

**PART C – Decision under Appeal**

The decision under appeal is the Ministry of Social Development (“ministry”) reconsideration decision dated March 13, 2013, which held that the \$700 the appellant received from attending a job training program, in January 2013, met the definition of unearned income and, therefore, was not eligible for an earnings exemption per Section 1 of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) and Sections 1, 6, 7 and 8 of Schedule B of the EAPWDR and was subsequently deducted from her March income assistance.

**PART D – Relevant Legislation**

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Section 1; and Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Schedule B: Sections (1), (6), (7) and (8).

## PART E – Summary of Facts

The appellant was not in attendance at the hearing and had asked a representative to be there on her behalf. After confirming that the appellant was notified, the hearing proceeded under Section 86(b) of the Employment and Assistance Regulation and the representative was allowed to sit in.

The evidence included :

The appellant's request for reconsideration dated March 1, 2013.

At the hearing, the appellant's representative did not present the Panel with any new oral or documentary evidence, stating she was relying on the appellant's Notice of Appeal document as her submission on the appellant's behalf.

The appellant's Notice of Appeal included the following information and was considered to be her submission at the hearing:

The appellant contacted the ministry, by telephone, in December 2012 to advise them she was planning to attend a local job training program in January 2013 and she was going to be receiving earnings from that program of \$50 for each day attended over the four week program.

During that phone call, the ministry told the appellant she would not be deducted those monies as she was a PWD recipient and allowed to earn \$800 before deductions would occur.

The Ministry then deducted the full amount of \$700, which she received in January as training supports for attending the job training program, from her March assistance cheque.

The appellant has obtained full time employment at the end of the job training program.

The ministry appeared to be penalizing her for working so hard to be independent of the system.

The ministry did not tell her the job training allowance was not considered employment income at the time she inquired in December 2012; and,

The legislation was not adequately explained to her and she may not have enrolled in the program if she was aware that the monies would be deducted.

The ministry's submission at the hearing included:

The appellant has been a recipient of PWD assistance since May 2003.

The appellant had declared in February that she received \$700 in training supports from participating in a four week job training program that ran 6 hours a day and was paid \$50 per day for attendance.

That it is the ministry's position that the \$700 the appellant received in training supports from the job training program meet the definition of 'unearned income' and not 'earned income' because the money is a training allowance and therefore, not eligible for an earnings exemption.

That no information has been provided by the appellant to show the money she received was from employment and earned income.

**PART E – Summary of Facts – cont'd**

The training allowance the appellant received was considered a stipend and it is the ministry's opinion that it meets the definition of unearned income.

The ministry has decided to allow the appellant a \$100 exemption for reasonable transportation costs to attend the program.

The ministry believes the appellant is currently aware of the \$100 travel expense exemption.

That the appellant is not eligible for any further exemptions as there was no information provided to the ministry to confirm she had any other educational related costs.

The ministry apologizes for any misunderstanding that may have occurred in the treatment of the training supports the appellant received.

**The Panel finds:**

The appellant has been a recipient of PWD assistance since May 2003.

The appellant has not provided any further information to the ministry or the Panel in support of the \$700 training allowance being received as anything other than a stipend for her attendance at the job training program.

The ministry has relied on portions of the legislation that are relevant to the situation and have consulted ministry policy that allows them the discretion to provide the appellant with reasonable transportation costs to the Job training program.

## PART F – Reasons for Panel Decision

The issue to be decided is whether the ministry's decision to deem the appellant's training allowance as unearned income is a reasonable application of the applicable enactment in the circumstances of the appellant.

The legislation provides:

### Definitions

1 (1) In this regulation:

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

(q) education or training allowances [emphasis added], grants, loans, bursaries or scholarships;...

### Schedule B

#### Net Income Calculation

(section 24 (b) )

#### 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

## PART F – Reasons for Panel Decision – cont'd

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. [emphasis added]

#### **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.

## PART F – Reasons for Panel Decision – cont'd

**Exemptions — unearned income**

7 (1) 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;
- (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
  - (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*.

(2) Subsection (1) (d.1) applies in respect of a person only if

- (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.

(3) In this section, "**structured settlement annuity payment**" means a payment referred to in subsection (2) (b) (iii) made under the annuity contract referred to in that subsection.

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

8 (1) In this section:

"**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.

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

#### The ministry argues:

That the training supports the appellant received from the job training program she attended meet the definition of 'unearned income' not 'earned income' as they are a training allowance. Training allowances are not eligible for an earnings exemption. As no information has been provided by the appellant to confirm the \$700 she received was from employment, the money cannot be treated as earned income. The ministry has allowed a \$100 exemption to allow for the appellant's reasonable transportation costs to attend the program; however, it is of the position the appellant is not eligible for any further exemptions under the legislation because she has not provided any information to support that she had any other educational related costs.

#### The appellant argues:

That she was given incorrect information by the ministry and she believes she should be able to keep the \$700 she received from the job training program because she worked hard for that money and has made a great effort to become independent of the system.



The Panel finds the amount of \$700, was correctly defined as 'unearned income' per Section 1(1)(q) of the EAPWDR; and, that the unearned income did not meet any of the deduction or exemption criteria as listed in Schedule B: Sections (6) and (7). In addition, the ministry has appropriately exercised its discretion to exempt education related unearned income as provided for in Section (8) of Schedule B, by allowing a \$100 deduction from the appellant's unearned income to account for reasonable transportation costs to attend the Job Program.

The Panel finds the ministry's determination of the appellant's job training allowance as being considered unearned income is reasonable application of the applicable enactment in the circumstances of the appellant and confirms the decision.