

## PART C – Decision under Appeal

The issue under appeal is whether the Ministry of Social Development's (the ministry) reconsideration decision of October 10, 2012 in which the appellant was denied an income exemption for a Workers Compensation Board of Manitoba Orphan Pension was reasonably supported by the evidence or is a reasonable application of the legislation, in the circumstances of the appellant, as the benefits are defined as unearned income under Section 24 of the Employment and Assistance for Persons with Disabilities Regulation. The ministry maintains that the appellant was overpaid from April 01, 2007 until August 01, 2012 as a result of receiving a Workers Compensation Board of Manitoba Orphan Pension in the amount of \$18,650.07.

## PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act,(EAPWDA) sections 18, 19  
Employment and Assistance for Persons with Disabilities Regulation(EAPWDR), sections 1, 24  
Employment and Assistance for Persons with Disabilities Regulation, schedule A sections 1,2, 4.  
Employment and Assistance for Persons with Disabilities Regulation, schedule B sections 1,6,7,8,

## PART E – Summary of Facts

With the consent of the parties, the appeal hearing was conducted in writing in accordance with section 22 (3) (b) of the Employment and Assistance Act.

The information before the ministry at the time of reconsideration was :

- A 4 page report from the Workers compensation Board of Manitoba containing T5007 statements from 2007 to 2011 in the name of the appellant.
- A 4 page report from the British Columbia Ministry of Housing and Social Development entitled overpayment chart.
- A 1 page report entitled Incoming Movement Report.
- A 2 page letter to the Public Guardian and Trustee from the appellant's landlord outlining the funding formula for the care home dated September 24, 2012.
- A 7 page trust account ledger.
- A 2 page letter to the Ministry of Social Development from the Public Guardian and Trustee dated September 21, 2012.

In the hearing file the appellant's case is presented by the Public Guardian and Trustee (PGT). The PGT states that they have no record of any correspondence between the PGT and the Ministry of Social Development until May 9, 2012 when the PGT issued a letter to inform the ministry of an increase in the amount of the appellant's Workers Compensation Board of Manitoba Orphan Pension to \$303.80 a month.

The PGT has been forwarding the Workers Compensation Board of Manitoba Orphan Pension monthly income directly to the care facility on behalf of the appellant. The PGT states that a Senior Contract Coordinator of Community Living BC has stated that the user fee for the appellant is \$716.00 per month. The care home has not been able to produce accounting records for the appellant's user fee or account for how they are handling any payment overage for the appellant. The PGT states that the appellant has been sending all of his funds to the facility in good faith and he does not have assets to cover his needs as well as pay a substantial debt when all of his income and benefits have been channeled to the facility.

The ministry states in the file that the appellant is currently receiving disability assistance as a single person. The appellant's file opened in January 1979. The ministry states that the appellant has been receiving a Workers Compensation Board of Manitoba Orphan Pension since prior to 2004. In June 2007 the ministry states it changed the appellant's benefits from "comforts only" of \$95.00 a month to Persons with Disabilities regular benefits. The ministry states that in August 2012 it completed a review of the appellant's file from 01 April 2001 to 01 August 2012 in which it determined that the appellant had been in continuous receipt of a Workers Compensation Board of Manitoba Orphan Pension which is considered unearned income under EAPWDR section 1 and the appropriate deductions had not been made since 2007.

The ministry maintains that the appellant did not report the income and any changes in income as required by the legislation and therefore has a debt to the government in the amount of \$18,605.07 which must be repaid.

**PART F – Reasons for Panel Decision**

The issue under appeal is whether the ministry decision to deny an income exemption for Workers Compensation Board of Manitoba Orphan Pension payments is supported by the evidence and is a reasonable application of the legislation.

EAPWDA sections 18 & 19

**Overpayments**

- 18** (1) If disability assistance, hardship assistance or a supplement is provided to or for a family unit that is not eligible for it, recipients who are members of the family unit during the period for which the overpayment is provided are liable to repay to the government the amount or value of the overpayment provided for that period.
- (2) The minister's decision about the amount a person is liable to repay under subsection (1) is not appealable under section 16 (3) [*reconsideration and appeal rights*].

