

### PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (Ministry's) reconsideration decision dated June 12, 2014 in which the Ministry determined that Employment Insurance (EI) earnings should be deducted from the Appellant's disability assistance for the month of June 2014. The Ministry found that EI benefits received by the Appellant's spouse in April 2014 are considered unearned income under section 1 of the Employment and Assistance for Persons with Disabilities Regulation, and are subject to the deduction and exemption rules set out in Schedule C of the Regulation. The Ministry found that EI benefits must be deducted from the Appellant's disability assistance because no exemptions applied.

### PART D – Relevant Legislation

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

Sections 1, 9, 24, and 29; Schedule A sections 1, 2, and 4; and Schedule B sections 1, 6, and 7

## 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 June 9, 2014 in which he stated that his family unit is a working family with two small children, bill payments, etc. He has to temporarily depend on provincial benefits because his federal disability is yet to be completed. His wife became ill at the end of February; was hospitalized for 25 days in March; and is just now returning to work.
- 2) A Service Canada account print-out with the notation "EI" at the top of the page, showing 4 payments for the reporting period March 16 – May 3, 2014. The net amounts paid for this period were: \$432.00 on May 4<sup>th</sup>, April 21<sup>st</sup>, and April 16<sup>th</sup>, and \$216.00 on April 16<sup>th</sup>.

In his Notice of Appeal dated July 3, 2014, the Appellant stated in the attached submission that his wife is the main family income earner and they had to pay dozens of extra expenses out of a somewhat diminished income due to illness. They then lost the vast majority of his disability income and are out \$2,500.00 over 3 months. The Panel finds that these statements relate to the Appellant's income and expenses and therefore admits them under section 22(4)(b) of the *Employment and Assistance Act* as testimony in support of the information and records that were before the Ministry at the time the decision being appealed was made.

The Appellant did not provide any other submission for this written hearing and the Ministry relied on its reconsideration decision and did not submit any new information. The Ministry's evidence included information that the Appellant was receiving disability assistance for a family unit of 4 in the amount of \$1,474.56 per month (\$794.56 support, and \$700.00 shelter, less a \$20.00 repayment). In May, the Ministry processed the Appellant's monthly earnings report for June and the Appellant declared \$1,080.00 EI earnings for his spouse which was confirmed by the Service Canada account print-out for April. With the EI deducted from his disability assistance, the Appellant received \$394.56 for June 2014. The Ministry reported that the \$1,080.00 EI benefit was the net amount the Appellant's spouse received after allowable deductions.

The panel makes the following findings of fact:

1. The Appellant receives \$1,474.56 per month in disability assistance for his family of 4.
2. The Appellant's spouse became ill and was hospitalized in March.
3. In May 2014, the Appellant declared \$1,080.00 net EI earnings for his spouse and the Ministry deducted this amount from his June disability assistance and paid the Appellant \$394.56 for June 2014.

**PART F – Reasons for Panel Decision**

The issue in this appeal is whether the Ministry's decision to deduct EI earnings from the Appellant's disability assistance for the month of June 2014 was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the Appellant.

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:

(g) employment insurance;

**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.

**Monthly reporting requirement**

29 For the purposes of section 11(1)(a) [*reporting obligations*] of the Act,

(a) the report must be submitted by the 5<sup>th</sup> day of the calendar month following the calendar month in which there is a change that is listed on paragraph (b), and

(b) the information required is all of the following, as requested in the monthly report form prescribed under the Forms Regulation:

(i) change in the family's assets;

(ii) change in income received by the family unit and the source of that income;

(iii) change in the employment and educational circumstances of recipients in the family unit;

(iv) change in family unit membership or the marital status of a recipient.

(B.C. Reg. 335/2007)

**SCHEDULE A Disability Assistance Rates****Maximum amount of disability assistance before deduction of net income**

**1 Subject to 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.

**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 (5) 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
6	Two applicants/recipients and one or more dependent children	One applicant/recipient is a person with disabilities, the other is not a person with disabilities and is under 65 years of age	\$794.56

**Monthly shelter allowance**

4(2) The monthly shelter allowance for a family unit 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
4	4 persons	\$700

**SCHEDULE B Net Income Calculation**

**Section 1 – Deduction and exemption rules**

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) income assistance paid to a child in the home of a relative;

(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 sales tax credit under 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; (B.C. Reg. 276/2004)
- (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) payments granted by the government of British Columbia as Interim Early Intensive Intervention Funding;
- (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. (B.C. Reg. 115/2003)
- (xxiv) payments granted by the government of British Columbia under the Ministry of Children and Family Development's Extended Autism Intervention Program (BC Reg. 209/2003)
- (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. (BC Reg. 209/2003)

(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. (B.C. Reg. 462/2003)

(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, (B.C. Reg. 22/2005)

(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. (B.C. Reg. 91/2005)

(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. (B.C. Reg. 90/2005)

(xxx) a refund provided by the Fair PharmaCare program of the Ministry of Health, B.C. Reg. 292/2005)

(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. (B.C. Reg. 192/2006)

(xxxii) a Universal Child Care Benefit provided under the *Universal Child Care Benefit Act (Canada)*. (B.C. Reg. 250/2006)

(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. (B.C. Reg. 165/2007)

(xxxiv) money withdrawn from a registered disability savings plan, (B.C. Reg. 363/2007)

(xxxv) a working income tax benefit provided under the *Income Tax Act (Canada)*, (B.C. Reg. 48/2008)

