

PART C – Decision under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Social Innovation (the ministry) dated January 14, 2014 in which, pursuant to Section 24 and Schedule B of Employment Assistance for Persons With Disabilities Regulation (EAPWDR), the ministry determined that family maintenance payments received by the appellant's spouse for the benefit of her child are considered income and must be deducted from the appellant's disability allowance despite the fact that the appellant does not receive disability benefits for his spouse and stepchild because they do not meet the citizenship eligibility criteria set out in Section 6 of the EAPWDR.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (EAPWDA):

- Section 1 and 1.1

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR):

- Sections 1, 6, 24
- Schedule B Sections (1)(6)(7)(7.1)(8)

PART E – Summary of Facts

The appellant is a man with a dependent child who has been receiving disability assistance (DA) since March of 2009. He and his child also reside with his wife and stepchild who came to Canada in 2011 on visitors' visas, and who currently remain in Canada on extended visitors' visas. The wife and stepchild have applied to Citizenship and Immigration Canada for permanent residency. The appellant's wife receives monthly maintenance income of \$475.00 from the biological father of the appellant's stepchild. Because the appellant's wife and stepchild do not meet the citizenship eligibility requirements set out in Section 6 of the EAPWDR they have not been added to his file and he does not receive DA for them.

On December 13, 2013 the ministry advised the appellant that his spouse's monthly maintenance income of \$475.00 would be deducted from his DA because it constituted "unearned income" that was not eligible for any of the income exemptions set out in Schedule B of the EAPWDR, and was therefore deemed to be part of the "net income" of the family unit.

On December 28, 2013 the appellant requested reconsideration of the ministry's decision, stating that because he received no additional DA for his wife and stepchild his entire DA had to be used to pay his monthly rent of \$910.00. He added that the child tax credits he received for his child and stepchild and his spouse's monthly maintenance income were used to buy food and cover other monthly expenses.

On January 14, 2014 the ministry released its reconsideration decision which upheld the original decision that \$475.00 monthly maintenance income be deducted from the appellant's DA.

On January 17, 2014 the appellant filed a Notice of Appeal, to which he appended a one-page handwritten letter. In the letter the appellant argued that because his wife and stepchild were ineligible for inclusion in the family unit he was receiving DA for two people when he had to provide for a household of four people. He added that the majority of his DA was used to pay rent and a few other bills, and his spouse's maintenance income and child tax credits were used to obtain food and pay utilities. With the deduction of \$475.00 from his DA he now had to choose between paying rent and buying food.

At the hearing neither the appellant nor the ministry submitted additional written evidence, and both the appellant and the ministry agreed that the citizenship ineligibility of the appellant's spouse and stepchild was not an issue in the appeal.

In his oral submission the appellant stated that he receives DA benefits of \$1,242.00 for himself and his child less an electrical utility deduction of \$90.00, for a net monthly DA of \$1,152.00 prior to the deduction of his spouse's \$475.00 monthly maintenance income. He also receives child tax credits of approximately \$500.00 for his child and stepchild. He and his spouse were married on March 30, 2011 and his spouse and stepchild expect to become permanent residents of Canada by the end of 2014. He added that the ministry has recently informed him that for compassionate reasons it will be increasing his shelter allowance to reflect the presence of his stepchild in the family unit.

In her oral submission the ministry representative relied on the reconsideration decision and reiterated the reasons for its decision.

PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry's decision which determined that family maintenance payments received by the appellant's spouse must be deducted from the appellant's disability allowance despite the fact that the appellant does not receive disability benefits for his spouse and stepchild because they do not meet the citizenship eligibility criteria set out in Section 6 of the Employment Assistance For Persons With Disabilities Regulation.

The relevant legislation is set out in the EAPWDA and the EAPWDR:

EAPWDA:

Interpretation

1 (1) In this Act:

"dependant", in relation to a person, means anyone who resides with the person and who

- (a) is the spouse of the person,
- (b) is a dependent child of the person, or
- (c) indicates a parental responsibility for the person's dependent child;

"family unit" means an applicant or a recipient and his or her dependants;

Meaning of "spouse"

1.1 (1) Two persons, including persons of the same gender, are spouses of each other for the purposes of this Act if

- (a) they are married to each other, or
- (b) they acknowledge to the minister that they are residing together in a marriage-like relationship.

EAPWDR:

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:

- (p) maintenance under a court order, a separation agreement or other agreement;

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.

