

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (the ministry) reconsideration decision of September 12, 2012, which denied the appellant's request not to deduct his Child Maintenance payments from his disability assistance. The ministry concluded that disability assistance may be provided to a family unit in an amount that is no more than the amount determined in the legislation minus the family unit's net income. The ministry determined that the Child Maintenance income is considered an unearned income and must be deducted from disability assistance pursuant to Section 24 of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) and Sections 1, 3, 6, and 7 of Scheduled B of the EAPWDR

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), Section 24
Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), Section 1, 3, 6, and 7 of Schedule B

PART E – Summary of Facts

The appellant did not attend the hearing. After confirming that the appellant had been notified of the hearing, the panel proceeded with the hearing in accordance with s. 86(b) of the Employment and Assistance Regulation.

The information before the ministry at the time of reconsideration included the following:

- A copy of the Monthly Report for the month of August 2012 indicating income of \$925 for Maintenance support, \$234.16 for Basic Child Tax Benefit, \$341.91 for Nation Child Benefit Supplement and \$100 for Universal Child Care.
- Request for Reconsideration form signed by the appellant on August 30, 2012;

Information subsequently put before the appeal panel included the following:

- The Notice of Appeal dated September 20, 2012.

In the written submission included with his Request for Reconsideration, the appellant wrote "Federally (Homemaker) is considered a profession. Provincially it is not in reference to (child maintenance) is deducted dollar for dollar". The appellant said that he is allowed to earn \$500 per month working, but as he cannot work due to his health, he and his spouse should be allowed to keep the income from the Child Maintenance. The appellant said that the income from the Child Maintenance will assist him with the extra costs and that the Child Maintenance is ordered by a Judge for his children. The appellant said that he and his spouse are a dedicated family with a few more obstacles than others. They are working hard to raise their children. With "homemaker" being allowed as profession, the child maintenance won't be deducted from their income. The appellant requested changing the legislation to have "Homemaker" with the same status as it is Federally.

In his Notice of Appeal, the appellant stated that the ministry's "summary of facts" is not correct. He argues that "my appeal is the current legislation in place that "Child Maintenance" is deducted". The appellant said that "if the parent(s) are Multiple Barrier/PWD, they should be able to claim the first \$500 of the maintenance benefit as a job income". The appellant stated that Federally homemaker is a profession but not provincially and this is discriminatory and human rights issues.

At the hearing, the ministry relies on its reconsideration decision. The appellant is a PWD and is currently receiving disability assistance as a two parent family unit, his file having reopened in July 2009. The ministry submitted that she had a telephone conversation with the appellant after the ministry's decision. The appellant and his spouse, as a family unit, received \$925 on July 31, 2012 for the maintenance of the spouse's two children. The ministry said that she explored with the appellant the possibility of applying for a crisis supplement as the family unit might have had an unexpected needs paying rent and other expenses; however, the appellant was not interested in applying for a crisis supplement and was of the view that he is entitled to the same amount of deduction as a Persons With Disabilities (PWD) receives as an income. The ministry states that Section 1 of the EAPWDR defines maintenance under a court order, a separation agreement or other agreement as "unearned income". The ministry does not have the ability to change the legislation and must make a reconsideration decision based on the current legislation. The Family Maintenance payments are not included in the exemption categories and as such must be deducted from the appellant's disability assistance..

The panel makes the following findings of fact:

- a- The appellant is receiving disability assistance as a two parent family unit since July 2009.
- b- The appellant received \$925 child maintenance on July 31, 2012.

PART F – Reasons for Panel Decision

The issue on this appeal is whether the ministry's decision to deny the appellant's request not to deduct his Child Maintenance payments from his disability assistance was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant. In particular, was the ministry reasonable in determining that the Child Maintenance is considered unearned income and is not listed in the exemption categories of Schedule B of the EAPWDR?

The relevant legislation is as follows:

Under section 1 of the EAPWDR, **earned income**" means

- (a) any money or value received in exchange for work or the provision of a service,
- (b) tax refunds,
- (c) pension plan contributions that are refunded because of insufficient contributions to create a pension,
- (d) money or value received from providing room and board at a person's place of residence, or
- (e) money or value received from renting rooms that are common to and part of a person's place of residence;

"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*;
- (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)*.

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.

Schedule B of the EAPWDR deals with the Net Income Calculation. Under 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:
- (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.

