

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development's (the ministry's) reconsideration decision of June 6, 2013 in which the ministry denied the appellant disability assistance for June, 2013 pursuant to section 9 of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) because she received unearned income in the form of an inheritance income in April which must be included in the calculation of assistance as no exemptions applied. The appellant's income exceeded the assistance rates pursuant to Schedule A of the EAPWDR and the appellant was ineligible for assistance for June as calculated in Schedule B of the EAPWDR.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), sections 1, 9, 24, and Schedules A and B

PART E – Summary of Facts

Procedural matters

The appellant was not in attendance at the hearing. After confirming that the appellant had been notified of the hearing, the panel proceeded with the hearing under section 86(b) of the *Employment and Assistance Regulation*.

Evidence

The evidence before the Ministry at the time of the reconsideration decision included the following:

June 6 2013 – The following information is outlined by the ministry in the Reconsideration Decision Appendix A:

- the appellant is a sole recipient of disability assistance with no dependants; and
- in April 2013 the appellant received a \$1000 inheritance.

May 16, 2013 – As outlined in the Request for Reconsideration Section 2, the ministry outlines the decision to be reconsidered as follows:

- on May 13, 2013, the ministry received a Release of Information from an Advocate and several documents from the appellant including a bank statement and a letter from the appellant explaining her bank transactions which indicated that the appellant received a \$1000 inheritance on April 3, 2013, from her Aunt and that the bank statement show a deposit of \$1000 on April 3, 2013;
- on May 15, 2013 the ministry left a message with the Advocate advising that there was no eligibility for June disability assistance due to the income received in April 2013 is in excess of the assistance rates, updated the appellant's income on her file and received a fax from the Advocate which included a copy of the email confirming the inheritance; and
- on May 16, 2013 the appellant left a phone message for the ministry, the ministry then returned the call and advised the appellant that she was not eligible for June 2013 assistance due to unearned income received in the month of April 2013 that was in excess of the assistance rate of \$906.42, that the appellant was advised of the right to reconsideration and the appellant requested a reconsideration package.

May 16, 2013 – As outlined in the Request for Reconsideration Section 3, the appellant outlines her reasons for the request for reconsideration decision as follows:

- the appellant requests reconsideration for her denial for assistance for the month of June, 2013;
- that this is taking a huge toll on her life, that she was not aware that an inheritance was considered unearned earnings, that the form, the package and definitions were not given to her in the past;
- that her aunt's passing away has been very hard as she was close to her and now she is gone;
- that she does not feel it is fair that someone who receives a small inheritance from a close family member should have their assistance taken away from them the same month that they have to cover rent, bills etc., let alone taken away at all, and that this seems cruel to her;
- that this was not a large inheritance but a small one given by the appellant's aunt to show her love and give this to her as a gift and that it should be considered a "one-time gift"; and
- that the condition of her health worsened because of this situation.

May 15, 2013 – A letter from the Executor of the will of the appellant's aunt which confirms that the appellant received an inheritance from her aunt in the amount of \$1000.

May 13, 2013 – The appellant's bank account history from her bank and the appellant's explanations for the bank transactions. The appellant's explanation outlines the following:

- that she was unaware that loans or gifts of money had to be claimed and that if she earned more than \$500 per month that this was to be claimed;

- that she was not told that disability is just the same as being on welfare until recently when these allegations were made;
- that she has been aware that since October 2013 the income allowance went up to \$800 per month and
- that she would like to claim any money loaned or gifted as income.

Additional Evidence

After the date of the reconsideration decision additional information was submitted:

- In the Notice of Appeal dated June 17, 2013 the appellant states that all she does not agree with an inheritance (a small amount) \$1000 considered to be unearned income, that it should be considered "a one-time gift" and that her deceased aunt would have wanted her to do something nice for herself with this money.

