitions*

1 (1) *In this regulation:*

*“Act” means the Employment and Assistance for Persons with Disabilities Act*

...

*“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; (B.C. Reg. 518/2004)*
- (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;*

### *Limits on income*

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.*



*Amount of disability assistance*

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 A**  
**DISABILITY ASSISTANCE RATES**

*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. (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.

**TABLE**

<b>Item No</b>	<b>Column 1 Family Unit Composition</b>	<b>Column 2 Age or status of applicant or recipient</b>	<b>Column 3 Amount of support</b>
1	Sole applicant/recipient and no dependant children	Applicant/recipient is a person with disabilities	\$531.42

**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. (B.C. Reg. 306/2005)

**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.
- (2) The monthly shelter allowance for a family unit 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:

**Table**

<b>Item</b>	<b>Column 1 Family Unit Size</b>	<b>Column 2 Maximum Monthly Shelter</b>
1	1 person	\$375

**SCHEDULE B**  
**NET INCOME CALCULATION**

**Deduction and exemption rules**

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)
  - (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 sales tax credit under 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;...
- (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

(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 the 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. (B.C. Reg. 58/2003)

### **Application of deductions and exemptions**

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. (B.C. Reg. 430/2004)

### **Eligibility for medical services only**

61.1 For the purposes of this Division, a person may be eligible for medical services only if

(a) the person is a person with disabilities who is under age 65 and the person's family unit ceased to be eligible for disability assistance as a result of

(i) employment income earned by the person or the person's spouse,

(ii) money received by the person or another member of the person's family unit under the settlement agreement approved by the Supreme Court in Action No. S50808, Kelowna Registry, or

(iii) any person in the family unit receiving a pension or other payment under the Canada Pension Plan

It was acknowledged by both the appellant and the ministry at the hearing that in June 2006 the appellant was receiving \$1892.00 per month as long term disability benefits from a Private Insurer, which was in excess of the maximum disability benefit of \$906.42. In view of such excess income, the panel finds that the ministry reasonably determined that the appellant was not eligible for disability benefits and the MSO covered under such disability benefits.



It was also acknowledged by both the parties that that the appellant's excess income was from a Private Insurer and not from any of the sources specifically prescribed under Section 61.1(a). In the circumstances, the panel finds that the ministry reasonably concluded that it had no other legal discretion to MSO to the appellant by way of a re-designation or recoding of her file. In the circumstances, the panel finds that the minister's determination to deny disability assistance and MSO to the appellant in June 2006 was a reasonable application of the applicable enactment in the circumstances of the appellant.

#### Issue No Two

The Second Issues before the Panel is whether the ministry's decisions to deny the appellant's requests of March 20, 2012 to provide disability assistance is reasonably supported by evidence or a reasonable application of the applicable legislation in the circumstances of the appellant. In this context, the relevant applicable law is set out in the Section 1 (Definition of "Unearned income"), Section 9 ("Limits of Income"); Section 24 ("Amount of Disability Assistance") and Schedule A and Schedule B of EAPWDR, which are set out under Issue No 1 above.

It was acknowledged by the appellant at the hearing that her current combined long-term disability benefits from the Private Insurer and CPPD amount to \$2000.00 per month, which is in excess of the maximum disability rate of \$906.42 for the appellant as determined under Section 24 of EAPWDR. In view of such excess income, the panel finds that the ministry reasonably determined that the appellant was not eligible for disability benefits and MSO pursuant to the provisions of Section 9(2) of EAPWDR.

#### Issue No Three

The Third Issues before the Panel is whether the ministry's decisions to deny the appellant's requests of March 20, 2012 to provide hardship assistance, is reasonably supported by evidence or a reasonable application of the applicable legislation in the circumstances of the appellant.

In this context, the relevant applicable law is set out in Sections 35 to 39 of EAPWDR, which read as follows:

#### *PART 4 – HARDSHIP ASSISTANCE*

##### *Eligibility and limitations*

- 35. (1) For a family unit to be eligible for hardship assistance, the family unit*
- (a) must be ineligible for disability assistance for one or more reasons set out in sections 37 to 42.1, and (B.C. Reg. 102/2008)*
  - (b) must not be ineligible for disability assistance for any other reason. (B.C. Reg. 161/2004)*
- (2) A family unit that is eligible for hardship assistance must be provided with hardship assistance*
- (a) in accordance with Schedule D,*
  - (b) only for the calendar month that contains the date of the applicant's submission of the application for disability assistance (part 2) form, and (B.C. Reg. 306/2005)*
  - (c) subject to section 4 (2) of Schedule D, only from the date in that calendar month on which the minister determines that the family unit is eligible for hardship assistance. (B.C. Reg. 161/2004)*

(3) A family unit to which hardship assistance has been provided for 3 consecutive calendar months because of the circumstances described in section 37, 39, or 41 is not eligible for hardship assistance under any of those sections for the 3 consecutive calendar months immediately following those 3 calendar months of receipt. (B.C. Reg. 161/2004)

Rules about applications, payments, etc.

36. Subject to this Part, the following sections apply in respect of hardship assistance:

(a) section 4 [application and applicant orientation requirements];

(a.1) section 4.1 [application for disability assistance – stage 1];

(a.2) section 4.2 [application for disability assistance – stage 2]; (B.C. Reg. 313/2007)

(b) section 5 [applicant requirements]; (c) section 6 [citizenship requirements]; (d) section 7 [effect of applying for other sources of income]; (e) section 8 [requirement to apply for CPP benefits];

(f) section 9 [limits on income]; (g) section 10 [asset limits].