Section 2 of the Schedule B defines deductions from earned income and states that the only deductions permitted from earned income are the following:

- (a) any amount deducted at source for
 - (i) income tax,
 - (ii) employment insurance,
 - (iii) medical insurance,
 - (iv) Canada Pension Plan,
 - (v) superannuation,
 - (vi) company pension plan, and
 - (vii) union dues;
- (b) if the applicant or recipient provides both room and board to a person at the applicant's or recipient's place of residence, the essential operating costs of providing the room and board;
- (c) if the applicant or recipient rents rooms that are common to and part of the applicant's or recipient's place of residence, 25% of the gross rent received from the rental of the rooms.

Under Section 3 of the Schedule B the amount of earned income calculated under subsection (2) is exempt for a family unit if

- (a) a recipient in the family unit has been receiving continuously for the 3 calendar months immediately

preceding the calendar month for which the exemption is claimed

- (i) disability assistance under the Act,
- (ii) income assistance under the *Employment and Assistance Act*,
- (iii) disability assistance or income assistance under a former Act,
- (iv) a youth allowance under the *BC Benefits (Youth Works) Act*, or
- (v) any combination of the assistance and allowances referred to in subparagraphs (i) to (iv).

Section 6.3 (2) of the Schedule B deals with deductions from unearned income and states 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.

Pursuant to Section 7(1) of the Schedule B 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 (1) [*assets held in trust for person with disabilities*] of this regulation if the payment is applied exclusively to or used exclusively for
 - (i) disability-related costs,
 - (ii) the acquisition of a family unit's place of residence,
 - (iii) a registered education savings plan, or
 - (iv) a registered disability savings plan;
- (d.1) subject to subsection (2), a structured settlement annuity payment made to a person referred to in section 12 (1) of this regulation if the payment is applied exclusively to or used exclusively for an item referred to in subparagraph (i), (ii), (iii) or (iv) of paragraph (d) of this subsection;
- (d.2) money expended by a person referred to in section 12.1 (2) [*temporary exemption of assets for person with disabilities or person receiving special care*] of this regulation from an intended registered disability savings plan or trust if the money is applied exclusively to or used exclusively for disability-related costs;
- (d.3) subject to subsection (2.1),
 - (i) a payment made from a trust to or on behalf of a person referred to in section 12 (1) of this regulation,
 - (ii) a structured settlement annuity payment that, subject to subsection (2), is made to a person referred to in section 12 (1) of this regulation, or
 - (iii) money expended by a person referred to in section 12.1 (2) of this regulation from an intended registered disability savings plan or trust
 if the payment, structured settlement annuity payment or money is applied exclusively to or used exclusively for disability-related costs to promote independence;
- (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*.
- (f) a tax refund.

The ministry's position, as stated in its reconsideration decision, is that the maintenance under a court order, a

separation agreement or other agreement is considered unearned income under Section 1 of the EAPWDR and must be deducted from the appellant's disability assistance pursuant to Section 24 of the EAPWDR.

The appellant in his written submissions argued that the parents who are designated as Persons with Multiple Barriers (PPMB) and/or PWD should be able to claim the maintenance they receive as an earned income and be allowed to exempt the first \$500. The appellant further argued that the legislation is discriminatory and raises human rights issues. The panel notes that although the appellant acknowledges that maintenance payments are not exempt from net income calculations, he argues that the legislation should be changed as it is unfair and a detriment to the welfare of the children of people on disability assistance.

In reviewing the ministry's reconsideration decision, the panel has examined the legislative provisions respecting definitions of unearned income, family maintenance payments and the exemption categories.

In respect to the appellant's submission regarding human right issues, the panel has no jurisdiction to apply Human Rights Codes as Section 46.3 of the *Administrative Tribunals Act (ATC)* applies to the tribunal and as such this issue was not dealt with by the panel.

In respect to Section 1 of the EAPWDR, the panel finds that the legislation defines unearned income to include maintenance under a court order. Therefore, the panel finds that based on the evidence, the ministry reasonably determined that the appellant's maintenance payments are unearned income. The panel further finds that Schedule B Section 1, 6, 7 and 8 have no deduction or exemption provisions applicable to the appellant's circumstance. Although the appellant argued that Section 3(2)(a) of Schedule B of the EAPWDR should apply to maintenance payments, the panel finds that the ministry reasonably concluded that this exemption only applies to "earned income" as set out in the current legislation. Section 24 of the EAPWDR stipulates that the family unit's net income must be deducted from their disability assistance. Therefore, the panel finds that the ministry reasonably determined that it could not waive the requirement to deduct the amount of the appellant's maintenance payment from his disability assistance.

Accordingly, the panel confirms the ministry's reconsideration decision as being a reasonable application of the applicable enactment in the circumstances of the appellant.