

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development (ministry) reconsideration decision of December 7th, 2012 wherein the ministry determined the appellant was not eligible for disability assistance for the month of December 2012 as set out in section 9 Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) because the net income for the family unit in October 2012, as determined under Schedule B (EAPWDR) exceeded the rate of disability assistance determined under Schedule A (EAPWDR) for which the appellant would have been eligible.

PART D – Relevant Legislation

Employment and Assistance For Persons with Disabilities Regulation (EAPWDR), section 1 and 9; Schedule A sections 1, 2, 4 and Schedule B sections 1 to 3.

PART E – Summary of Facts

The evidence before the ministry at the time of reconsideration:

- Pay stubs for the appellant covering the period of August to December 2011;
- Pay stubs for the appellant covering the period of February to September 2012;
- Two pay stubs for the appellant for October 2012 employment totaling \$1,849.58;
- - on October 12th, 2012 the appellant received net earnings of \$1109.64 with deductions of \$250.36 for Canada Pension, Employment Insurance and Income Tax; the gross earnings were \$1,360.00;
- - on October 26th the appellant received net earnings of \$736.94 with deductions of \$110.06 for Canada Pension, Employment Insurance and Income Tax; gross earnings were \$850.00;
- Letter dated October 11th, 2012 from the ministry to the appellant requesting information to determine his eligibility for disability assistance;
- Letter dated November 21st, 2012 from ministry to the appellant advising him his assistance is being reduced because his employment income earned in October 2012 exceeds the amount of disability assistance he would be eligible to receive;
- Log of expenses from the appellant – no period specified;
- Cash register receipts for the period October 16th to 18th, 2012 for cellphone and cellphone cover; 3 - bus ticket receipts; clothing and accessories; toiletries; miscellaneous purchases.
- Request for Reconsideration dated November 28th, 2012;

The appellant is designated a Persons with Disabilities (PWD) and is a single recipient of disability assistance. On October 10th, 2012 his file was selected for review. The appellant was requested to submit several documents, i.e, bank records, employment pay slips, income tax assessment for 2011 and rent receipts. The ministry determined the appellant is the only person in the family unit with a PWD designation and the exempt amount for earned income is calculated as the lesser of \$800 and the family unit's total earned income in the calendar month of calculation; his monthly assistance (for a single recipient) is \$531.47 and his shelter allowance is \$375.00. During the month of October 2012 the appellant had net employment earnings of \$1,849.58. The appellant is eligible for disability assistance of \$906.47. In calculating the appellant's net income under Schedule B EAPWDR his net income (earnings) for October 2012 was \$1,849.58 minus the \$800 exemption which results in a Net Income of \$1,049.58 which exceeds the amount of his disability assistance according to Schedule A EAPWDR. In the Request for Reconsideration the appellant stated that he had spent \$896.93 in October on retrieving his daughter from another community and now finds himself without money for food or rent. The ministry's file shows the appellant as a single recipient of disability assistance with no dependants shown.

No new evidence was presented and no witnesses were called.

PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry's reconsideration wherein the ministry determined that the ministry determined the appellant was not eligible for disability assistance for the month of December 2012 as set out in section 9 Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) because the net income for his family unit in October 2012, as determined under Schedule B exceeded the rate of disability assistance determined under Schedule A for which the appellant would have been eligible.

The legislation considered: EAPWDR

Part 1 - Definitions

"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;

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.

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	Sole applicant/recipient and one or more dependent children	Applicant/recipient is a person with disabilities	\$672.08
3	Two applicants/recipients and no dependent children	One applicant/recipient is a person with disabilities, the other is not a person with disabilities and is under 65 years of age	\$700.56
4	Two applicants/recipients and no dependent children	Both applicants/recipients are persons with disabilities	\$949.06
5	Two applicants/recipients and no dependent children	One applicant/recipient is a person with disabilities, the other is not a person with disabilities and is 65 or more years of age	\$949.06
6	Two applicants/recipients and one or more dependent children	One applicant/recipient is a person with disabilities, the other is not a person with disabilities and is under 65 years of age	\$794.56
7	Two applicants/recipients and one or more dependent children	Both applicants/recipients are persons with disabilities	\$1 043.06
8	Two applicants/recipients and one or more dependent children	One applicant/recipient is a person with disabilities, the other is not a person with disabilities and is 65 or more years of age	\$1 043.06

- (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.
- (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 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	2 persons	\$570
3	3 persons	\$660
4	4 persons	\$700
5	5 persons	\$750
6	6 persons	\$785
7	7 persons	\$820
8	8 persons	\$855
9	9 persons	\$890
10	10 persons	\$925

**Schedule B – Net Income Calculation - EAPWDR
Deductions and Exemption rules**

Section 1 - When calculating the net income of a family unit for the purposes of section 24 (b) [amount of disability assistance] of this regulation,

(a) the following are exempt from income:

