

### PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision of March 24, 2015 wherein the ministry determined that the appellant is ineligible for April 2015 Disability Assistance because she received unearned income, in the form of bingo winnings, of \$4,073 on February 8, 2015. The ministry determined the \$4,073 was higher than the Disability Assistance rates for which she is eligible and therefore is ineligible for April 2015 Disability Assistance as per sections 9 and 24 of the Employment and Assistance For Persons with Disabilities Regulation (EAPWDR).

### PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) sections 1, 9, 24, 29  
Employment and Assistance For Persons with Disabilities Regulation (EAPWDR) Schedules A and B

## PART E – Summary of Facts

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

- An undated letter written by the appellant listing the various places she spent the money she won. The list includes stores, restaurants, money given to family and friends, and household bills. The appellant estimates the total to be \$3,881.
- Back statements for the appellant's account for December 2014, January and February 2015.
- A ministry Monthly Report form completed by the appellant undated. The appellant writes she won \$4,093 at bingo on February 8<sup>th</sup>.
- An untitled ministry form relating to the appellant's March 2015 disability assistance signed by the appellant February 12, 2015.
- A copy of a cheque from a casino corporation to the appellant dated February 7, 2015 in the amount of \$4,073 including the note the winnings were from the game "Bingo Progressive."
- A Request for Reconsideration form dated March 23, 2015. The appellant writes that she was reported [to the ministry] for winning \$4,073 but she did not have time to report the winnings to the ministry by March 5, 2015. She writes that she initially lied to the ministry about winning the money because she was scared but then she came forward and disclosed her winnings.

At the hearing the appellant told the panel that she won \$4,073 playing bingo on February 8, 2015. She was aware that she was obligated to disclose the winnings to the ministry by March 5 however she received a call from the ministry on March 2. The ministry asked her about the winnings and she got nervous and denied she had won the money. She told the panel after she had a few days to think about it she called the ministry back and admitted to winning the money and said she would provide proof. She added that it was her intent to declare the winnings on March 5 but the ministry called her three days before then. She said she gathered the documents requested by the ministry. She added that she gave a friend \$500 at the bingo hall on the day she won the money.

The appellant's witness told the panel he was there the evening she won the money. He said he saw her give the \$500 to her friend and was with her when she spent the remainder of the money over the following couple days. He said all the money was spent within 2 to 3 days.

The ministry told the panel that they received information anonymously that the appellant had won money at bingo. The ministry called the appellant on March 2, 2015 to ask about the winnings and remind the appellant that she is required to disclose any money she receives by March 5. The ministry added that since the appellant provided the requested documentation related to the winnings there was no sanction assessed to her. The money she won is considered unearned income as per EAPWDR section 1(1) and therefore deducted from her eligible disability assistance for the month of April 2015. Since the amount she won was more than her eligible disability assistance of \$1332.08, she was ineligible for assistance for the one month. The ministry told the panel that even though her winnings were equal to approximately three months of disability assistance, the appellant was found ineligible for one month's assistance only and the ministry did not assess any sanctions or penalties.

## PART F – Reasons for Panel Decision

The issue on appeal is whether the ministry was reasonable in finding the appellant is ineligible for April 2015 Disability Assistance because she received unearned income, in the form of bingo winnings, of \$4,073 on February 8, 2015. The ministry determined the \$4,073 was higher than the Disability Assistance rates for which she is eligible and therefore is ineligible for April 2015 Disability Assistance as per sections 9 and 24 of the Employment and Assistance For Persons with Disabilities Regulation (EAPWDR).

