



PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (ministry)'s reconsideration decision dated September 3, 2015 finding the appellant ineligible for income assistance, disability assistance, persons with disabilities and Medical Services Only.

PART D – Relevant Legislation

The relevant legislation is section 4 of the Employment and Assistance Act (EAA); sections 1, 10, 66.1, 66.2 and 66.3, sections 1, 2 and 4 of Schedule A, sections 1, 6, 7 and 8 of Schedule B of the Employment and Assistance Regulation (EAR); sections 1, 3, 4 and 5 of the Employment and Assistance for Persons with Disabilities Act (EAPWDA); sections 1, 9, 61.1 and sections 1, 2 and 4 of Schedule A and sections 1, 6, and 7 of Schedule B of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR).

PART E – Summary of Facts

The material before the panel of this hearing included the following documents:

1. The appellant's application for income assistance dated July 30, 2015,
2. An undated handwritten letter from the appellant describing some of his medical conditions,
3. A handwritten letter received by the ministry on August 25, 2015 from the appellant setting out his circumstances in regard to his medical costs and arguing that his monthly income amount should not disqualify him from Persons with a Disability status,
4. At the hearing the appellant submitted a handwritten letter from himself marked as received by the ministry on September 18, 2015 in which he states that he has no dental coverage and no optical coverage and notes that he has just become aware that he qualifies for a lifetime amount of \$15,000 for prescription drugs through his pension plan.
5. At the hearing the appellee also submitted materials describing health care benefits available under the Canada Pension Plan.

The panel considered the admissibility on these last two items. The materials provided were in support of the information provided to the ministry at the reconsideration stage and so admitted those documents.

The appellant is a single person with a monthly income of \$1189.18 from Canada Pension Plan and \$487.35 from a private pension.

The appellant suffers from significant medical issues including hypertension, high blood pressure, irritable bowel syndrome, and diverticulosis. The appellant also has been diagnosed with a psychotic disorder, schizophrenia and OCD. The combination of these ailments, physical and mental, have meant that the appellant has been unable to work for many years, has been hospitalized numerous times, finds it difficult to maintain his health, and has had and continues to have substantial medical bills.

Over the years the appellant has accessed his own resources in order to cover his medical costs which has left him with few assets. The appellant does have access to a lifetime \$15,000 through his private pension for prescriptions and certain other medical goods and services. However, this amount cannot be used for dental and optical expenses. The appellant currently finds himself running out of funds to cover his dental and optical costs.

In July 2015 the appellant made application to the Ministry for persons with disability status in order to help cover his dental and optical costs. The ministry denied the appellant's application on the basis that the appellant's total monthly income is in excess of the legislated amount. The appellant subsequently applied for Medical Services Only, but the ministry denied that application on the basis that the appellant had never received Persons with a Disability status.



PART F – Reasons for Panel Decision

The decision under appeal is the Ministry of Social Development and Social Innovation (ministry)'s reconsideration decision dated September 3, 2015 finding the appellant ineligible for income assistance, disability assistance, Persons with Disabilities status and Medical Services Only.

The relevant legislation is: section 4 of the EAA; sections 1, 10, 66.1, 66.2 and 66.3, sections 1, 2 and 4 of Schedule A, sections 1, 6, and 7 of Schedule B of the EAR; sections 1, 3, 4 and 5 of the EAPWDA; sections 1, 9, 61.1 and sections 1, 2 and 4 of Schedule A and sections 1, 6 and 7 of Schedule B of the EAPWDR.

EAA

Income assistance and supplements

4. Subject to the regulations, the minister may provide income assistance or a supplement to or for a family unit that is eligible for it.

EAR

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:

...

(e) superannuation benefits;

(f) any type or class of Canada Pension Plan benefits;

Limits on income

10 (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 income assistance if the net income of the family unit determined under Schedule B equals or exceeds the amount of income assistance determined under Schedule A for a family unit matching that family unit.

