

PART C – Decision under Appeal

The decision under appeal is the ministry's reconsideration decision dated January 3, 2014, which found the appellant is ineligible to receive disability assistance for January 2014, because she had received income in excess of the legislated limit as defined and outlined in Sections 1, 9 and Schedule B (1) (6) (7) of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR).

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), Section 1, Section 24, Section 9

EAPWDR, Schedule A (1)(2)(3)(4)

EAPWDR, Schedule B (1)(6)(7)(8)

## PART E – Summary of Facts

The evidence before the minister at reconsideration consists of the following:

1. The appellant is currently receiving \$906.42 disability assistance as a sole recipient. Her file was opened in September 2010.
2. The appellant informed the ministry on December 9, 2013 that she received \$10,955.87 from Workers Compensation Board (WCB). The ministry advised the appellant that this amount might affect her January 2014 benefits.
3. The ministry advised the appellant on December 19, 2013 that she was ineligible for January 2014 disability assistance.
4. The appellant in her Request for Reconsideration (RFR) dated December 19, 2013 stated that she had debt in excess of her WCB cheque and therefore she had no funds to pay for her January rent and utilities. The appellant further stated that it was her understanding when she left the ministry's office on December 9, 2013 that she would be receiving a support cheque for January 2014. She claimed that she did not receive any notification then of any issue with her support cheque. She explained that the entire amount of her WCB cheque was used to pay her debt at her bank and therefore not available to meet her monthly expenses. She stated that her debt included a \$10,000 line of credit, a \$1,000 credit card balance and various other debts associated with living with medical costs and she had an extremely low income. She stated that she did not have any other funds to access. She was informed by the ministry that her January 2014 support cheque could not be issued until she submitted her request for reconsideration

The appellant in her Notice of Appeal (NOA) dated January 17, 2014 claimed that the ministry erred in its interpretation of the law and policy.

The appellant's advocate in her written submission, dated February 13, 2014 noted that the appellant declared to a ministry worker that she received WCB benefits on December 6, 2014 and she sought direction from the ministry about how to proceed regarding these monies but was not provided with any information. Attached to the submission is a copy of a previous decision of this tribunal.

The panel admitted the additional evidence in the advocate's submission of February 13, 2014 because it was in support of the information and records that were before the minister when the decision being appealed was made, in accordance with s.22(4) of the Employment and Assistance Act. The balance of the submission comprised argument which is set out in Part F of the panel's decision.

The ministry provided a submission dated February 18, 2014 comprised of argument which is set out in Part F of the panel's decision.

The panel makes the following findings of fact from the evidence presented:

- The appellant is currently receiving \$906.42 disability assistance
- The appellant received from WCB \$10,955.87 in December 2013
- The appellant used her WCB cheque to pay her debt

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## PART F – Reasons for Panel Decision

The issue under appeal is whether the ministry's decision to deny the appellant disability assistance for the month of January 2014 because her net income in December 2013 exceeded the amount of disability assistance, was reasonably supported by the evidence or a reasonable application of the applicable enactment in the circumstances of the applicant.

Legislation considered:

### Section 1 - Definitions

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

- (j) workers' compensation benefits and disability payments or pensions;
- (t) any other financial awards or compensation.

### 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.

### 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.

### 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 (0.1) For the purposes of this section:

**"deemed dependent children"** , in relation to a family unit, means the persons in the family unit who are deemed to be dependent children under subsection (5);

**"maximum adjustment"** , in relation to a family unit, means the amount the family unit would receive for a calendar month as the national child benefit supplement if

- (a) the family unit were entitled to receive the national child benefit supplement for the calendar month,
- (b) the income of the family unit, for the purposes of calculating the national child benefit supplement, were zero, and
- (c) all dependent children and all deemed dependent children in the family unit were qualified dependants within the meaning of the *Income Tax Act* (Canada);

**"warrant"** has the meaning of warrant in section 14.2 [*consequences in relation to outstanding arrest warrants*] of the Act.

(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.

<b>Item</b>	<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
	Family unit composition	Age or status of applicant or	Amount of

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		recipient	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:

**"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;

**"warrant"** has the meaning of a warrant in section 15.2 [*consequences in relation to outstanding arrest warrants*] of the Act.

(2) The monthly shelter allowance for a family unit to which section 15.2 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

**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

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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:

(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;

The appellant's Position:

The advocate argued that the ministry erred in not applying s.7 (1) (c) of the EAPWDR to the appellant's situation. Section 7(1)(c) states that "the following unearned income is exempt:... (c) a criminal injury compensation award or other awards, except the amount that would cause the family's assets to exceed, at the time the award is received, the limit applicable under section 10 (assets limits) of this regulation."

The advocate stated that the appellant had received an "other award" and her WCB benefits ought to be considered as an "other award" and therefore exempt. The advocate stated that Section 7(1) (c) of the EAPWDR must also be considered in relation to Section 8 of the Interpretation Act of BC, which states that every enactment must be construed as being remedial, and must be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects.

The advocate stated that the past EAAT decision considered s.8 of the Interpretation Act in relation to s.7(c) of Schedule B of the EAPWDR, and the panel determined that s.7(c) of Schedule B of the EAPWDR is "broad and that no legislative definition is provided for "award" to be applied when interpreting the "other award". Therefore the panel found that, as the meaning of the "other award" is

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ambiguous and section 8 of the (Interpretation Act) requires the legislation be construed as being remedial and given liberal interpretation, it is reasonable to resolve the ambiguity in favour of the appellant and determine that the unearned income the appellant received from the insurance provider reasonably falls within the meaning of the "other award" and ... is exempt unearned income under s. 7(a) of Schedule B of the EAPWDR."

