

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (ministry) reconsideration decision of September 10th, 2012 wherein the ministry determined that the appellant had received a retro-active family bonus payment and under Schedule B, section 10 Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) any portion of a retroactive payment must be treated as unearned income and that the retroactive portion of the family bonus payment is not exempt under Schedule B, section 1(a)(iv), 6 or 7 EAPWDR when calculating the family's net income when determining the amount disability assistance that may be provided to a family unit under section 24 EAPWDR.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), section 24 and Schedule B section 1(a)(iv), 6, 7 and 10

PART E – Summary of Facts

The evidence before the ministry at the time of reconsideration:

- The request for reconsideration dated August 30th, 2012
- Ministry document respecting benefit month September 2012 showing the full amount of the family bonus payment (\$539.32) and the scheduled (monthly) amount (\$181.41) that the appellant is eligible to receive. The retro-active portion which is considered as unearned income is the difference - \$357.91.
- Notice of Appeal dated September 18th, 2012.

In August 2012 the ministry was advised electronically by Canada Revenue agency (CRA) that the appellant received a retro-active family bonus payment of \$539.32 of which \$357.91 was a retroactive payment. The ministry advised the appellant the retroactive portion (\$357.91) would be deducted from the September disability assistance in accordance with the EAPWDR. The appellant requested the ministry not make this deduction as he had not received any money for his son's care for the past five months and the money was needed to pay bills, purchase school clothes and school supplies.

The appellant did not attend the oral hearing. The panel being satisfied the appellant was properly notified of the date, time and location of the oral hearing, the hearing proceeded under section 86(b) Employment and Assistance Regulation (EAR).

The ministry made a submission which contained an overview of the facts and the ministry's arguments. The ministry did not submit any new evidence.

PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry's reconsideration decision to deduct the retroactive portion of the family bonus payment the appellant received in August 2012 as unearned income when calculating the appellant's net income and determining the amount of assistance to be paid as set out by section 24 EAPWDR.

The legislation considered: EAPWDR

Amount of disability assistance

Section 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 B Net Income Calculation (section 24 (b))

Deduction and exemption rules

Section 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;

Deductions from unearned income

Section 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.

Backdated family bonus treated as unearned income

Section 10

(1) If that portion of a child benefits cheque is attributable to family bonus, the payee of which is the person in the applicant's or recipient's family unit, includes an amount attributable to family bonus for 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 a 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 bonus

- (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, or
- (c) Repealed (B.C. Reg. 48/2010)

The ministry stated that the appellant receives disability assistance as a single parent. The ministry stated that in August 2012 the appellant received a retroactive family bonus payment and that the retroactive portion of that family bonus payment (the amount outside of the current monthly benefit) must be treated as unearned

income as stated in Schedule B, section 10 EAPWDR and that all unearned income except that which is exempt under Schedule B, section 1, 6 or 7 must be included in determining a family's net income under Schedule B EAPWDR. The ministry argued that Section 24 EAPWDR states that the family's net income as determined under Section B must be deducted from the amount of eligible disability assistance determined under Schedule A to determine the amount of disability assistance that may be provided for a calendar month. The ministry argued that retroactive bonus payments are not exempt under Schedule B and the amount was considered in calculating the appellant's net income and properly deducted from his disability benefits.

In the Request for Reconsideration dated August 30th, 2012, the appellant argued that he needed the money to pay back bills that went unpaid for three months; needed school clothes; had to pay movers to be moved – wasn't covered and that he wasn't getting a check for the first five months that his son was with him.

Schedule B, section 10(1) EAPWDR directs the ministry to treat all retroactive family bonus payments as unearned income and Schedule B, section 1(a)(iv) which exempts a family bonus payment from being considered as income specifically states "... , except that portion treated as unearned income under section 10(1) of this Schedule;".

Section 24 EAPWDR states that the family's net income as determined under Schedule B must be deducted from the amount of assistance as determined under Schedule A (monthly support allowance and shelter allowance) to determine the amount of assistance that may be provided for a calendar month.

Schedule B, sections 6 and 7 EAPWDR do not relate to retroactive family bonus payments.

The panel finds that the EAPWDR legislation supports the ministry's position. The panel finds the ministry determined that the appellant received a retroactive family bonus payment which the ministry treated as unearned income and then deducted the retroactive portion attributed to the preceding months from the appellant's monthly disability benefits. The panel finds that the ministry has no discretion not to deduct the full amount of the retroactive family bonus payment when calculating the appellant's monthly net income. The panel finds the ministry's decision to deduct the retroactive portion of the family bonus payment from the appellant's monthly disability benefit was reasonable.

Therefore, the Panel confirms the ministry's decision pursuant to section 24(1)(a) and section 24(2)(a) of the Employment and Assistance Act.