

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (ministry) reconsideration decision of November 8th, 2012 wherein the ministry determined the appellant was not eligible for disability assistance for the month of September because the appellant received an insurance benefit of \$1,775 which the ministry determined was not compensation for a destroyed asset and therefore must be considered as unearned income as stated under section 1(d) of the Employment and Assistance For Persons with Disabilities Regulation (EAPWDR) and included when calculating the family's net income under Schedule B EAPWDR. The ministry determined the appellant's net income exceeded the amount of disability assistance determined under Schedule A EAPWDR and therefore the appellant was not eligible for disability assistance as set in section 9 EAPWDR.

PART D – Relevant Legislation

Employment and Assistance For Persons with Disabilities Regulation (EAPWDR), sections 1 (definitions – earned income and unearned income), 9, 29 and Schedule A, sections 1 to 4; Schedule B, sections 4, 6 and 7.

PART E – Summary of Facts

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

- Repair invoice for \$811.89 dated July 10th, 2012 for the appellant's vehicle and receipt in that amount;
- Appellant's cell phone invoice dated July 11th, 2012 in amount of \$122.60;
- Receipt dated 2012/07/05 for \$3.29 for cider vinegar with "medical supply" written on same;
- 2 receipts for shiatsu massage dated July 3rd (#002) - \$75; and July 11th and 12th (#005) - \$150.00;
- Receipt dated 2012/07/04 for \$11.16 unknown product with "office supplies" written on same;
- Receipt dated 2012/07/27 for \$9.98 for wood and nails with "office supplies" written on same;
- Receipt dated 2012/07/23 for \$67.18 for Kodak product with "office supplies" written on same;
- Receipt dated 2012/07/19 for \$170.50 for turbo fan and flashlight with "office supplies" written on same;
- Receipt dated 2012/07/21 for \$67.20 for file box and two - 24pack bottled water with "office supplies" written on same;
- Receipt dated 2012/07/13 for \$16.10 for bottled water; chocolate bar with "office supplies" written on same;
- Receipt dated 2012/07/04 for \$46.94 for unknown product with "car supplies (batteries 4 flashlight) written on same;
- Receipt dated 2012/07/23 for \$11.18 for Mesh back support with "car supplies" written on same.
- Receipt dated 2012/07/29 for \$11.18 for Mesh back support with "car supplies" written on same.
- Receipt dated 2012/07/16 for \$6.72 for unknown product with "car care" written on same.
- Gasoline receipts dated 2012/07/11 for \$15.59; receipt dated 2012/07/12 for \$5.30; receipt dated 2012/07/12 for \$3.98; and receipt dated 2012/07/22 for \$2.82;
- Self-Employment Program (SEP) Client Monthly Report (3 pages) dated August 7th, 2012 and signed by appellant, for month ended July 2012 – Business 'A'; showing business cash receipts of \$4,328.57; deposits in cash reserve account - \$1,134.56 and amount expended on permitted business expenditures of \$3,194.01; personal amount retained is \$0.00; amount retained in cash (balance on August 7th, 2012) \$1,973.10 and business assets (including equipment) +/- \$25,000 ?; with Expense/Income chart for appellant's business covering period of January to July, attached.
- SEP Client Monthly Report (4 pages) dated August 7th, 2012 and signed by appellant for month ended July 2012 – Business 'B'; showing business cash receipts of \$369.24; deposits in cash reserve account is \$128.29; expended on permitted business expenditures of \$240.95; personal amount retained is \$0.00; amount retained in cash (balance on August 7th, 2012 is \$200.63; business assets +/- \$800 ? business inventory - ?; page 3 and 4 showing cash receipts;
- Appellant's Business Account activity statement (Business 'A') for July 2012 showing deposit of \$2,000 from insurance benefit;
- Facsimile dated September 10th, 2012 from ICBC to the appellant stating that the \$2,000 paid to the appellant was not only compensation for injuries but also reimbursement for massage treatments and allotted a certain amount for future treatments as well.
- Request for Reconsideration dated October 3rd, 2012.