**Liability for and recovery of debts under Act**

- 19** (1) An amount that a person is liable to repay under this Act is a debt due to the government that may be
- (a) recovered in a court that has jurisdiction, or
  - (b) deducted, in accordance with the regulations from any subsequent disability assistance, hardship assistance or supplement for which the person's family unit is eligible or from an amount payable to the person by the government under a prescribed enactment.
- (2) Subject to the regulations, the minister may enter into an agreement, or accept any right assigned, for the repayment of an amount referred to in subsection (1).
- (3) An agreement under subsection (2) may be entered into before or after the disability assistance, hardship assistance or supplement to which it relates is provided.
- (4) A person is jointly and separately liable for a debt referred to under subsection (1) that accrued in respect of a family unit while the person was a recipient in the family unit.

EAPWDR, sections 1 & 24

## Part 1 — Interpretation

### Definitions

1 (1) In this regulation:

**"Act"** means the *Employment and Assistance for Persons with Disabilities Act*;

**"assistance"** means disability assistance, hardship assistance or a supplement;

**"cash assets"** in relation to a person, means

(a) money in the possession of the person or the person's dependant,

(b) money standing to the credit of the person or the dependant with

(i) a savings institution, or

(ii) a third party

that must pay it to the person or the dependant on demand,

(c) the amount of a money order payable to the person or the dependant, or

(d) the amount of an immediately negotiable cheque payable to the person or the dependant;

**"Community Living BC"** means Community Living British Columbia established under the *Community Living Authority Act*;

**"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;

**"income assistance"** has the same meaning as in the *Employment and Assistance Act*;

**"minister"**, in relation to a power, duty or function that the minister has delegated under section 25 of the Act to another person, includes that other person;

**"special care facility"** means a facility that is a licensed community care facility under the *Community Care and Assisted Living Act* or a specialized adult residential care setting approved by the minister under subsection (3);

**"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)*.

### 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.

Employment and Assistance for Persons with Disabilities Regulation Schedule A

### Disability Assistance Rates

(section 24 (a) )

### 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 (0.1) For the purposes of this section, "**warrant**" has the meaning of warrant in section 14.2 [consequences in relation to outstanding arrest warrants] of the Act.

(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.

Item	Column 1 Family unit composition	Column 2 Age or status of applicant or recipient	Column 3 Amount of support
1	Sole applicant/recipient and no dependent children	Applicant/recipient is a person with disabilities	\$531.42

**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;

"**warrant**" has the meaning of warrant in section 14.2 [consequences in relation to outstanding arrest warrants] of the Act.

(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:

Item	Column 1 Family Unit Size	Column 2 Maximum Monthly Shelter
1	1 person	\$375

Employment and Assistance for Persons with Disabilities Regulation Schedule B, sections 1,6,7,8

### 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, 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) Repealed. [B.C. Reg. 85/2012, Sch. 2, s. 7.]

(xxii) payments granted by the government of British Columbia under section 8 [*agreement with child's kin and others*] of the *Child, Family and Community Service Act*;

(xxiii) payments granted by the government of British Columbia under the Ministry of Children and Family Development's At Home Program;

(xxiv) Repealed. [B.C. Reg. 85/2012, Sch. 2, s. 7.]

(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 under Plan I, "Fair PharmaCare", of the PharmaCare program established under the Continuing Care Programs Regulation, B.C. Reg. 146/95;

(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,

(xl) payments granted by the government of British Columbia under the Ministry of Children and

Family Development's Family Support Services program;

(xli) payments granted by the government of British Columbia under the Ministry of Children and Family Development's Supported Child Development program;

(xlii) payments granted by the government of British Columbia under the Ministry of Children and Family Development's Aboriginal Supported Child Development program,

(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.

**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

(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*.

### Minister's discretion to exempt education related unearned income

8 (1) In this section:

**"education costs"** means the amount required by a student for tuition, books, compulsory student fees and reasonable transportation costs for a semester;

**"day care costs"** means the difference between a student's actual day care costs and the maximum amount of child care subsidy that is available under the *Child Care Subsidy Act* to a family unit matching the student's family unit, for a semester.

(2) The minister may authorize an exemption for a student up to the sum of the student's education costs and day care costs from the total amount of

- (a) a training allowance,
- (b) student financial assistance, and
- (c) student grants, bursaries, scholarships or disbursements from a registered education savings plan

received for the semester.

EAPWDR Schedule A

People receiving special care

**8** (1) For a person with disabilities who receives accommodation and care in a special care facility (other than a special care facility described in subsection (3)) or a private hospital or who is admitted to a hospital because he or she requires extended care, the amount referred to in section 24 (a) [*amount of disability assistance*] of this regulation is the sum of

(a) the actual cost, if any, to the applicant or recipient of the accommodation and care at the rate approved by the minister for the type of facility, plus

(b) a comforts allowance of \$95 for each person for each calendar month.

