

PART C – Decision under Appeal

The decision being appealed is the Ministry's June 18, 2012 reconsideration decision in which the Ministry determined, in accordance with section 9(2) of the Employment and Assistance for Persons with Disabilities Regulation, that the Appellant who has Person with Disabilities designation (PWD) was not eligible for disability assistance for the month of April 2012 because in March 2012 she received unearned income in the amount of \$2616.41 which exceeded the total monthly support and shelter allowances for her family unit as provided for in the regulation.

PART D – Relevant Legislation

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

PART E – Summary of Facts

The Appellant did not appear at the hearing. The Panel confirmed that the Appellant was notified of the hearing and then proceeded with the hearing under section 86(b) of the Employment and Assistance Regulation.

For its reconsideration decision the Ministry had the following evidence:

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

- The Appellant is receiving disability assistance as a single person with one dependent child.
- In March 2012 the Appellant received a regular family bonus payment of \$176.50 plus a retroactive family bonus payment of \$2616.41.
- The Appellant's disability assistance rate is \$1242.08 (\$672.08 support and \$570 shelter).
- Copy of Canada Revenue Agency notice dated March 20, 2012 indicating child tax benefits of \$2,022.56 and child benefit supplements for \$2,792.91 from July 2011 to June 2012.
- Copies of Canada Revenue Agency records indicating that the Appellant received a lump sum payment as back pay for Child Tax Benefits from 2008-2009.

2. Appellant's June 11, 2012 request for reconsideration in which she wrote that the government underpaid her family allowance from 2009. She had been underpaid for quite some time because there was a question about whether a child was hers. A provincial court judge determined that the child was hers.

Because the Appellant did not appear at the hearing the Panel will consider the statements in her notice of appeal to be her submissions for this hearing. Those are set out in Part F – Reasons for Panel Decision.

At the hearing the Ministry reviewed the amounts the Appellant received as family bonus payments and referred to the applicable regulations. The Ministry pointed out that it had to apply the applicable legislation and therefore it reaffirmed its decision.

The Panel makes the following findings of fact which are not in dispute:

1. The Appellant is eligible for shelter and support benefits for a family unit of 2.
2. In March 2012 the Appellant received a regular family bonus payment of \$176.50 and a lump sum retroactive family bonus payment of \$2616.41.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the Ministry reasonably determined that, in accordance with section 9(2) of the EAPWDR, the Appellant was not eligible for disability assistance for the month of April 2012 because she had unearned income in March 2012 which exceeded the total monthly support and shelter allowances for her family unit under that regulation.

The following sections of the EAPWDR apply to the Appellant’s circumstances in this appeal:

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, recipient or a dependent.

(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

2(1) A monthly support allowance for the purpose of 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 subsection (2) to (5) for each dependent child in the family unit.

Column 1	Column 2	Column 3
Family unit composition	Age or status of applicant or recipient	Amount of support
Sole applicant/recipient and one or more dependent children	Applicant/recipient is a person with disabilities	\$672.08

4(2) The monthly shelter allowance for a family unit to which section 14.2 of the Act does not apply is the smaller of (a) the family unit’s actual shelter costs, and (b) the maximum set out in the following table for the applicable family size:

Column 1	Column 2
Family Unit Size	Maximum Monthly Shelter
2 persons	\$570

Schedule B

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... (iv) a family bonus, except the portion treated as unearned income under section 10(1) of this Schedule; (v) the basic child tax benefit.

Backdated family bonus treated as unearned income

10(1) If that portion of a child benefits cheque attributable to family bonus, the payee of which is a person in the applicant’s or recipient’s family unit, includes an amount attributable to family bonus of one or more calendar months preceding the calendar month in which the cheque was issued, the

amount for each preceding calendar month must be treated as unearned income.

(2) For the purposes of subsection (1), an amount that, under the *Income Tax Act* (British Columbia) or the *Income Tax Act* (Canada), is deducted or set off from family bonus is considered to have been paid to a person in the applicant's or recipient's family unit.

(3) Subsection (1) does not apply to an amount included in that portion of a child benefits cheque attributable to family income (a) to replace a lost or stolen cheque for which an amount was advanced under section 58 [*advance for lost or stolen family bonus cheque*] of this regulation, or (b) to replace a cheque for which no amount was advanced under section 58 [*advance for lost or stolen family bonus cheque*] of this regulation if the replacement is received in the calendar month following the calendar month for which the lost or stolen cheque was issued.

The Ministry's position is that it reviewed all the information in the Appellant's file, her request for reconsideration and the applicable legislation. The Ministry specifically considered the application of section 24 and Schedule B section 10 of the EAPWDR in the Appellant's circumstances. It determined that retroactive family bonus payments are considered unearned income under the EAPWDR and therefore the Appellant's retroactive family bonus of \$2616.41 reported in March 2012 must be deducted from her disability assistance rate. Because the Appellant's unearned income of \$2616.41 exceeded her monthly disability assistance of \$1242.08, the Ministry determined that she was not eligible for disability assistance for April 2012; that is, the month following the month the income was reported.

The Appellant submitted that the retroactive family bonus payment was tax free by the federal government. It was sent to her because the federal government underpaid her family allowance in 2008-2009.

The Panel notes that the EAPWDR treats regular family bonus payments differently than backdated family bonus payments. Under Schedule B section 1(a)(iv) family bonus payments, except for backdated family bonus payments, are exempt from income for the purposes of calculating assistance eligibility. However, under Schedule B section 10, backdated family bonus payments are not exempt and are treated as unearned income. In March 2012 the federal government reported that the Appellant received \$2616.41 as a retroactive family bonus payment. The Panel finds that the Ministry reasonably applied section 10 of Schedule B and treated that retroactive payment as unearned income. The Ministry applied that retroactive unearned income to the Appellant's April 2012 disability shelter and support allowance and then it reasonably determined that the retroactive payment exceeded the Appellant's total allowance so that she was not eligible for April 2012 shelter and support allowance.

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