The appellant is a recipient of disability assistance and is eligible for \$906.32 (\$531.42 support and \$375 shelter) monthly. The appellant has two businesses which will be referred to as Business A and Business B. The appellant reports any income with the businesses through the SEP. In July 2012 the appellant declared, through Business A, \$4,542.86 in income; \$2000 was an insurance benefit payment from ICBC and the remaining \$2,542.86 was from self-employment. ICBC advised the ministry that \$225.00 of the \$2,000.00 was reimbursement for massage therapy and the remaining \$1,775.00 was for "general damages". The ministry determined the \$225.00 should not be included in calculating the appellant's net income but the \$1,775.00 being an insurance benefit and not compensation for a destroyed asset, is considered unearned income and should be included in calculating the appellant's net income.

Under the SEP income in the July 2012 report the appellant declared \$4,328.57 revenues from Business A and \$369.24 revenues from Business B from which the appellant stated he deposited \$1,134.56 in a cash reserve account and \$3,194.01 was spent on permitted business expenditures; \$0 was personally retained. Of the revenues from Business B the appellant stated \$128.29 was deposited in a cash reserve account and \$240.95 was spent on permitted business expenditures; \$0 was personally retained. Since the appellant claimed \$2,000.00 as revenue under Business A the ministry considered the appellant to have received \$2,328.57 of earned income in July 2012 through self-employment.

Under SEP exemptions the appellant provided the ministry with receipts for business expenses of \$1,486.01 for car care, car supplies, bottled water and chocolate, flashlight, flashlight batteries, fan, air treatment appliance, office supplies, apple cider vinegar, nails and massage treatments. Under the EAPWDR the ministry determined the appellant had \$990.68 in permissible expenditures. The ministry was not satisfied that bottled water, chocolate, flashlights, batteries, a fan, an air treatment appliance, nails, apple cider vinegar and massage treatments are expenses incurred in the operation of his business(es).

At the time relevant to this appeal, a Person with Disabilities (PWD) designation was entitled to a \$500 monthly earned income exemption. The ministry determined that after the \$990.68 business expense deductions and \$500 earnings exemption the ministry determined the appellant had earned income of \$837.89.

Based on the bank statements provided by the appellant the ministry determined that the appellant deposited more than \$837.89 of earned income into his business account and that the sum of that account did not exceed \$5,000.00 therefore the remainder of his earned income is exempt.

The ministry determined that the appellant's SEP income received in July 2012 (\$2,328.57) is exempt and should not be included in the calculation of his net income. The ministry, however, did not consider the insurance benefit of \$1,775.00 paid to the appellant in July as compensation for a destroyed asset and so this money had to be considered as unearned income. Since the appellant's net income exceeded his disability assistance rate he was ineligible for disability assistance.

The appellant is required to report his income to the ministry by the 5th day of the month following the month in which the income is received. The income is calculated at the earliest opportunity; the month following the month the income is to be reported, i.e. the income received in July 2012 is to be reported by August 5th, 2012 and this reporting affects the September disability assistance.

In the Notice of Appeal the appellant stated that it is an unrealistic expectation that all documents are submitted by the 5th day of the following month. He stated he deposited the ICBC payment into his business account because he understood the payment was mainly for loss of employment income and for some massages due to a work related incident.

Neither party called any witnesses.

Prior to the hearing commencing the appellant submitted the following documents for consideration:

1. Letter dated July 14th, 2012 from the appellant to the ministry outlining the appointments that had to be cancelled due to a motor vehicle accident which would have resulted in income to the appellant's business.
2. Letter of September 4th, 2012 from appellant to ministry explaining his business expenses and with a revised list of business expenses for July 2012 attached.
3. Letter of October 18th, 2012 from appellant to ministry stating his position on the inconsistencies of the ministry's decision on allowable business expenses.

The ministry did not raise an objection to these documents being received by the panel but did state that normally these submissions are made prior to the day of the hearing.

The panel finds these letters, numbered 1 to 3, contain information or evidence that is in support of the information and record that was before the ministry at the time the reconsideration decision was made and therefore are admissible as evidence under section 22(4) Employment and Assistance Act (EAA).