The advocate stated that the lump sum WCB benefits clearly meet the criteria for exempt unearned income. The advocate further contended that the ministry did not cite the definition of an asset as set out in s.1 of the EAPWDR. The appellant did not enjoy at any time any of the benefits of an asset, as set out in the definition of asset. As a result of receiving a cheque from WCB the appellant did not receive any: equity, equity converted to cash, beneficial interest, money in her possession, and money standing to her credit. The advocate stated that the objects of the Ministry and its legislation (including the EAPWDR) are to ensure that "British Columbians in need are assisted to achieve their social and economic potential." The advocate stated that the appellant remained in "need" in spite of receiving a WCB cheque because she applied the entire amount to her outstanding debt. The appellant was left with no equity, no monies to her credit, no monies in her possession, no equity that she was able to convert to cash and no beneficial interest. The appellant used the WCB cheque in her struggle to achieve some social and economic potential by reducing her debt and monthly interest payments.

#### The Ministry's Position:

The ministry's position is that the appellant's WCB benefits of \$10,955.87 is "unearned income" as defined under Section 1 of the EAPWDR, and that Section 24 of the EAPWDR explains that a person's net income (calculated under Schedule B) must be deducted from their disability assistance rate (calculated under Schedule A). The appellant's net income, as stipulated in Schedule B of the EAPWDR, includes her unearned income minus any applicable exemptions or deductions. Section 9 of the EAPWDR states that if the appellant's net income exceeds her assistance rate, she is ineligible for assistance. As a sole recipient of disability, the appellant's assistance rate under Schedule A is \$906.42. The ministry explained that in Schedule B, sections 1, 6, 7, 7.1 and 8 specify the deductions and exemptions from unearned income that may be made for the purposes of calculating net income. There are no exemptions for WCB income and therefore the full amount of her WCB must be included in the calculation of the appellant's net income. The minister acknowledges the appellant's position that the funds went to pay old debts and that she does not have any cash in hand, but the legislation is clear. Schedule B(1)(c) states that even if any amount was garnished, attached, seized or deducted, it is still all considered income

The ministry further stated that the WCB benefits are expressly included in the definition of unearned income in subsection (j) of section 1 of the EAPWDR, and therefore they cannot and do not meet the definition of "any other financial awards or compensation" in subsection (t). Furthermore, the minister finds that as the income does not meet the definition of subsection (t), and does not meet any other listed definition of earned income that is an "award," the income cannot be exempted as an "other award" under Schedule B 7(1) (c) of the EAPWDR. It is the minister's opinion that it is unreasonable to be able to label any payment as an "other award" for the purposes of Schedule B 7(1) (c) when it is not defined as an award under unearned income in Section 1 of the EAPWDR.

The Panel's Decision:

The panel notes that section 24 provides that a person's net income includes "*unearned income*" minus any applicable exemptions described in section 7 of the EAPWDR. Furthermore, it also notes that "*unearned income*" is respectively defined in section 1 (j) and 1(t) to expressly include "*worker's compensation benefits*" and "*any other financial awards or compensation*". Therefore, in accordance with the principles of statutory interpretation, the panel is of the view that any amounts of "*worker's compensation benefits*" and/or "*any other financial awards or compensation*" have to be first included in all other types of "*unearned income*" to determine the aggregate amount of the "*unearned income*" before it is subject to the applicable exemptions described in section 7 (e.g. "*or other award*").

The panel further notes that the separate definitions (i.e. the phrase "worker's compensation benefits" mentioned in section 1(j) and the phrase "other financial award or compensation" mentioned in section 1(t) of the EAPWDR) indicate a clear legislative intention to distinguish these two types of benefits, which are included in the definition of the phrase "*unearned income*" described in Section 1. Therefore, the panel concludes that the use of the word "other" in both s. 1 and s. 7 of the EAPWDR denotes categories of "unearned income" not otherwise expressly defined in the applicable legislation.

That the applicable legislation treats WCB benefits as a specific category of unearned income, rather than "other awards" is further evidenced by the inclusion of exemptions in sections 7.1 and 7.2 of Schedule B of the EAPWDR for certain WCB benefits, namely, temporary partial disability compensation paid under section 29 or 30 of the *Workers Compensation Act (WCA)*. The appellant has not argued that her WCB benefits were provided under those sections of the WCA.

For the above reasons, the panel finds that the ministry has reasonably determined that the exemption set out in s. 7(1)(c) of the EAPWDR for "a criminal injury compensation award or other award" does not apply to the WCB benefits received by the appellant.

Section 24 of the EAPWDR states that 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

The panel therefore finds that the ministry reasonably determined that the appellant's net income of \$10,954.87 exceeds her assistance rate of \$906.42, causing it to exceed the disability assistance limits as prescribed by s.9 and s.24 of the EAPWDR.

The advocate notes that Section 7(1)(c) of the EAPWDR states that "the following unearned income is exempt:...(c) a criminal injury compensation award or other awards, except the amount that would cause the family's assets to exceed, at the time the award is received, the limit applicable under section 10 (assets limits) of this regulation." The panel notes that the "other awards" refer to any other awards not expressly listed under Section 1 of the EAPWDR but includes "other financial awards."

The panel finds that the ministry's decision that the appellant is ineligible to receive disability assistance for January 2014, because she had received income in excess of the legislated limit as



defined and outlined in Sections 1, 9 and Schedule B (1) (6) (7) of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) was a reasonable application of the applicable enactment in the circumstances of the appellant and was reasonably supported by the evidence, and thus confirms the decision.