Definitions

66.1 In this Division:

"continuation date"

(a) in relation to a person who is a main continued person under section 66.3 (1) [access to medical services only] or 66.4 (1) [access to transitional health services] as a result of having been part of a family unit on the date the family unit ceased to be eligible for income assistance, means that date, and

(b) in relation to a dependent continued person under section 66.3 (2) or 66.4 (2) of a main continued person, means the continuation date of the main continued person;

"continued person" means

- (a) a main continued person under section 66.3 (1) or 66.4 (1), or
(b) a dependent continued person under section 66.3 (2) or 66.4 (2);

"nutrition-related supplement" means any of the following supplements:

- (a) a supplement under section 73 [diet supplement];
(b) a supplement under section 74 [nutritional supplement-short-term];
(c) a supplement under section 74.01 [tube feed nutritional supplement];
(d) a supplement under section 2 (3) of Schedule C that is related to nutrition;

"qualifying federal benefit" means a supplement under Part II or an allowance under Part III of the Old Age Security Act (Canada);

"qualifying person" means a person who

- (a) has persistent multiple barriers to employment, or
(b) is a recipient of income assistance who is described in section 8 (1) [people receiving special care] of Schedule A.

Access to medical services only

66.3 (1) Subject to subsection (4), a person is a main continued person if

- (a) the person was
(i) part of a family unit identified in subsection (3) on the date the family unit ceased to be eligible for income assistance, and

(ii) a qualifying person on that date, and

(b) the person has not, since that date, been part of a family unit in receipt of income assistance, hardship assistance or disability assistance.

(2) Subject to subsection (6), a person is a dependent continued person if

(a) the person was a dependant of a main continued person under subsection (1) on the main continued person's continuation date, and

(b) the person is currently a dependant of that main continued person.

(3) A family unit is identified for the purposes of subsection (1) (a) if the family unit, while in receipt of income assistance, ceased to be eligible for income assistance

(a) on a date the family unit included a person aged 65 or older,

(b) as a result of a person in the family unit receiving an award of compensation under the Criminal Injury Compensation Act or an award of benefits under the Crime Victim Assistance Act, or

(c) as a result of a person in the family unit receiving a payment under the settlement agreement approved by the Supreme Court in Action No. S50808, Kelowna Registry.

(4) Subject to subsection (5), a person's status as a main continued person under subsection (1) is suspended for a calendar month if

(a) the person fails to meet an applicable income test under subsection (7) in the calendar month and in each of the immediately preceding 12 calendar months, and

(b) the person's continuation date is before those immediately preceding 12 calendar months.

(5) Subsection (4) does not apply to a person who is a main continued person under subsection (1) as a result of having been part of a family unit identified in subsection (3) (c).

(6) A person's status as a dependent continued person under subsection (2) of a main continued person under subsection (1) is suspended if the main continued person's status is suspended under subsection (4).

(7) For the purposes of subsection (4), a main continued person under subsection (1) meets the income test for a calendar month if,

(a) in the case that the main continued person is aged 65 or older or the main continued person's



family unit includes a person aged 65 or older, the main continued person or another person in the family unit is in receipt of a qualifying federal benefit, and
 (b) in the case that neither the main continued person nor another person in the main continued person's family unit is aged 65 or older, the main continued person or another person in the family unit is eligible to receive premium assistance under the Medicare Protection Act.
 (8) Despite this Division, a person is not eligible, as a main continued person under subsection (1), to receive a health supplement under this Division for the calendar month in which the person's continuation date occurs.
 (9) Despite this Division, a person is not eligible, as a dependent continued person under subsection (2) of a main continued person under subsection (1), to receive a health supplement under this Division for the calendar month in which the main continued person's continuation date occurs.
 (B.C. Reg. 145/2015)

Schedule A - Income Assistance Rates - (section 28 (a))

Maximum amount of income assistance before deduction of net income

1 (1) Subject to this section and section 3 and 6 to 10 of this Schedule, the amount of income assistance referred to in section 28 (a) [amount of income 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 (4) for each dependent child in the family unit. (B.C. Reg. 197/2012)

Item	Family unit composition	Age or status of applicant or recipient	Amount of support
1	Sole applicant/recipient and no dependent children	Applicant/recipient is under 65 years of age	\$235.00

Monthly shelter allowance

4 ...
 (2) The monthly shelter allowance for a family unit to which section 15 (2) of the Act does not apply is the smaller of (B.C. Reg. 73/2010)
 (a) the family unit's actual shelter costs, and
 (b) the maximum set out in the following table for the applicable family size:

Item	Family Unit Size	Maximum Monthly Shelter
1	1 person	\$375

Schedule B - Net Income Calculation (section 28 (b))

Deduction and exemption rules

1 When calculating the net income of a family unit for the purposes of section 28 (b) [amount of income 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 in respect of a child in care; (B.C. Reg. 145/2015)