4. Letter of October 4th, 2012 from the appellant to the ministry outlining outstanding issues/requests that appellant has sent into the local ministry office.
5. Letter of November 12th, 2012 from the appellant to the ministry advising he disagrees with a legislated enactment within the EPWDR legislation.
6. Letter of December 7th, 2012 from the appellant's doctor to the appellant outlining the benefits of the appellant being self-employed.

The ministry did not raise an objection to these documents being received by the panel but did state that normally these submissions are made prior to the day of the hearing.

The panel finds these letters, numbered 4 to 6, do not pertain to the issue under appeal and do not contain information or evidence that is in support of the information and record that was before the ministry at the time the reconsideration decision was made and therefore are not admissible as evidence under section 22(4) Employment and Assistance Act (EAA).

At the hearing the appellant stated that although he has a PWD designation he has been operating his business for several years and in that business he has a vehicle which is specially equipped for him. The appellant testified that when he was involved in a motor vehicle accident with this vehicle he was forced to cancel appointments which then impacted on his business income. The appellant testified that when ICBC paid him the \$2,000.00 it was his understanding this was to cover his massage treatments and the loss of business income as ICBC paid the body shop directly to have his vehicle repaired. The appellant testified ICBC did not inform him the payout was for "general damages" nor has he received any explanation from either ICBC or the ministry on what "general damages" covers. The appellant testified that he deposited the \$2,000.00 into his business account because, in his opinion, the money was to replace lost income (letter of July 14th, 2012) and that the lost income should be considered as SEP business income. The appellant testified there are inconsistencies from month to month on what is approved as an operating (business expense) and what is not. The appellant testified that his business account has never gone over the \$5,000 allowable limit and that the expenses for July 2012 were more than \$990 and that is why he submitted the revised outline of his expenses. The appellant testified the ministry does not consider his cell phone bill as a business expense as he uses it for personal use as well but because the cell phone plan is all-encompassing he cannot differentiate between personal use and business use and he does not record the use on each call.

The panel considered the appellant's statements as providing more detail about the nature of the income and business expenses he experienced in July 2012 and admitted the oral testimony as evidence in support of the information and record that was before the ministry at the time the reconsideration decision was made and in accordance with section 22(4) Employment and Assistance Act (EAA).

The ministry relied on the facts as stated in the reconsideration decision.

PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry's decision wherein the ministry determined the appellant was not eligible for disability assistance for the month of September because the appellant received an insurance benefit of \$1,775 which the ministry determined was not compensation for a destroyed asset and therefore must be considered as unearned income as stated under section 1(d) EAPWDR and included when calculating the family's net income under Schedule B EAPWDR. The ministry determined the family's net income exceeded the amount of disability assistance determined under Schedule A EAPWDR and therefore the family unit was not eligible for disability assistance as set in section 9 EAPWDR.

The legislation considered: (EAPWDR)

Definitions

Section 1 - In this regulation:

"earned income" means

- (a) any money or value received in exchange for work or the provision of a service,
- (b) Repealed (B.C. Reg. 197/2012)
- (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*; (B.C. Reg. 518/2004)
- (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)*.
- (w) tax refunds. (B.C. Reg. 197/2012)

Limits on income

Section 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, a recipient or a dependant.
- (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.

Monthly reporting requirement

Section 29

- (1) For the purposes of section 11 (1) (a) [reporting obligations] of the Act,
 - (a) the report must be submitted by the 5th day of each calendar month and
 - (b) the information required is all of the following, as requested in the monthly report form prescribed under the Forms Regulation: (BC334/2007)
 - (i) whether the family unit requires further assistance;
 - (ii) changes in the family units assets;
 - (iii) all income received by the family unit and the source of that income;
 - (iv) the employment and educational circumstances of recipients in the family unit;
 - (v) changes in family unit membership or the marital status of a recipient.

SCHEDULE A - Disability Assistance Rates [section 24 (a)]

Section 1 - Maximum amount of disability assistance before deduction of net income

- (1) Subject to this section and 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 all(2) Despite subsection (1), disability assistance may not be provided in respect of a dependent child if support for that child is provided under section 8 (2) or 93 (1) (g) (ii) of the *Child, Family and Community Service Act*. (B.C. Reg. 197/2012)

Section 2 – Monthly Support Allowance

- (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.

