

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated August 6, 2014 which found that the appellant is not eligible for disability assistance for the month of August 2014, pursuant to Section 9 of the *Employment and Assistance for Persons With Disabilities Regulation* (EAPWDR), as the net monthly income of the family unit exceeded the amount of disability assistance payable due to unearned income received by the appellant in June 2014.

PART D – Relevant Legislation

Employment and Assistance for Persons With Disabilities Regulation (EAPWDR), Sections 1, 9, and 24 and Schedules A and B

PART E – Summary of Facts

The appellant did not attend the hearing. After confirming that the appellant was notified of the date, time, and location, the hearing proceeded under Section 86(b) of the *Employment and Assistance Regulation*.

The evidence before the ministry at the time of the reconsideration decision included:

- 1) Trust Statement from a law firm dated June 3, 2014 showing monies received for general damages, pain, suffering, residual damage and special damages and disbursements in a total amount of \$15,000 as well as monies paid out, including the sum of \$9,370.13 to the appellant;
- 2) Transaction Record for a financial institution dated June 6, 2014 showing a deposit of the sum of \$9,370.13 as well as various withdrawals;
- 3) Letter dated July 23, 2014 from a law firm to the appellant and another party regarding default in payments on a mortgage and a demand for payment of the sum of \$50,761.84; and,
- 4) The appellant's Request for Reconsideration dated July 24, 2014.

In his Request for Reconsideration, the appellant wrote that:

- He has no money or food.
- He is being sued for non-payment of \$50,295.51 for a mortgage, which demands payment by July 31, 2014; he has enclosed a report.
- He cannot pay his rent of \$650 per month or his methadone doctor for \$50 per month.

In his Notice of Appeal dated August 12, 2014 the appellant expressed his disagreement with the ministry's reconsideration decision and wrote that:

- He had to pay bills. He sent copies of every bill he paid to the ministry.
- He still has a second mortgage of \$51,000 which is still outstanding.
- He was compensated for injuries to his back and now has discs disintegrating due to this accident. He has an abscess on his left foot. He is in pain 24 hours and it hurts him to walk.
- He has difficulty breathing due to COPD and gets severe migraines. He takes medications but they are not strong enough. He gets panic attacks because he does not get enough oxygen to breathe properly.
- He has severe edema on his legs, groin and feet. He takes vitamins for macular degeneration in his left eye.
- Due to his poor health, he is unable to work. He is now in pain at all times.
- Certain deductions and exemption rules apply to his situation, as set out in Sections 1, 3 and 7 of Schedule B of the EAPWDR.

The ministry did not raise an objection to the appellant's statements in his Notice of Appeal. The panel finds that the statements detail his bill payments from the settlement he received and his health concerns possibly precipitated or aggravated by the accident. The panel therefore admits the new information pursuant to 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 ministry relied on its reconsideration decision, as summarized at the hearing. The ministry provided information that:

- The appellant is a single recipient of disability assistance and his total monthly rate is

\$1,085.16, consisting of shelter of \$375, support of \$531.42, a monthly nutritional supplement of \$205 and a drug and alcohol supplement of \$41.66 less a \$20 repayment.

- In June 2014, the appellant received an ICBC disbursement of \$9,370.13 which was deposited into the appellant's bank account.
- Funds received in June are reported in July and deducted from the client's August 2014 assistance.
- The appellant called the ministry in July 2014 to advise the ministry of the funds he had received and the bills he had paid.

PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry's decision, which found that the appellant is not eligible for disability assistance for the month of August 2014, pursuant to Section 9 of the *Employment and Assistance for Persons With Disabilities Regulation* (EAPWDR), as the net monthly income of the family unit exceeded the amount of disability assistance payable, was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant.

Section 9 of the *Employment and Assistance for Persons With Disabilities Regulation* (EAPWDR) provides:

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.

Schedule A of the EAPWDR sets out the total amount of disability assistance payable as the sum of the monthly support allowance for a family unit matching the family unit of the applicant or recipient plus the applicable shelter allowance. In calculating the net income of a family unit under Schedule B, various exemptions from income are provided for but, otherwise, all earned and unearned income must be included.

Section 1 of Schedule B of the EAPWDR provides as follows:

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;

...

(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.