Applicants who do not meet requirement for social insurance number or proof of identity

37. The minister may provide hardship assistance to a family unit that is not eligible for disability assistance because of the failure to provide a social insurance number or proof of identity required under section 4.1 (2) (a) (i) or 4.2 (3) (a) [application and applicant orientation requirements] if (B.C. Reg. 313/2007)

(a) the minister considers that undue hardship will otherwise occur, and

(b) the minister is satisfied that the applicant is making every effort to supply the social insurance number or proof of identity.

38. Repealed (B.C. Reg. 69/2008)

Applicants who fail to provide sponsorship information

38.1. The minister may provide hardship assistance to the family unit of an applicant described in section 6 (1) (a) or (b) [citizenship requirements] that is not eligible for disability assistance because of the failure to provide the information and verifications required under section 4.2 (3) (c) [application requirements] for the minister to determine whether unearned income described in paragraph (v) of the definition in section 1 (1) of “unearned income” is available to the family unit, if (B.C. Reg. 313/2007)

(a) the minister considers that undue hardship will otherwise occur, and

(b) the minister is satisfied that the applicant is making every effort to supply the information and verifications. (B.C. Reg. 161/2004)

Family units that have excess income

39. The minister may provide hardship assistance to a family unit that is not eligible for disability assistance because the income of the family unit exceeds the limit under section 9 [limits on income] if

(a) the minister considers that undue hardship will otherwise occur,

(b) the applicant provides the type of security specified by the minister for the repayment of the hardship assistance,

- (c) the family unit includes one or more dependent children, and  
(d) the income that causes the family unit to be ineligible for disability assistance could not, in the minister's opinion, reasonably be expected to be used to meet the family unit's basic needs.

*Applicant on strike or locked out*

40. The minister may provide hardship assistance to a family unit that is not eligible for disability assistance because an applicant is on strike or locked out if
- (a) the minister considers that undue hardship will otherwise occur,
  - (b) the applicant provides the type of security specified by the minister for the repayment of the hardship assistance, and
  - (c) the applicant satisfies the minister that the financial assistance that the applicant who is on strike or locked out is eligible for from his or her trade union, combined with the other resources of the family unit, is inadequate to meet the basic needs of the family unit.

*Family units that have excess assets*

41. The minister may provide hardship assistance to a family unit that is not eligible for disability assistance because the assets of the family unit exceed the applicable limit under section 10 (2) [asset limits] if
- (a) the minister considers that undue hardship will otherwise occur,
  - (b) the applicant provides the type of security specified by the minister for the repayment of the hardship assistance,
  - (c) the applicant satisfies the minister that
    - (i) the assets that caused the family unit to be ineligible are not immediately available to meet the family unit's basic needs, and
    - (ii) every effort has been made and continues to be made to sell the assets, and
  - (d) the family unit (i) includes one or more dependent children, or
  - (ii) includes only persons who have reached 65 years of age.

*Family units ineligible or declared ineligible under section 34*  
[consequences for conviction, acknowledgment, etc. under a former Act]

42. The minister may provide hardship assistance to a family unit that is ineligible or declared ineligible under section 34 [consequences for conviction, acknowledgment, etc. under a former Act] if
- (a) the family unit includes one or more dependent children,
  - (b) the minister considers that undue hardship will otherwise occur, and
  - (c) the applicant provides the type of security specified by the minister for the repayment of the hardship assistance.

*Family units ineligible or declared ineligible in relation to convictions or judgments*

- 42.1. (1) In the circumstances described in subsection (2), the minister may provide hardship assistance to a family unit that under section 14 (5) (a) [consequences for conviction or judgment in relation to Act] of the Act is not eligible for disability assistance because it includes only
- (a) persons convicted of an offence under the Criminal Code, this Act or the Employment and Assistance Act in relation to obtaining money under this Act or the Employment and Assistance Act



- by fraud or false or misleading representation,*  
*(b) persons convicted of an offence under this Act or the Employment and Assistance Act, or*  
*(c) persons in respect of whom*  
*(i) a court has given judgment in favour of the government in an action for debt for obtaining disability assistance, hardship assistance or a supplement under this Act or income assistance, hardship assistance or a supplement under the Employment and Assistance Act, for which he or she was not eligible, and*  
*(ii) the minister has made a declaration under section 14 (3) of the Act.*  
*(2) The minister may provide hardship assistance to a family unit described in subsection (1) if the minister considers that otherwise*  
*(a) the family unit will experience undue hardship, and*  
*(b) the physical health of a person in the family unit will be in imminent danger. (B.C. Reg. 102/2008)*

In particular, the Section that is applicable to the current circumstances of the appellant is Section 39 (c) of EAPWDR. Based on this provision of the law, the ministry determined that, as the appellant is a single-family unit under the age of 65 years without any dependants, she is not eligible for medical services benefits, as hardship assistance. At the hearing, the appellant confirmed that she is a single-family unit under the age of 65 without any dependants. Therefore, the Panel finds that the ministry reasonably concluded that the appellant is not eligible for medical service benefits, as hardship assistance, as requested by the appellant in her application of March 20, 2012, was a reasonable application of the applicable enactment in the circumstances of the appellant.

The panel finds that the ministry's decision denying medical services benefits in June 2006 as well as in response to the appellant's request of March 20, 2012 was a reasonable application of the application of the applicable legislation in the circumstances of the appellant and, therefore, confirms the Reconsideration decision.