Table 1 - Monthly Support Allowance

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

- (2) If the family unit includes one or more dependent children or deemed dependent children, the support allowance under subsection (1) for a calendar month is increased by an amount equal to
 - (a) the maximum adjustment, minus

(b) the sum of

- (i) the family bonus, if any, paid to the family unit for the preceding calendar month, and
 - (ii) the amount of the supplement, if any, provided to or for the family unit under section 59 [supplement for delayed, suspended or cancelled family bonus] of this regulation for the current calendar month.
- (B.C. Reg. 286/2003) (B.C. Reg. 197/2012)

(3) In calculating the adjustment under subsection (2), an amount that, under the *Income Tax Act* (British Columbia) or the *Income Tax Act* (Canada), is deducted or set off from the family bonus must be treated as if it were paid to a person in the family unit.

(4) The support allowance under subsection (1) for a calendar month is not increased under subsection (2) if a person in the family unit refuses to

- (a) apply for the family bonus for the preceding calendar month, or
- (b) accept the family bonus for the preceding calendar month in respect of a dependent child in the family unit who is, or may be, a qualified dependant within the meaning of the *Income Tax Act* (Canada). (B.C. Reg. 197/2012)

(5) If a family unit includes a person who

- (a) immediately before reaching 19 years of age was a dependent child in the family unit, and
 - (b) reached that age while attending secondary school,
- the person is deemed to be a dependent child, for the purposes of this section, until the earlier of
- (c) the end of the school year in which the person reached the age of 19 years, and
 - (d) the date the person stops attending secondary school.

Section 3 - Prorating of support allowance

In the calendar month that contains the date of the applicant's submission of the application for disability assistance (part 2) form, the monthly support allowance is prorated based on the number of days remaining in that calendar month, beginning with the date of that submission. (B.C. Reg. 306/2005)

Section 4 Monthly Support Allowance

(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;

(2) The monthly shelter allowance for a family unit to which section 14.2 of the Act does not apply is the smaller of (B.C. Reg. 73/2010)

- (a) the family unit's actual shelter costs, and
- (b) the maximum set out in the following table for the applicable family size:

Table

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

2.1) The monthly shelter allowance for a family unit to which section 14.2 of the Act applies 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 unit composition:

Item	Column 1 Family Unit Composition	Column 2 Maximum Monthly Shelter

1	Two applicants/recipients and no dependent children and a warrant has been issued for one	\$375
---	---	-------

(3) For a family unit of more than 10 persons, the maximum monthly shelter allowance is calculated by adding an extra \$35 for each person by which the family unit size exceeds 10.

(4) Repealed (B.C. Reg. 62/2010)

(5) Despite subsection (2) (a) or (2.1) (a), if the actual shelter costs of a recipient increase as a result of the recipient remortgaging his or her place of residence, the amount of the mortgage payments is deemed, for the term of the new mortgage, to equal the amount before the remortgaging unless (B.C. Reg. 73/2010)

(a) the remortgaging was necessary because of the expiry of the mortgage term, and

(b) the amount borrowed under the mortgage is not increased.

(6) Despite subsection (2) or (2.1), the maximum monthly shelter allowance for a person who (a) is a sole recipient without dependants, and

(b) provides confirmation of pregnancy from a medical practitioner, nurse practitioner or a registrant of the College of Midwives of British Columbia (B.C. Reg. 73/2010)

is increased by up to \$195 per month for the duration of the pregnancy.

Schedule B, Section 4 – Small business exemption

(1) In this section and section 5,

"permitted operating expenses" means costs, charges and expenses incurred by a person in the operation of a small business, under a self-employment program in which the person is participating, for the following:

(a) purchase of supplies and products;

(b) accounting and legal services;

(c) advertising;

(d) taxes, fees, licences and dues incurred in the small business;

(e) business insurance;

(f) charges imposed by a savings institution on an account and interest;

(f.1) payments, including principal and interest, on a loan that is

(i) not greater than the amount contemplated by the recipient's business plan, accepted by the minister under section 70.1 of this regulation, and

(ii) received and used for the purposes set out in the business plan; (B.C. Reg. 462/2003)

(g) maintenance and repairs to equipment;

(h) gross wages paid to employees of the small business, but not including wages paid to

(i) the person participating, or

(ii) a person in the family unit of the person participating;

(i) motor vehicle expenses;

(j) premiums for employment insurance or workers' compensation benefits;

(k) employer contributions for employment insurance, workers' compensation or the Canada Pension Plan;

(l) rent and utilities, excluding rent and utilities for the place of residence of the persons described in subparagraphs (i) or (ii) of paragraph (h) unless

(i) there is an increase for rent or utilities and the increase is attributable to the small business, and

(ii) the increase is not provided for in the calculation of the family unit's shelter allowance under Schedule A of this regulation;

(m) office expenses;

(n) equipment purchases or rentals.

