

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development's (Ministry) reconsideration decision dated April 10, 2013 which found that the appellant was not eligible for April 2013 disability assistance. The Ministry determined that the appellant received \$1,897.93 net unearned income in February 2013 which exceeded the appellant's assistance rate of \$906.42 pursuant to Sections 1, 9 and 24 of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR).

PART D – Relevant Legislation

Sections 1, 9, and 24 of the Employment and Assistance for Persons with Disabilities Regulation – EAPWDR

Sections 1, 2, 4 of Schedule A of the EAPWDR

Section 1, 6, 7, 7.1 and 8 of Schedule B of the EAPWDR

PART E – Summary of Facts

The evidence before the Ministry at the time of the reconsideration decision consisted of:

- A copy of the Notification of Assessment dated November 8, 2012 advising the appellant that the following funding is available to him:
 - a) November 7, 2012 – Grant - \$875
 - b) November 7, 2012 – Student Loan - \$6,300
 - c) February 20, 2013 – Student Loan - \$3,300
 - d) February 20, 2013 – Grant - \$875
- A copy of Student Aid BC, Check Loan Application Status indicating the total payment of \$4,175 to the appellant on February 20, 2013;
- A copy of the appellant's student loan record;
- Request for reconsideration.

In the request for reconsideration, the appellant wrote that he provided information about his school and requested assistance in order to purchase clothes for school. The appellant wrote that he went to the Ministry and was told that "it would be okay as long as I did not go over \$9000 a year". The appellant wrote that he had to borrow money to purchase clothing. He had to also pay for other expenses such as transportation, a desk, note books, pens, programs for laptop and a tutor to help him learn computer and writing skills.

On the copy of his student loan record the appellant wrote that the he had other expenses such as binders and supplies and that the Ministry did not consider them.

In the Notice of Appeal the appellant wrote that "I noticed the Ministry allotted me \$78 a month for a 4 month semester when in fact that payment received was for an 8 month". The appellant further wrote that he had other expenses such as binders, papers, internet stick.

At the hearing, the appellant stated that all he wants to do is to go to school and get off the income assistance program. The appellant said that in November 2012, he went to the Ministry informing them of his decision requesting assistance in order to purchase clothing. He said that the school has a dress code that he must follow. He provided the Ministry a copy of his student loan notification of assessment and told the Ministry he would pay them back as soon as he receive his student loan. The appellant stated that the Ministry refused to assist him and he had to borrow money to purchase clothing for school.

The appellant said that the Ministry only exempted \$312 for transportation which is for 4 months when the loan he received was for 8 months. The appellant stated that he needed to purchase a computer, pay for internet and buy binders and computer stick in order to submit his school assignments. The appellant further said that he was honest and open and told the Ministry he was receiving student loan and provided a copy of the assessment. The appellant said that he did not apply for rent assistance and he understood the \$7,950 living costs was for him to go to school.

The Ministry relies on the reconsideration decision stating that the appellant received \$4,175 student assistance in February 2013. The Ministry applied the exemptions under the legislation which were \$1,057.07 tuition fee, \$908 books and \$312 transportation. The Ministry said that the appellant's disability assistance as a sole recipient is \$906.42 per month. The appellant did not provide any

receipts for expenses admissible under the legislation and as such, his net income for February exceeded his assistance rate.

The appellant stated that he was not asked to submit any receipts.

The following facts are not in dispute:

- The appellant was in receipt of disability assistance under the EAPWDR as a single recipient;
- The appellant received \$7,950 living cost as part of his student loan;
- The appellant must follow a dress code at his school;
- The appellant did not provide receipts of his expenses to the Ministry.

PART F – Reasons for Panel Decision

The issue under this appeal is the reasonableness of the Ministry's decision dated April 10, 2013 which found that the appellant was not eligible for April 2013 disability assistance. The Ministry determined that the appellant received \$1,897.93 net unearned income in February 2013 which exceeded the appellant's assistance rate of \$906.42 pursuant to Sections 1, 9 and 24 of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR).

