



PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry's) reconsideration decision dated August 26, 2013 finding the appellant ineligible for disability assistance for the month of September 2013. The ministry found that in July 2013 the appellant received unearned income in the form of an inheritance, in excess of the monthly disability assistance she was eligible for in accordance with section 9(2) of the Employment and Assistance for Persons with Disabilities Regulation.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) : sections 1, 9, and 24; Schedule A sections 1, 2 and 4; and Schedule B sections 1, 6, 7, 7.1 and 8.

PART E – Summary of Facts

The evidence before the ministry at the time of reconsideration consisted of:

1) The appellant's Request for Reconsideration dated August 9, 2013 which states that the appellant "is beyond the fighting in temporary agencies and threats of diseases. My niece was working in temporary agencies at the time she was stabbed with Hepatitis C. The nervous tension plus when I go home they are there again. My nerves are beyond taking it, plus my teeth are rotted and it has been hard. Request for (illegible) Canada federal lawyer ascertain"; and

2) Letter from a law firm dated July 18, 2013 with cheque stub attached, indicating that the appellant received a final distributive share of an estate in the amount of \$1,306.37.

In her Notice of Appeal the appellant states that she disagrees with the ministry's reconsideration decision because she needs a place to live. She states that "I can pay monthly payments to pay the rent for September. I acknowledge I made a mistake of the cheque but cannot reverse. I called and the account is way over and could not reverse".

Additional documents submitted prior to the hearing with the appellant's Notice of Appeal included:

1) 10 Day Notice to End Tenancy for Unpaid Rent or Utilities from the appellant's landlord dated August 28, 2013 indicating that the appellant failed to pay rent of \$500 due on August 22, 2013;

2) Bank Profile from the appellant's financial institution dated August 28, 2013 indicating that the appellant's bank account balance is \$1.62 and she has RRSPs in the amount of \$3,738.85; and

3) Inquiry printout from the appellant's bank dated August 28, 2013, confirming an account balance of \$1.62.

The ministry stated at the hearing that they had requested these documents from the appellant; therefore, they did not object to the documents being admitted as evidence. The panel admits them pursuant to section 22(4)(b) of the *Employment and Assistance Act* as written testimony in support of the information or records that were before the minister when the decision being appealed was made. Specifically, the panel admits the Notice to End Tenancy and the bank account balance information because these records assist in determining whether the inheritance funds received by the appellant may be considered as income rather than an asset under the EAPWDR.

The appellant did not attend the hearing. After establishing that the appellant had been notified of the hearing date and time, the hearing proceeded under section 86(b) of the *Employment and Assistance Regulation*.

At the hearing, the ministry summarized its reconsideration decision, stating that they determined that the appellant was ineligible for September 2013 disability assistance because her net income was in excess of the legislated limit. Her payment stub due in August 2013, which is used by the ministry to determine continuing eligibility for September, indicated that the appellant received an inheritance of approximately \$1,300. The ministry requested additional documentation from the estate trustee which confirmed the amount of the inheritance and that it was a one-time payment and not a trust set up for



the benefit of the appellant.

The ministry determined that the inheritance was unearned income which is not exempt under the EAWDR and must be deducted from the income assistance payment pursuant to section 24, where it exceeds the disability assistance rate as determined under Schedule A of the regulation. The ministry explained that the appellant's rate of assistance was \$906.42 per month, and that the inheritance of approximately \$1,300 put her more than \$400 over the limit. The ministry stated that some types of funds, such as employment income, are exempt from being deducted and that clients might get confused and misread that any type of income is exempt; however, an inheritance is not exempt.

The ministry explained that at the time of the reconsideration the appellant told them that she had exhausted the funds and she requested "benefits on appeal" to prevent her from being evicted for non-payment of rent. The ministry requested the appellant's bank statements which showed that the funds were not in her account as an asset, and that her account balance was almost nil.

[REDACTED]

PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry reasonably determined that the appellant was not eligible for disability assistance for the month of September 2013 because in July 2013 she received an inheritance in excess of the monthly disability assistance she was eligible for, in accordance with section 9(2) of the EAPWDR.

The relevant sections of the EAPWDR are as follows:

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:

- (l) a trust or inheritance;

Limits on income

9 (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.

Amount of disability assistance

24 Disability assistance may be provided to or for a family unit, for a calendar month, in an amount that is not more than

- (a) the amount determined under Schedule A, minus
- (b) the family unit's net income determined under Schedule B.

SCHEDULE A Disability Assistance Rates (section 24 (a))

Maximum amount of disability assistance before deduction of net income

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

- (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.

2 (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 (4) for each dependent child in the family unit.

