

### PART C – Decision under Appeal

The decision under appeal is the Reconsideration Decision dated September 4, 2012, in which the Ministry of Social Development (“Ministry”) confirmed its decision that the Appellant is not eligible for income assistance because he has income in excess of the legislated limit.

### PART D – Relevant Legislation

The relevant legislation is section 4 of the *Employment and Assistance Act* (EAA) and the definition of “unearned income” in section 1, sections 10 and 28 and sections 1, 6 and 7 of *Schedule “B”* of the *Employment and Assistance Regulation* (EAR).

**PART E – Summary of Facts**

The Appellant is not currently receiving income assistance.

On August 14, 2012, the Appellant applied for income assistance.

On August 15 the Appellant's application was denied on the basis that he receives CPP in excess of the legislated amount to qualify for income assistance.

On August 16 the Appellant submitted a request for reconsideration on the basis that he requires assistance with certain medical expenses.

On September 6, the Ministry rendered a reconsideration decision confirming the Appellant's ineligibility for income assistance.

The Appellant currently receives CPP each month in the amount of \$1058.93.

The Appellant suffers from numerous medical conditions which require significant management, treatment and travel.

The Appellant is interested in accessing the medical benefits available to income assistance recipients rather than receiving income assistance.

## PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the Ministry's reconsideration decision to confirm the decision finding the Appellant ineligible for income assistance.

The relevant legislation is section 4 of the EAA:

### **Income assistance and supplements**

**4** Subject to the regulations, the minister may provide income assistance or a supplement to or for a family unit that is eligible for it.

and the definition of "unearned income" in section 1, sections 10 and 28 and sections 1, 6 and 7 of *Schedule "B" of the Employment and Assistance Regulation (EAR)*:

### **Definitions**

**1** (1) In this regulation: . . .

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

(f) any type or class of Canada Pension Plan benefits;

### **Limits on income**

**10** (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 income assistance if the net income of the family unit determined under Schedule B equals or exceeds the amount of income assistance determined under Schedule A for a family unit matching that family unit.

### **Amount of income assistance**

**28** Income 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"**

### **Deduction and exemption rules**

**1** When calculating the net income of a family unit for the purposes of section 28 (b) [*amount of income 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. 1 (b).]
  - (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) payments granted by the government of British Columbia as Interim Early Intensive Intervention Funding;
- (xxi) 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];
- (xxii) payments granted by the government of British Columbia under the Ministry of Children and Family Development's At Home Program;
- (xxiii) payments granted by the government of British Columbia under the Ministry of Children and Family Development's Extended Autism Intervention Program;
- (xxiv) 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;
- (xxv) a loan that is
  - (A) not greater than the amount contemplated by the recipient's business plan, accepted by the minister under section 77.2 of this regulation, and

- (B) received and used for the purposes set out in the business plan;
- (xxvi) 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;
- (xxvii) 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;
- (xxviii) 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;
- (xxix) a refund provided by the Fair PharmaCare program of the Ministry of Health Services;
- (xxx) 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;
- (xxxi) a Universal Child Care Benefit provided under the *Universal Child Care Benefit Act (Canada)*;
- (xxxii) 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;
- (xxxiii) money withdrawn from a registered disability savings plan;
- (xxxiv) a working income tax benefit provided under the *Income Tax Act (Canada)*;
- (xxxv) Repealed. [B.C. Reg. 180/2010, s. 1 (b).]
- (xxxvi) the climate action dividend under section 13.02 of the *Income Tax Act*;
- (xxxvii) 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,
- (xxxviii) 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 of this Schedule,
- (c) all earned income must be included, except the deductions permitted under section 2 and any earned income exempted under sections 3 and 4 of this Schedule, and
- (d) all unearned income must be included, except the deductions permitted under section 6 and any income exempted under sections 7 and 8 of this Schedule.

#### **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 11 [asset limits] of this regulation;

(d) a payment made from a trust to or on behalf of a person referred to in section 13 (2) [assets held in trust for person receiving special care] of this regulation if

(i) the payment is applied exclusively to or used exclusively for disability-related costs as defined in section 13 (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*.

At the hearing the Appellant stated that he did not wish to receive income assistance but rather wants to receive the medical benefits available to recipients because he has a number of serious medical conditions which he does not have resources to properly manage and treat.

The panel finds that the reconsideration decision before the panel is not whether the Appellant is eligible to receive medical benefits, but rather whether the Appellant qualifies for income assistance.

The Ministry stated that as per the legislation, the Appellant does not qualify for income assistance because his monthly CPP "unearned income" of \$1058.93 per month is in excess of the current income assistance rates applicable to him which would amount to \$610 per month.

The panel finds that under section 1(1)(f) of EAR the Appellant's CPP income is "unearned income". The panel also finds that this income does not qualify for any of the exemptions listed in Schedule "B" of the EAR. The panel finds that in accordance with sections 10 and 28 of the EAA the Appellant's income of \$1058.93 per month is in excess of the current income assistance rates applicable to him, which would amount to \$610 per month. Accordingly, the Appellant does not qualify for income assistance.

As, at the time of the reconsideration decision the Appellant was in receipt of monthly income in excess of the income assistance monthly rates, the panel finds that the Ministry's reconsideration decision finding that the Appellant does not qualify for income assistance was a reasonable application of the applicable enactment in the circumstances of the person appealing the decision.

Accordingly, the Panel confirms the Ministry's decision.