Legislation EAPWDR

Pursuant to Section 1 of the EAPWDR "**unearned income**" means any income that is not earned income, and includes, without limitation, money or value received from any of the following:

- (a) money, annuities, stocks, bonds, shares, and interest bearing accounts or properties;
- (b) cooperative associations as defined in the *Real Estate Development Marketing Act*;
- (c) war disability pensions, military pensions and war veterans' allowances;
- (d) insurance benefits, except insurance paid as compensation for a destroyed asset;
- (e) superannuation benefits;
- (f) any type or class of Canada Pension Plan benefits;
- (g) employment insurance;
- (h) union or lodge benefits;
- (i) financial assistance provided under the *Employment and Assistance Act* or provided by another province or jurisdiction;
- (j) workers' compensation benefits and disability payments or pensions;
- (k) widows' or orphans' allowances;
- (l) a trust or inheritance;
- (m) rental of tools, vehicles or equipment;
- (n) rental of land, self-contained suites or other property except the place of residence of an applicant or recipient;
- (o) interest earned on a mortgage or agreement for sale;
- (p) maintenance under a court order, a separation agreement or other agreement;
- (q) education or training allowances, grants, loans, bursaries or scholarships;
- (r) a lottery or a game of chance;
- (s) awards of compensation under the *Criminal Injury Compensation Act* or awards of benefits under the *Crime Victim Assistance Act*, other than an award paid for repair or replacement of damaged or destroyed property;
- (t) any other financial awards or compensation;
- (u) Federal Old Age Security and Guaranteed Income Supplement payments;
- (v) financial contributions made by a sponsor pursuant to an undertaking given for the purposes of the *Immigration and Refugee Protection Act (Canada)* or the *Immigration Act (Canada)*.

Section 9 of the EAPWDR deals with the limits on income and states; 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.

Pursuant to section 24 of the EAPWDR the Disability assistance may be provided to or for a family unit, for a calendar month, in an amount that is not more than
 (a) the amount determined under Schedule A, minus
 (b) the family unit's net income determined under Schedule B.

Schedule A – Disability Assistance Rates

Section 1 of the Schedule A deals with the maximum amount of disability assistance before deduction of net income and states; 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.

Pursuant to Section 2 of the Schedule A, a month support allowance 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

Section 4 of the Schedule A states that the maximum monthly shelter allowance for one person is \$375.

Schedule B Net Income Calculation

Section 1 – Deduction and exemption rules

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.

Section 6 of the Schedule B deals with the deduction from unearned income and states that the only deductions permitted from unearned income are the following:

- (a) any income tax deducted at source from employment insurance benefits;
- (b) essential operating costs of renting self-contained suites.

Pursuant to Section 7 of the Schedule B the following unearned income is exempt:

- (a) the portion of interest from a mortgage on, or agreement for sale of, the family unit's previous place of residence if the interest is required for the amount owing on the purchase or rental of the family unit's current place of residence;

- (b) \$50 of each monthly Federal Department of Veterans Affairs benefits paid to any person in the family unit;
- (c) a criminal injury compensation award or other award, except the amount that would cause the family unit's assets to exceed, at the time the award is received, the limit applicable under section 10 [asset limits] of this regulation;
- (d) a payment made from a trust to or on behalf of a person referred to in section 12 (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.

Pursuant to Section 8 of the Schedule B the Minister has discretion to exempt education related unearned income.

"**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 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.

The Ministry's position is that all applicable expenses were exempted from the appellant's unearned income. The appellant's unearned income for February 2013 was in excess of his disability assistance and he is not eligible to receive assistance for the month of April.

The appellant argues the living costs he received as part of his student loan is not for rent and it is for him to attend school. The appellant agreed with the Ministry that he has received his May disability assistance.

Respecting allowable exempted expenses, the panel notes that Section 8 of Schedule B of the EAWPDR states the education costs means the amount required by a student for tuition, books, compulsory student fees and reasonable transportation costs for a semester. The panel accepts the appellant's submission stating that he purchased computer stick, binders and paid for a tutor to teach him how to operate a computer; however, the panel notes that the appellant did not provide any receipts in support of his claim and that the legislation specifically states that only tuition, books, compulsory students fees and reasonable transportation costs for a semester are allowable exempted expenses.

Respecting the living costs expenses, the panel finds that when applying the legislation, the education allowances, including grants and loans received by the appellant, fall within the Section 1 (q) of the EAPWDR definition of unearned income and that they are not permitted deductions under Section 6 of the Schedule B nor do they fall within any of the "unearned income" exemptions of Section 7 of Schedule B. The panel finds that the Ministry correctly determined that the appellant's net income for February 2013 (as determined under Schedule B) exceeded his disability assistance (as determined under Schedule A of the EAPWDR).

Therefore, the panel finds that the Ministry was reasonable in concluding that the appellant was not

APPEAL

eligible for disability assistance for April 2013 and confirms the Ministry's reconsideration decision.