(2) Earned income of a recipient of disability assistance is exempted from the total income of the recipient's family unit if

(a) the recipient is participating in a self-employment program, and

(b) the earned income is derived from operating a small business under the self-employment program in

which the recipient is participating and

- (i) is used for permitted operating expenses of the small business, or
- (ii) is deposited in a separate account, established by the recipient in a savings institution, which account
 - (A) consists exclusively of funds reserved by the recipient for the purpose of paying permitted operating expenses of that small business, and
 - (B) the amount deposited does not increase the current balance of the separate account to a sum that exceeds \$5 000, or
- (iii) is used for costs of renovations to the recipient's place of residence up to but not exceeding \$5 000 in total or a greater amount approved by the minister, if the renovations are part of a business plan accepted by the minister under section 70.1 of this regulation.

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.

Exemptions - unearned income

Section 7

In this section:

"disability-related cost" means a disability-related cost referred to in paragraph (a), (b), (c) or (e) of the definition of disability-related cost in section 12 (1) [*assets held in trust for person with disabilities*] of this regulation; (B.C. Reg. 197/2012)

"disability-related cost to promote independence" means a disability-related cost referred to in paragraph (d) of the definition of disability-related cost in section 12 (1) of this regulation; (B.C. Reg. 197/2012)

"intended registered disability savings plan or trust", in relation to 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, means an asset, received by the person, to which the exemption under that section applies;

"structured settlement annuity payment" means a payment referred to in subsection (2) (b) (iii) made under the annuity contract referred to in that subsection. (B.C. Reg. 197/2012)

(1) The following unearned income is exempt: (B.C. Reg. 83/2012)

- (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;
 (B.C. Reg. 197/2012)
- (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;
(B.C. Reg. 197/2012)

(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; (B.C. Reg. 197/2012)

(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;

(B.C. Reg. 83/2012) (B.C. Reg. 197/2012)

(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*.

(B.C. Reg. 58/2003)

(f) a tax refund. (B.C. Reg. 197/2012)

(2) Subsection (1) (d.1) and (d.3) (ii) applies in respect of a person only if (B.C. Reg. 197/2012)

(a) the person has entered into a settlement agreement with the defendant in relation to a claim for damages in respect of personal injury or death, and

(b) the settlement agreement requires the defendant to

(i) make periodic payments to the person for a fixed term or the life of the person,

(ii) purchase a single premium annuity contract that

(A) is not assignable, commutable or transferable, and

(B) is designed to produce payments equal to the amounts, and at the times, specified in the settlement agreement,

(iii) make an irrevocable direction to the issuer of the annuity contract to make all payments under that annuity contract directly to the person, and

(iv) remain liable to make the payments required by the settlement agreement.

(B.C. Reg. 83/2012)

(2.1) The maximum amount of the exemption under subsection (1) (d.3) is \$8 000 in a calendar year, calculated as the sum of all payments, structured settlement annuity payments and money that, during the calendar year, are applied exclusively to or used exclusively for disability-related costs to promote independence. (B.C. Reg. 197/2012)

(3) Repealed (B.C. Reg. 83/2012) (B.C. Reg. 197/2012)

The ministry argued that the ministry worker was informed by ICBC that the \$2,000.00 paid to the appellant was to reimburse the appellant for \$225 for massage treatments (out of pocket expenses) and the \$1,775.00 for "general damages". The ministry argued that EAPWDR section 1 states that insurance benefits, except insurance paid as compensation for a destroyed asset, are considered unearned income and since the reimbursement of incurred costs for massage treatments do not meet the definition of income, the \$225 is not included in the calculation of the appellant's net income. The ministry argued there are no deductions for insurance benefits under Schedule B, the full \$1,775.00 must be included in calculating the appellant's net income. The ministry argued that since the appellant's net income (\$1,775.00) exceeded his disability

assistance (\$906.42), the appellant was ineligible for disability assistance as per section 9 EAPWDR.