The panel found that the item received after the date of the reconsideration decision contained information about the inheritance in support of the information and records that were before the minister when the decision being appealed was made and therefore the panel determined that the item was admissible as evidence in accordance with Section 22 (4) of the the Employment and Assistance Act (EAA).

PART F – Reasons for Panel Decision

Issue to be Decided

The issue under appeal is whether the ministry's reconsideration decision, which denied the appellant disability assistance for June 2013 pursuant to section 9 of the EAPWDR because she received unearned income in the form of an inheritance income in April which must be included in the calculation of assistance as no exemptions applied was a reasonable application of the applicable enactment in the circumstances of the appellant or was reasonably supported by the evidence.

Legislation

The applicable EAPWDR legislation is as follows:

Section 1 (1) (I)

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:

- (I) a trust or inheritance;

Section 9 (1) and (2)

Limits on income

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.

Section 24

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

- (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) 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*.

Monthly support allowance

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	Applicant/recipient is a person with	531.42

dependent children

disabilities

Monthly shelter allowance

4 (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 (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 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, Sch. 2, s. 11 (a).]

- (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;
- (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, 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.

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 (0.1) 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;

"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;

"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.

(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 (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;

(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;

(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;

(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;

(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*;

(f) a tax refund.

(2) Subsection (1) (d.1) and (d.3) (ii) 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.

(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.

(3) Repealed. [B.C. Reg. 197/2012, Sch. 2, s. 13 (f).]

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 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.

Ministry Position

The ministry argues that section 9(2) of the EAPWDR sets out 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. The ministry clarifies the following: that "unearned income", means any income that is not earned income and includes, without limitation, money or value received from a trust or inheritance. The ministry further argues that as per Schedule A, a sole recipient is eligible for a maximum of \$906.42 disability assistance per month (\$531.42 support and \$375 shelter) and that as per Schedule B section 1 d), all unearned income must be included, except deductions permitted under section 6 and any income exempted under sections 7 and 8.

The ministry found that the appellant was not eligible for disability assistance for June 2013. The ministry reasons were the following: as per section 1 of the EAPWDR Definitions, a trust or inheritance is defined as unearned income; there are no allowable exemptions for an inheritance therefore the full amount must be deducted from assistance; that any income or changes that may affect assistance are to be reported to the ministry by the 5th on the next month affecting the following months assistance; the appellant's April inheritance was to be reported to the ministry May 5th and affects June assistance; and as the appellant's inheritance was in excess of her assistance rate she is ineligible for June assistance.

Appellant Position

The appellant argued that she does not agree with an inheritance (a small amount) \$1000 considered to be unearned income, that it should be considered "a one-time gift" and that her deceased aunt would have wanted her to do something nice for herself with this money.

Panel Decision

The panel finds the ministry determination that the appellant was ineligible for disability assistance for June was a reasonable application of the applicable enactments in circumstances of the appellant:

- as per EAPWDR section 9 (2) that the appellant is not eligible for disability assistance because her net income determined under Schedule B exceeds the amount of disability assistance determined under Schedule A;
- as per EAPWDR Section 1 (1) (l) the \$1000 inheritance received by the appellant is defined as "unearned income" because "unearned income" means any income that is not earned income and includes, without limitation, money or value received from a trust or inheritance and there are no exceptions;
- as per EAPWDR Section 24 that disability assistance may be provided for a calendar month in an amount that is not more than the amount determined under Schedule A, minus the appellant's income determined under Schedule B;
- as per EAPWDR Schedule A that the appellant as a sole recipient is eligible for a maximum of \$906.42 disability assistance per month (\$531.42 support and \$375 shelter);
- as per EAPWDR Schedule B section 1 (d) that all unearned income must be included and that there are no deductions permitted under section 6 and no income exemptions under sections 7 and 8; and although the appellant argues that the inheritance should be considered a one-time-gift, the appellant's net income exceeded the assistance rates and the appellant was ineligible for assistance for June as calculated in EAPWDR Schedule A.

. Therefore, the panel confirms the reconsideration decision.