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

Monthly Shelter Allowance

4(1) For the purposes of this section

(2) The monthly shelter allowance for a family unit to which section 14.2 of the Act does not apply is the smaller of

(a) the family unit's actual shelter costs, and

(b) the maximum set out in the following table for the applicable family size:

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

Schedule B Net Income Calculation

1 When calculating the net income of a family unit for the purpose 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)

(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) 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, Sh 2)
- (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.
- (xxiv) Repealed (B.C. Reg. 85/2012, Sch.2)
- (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;



(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)

(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, 3.1 and 4, and

(d) all unearned income must be included, except the deductions permitted under section 6 and any income exempted under sections 7, 7.1, 7.2 and 8.

[am. B.C. Regs. 276/2004; 292/2005; 195/2007; 48/2008; 87/2008; 94/2008; 4/2010; 48/2010, Sch. 1; 180/2010; 242/2010; 32/2012, Sch. 4; 85/2012, Sch. 2; 197/2012, Sch. 2; 332/2012; 123/2013.]

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.

Exemptions - unearned income

7(1) The following unearned income is exempt:

(d) a payment made from a trust to or on behalf of a person referred to in section 12(1) of this regulation [*assets held in trust for person with disabilities*]

(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;

Exemptions - workers compensation

7.1 (1) Subject to subsection (2), unearned income that is compensation paid under section 29 or 30 of the *Workers Compensation Act* is exempt for a family unit.

Minister's discretion to exempt education related unearned income

8. (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 position of the ministry, as set out in the reconsideration decision, is that the appellant is ineligible for September 2013 disability assistance because she received income in excess of the legislated limit. On her August monthly declaration form ("stub") the appellant declared \$1,306.37 as the final distributive share of an estate. The ministry confirmed with the law firm that issued the payment that the appellant received these funds and did not receive any other payments, and that these funds were not a trust account set up for the appellant. The ministry's position at the hearing was that because the appellant had spent the funds (as indicated by her bank balance of \$1.62 and the Notice to End Tenancy for non-payment of rent) the inheritance could not be classified as an asset under the legislation, and had to be viewed as income.

The ministry states that the appellant was receiving disability assistance as a sole recipient, with a monthly rate of \$906.42 under Schedule A of EAPWDR: the appellant receives \$531.42 for support plus \$375 for shelter. The ministry further states that section 24 requires the appellant's net income to be deducted from her assistance rate. Schedule B(1) of the EAPWDR states that net income includes all *earned income* and *unearned income*, minus all applicable deductions and exemptions, and income received from an inheritance is classified as unearned income pursuant to section 1.

The ministry states that there are no applicable exemptions from inheritance income and the appellant's entire inheritance must therefore be included in the calculation of her net income. Also, as income is calculated at the earliest opportunity, the inheritance that was received in July and reported on the August stub, affects assistance for September, the month in which the appellant was found ineligible because her net income of \$1,306.37 exceeds the disability rate of \$906.42.

The appellant's position is that she "is beyond fighting temporary agencies and threats of disease", and she suffers from nervous tension and rotten teeth and had requested a federal lawyer. She states that she needs a place to live and can make monthly payments to pay the rent for September. She "made a mistake of the rent cheque but cannot reverse it", and her account is overdrawn.

The panel finds that the ministry considered the monthly disability assistance the appellant is eligible for and the amount of inheritance the appellant received in July 2013. The ministry reasonably determined that the inheritance is unearned income per section 1 of the EAPWDR where an inheritance is clearly defined as such. As well, the appellant's bank statements indicated that the money was not in her account as an asset. The panel finds that the ministry's interpretation of sections 9 and 24 were reasonable as these sections state that a family is not eligible for assistance when their net income calculation per Schedule A of the regulation exceeds the disability rate for their family size, and net income must be deducted from the disability amount.

The panel further finds that the ministry reasonably determined that the deductions and exemptions described in Schedule B of the EAPWDR do not apply to the appellant's inheritance income. The exemptions allowed under section 1 of Schedule B include government benefits and payments from legal settlements. The allowable deductions under section 6 of the Schedule relate to Employment Insurance and rental suites, while sections 7, 7.1, and 8 have to do with trusts, Workers

Compensation, and education allowances. The inheritance that the appellant received is not any of these.

Accordingly, the panel finds that based on the evidence the ministry reasonably determined that the appellant's unearned income of \$1,306.37 in July 2013, consisting of a final distributive share of an estate, was more than the \$906.42 a month she was eligible for in disability assistance. Therefore, the appellant was not eligible for disability assistance for September 2013. The panel confirms the ministry's reconsideration decision because it finds that the decision was reasonably supported by the evidence and was a reasonable application of the applicable legislation in the appellant's circumstances.