

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation's (the ministry) reconsideration decision of February 13, 2014 wherein the ministry determined that the appellant must have \$600 per month (an additional \$300 over the current \$300 that is deducted) deducted from her assistance to reflect the amount she receives from her ex-husband as child support. The ministry determined that the \$300 paid by her ex-husband to their child's school on her behalf is considered unearned income and therefore must be deducted as required by the legislation.

PART D – Relevant Legislation

Employment and Assistance for Persons With Disabilities Regulation (EAPWDR) Sec 1, 9, and 24
Employment and Assistance for Persons With Disabilities Regulation Schedule A Sec 1, 2, 4, and 5
Employment and Assistance for Persons With Disabilities Regulation Schedule B Sec 1, 6, 7, and 8

PART E – Summary of Facts

The information before the ministry at the time of reconsideration included the following:

- A separation agreement between the appellant and her ex-husband dated June 28, 2007. The agreement obligates the appellant's ex-husband to pay the appellant \$600 per month beginning June 1, 2007. The agreement outlines the child's fees for private school and that the appellant and her ex will share the \$600 per month cost between themselves. The agreement goes on to detail that the ex-husband will pay the appellant \$300 per month directly and pay \$300 to the school on her behalf to equal the requisite \$600 per month maintenance obligation.
- A written statement on her Request for Reconsideration where the appellant writes that she has only ever received \$300 per month from her ex-husband. She adds that she was unaware that her separation agreement was worded in such a way to suggest she was receiving \$600 per month.
- A written statement in the Notice of Appeal dated Feb 18, 2014. The appellant writes that she does not receive \$600 per month and has only ever received \$300 per month in child support from her ex-husband. She adds that she recently had a heart attack that resulted in 14 fractures. She writes that she has never claimed her son's school fees on her tax return and that her ex-husband has always claimed the fees as a tax deduction. She adds that if she has her benefits reduced by an additional \$300 per month she will not be able to afford her rent.

Neither the ministry nor the appellant was in attendance at the hearing. After confirming they both had been notified, the hearing proceeded under section 86(b) of the Employment and Assistance Regulation.

The panel finds as fact:

- The appellant signed a separation agreement dated June 28, 2007 with her ex-husband.
- Part 6.1 of the separation agreement orders her ex-husband to pay her \$600 per month beginning June 1, 2007.
- Part 6.4 of the separation agreement states that couples' son goes to private school costing \$7200 per year which the couple will share the expense. They agree that her ex-husband will pay \$300 per month on the appellant's behalf towards their son's school fees and related expenses. The ex-husband will pay the remaining \$300 per month directly to the appellant.

PART F – Reasons for Panel Decision

The issue in this case is the reasonableness of the ministry's decision that because the appellant's ex-husband pays \$300 of child maintenance payment to her child's school on her behalf and \$300 to her directly, the entire \$600 per month is considered unearned income and is not exempt from her net income calculation under Schedule B.

The relevant legislation is as follows:

Employment and Assistance for Persons With Disabilities Regulation

1 The legislation states: "**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) surviving spouses' 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;

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.

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.

Employment and Assistance for Persons With Disabilities Regulation Schedule 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;
- (xliii) money paid or payable from a fund that is established by the government of British Columbia, the government of Canada and the City of Vancouver in relation to recommendation 3.2 of the final report of the Missing Women Commission of Inquiry,
- (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.

It is the ministry's position that although the appellant's ex-husband pays \$300 of her child maintenance payment to their child's school on her behalf and \$300 to her directly, the entire \$600 per month is considered unearned income and is not exempt from her net income calculation under Schedule B. Therefore \$600 must be deducted from her disability assistance as per section 24 of the EAPWDR.

It is the position of the appellant that she has only ever received \$300 per month from her ex-husband for child support and that she cannot afford to have an additional \$300 per month come off of her disability assistance.

The panel relied on the separation agreement to determine what the appellant receives from her ex-husband in child maintenance. The separation agreement provides the appellant with \$600 per month based on the income of her ex-husband at the time the agreement was finalized. Part 6.1 of the agreement reads that, based on an annual income of \$64,000, the appellant's ex-husband is obligated to pay her \$600 per month in child maintenance. Section 6.4 of the agreement reads that the combined tuition and related school expenses for their child is \$7200 per year and that each parent is to pay half, equaling \$300 per month each. The agreement goes on to detail that the ex-husband agrees to pay the appellant's portion of school related expenses on her behalf and to pay the remaining \$300 per month directly to the appellant.

The panel considered the appellant's argument that she has only ever received \$300 per month from her ex-husband. The panel accepts that the appellant receives \$300 directly from her ex-husband however; the panel finds that the ministry was reasonable to consider that the full amount of the benefit received by the appellant is \$600 per month. The panel finds that the ministry reasonably calculated the \$300 paid by the ex-husband to the child's school related expenses as part of the overall maintenance payment. The panel finds that the ministry was reasonable to consider the \$600 per month as unearned income as defined by Section 1 the EAPWDR and that it is not exempt under schedule B and is to be deducted from the appellant's disability assistance in accordance with Section 24 of the EAPWDR.

The panel finds that the ministry's decision was a reasonable application of the legislation and therefore confirms the ministry's decision.