Citizenship requirements

6 (1) For a family unit to be eligible for disability assistance at least one applicant or recipient in the family unit must be

- (a) a Canadian citizen,
- (b) authorized under an enactment of Canada to take up permanent residence in Canada,
- (c) determined under the *Immigration and Refugee Protection Act* (Canada) or the *Immigration Act* (Canada) to be a Convention refugee,
- (d) in Canada under a temporary resident permit issued under the *Immigration and Refugee Protection Act* (Canada) or on a minister's permit issued under the *Immigration Act* (Canada),
- (e) in the process of having his or her claim for refugee protection, or application for protection, determined or decided under the *Immigration and Refugee Protection Act* (Canada), or
- (f) subject to a removal order under the *Immigration and Refugee Protection Act* (Canada) that cannot be executed.

(2) If a family unit satisfies the requirement under subsection (1), disability assistance and supplements may be provided to or for the family unit on account of each person in the family unit who is

- (a) a Canadian citizen,
- (b) authorized under an enactment of Canada to take up permanent residence in Canada,
- (c) determined under the *Immigration and Refugee Protection Act* (Canada) or the *Immigration Act* (Canada) to be a Convention refugee,
- (d) in Canada under a temporary resident permit issued under the *Immigration and Refugee Protection Act* (Canada) or on a minister's permit issued under the *Immigration Act* (Canada),
- (e) in the process of having his or her claim for refugee protection, or application for protection, determined or decided under the *Immigration and Refugee Protection Act* (Canada),
- (f) subject to a removal order under the *Immigration and Refugee Protection Act* (Canada) that cannot be executed, or
- (g) a dependent child.

(3) If a family unit includes a person who is not described in subsection (2),

- (a) the person's income and assets must be included in the income and

assets of the family unit for the purposes of determining whether the family unit is eligible for assistance, except as otherwise provided in this regulation, and

(b) the family unit is not eligible for any disability assistance under Schedule A, hardship assistance under Schedule D or supplements under Part 5 of this regulation on account of or for the use or benefit of that person.

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) 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;
- (xxxii) 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;
- (xxxiii) a Universal Child Care Benefit provided under the *Universal Child Care Benefit Act* (Canada);
- (xxxiv) 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;
- (xxxv) money withdrawn from a registered disability savings plan;
- (xxxvi) a working income tax benefit provided under the *Income Tax Act* (Canada);
- (xxxvii) Repealed. [B.C. Reg. 180/2010, s. 2 (b).]
- (xxxviii) the climate action dividend under section 13.02 of the *Income Tax Act*;
- (xxxix) 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,

(xi) 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.

The appellant argues that his spouse's monthly maintenance income should not be deducted from his DA because he must provide for a household of four, and he cannot afford to pay rent, utilities, food and other expenses without the additional \$475.00 that the family maintenance income brings into the household. He argues further that he is being forced to choose between paying rent and feeding his family.

The ministry argues that a family unit's net income as calculated under Schedule B of the EAPWDR must be deducted from its DA calculated under Schedule A. Section 1 of the EAPWDA defines a "family unit" as an applicant or a recipient and his or her dependants and defines "dependant" as anyone who resides with the person and is the person's spouse or dependent child. Section 1.1 of the EAPWDA defines "spouses" as two persons who are married to each other. The appellant admits that his wife is his "spouse" within the meaning of the legislation. Her income must therefore be included as part of the family unit's net income, pursuant to Section 24 and Schedule B of the EAPWDR. Section 1(p) of the EAPWDR includes maintenance under a court order or separation agreement in its definition of "unearned income". Per Schedule B, unearned income is included in calculating a recipient's net income and there are no exemptions or deductions that apply.

The ministry argues further that despite the fact the appellant's spouse and stepchild are ineligible for DA because they do not meet the citizenship requirements set out in Section 6(2) of the EAPWDR the spouse's income and assets must be included in the income and assets of the family unit as stated in Section 6(3)(a).

The panel concludes that Section 6(3)(a) stipulates that the monthly maintenance income of the

appellant's spouse must be included in the income of the family unit and constitutes "unearned income" with no applicable deductions or exemptions under Schedule B. Therefore the full monthly maintenance payment of \$475.00 must be deducted from the appellant's DA pursuant to Section 24 of the EAPWDR.

Accordingly this panel finds that the ministry's decision that the spouse's \$475.00 monthly maintenance income be deducted from the appellant's DA is a reasonable application of the applicable legislative enactments in the appellant's circumstances and confirms the decision.