(2) If the special care facility under subsection (1) is an alcohol or drug treatment centre, the minister may, in addition, pay either or both of the following while the applicant or recipient is in the alcohol or drug treatment centre:

(a) actual shelter costs for the applicant's or recipient's usual place of residence up to the amount under section 4 for a family unit matching the applicant's or recipient's family unit;

(b) a monthly support allowance for the applicant's or recipient's family unit, equal to the amount calculated under sections 2 and 3 of this Schedule minus the portion of that allowance that would be provided on account of the applicant or recipient.

(3) For a person with disabilities who receives accommodation and care in a special care facility operated by a service provider as defined in section 1 of the *Community Living Authority Act*, the amount referred to in section 24 (a) [*amount of disability assistance*] of this regulation is the sum of

(a) the support allowance that is applicable under sections 2 and 3 of this Schedule for a family unit matching the applicant's or recipient's family unit, plus

(b) the maximum shelter allowance that is applicable under section 4 of this Schedule for a family unit matching the applicant's or recipient's

family unit.

The appellant's position is that the PGT has been submitting the monthly Workers Compensation Board of Manitoba Orphan Pension directly to the care facility in which the appellant resides and they have done so in good faith since June 2007. The PGT states they notified the ministry in writing on May 09, 2012 when the amount of the monthly benefit increased but their files do not indicate any other contact with the ministry. The PGT indicates that all the funds the appellant receives are forwarded to the care facility and therefore the appellant does not have sufficient assets to cover his needs as well as pay a substantial debt. The PGT is asking for the overpayment decision to be reversed.

The ministry states that the appellant's file was opened in January 1979 and that the Workers Compensation Board of Manitoba Orphan Pension started prior to 2004. The ministry changed the appellant's funding in June 2007 from "comforts only" of \$95.00 per month to PWD regular benefits and did not deduct the unearned income from the regular disability benefits. The ministry states that the PGT has not reported any of the annual changes in the appellant's income as required by the legislation. The ministry maintains that the appellant has been overpaid in the amount of \$18,650.07 and this must be repaid.

The appellant is a single person receiving regular PWD benefits. The regular PWD benefits started in June 2007 when the ministry changed the appellant's benefits from "comfort only" benefits of \$95.00 per month which also allows for accommodation and care costs to regular benefits. No explanation was given for this change and the panel cannot discern if the care home or the PGT was notified of this change. The panel finds that the ministry at this time did not deduct the Workers Compensation Board of Manitoba Orphan Pension from the appellant's disability benefits. It appears to the panel that this was an error on the part of the ministry which clearly knew the appellant was receiving Workers Compensation Board of Manitoba Orphan Pension "since prior to 2004" and had unilaterally changed the appellant's status in 2007. This status had not been reviewed since 2007 until the PGT notified the ministry of a change in the appellant's income.

The panel finds that:

- the appellant, through the PGT, has been in receipt of unearned income since June of 2007 and the PGT has not shown there was any communication with the ministry regarding changes in the amount of the appellant's Workers Compensation Board of Manitoba Orphan Pension as required by the EAPWDR.
  - under EAPWDR section 1 the appellant has been in receipt of "unearned income".
- (j) workers' compensation benefits and disability payments or pensions;
- (k) widows' or orphans' allowances;
- the Workers Compensation Board of Manitoba Orphan Pension is not listed in EAPWDR Schedule B as one of the exemptions to earned income and therefore must be deducted from the appellant's disability benefits.
  - the ministry states that the overpayment amount is \$18650.07, an amount it declares it calculated from the appellant's T5007 slips. When the panel calculates the amount owing from the T5007 slips for the years 2007 through 2011 and adds the 6 months of pension reported by the PGT for 2012, the amount the PGT states in its financial report and the amount the ministry shows in it's overpayment report the final numbers are not the same. In fact the 3

calculations show 3 separate totals.

It is not clear to the panel what the correct total amount owing is and why the ministry changed the appellant's status in 2007 to PWD regular benefits. The panel acknowledges that in accordance with EAPWDA 18 (2) the amount a person is required to pay is not appealable, however given the inconsistencies noted above, the panel respectfully suggests that the ministry review its calculations and reasoning in this instance.

It is unfortunate that the appellant, through no fault of his own finds himself in a position of overpayment. However the panel is bound to apply the legislation. Based on the forgoing analysis, the panel finds that the decision to deduct the appellant's Workers Compensation Board of Manitoba Orphan Pension is a reasonable application of the legislation and is supported by the evidence.

The panel confirms the ministry decision.