

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (Ministry) reconsideration decision dated September 11, 2014 in which the Ministry denied the Appellant's request for September 2014 disability assistance because he received Employment Insurance (EI) benefits in excess of the disability assistance rate for which he would otherwise be eligible. The Ministry determined that EI in the amount of \$1,952.00 should be deducted from the Appellant's disability assistance because EI is considered unearned income under the Employment and Assistance for Persons with Disabilities Regulation and no exemptions apply.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR):
Sections 1, 9, and 24; Schedule A; and Schedule B

PART E – Summary of Facts

The evidence before the Ministry at the time of the reconsideration consisted of:

1. The Appellant's Request for Reconsideration dated August 28, 2014 in which he stated the following:

- The Ministry has denied assisting him with benefits at this crucial point in his life when he is contending with mental and physical health issues and also facing eviction from his residence where he has been a very good tenant for several years.
- He is awaiting assistance for food, bus, and certain medications. Due to a number of mental and physical conditions he cannot survive without regular assistance, and any interruptions (to the payments) can set him back.
- By the time he got EI (medical) he had incurred a lot of debt and was starting to sell off his things in order to live and eat. He could not cover his rent fully and hence the debt to his landlord. His housing services had been cut off.
- His mother is elderly and he was helping her out financially.
- He is working closely with his social worker who works as the liaison at the Ministry.
- Because he lives pay cheque to pay cheque, he had (and has) no savings and no excess money to cover him if he doesn't receive one of his cheques.
- He has a list of medical diagnoses and major diseases and is facing another round of treatment.

In his Notice of Appeal dated July 3, 2014, the Appellant stated that he disagrees with the Ministry's decision to not reinstate his disability assistance for "September/October 2014". He was on medical EI for mental and physical health reasons and when his EI ran out in late July, he was told to go back on disability but was refused. Since then, his mental and physical health and housing are jeopardized because he did not receive his disability cheque.

The panel finds that the statements in the Notice of Appeal relate to the Appellant's receipt of EI and the impact he experienced from being refused disability assistance. The panel admits these statements under section 22(4)(b) of the *Employment and Assistance Act* as submissions 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 attend the hearing. The panel confirmed that he was notified of the date, time, and location and the hearing proceeded under section 86(b) of the *Employment and Assistance Regulation*.

At the hearing, the Ministry reviewed its reconsideration decision and the EAPWDR legislation and did not introduce any new evidence. The Ministry provided the following information in its reconsideration record:

- On August 29, 2014 it advised the Appellant that he was not eligible for September 2014 disability assistance due to excess earnings received from EI.
- The Appellant's disability assistance rate as a sole recipient is \$1,091.42 per month (\$375 shelter, \$531.42 support, \$205 monthly nutritional supplement, less a \$20 per month repayment).

- The Ministry receives a monthly report from Service Canada regarding active EI claims and found that the Appellant received \$1,952.00 in July 2014. The Ministry informed the Appellant that this would be deducted from his September assistance and he is not eligible for September assistance because the EI amount is in excess of his disability rate.
- When the Appellant reapplied for disability assistance in May 2014 he gave the Ministry permission to verify eligibility-related information from relevant institutions including Service Canada and on August 29, 2014 he verbally confirmed to the Ministry that he had received EI payments of \$1,952.00 in July 2014.
- Per Schedule B section 6(a) of the EAPWDR, income tax deducted at source from EI is a permitted deduction and the Ministry considers \$488.00 to be the Appellant's weekly unearned EI income (with \$26.00 deducted for taxes from the base amount of \$514.00 per week).
- Per section 29 of the EAPWDR, income received in a calendar month must be reported by the 5th day of the following calendar month, and any net income affects the benefit month following the month of the report.

The panel makes the following finding of fact: The Ministry deducted \$1,952.00 EI benefits received in the month of July 2014 and paid the Appellant no disability assistance for the month of September, 2014.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the Ministry's decision to deny the Appellant's request for September 2014 disability assistance due to his \$1,952.00 EI benefits, and deduct EI from his disability assistance 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.

SCHEDULE A Disability Assistance Rates (section 24(a))

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
1	Sole applicant/recipient and one or more dependent children	Applicant/recipient is a person with disabilities	\$531.42

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
1	1 person	\$375

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)

(xiiii) 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.

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, the Appellant submitted that his mental and physical health and housing have been jeopardized because of the Ministry refusing to reinstate his disability benefits. In his Request for Reconsideration, the Appellant argued that he cannot survive without regular assistance because he had incurred a lot of debt; was facing eviction; and was assisting his mother financially. Being cut off EI and disability assistance was awful for him because he has no savings or money to cover his expenses, and having financial and domicile concerns plus another round of health treatment is far too much, and he appreciates any assistance in light of his circumstances.

Ministry's position

The Ministry acknowledged the Appellant's submission but argued that unearned income must be deducted from his disability assistance because there are no exemptions for EI under Schedule B of the EAPWDR. The Ministry referred to section 1 of the EAPWDR which includes EI under the definition of unearned income. The Ministry established that section 24 of the EAPWDR requires income calculated under Schedule B to be deducted from the client's support and shelter allowances calculated under Schedule A.

The Ministry explained that under section 29 of the EAPWDR, income must be reported by the 5th day of the month following the month in which the income was received. Ongoing eligibility for disability assistance is calculated at the earliest opportunity; i.e., the month following the month in which the income is reported. The Appellant's EI income of \$1,952.00 was received in July, reported in August, and therefore affects his September 2014 disability assistance.

The Ministry noted that under section 9 of the EAPWDR, a family unit is not eligible for disability assistance if the amount of income exceeds the total monthly support and shelter allowance. In the Appellant's case, the Ministry noted that his EI benefits of \$1,952.00 were greater than his disability

assistance rate of \$1,091.42 and stated at the hearing that “there was no room left for him to be eligible for September.”

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). Therefore, it was reasonable for the Ministry to conclude that the Appellant’s EI was unearned income and the panel finds that the Ministry reasonably determined 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 of Schedule B 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 types 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 Ministry’s background information indicated that \$26.00 was deducted from the Appellant’s EI for taxes and the net amount he received for EI was \$488.00 weekly. Thus, it was reasonable for the Ministry to deduct EI in the amount of \$1,952.00 from the Appellant’s disability assistance for the month of July pursuant to section 24 of the EAPWDR.

Although the Appellant argued that the Ministry’s decision left him in an “awful position” with his health and housing jeopardized when he is without his disability assistance for even one month, the panel notes that the EAPWDR permits only the exemptions that are listed in Schedule B as summarized above. The Ministry has no legislative authority or discretion to grant an exemption on account of the Appellant’s health concerns and financial hardship.

The panel finds that the Ministry’s reconsideration decision to deduct the Appellant’s EI benefits and pay him no disability assistance for September 2014 was reasonably supported by the evidence and was a reasonable application of the applicable enactment in the circumstances of the Appellant. The panel confirms the reconsideration decision.