- (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)
- (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); (B.C. Reg.180/2010)
- (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; B.C. Reg. 276/2004)
- (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) Repealed (B.C. Reg. 197/2012)
- (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)
- (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. (B.C. Reg. 115/2003)
- (xxiv) Repealed; (B.C. Reg. 85/2012) (BC Reg. 209/2003)
- (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. (BC Reg. 209/2003) (B.C. Reg. 197/2012)
- (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. (B.C. Reg. 462/2003)
- (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, (B.C. Reg. 22/2005)
- (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. (B.C. Reg. 91/2005)
- (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; (B.C. Reg. 292/2005) (B.C. Reg. 32/2012)
- (xxxii) 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. (B.C. Reg. 192/2006)
- (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. (B.C. Reg. 165/2007)

- (xxxiv) money withdrawn from a registered disability savings plan, (B.C. Reg. 362/2007)
- (xxxv) a working income tax benefit provided under the *Income Tax Act* (Canada), (B.C. Reg. 48/2008)
- (xxxvi) Repealed (B.C. Reg. 180/2010)
- (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, (B.C. Reg. 87/2008)
- (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; (B.C. Reg. 85/2012)
- (xli) payments granted by the government of British Columbia under the Ministry of Children and Family Development's Supported Child Development program; (B.C. Reg. 85/2012)
- (xlii) payments granted by the government of British Columbia under the Ministry of Children and Family Development's Aboriginal Supported Child Development program, (B.C. Reg. 85/2012)
 - (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 earned income

Section 2 - 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.

Exemption - earned income

Section 3

- (1) Subject to subsection (2), the amount of earned income calculated under subsection (3) is exempt for a family unit.
- (2) If an application for disability assistance (part 2) form is submitted to the minister, the family unit may not claim an exemption under this section in relation to the first calendar month for which the family unit becomes eligible for disability assistance unless
 - (a) a member of the family unit who is designated as a person with disabilities previously received disability assistance under the Act or a former Act, or
 - (b) a member of the family unit received income assistance under the *Employment and Assistance Act* for the calendar month immediately preceding that first calendar month.
- (3) The exempt amount for a family unit that qualifies under this section is to be calculated as follows:
 - (a) in the case of a family unit that includes only one recipient who is designated as a person with disabilities, the exempt amount is calculated as the lesser of
 - (i) \$800, and

- (ii) the family unit's total earned income in the calendar month of calculation;
- (b) in the case of a family unit that includes two recipients who are designated as persons with disabilities, the exempt amount is calculated as the lesser of
 - (i) \$1 600, and
 - (ii) the family unit's total earned income in the calendar month of calculation.

The ministry argued the appellant has been a recipient of disability assistance for a number of years and that he is eligible to receive maximum disability assistance of \$906.42 a month. The ministry argued that the appellant must declare all income and report any changes which may affect the assistance he receives, by completing the stub that is attached to each cheque. The stub is completed one month and any changes will affect the assistance received the next month, i.e. income received in October and reported in November may affect the amount of assistance received in December. The ministry argued that in October 2012 the appellant received \$1,849.58 in employment earnings which was reported in November. The ministry stated that each recipient of disability assistance is, by legislation, exempted \$800 in earnings when the \$800 earning exemption is subtracted the appellant's net earned income is \$1,049.58. The ministry argued that since the appellant's net earned income exceeds the amount he would receive in disability assistance he is not eligible for disability assistance for that month (December). The ministry stated controls are not placed on what or where a recipient, such as the appellant, spends his disability assistance and the ministry has no legislated authority and no discretion to vary from the EAPWD legislation to consider or reimburse the appellant for his expenses for assisting his daughter.

The appellant argued the ministry does not provide sufficient monetary assistance for anyone to survive and he must work in order to provide himself with a decent living. The appellant argued that he has not worked since October 2012 and in the past he was able to bank his work hours and could keep himself under the exemption limit so that his disability assistance would not be affected but the company changed its policy and now has to pay out all worked hours within the pay period the hours were worked. The appellant argued that his daughter called in a state of emergency and she wanted to come and live with him. The appellant argued that he was in contact with the Ministry of Children and Family (MCF) and explained the situation. The appellant argued that his daughter was in need of clothes and other items which he decided to purchase and then kept the receipts. Unfortunately she only stayed with him a short while before returning to live with her mother.

Section 9 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 evidence before the panel is that in October 2012 the appellant received \$1,849.58 in earnings which was reported to the ministry in November 2012. Under Schedule B, section 3(3) EAPWDR a recipient of disability assistance is entitled to an \$800 earned income exemption and therefore the appellant's net income is reduced to \$1,049.58. The maximum amount of disability assistance the appellant, as a single recipient, would be eligible to receive is \$906.42. The panel finds that, based on the evidence, it was reasonable for the ministry to determine, the appellant's net income exceeded his monthly disability assistance and therefore is not entitled to disability assistance for that month. The panel finds the ministry has no discretion to reimburse the appellant for expenses which are not legislated

The panel finds that the legislation supports the ministry decision and that the ministry decision to determine the appellant was not entitled to disability assistance for the month of December 2012 was reasonable.

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