(xxxvi) the low income climate action tax credit under section 8.1 of the *Income Tax Act*,

(xxxvii) the climate action dividend under section 13.02 of the *Income Tax Act*, (B.C. Reg. 94/2008)

(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, (B.C. Reg. 87/2008)

(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. (B.C. Reg. 242/2010)

(xi) payments granted by the government of British Columbia under the Ministry of Children and Family Development's Family Support Services program; (B.C. Reg. 85/2012)

(xii) payments granted by the government of British Columbia under the Ministry of Children and Family Development's Supported Child Development program; (B.C. Reg. 85/2012)

(xiii) payments granted by the government of British Columbia under the Ministry of Children and Family Development's Aboriginal Supported Child Development program, (B.C. Reg. 85/2012)

(xiii) 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.C. Reg. 32/2014)

(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.

### **Section 6 – Deductions from unearned income**

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**

### **Section 7 – Exemptions – unearned income**

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(2) [assets held in trust for person with disabilities] of this regulation;

(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 the 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*. (B.C. Reg. 58/2003)

### **Section 9 – Application of deductions and exemptions**

(1) The deductions and exemptions in this Schedule apply only in the calendar month in which the income is actually received, despite any of the following:

- (a) the date the income is payable;
- (b) the period for which the income is payable;

- (c) the date the income is reported to the minister;
- (d) the date the minister receives notice of the income.

### Appellant's Position

In his Notice of Appeal submission, the Appellant's position is that his wife's illness caused dozens of extra expenses for his family, and losing the vast majority of his disability, \$2,500 over 3 months, has been "financially crippling, heart breaking, and massively disrupting to our family unit." He is asking the tribunal to consider that the legislation was written to prevent fraud, and is not intended to be punitive or mean-spirited, yet that is what comes across and adversely affects his family.

In his Request for Reconsideration, the Appellant argued that by "cancelling out (his wife's) EI benefits, we have been financially punished by a further \$2,500 over 3 months more than what we expected on our already diminished monthly budget due to illness." The Appellant further argued that no household "can withstand this kind of cut regardless of income or station."

### Ministry's position

The Ministry's position is that although it acknowledges the Appellant's financial struggles due to family illness, "there are no exceptions in policy based on your circumstance and legislation must apply." The Ministry argued that the Appellant's wife's EI earnings are considered unearned income under section 1 of the EAPWDR; there are no exemptions for EI (from the calculation of monthly income) under Schedule B of the regulation; and unearned income must therefore be deducted pursuant to section 24 of the EAPWDR.

The Ministry explained that under section 29 of the regulation, income must be reported by the 5<sup>th</sup> day of the month following the month in which the income was received. Ongoing eligibility for disability assistance is calculated at the earliest opportunity: the month following the month in which the income is reported. The EI income of \$1,080.00 was received in April, reported in May, and therefore affected the Appellant's June 2014 disability assistance resulting in the Appellant receiving reduced assistance in the amount of \$394.56 for June instead of his regular payment of \$1,474.56.

### Panel's decision

Section 1 of the EAPWDR defines unearned income as "any income that is not earned income" and specifies EI benefits in subsection 1(g). The Ministry therefore had no option but to view EI as unearned income and the Panel finds that the Ministry was reasonable in determining that unearned income "includes, without limitation, money or value received from employment insurance."

Under section 24 of the EAPWDR, the amount of monthly disability assistance is determined by deducting the family's net income calculated under Schedule B of the regulation from the amount of shelter and support allowances calculated under Schedule A. Sections 1, 6, and 7 of Schedule B set out types of unearned income that may be excluded from the calculation of the income that must be deducted. Section 1 describes monies that are exempt from income, including benefits for children, government program payments available to eligible individuals, and payments from legal agreements and court settlements. Section 6 permits an exemption for income tax deducted at source from EI



benefits; and section 7 exempts a variety of unearned income including monies relating to real property transactions, federal benefits, and court awards.

The Panel notes that none of the deductions and exemptions listed in sections 1, 6, and 7 of Schedule B of the EAPWDR include EI benefits. Although section 6 permits an exemption for income tax deducted from EI, the Service Canada account print-out and the Ministry's background information indicated that the Appellant's spouse's EI of \$1,080.00 was the net amount received, confirming that deductions had already been made at source. The Panel therefore finds that the Ministry reasonably determined that no deductions or exemptions applied to the EI income and, thus, EI in the amount of \$1,080.00 had to be deducted from the Appellant's disability assistance pursuant to section 24 of the EAPWDR.

Although the Appellant argued that he was out \$2,500.00 in disability assistance over 3 months due to the Ministry "cancelling out" his wife's EI benefits, and that the legislation is not intended to be punitive, the Panel notes that the Ministry's reconsideration decision only considered the effect of the EI income on the Appellant's disability assistance for the month of June and did not look at other months. Also, as noted above, the EAPWDR permits only those exemptions that are listed in Schedule B; the Ministry, therefore, had no legislative authority or discretion to grant an exemption on the basis of compassion or on account of the Appellant's financial hardship.

Accordingly, the panel finds that the Ministry was reasonable in deducting the EI payment of \$1,080.00 that was reported in May, and paying the Appellant \$394.56 disability assistance for June 2014. The Panel finds that the Ministry's reconsideration decision was reasonably supported by the evidence and was a reasonable application of the applicable enactment in the circumstances of the Appellant. The Panel therefore confirms the Ministry's reconsideration decision.