Section 1 of the EAPWDR defines "unearned income" as:

"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;

(q) education or training allowances, grants, loans, bursaries or scholarships;

(r) a lottery or a game of chance;

- (s) awards of compensation under the Criminal Injury Compensation Act or awards of benefits under the Crime Victim Assistance Act, other than an award paid for repair or replacement of damaged or destroyed property;
- (t) any other financial awards or compensation;
- (u) Federal Old Age Security and Guaranteed Income Supplement payments;
- (v) financial contributions made by a sponsor pursuant to an undertaking given for the purposes of the Immigration and Refugee Protection Act (Canada) or the Immigration Act (Canada);
- (w) tax refunds.

Section 1 of the EAPWDR defines "earned income" as:

"earned income" means

- (a) any money or value received in exchange for work or the provision of a service,
- (b) Repealed. [B.C. Reg. 197/2012, Sch. 2, s. 1 (a).]
- (c) pension plan contributions that are refunded because of insufficient contributions to create a pension,
- (d) money or value received from providing room and board at a person's place of residence, or
- (e) money or value received from renting rooms that are common to and part of a person's place of residence;

Section 7 of Schedule B of the EAPWDR sets out specific exemptions from unearned income as follows:

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:

- (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 (1) [*assets held in trust for person with disabilities*] of this regulation if the payment is applied exclusively to or used exclusively for
 - (i) disability-related costs,
 - (ii) the acquisition of a family unit's place of residence,

- (iii) a registered education savings plan, or
 - (iv) a registered disability savings plan;
- (d.1) subject to subsection (2), a structured settlement annuity payment made to a person referred to in section 12 (1) of this regulation if the payment is applied exclusively to or used exclusively for an item referred to in subparagraph (i), (ii), (iii) or (iv) of paragraph (d) of this subsection;
- (d.2) money expended by 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 from an intended registered disability savings plan or trust if the money is applied exclusively to or used exclusively for disability-related costs;
- (d.3) subject to subsection (2.1),
- (i) a payment made from a trust to or on behalf of a person referred to in section 12 (1) of this regulation,
 - (ii) a structured settlement annuity payment that, subject to subsection (2), is made to a person referred to in section 12 (1) of this regulation, or
 - (iii) money expended by a person referred to in section 12.1 (2) of this regulation from an intended registered disability savings plan or trust if the payment, structured settlement annuity payment or money is applied exclusively to or used exclusively for disability-related costs to promote independence;
- (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 that 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;
- (f) a tax refund.
- (2) Subsection (1) (d.1) and (d.3) (ii) applies in respect of a person only if
- (a) the person has entered into a settlement agreement with the defendant in relation to a claim for damages in respect of personal injury or death, and
 - (b) the settlement agreement requires the defendant to
 - (i) make periodic payments to the person for a fixed term or the life of the person,
 - (ii) purchase a single premium annuity contract that
 - (A) is not assignable, commutable or transferable, and
 - (B) is designed to produce payments equal to the amounts, and at the times, specified in the settlement agreement,
 - (iii) make an irrevocable direction to the issuer of the annuity contract to make all payments under that annuity contract directly to the person, and
 - (iv) remain liable to make the payments required by the settlement agreement.
- (2.1) The maximum amount of the exemption under subsection (1) (d.3) is \$8 000 in a calendar year, calculated as

the sum of all payments, structured settlement annuity payments and money that, during the calendar year, are applied exclusively to or used exclusively for disability-related costs to promote independence.

(3) Repealed. [B.C. Reg. 197/2012, Sch. 2, s. 13 (f).]

Ministry's position

The ministry's position is that the amount of \$9,370.13 received by the appellant in June 2014 from ICBC exceeded his monthly disability assistance amount of \$1,085.16 and, pursuant to Section 9 of the EAPWDR, the appellant is therefore not eligible for disability assistance for the month of August 2014. The ministry argued that, under Schedule B, all unearned income must be included in the calculation of income except the deductions permitted under Section 6 and any income exempted under Section 7, 7.1, 7.2 and 8. The ministry argued that the definition of "unearned income" means any income that is not earned income and includes, without limitation, money or value received from insurance benefits, except insurance paid as compensation for a destroyed asset. The ministry argued that the money received from insurance benefits is unearned income for which there are no exemptions.