The appellant argued the money received from ICBC was meant to replace the income lost when his vehicle was in for car body repairs and he had to cancel appointments which resulted in a loss of revenue. The appellant argued his business account has never gone over the \$5000 threshold and would not have done so had the \$1775.00 been classified by the ministry as business income. The appellant argued there are inconsistencies in which expenses are approved and which are not and the interpretations are subjective – what does “general damages” really mean? The appellant argued that because the \$1775.00 was classified as business income and he was denied disability assistance for July 2012, he had to borrow this money from his business as a loan which was permitted as a business expense in August 2012.

In the EAPWDR 1 of definitions – “unearned income” means any income that is not earned income, and includes, without limitation, money or value received from, paragraph (d) - insurance benefits, except insurance paid as compensation for a destroyed asset.

The evidence before the panel is that the ministry worker contacted ICBC regarding the \$2000.00 payment to the appellant and the ministry was advised the \$1,775.00 was for “general damages and the \$225.00 was to reimburse the appellant for massage treatments. The ministry considered the \$1,775.00 ICBC payment as unearned income received by the appellant; as defined under section 1(d), EAPWDR. The panel finds the \$1,775 payment was not compensation for a destroyed asset; it was paid for “general damages”. The remaining \$225.00 paid to the appellant was to reimburse him for massage treatments and since reimbursement of incurred costs does not meet the definition of income under the EAPWDR this amount is not included in the calculation of the appellant’s net income. The appellant’s position is that the \$1,775.00 is compensation for a loss of revenue from his business and should not be considered an insurance benefit.

The evidence before the panel is that ICBC paid the car body shop directly to repair the damage from the accident on the appellant’s vehicle and then paid the appellant general damages to cover other losses. In the appellant’s letter to the ministry dated July 14th, 2012, he states that his business lost \$800 in revenues due to cancellation of appointments and for future considerations subject to these appointments.

The panel finds that “loss of income” is not set out in Schedule B EAPWDR section 2, 4, 6 or 7; section 2 as a deduction from earned income; or section 4 as small business exemption – permitted operating expenses; or section 6 – deduction from unearned income and section 7 – exemptions – unearned income.

The panel finds the term “general damages” supports the ministry’s position that the payment by ICBC to the appellant is an insurance benefit which compensated the appellant for losses that can be readily proven, i.e. loss of business revenue (cancellation of scheduled business appointments), and therefore should be considered as unearned income, by definition, and included in the appellant’s net income calculation.

The panel finds the ministry reasonably determined that the \$2,000.00 received by the appellant from ICBC, of which \$1,775.00 is for general damages, is an insurance benefit and is not compensation for a destroyed asset; and therefore the ministry’s decision to consider the \$1,775.00 as unearned income as defined under Schedule B, section 1(d) EAPWDR and included in the calculation of the appellant’s net income was reasonable.

Section 9(2) EAPWDR states that 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. The panel finds that the appellant is eligible for monthly disability assistance of \$906.42. The appellant’s net income for the same month was \$1,775.00.

The panel finds that since the appellant’s net income for the month of July 2012 exceeded the amount of disability assistance to which he would be eligible that the ministry’s decision to determine he was not eligible

for disability assistance for the month of September 2012 was reasonable.

At the hearing the appellant disagreed with the ministry's decision on what should be considered an allowable operating business expense but since this issue, as dealt with in the reconsideration decision, was not the basis for the ministry's denial of September disability assistance, the panel has not addressed it in our decision. Permitted operating expenses – Small business exemption are set out in Schedule B, section 4 EAPWDR.

The panel finds that the ministry's reconsideration decision is reasonably supported by the evidence and is a reasonable application of the legislation in the circumstances of the appellant, and accordingly confirms the decision pursuant to section 24(1)(a) and 24(2)(a) of the Employment and Assistance Act.