The relevant legislation is as follows:

### EMPLOYMENT AND ASSISTANCE FOR PERSONS WITH DISABILITIES REGULATION

#### 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:

- (r) a lottery or a game of chance;

#### 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.

#### 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.

#### Reporting requirement

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

(a) the report must be submitted by the 5th day of the calendar month following the calendar month in which one or more of the following occur:

- (i) a change that is listed in paragraph (b) (i) to (v);
- (ii) a family unit receives earned income as set out in paragraph (b) (vi);
- (iii) a family unit receives unearned income that is compensation paid under section 29 or 30 of the *Workers Compensation Act* as set out in paragraph (b) (vii), and

(b) the information required is all of the following, as requested in the monthly report form prescribed under the Forms Regulation, B.C. Reg. 95/2012:

- (i) change in the family unit'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;
- (v) any warrants as described in section 14.2 (1) of the Act;
- (vi) the amount of earned income received by the family unit in the calendar month and the source of that income;
- (vii) the amount of unearned income that is compensation paid under section 29 or 30 of the *Workers Compensation Act* received by the family unit in the calendar month.

Employment and Assistance For Persons with Disabilities Regulation Schedule A

#### 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;
- (xliv) payments granted by the government of British Columbia under the Temporary Education Support for Parents program;
- (xlv) a BC early childhood tax benefit,
- (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.

**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 of the benefits;  
 B = (i) in respect of a family unit comprised of a sole applicant or a sole recipient of the benefits,  
 (ii) in respect of any other family unit, the amount under subparagraph (i), plus the amount of the benefits received by the other family unit;  
 C = the sum of the percentages of taxable amounts set out under section 117 (2) 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.

### Arguments of the Parties

The appellant argues that although she lied initially about winning money at bingo, she later disclosed the winnings to the ministry and provided all requested documents confirming the amount she won and how she spent the money to the ministry. She argues that she should not be penalized one-month's disability assistance.

The ministry argues that the appellant is not being assessed a penalty, but rather, the reason she is ineligible for April 2015 assistance is because the \$4,073 she won at bingo is considered unearned income and must be applied to her eligible disability assistance for the month of April 2015. Since the amount she won is in excess of her eligible disability assistance, she is therefore ineligible for one month's disability assistance as per EAPWDR section 24.

Both parties agree that the appellant won \$4,073 at bingo on February 8, 2015. The ministry has agreed to waive all penalties and sanctions in this case. The issue that the panel must decide is if the ministry reasonably determined that the winnings are considered unearned income by the applicable legislation and whether the ministry reasonably applied EAPWDR sections 9 and 24 and that the winnings do not qualify for an exemption or deduction under Schedule B when determining the appellant's April 2015 disability assistance eligibility.

#### Winnings as Unearned Income

The appellant provided confirmation that the \$4,073 was received from a casino corporation by providing a cheque stub including the note the winnings were from the game "Bingo Progressive." The ministry applied the definition of unearned income contained in EAPWDR 1(1)(r) which reads unearned income includes money received from "(r) a lottery or game of chance." The panel finds the ministry reasonably determined that the appellant's winnings from bingo are considered unearned income for the purposes of calculating her eligibility for disability assistance.

#### Calculation of April 2015 Eligibility

The ministry calculated the appellant's \$4,073 in unearned income, the February 8<sup>th</sup> bingo winnings, against her rate of assistance of \$1332.08 as described in EAPWDR sections 9 and 24. As the bingo winnings were more than her disability assistance rate for the month of April 2015; the ministry determined the appellant was ineligible for April assistance. The panel finds the ministry reasonably determined that the appellant's winnings from bingo must be included when calculating her April 2015 disability assistance and as \$4,073 is more than her disability assistance of \$1,332.08 for the month of April 2015; the ministry was reasonable to determine the appellant was ineligible for April 2015 assistance.

#### Eligible Exemption

The ministry determined that there is no legislated exemption that can be applied to bingo winnings contained in EAPWDR Schedule B. The panel reviewed the legislation and finds no such exemption. The panel finds the ministry reasonably determined that the appellant's winnings from bingo are not exempted as unearned income.

#### Conclusion

The panel finds that the ministry's reconsideration decision was a reasonable application of the applicable enactment in the circumstances of the appellant and confirms the ministry's decision.