Appellant's position

The appellant does not dispute that he was in receipt of money from ICBC in June 2014 in the amount of \$9,370.13 but argued in his Request for Reconsideration and Notice of Appeal that he had to pay a number of bills: he has no money or food, he cannot pay his rent of \$650 per month or his methadone doctor for \$50 per month, and he is being sued for non-payment of \$50,295.51 for a mortgage. The appellant argued that he was compensated for injuries to his back and now has discs disintegrating due to this accident. The appellant argued that he cannot work due to his poor health and constant pain, which includes an abscess on his left foot, difficulty breathing due to COPD, severe migraines, severe edema on his legs, groin and feet, and macular degeneration in his left eye. In his Notice of Appeal, the appellant quoted the deduction and exemption rules in Section 1(a)(xiv) and (xv) and Section 3 as well as Section 7(1)(d) of Schedule B of the EAPWDR and suggested that these apply to his situation.

Panel's decision

The appellant referred to the exemptions from income set out in Section 1(a)(xiv) and (xv) of Schedule B of the EAPWDR which relate to money paid or payable under the 1986-1990 Hepatitis C Settlement Agreement made June 15, 1999 and a rent subsidy provided by the provincial government, respectively. However, in the appellant's situation the Trust Statement dated June 3, 2014 shows monies received into a lawyer's trust account for general damages, pain, suffering, residual damage and special damages and disbursements in a total amount of \$15,000 as well as monies paid out, including the sum of \$9,370.13 to the appellant. The appellant wrote in his Notice of Appeal that he was compensated for injuries to his back and now has discs disintegrating due to this accident. There is no evidence in the information provided by the appellant that the money received by him in June 2014, or any part of it, related to either the specific Hepatitis C Settlement Agreement or to a rent subsidy from the provincial government and, accordingly, the panel finds that neither of these statutory exemptions apply to the appellant's circumstances.

Under Section 1(d) of Schedule B of the EAPWDR, all unearned income *must* be included in the calculation of net income unless it is specifically exempted and, according to Section 1 of the EAPWDR, "unearned income" is defined to include, without limitation, money or value received from "insurance benefits, except insurance paid as compensation for a destroyed asset" [Section 1 (d)].

The use of the word “must” in Schedule B of the EAPWDR requires the ministry to include all unearned income in the calculation of the net income of a family unit and the ministry does not have the discretion to exclude amounts because the person chose to use the funds to pay down outstanding debts or because the person is unable to work due to poor health.

The appellant quoted Section 7(d) of Schedule B of the EAPWDR, which sets out an exemption for unearned income where a payment is made from a trust that has been established pursuant to Section 12 of the EAPWDR and in which a person with disabilities holds a beneficial interest in real or personal property. Although the funds received by the appellant were paid out of a lawyer’s “trust account”, the appellant provided no evidence that a trust had been established for him in accordance with Section 12, that the monies received were paid from a pre-existing trust, or that monies were used for any of the purposes set out in Section 7(1)(d) of Schedule B of the EAPWDR, as required in order for the money to be exempt. The Transaction Record for a financial institution dated June 6, 2014 shows a deposit of the sum of \$9,370.13 directly into the appellant’s bank account, as well as various transfers, withdrawals, money orders and bill payments indicated, with no detail of the purpose for which the funds were used.

The appellant also quoted Section 3 of Schedule B of the EAPWDR, which sets out exemptions for *earned* income. However, the panel notes that the funds received by the appellant in June 2014 do not fall within the definition of ‘earned income’ as set out in Section 1 of the EAPWDR as there was no evidence provided that they are: *“any money or value received in exchange for work or the provision of a service, pension plan contributions that are refunded because of insufficient contributions to create a pension, money or value received from providing room and board at a person's place of residence, or money or value received from renting rooms that are common to and part of a person's place of residence.”* The panel therefore finds that the ministry reasonably determined that there are no deductions or exemptions available to the appellant for the funds he received from ICBC pursuant to Sections 1, 3 or 7 of Schedule B of the EAPWDR. The panel finds that the ministry reasonably concluded that the amount of the appellant's June 2014 income (\$9370.13) exceeded the amount of assistance determined under Schedule A for the appellant's family unit (\$1,085.16) and that the appellant is, therefore, not eligible for disability assistance for the month of August 2014, pursuant to Section 9 of the EAPWDR.

Conclusion

The panel finds that the ministry reconsideration decision was reasonably supported by the evidence and confirms the decision pursuant to Section 24(2)(a) of the *Employment and Assistance Act*.