(iii) Repealed (B.C. Reg. 48/2010)

(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); (B.C. Reg. 180/2010)

(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) Repealed (B.C. Reg. 197/2012)

(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) Repealed (B.C. Reg. 85/2012)

(xxi) 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];

(xxii) 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)

(xxiii) Repealed (B.C. Reg. 85/2012) (BC Reg. 209/2003)

(xxiv) 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. (BC Reg. 209/2003) (B.C. Reg. 197/2012)

(xxv) a loan that is

(A) not greater than the amount contemplated by the recipient's business plan, accepted by the minister under section 77.2 of this regulation, and

(B) received and used for the purposes set out in the business plan.

(B.C. Reg. 462/2003)

(xxvi) 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)

(xxvii) Repealed (B.C. Reg. 148/2015)

(xxviii) 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)

(xxix) a refund provided under Plan I as established under the Drug Plans Regulation; (B.C. Reg. 146/95); (B.C. Reg. 292/2005) (B.C. Reg. 32/2012) (B.C. Reg. 73/2015)

(xxx) 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)

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

(xxxii) 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. 195/2007)

(xxxiii) money withdrawn from a registered disability savings plan, (B.C. Reg. 362/2007)

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

(xxxv) Repealed (B.C. Reg. 180/2010)

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

(xxxvii) 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)

(xxxviii) 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)

(xxxix) 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)

(xl) 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)

(xli) 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)
(xlii) 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. 31/2014)
(xliii) payments granted by the government of British Columbia under the Temporary Education Support for Parents program, (B.C. Reg. 172/2014)
(xliv) a BC early childhood tax benefit, (B.C. Reg. 41/2015)
(xlv) child support; (B.C. Reg. 148/2015)
(xlvi) orphan's benefits under the Canada Pension Plan Act (Canada), (B.C. Reg. 148/2015)
(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 of this Schedule,
(c) all earned income must be included, except the deductions permitted under section 2 and any earned income exempted under sections 3 and 4 of this Schedule, and
(d) all unearned income must be included, except the deductions permitted under section 6 and any income exempted under sections 7 and 8 of this Schedule.

Deductions from unearned income

6 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

7 (0.1) In this section:

"disability-related costs", means a disability-related cost referred to in paragraph (a), (b) or (c) of the definition of disability-related cost in section 13 (1) [assets held in trust for person receiving special care] 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 13 (1) of this regulation;

"intended registered disability savings plan or trust" in relation to a person referred to in section 13.1 (2) [temporary exemption of assets for person applying for disability designation or 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.

(B.C. Reg. 197/2012)

(1) The following unearned income is exempt: (B.C. Reg. 83/2012)

- (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 11 [asset limits] of this regulation;
- (d) a payment made from a trust to or on behalf of a person referred to in section 13 (2) [assets held in trust for person receiving special care] 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 13 (2) (a) 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 13.1 (2) [temporary exemption of assets for person applying for disability designation or 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 13 (2) of this regulation,

(ii) a structured settlement annuity payment that, subject to subsection (2), is made to a person referred to in section 13 (2) (a) of this regulation, or

(iii) money expended by a person referred to in section 13.1 (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;

(B.C. Reg. 83/2012) (B.C. Reg. 197/2012)

(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. 57/2003)

(f) a tax refund. (B.C. Reg. 197/2012)

(2) Subsection (1) (d.1) and (d.3) (ii) applies in respect of a person only if (B.C. Reg. 197/2012)

(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.

(B.C. Reg. 83/2012)

(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.

EAPWDA

Interpretation

1 (1) In this Act:

...

"person with disabilities" means a person designated under section 2 [persons with disabilities];

Eligibility of family unit

3 For the purposes of this Act, a family unit is eligible, in relation to disability assistance, hardship assistance or a supplement, if

(a) each person in the family unit on whose account the disability assistance, hardship assistance or supplement is provided satisfies the initial and continuing conditions of eligibility established under this Act and the regulations, and

(b) the family unit has not been declared ineligible for the disability assistance, hardship assistance or supplement under this Act or the regulations.

Application of Act

4 To be eligible for disability assistance or hardship assistance under this Act, a family unit must include a person with disabilities.

Part 2 - Assistance

Disability assistance and supplements

5 Subject to the regulations, the minister may provide disability assistance or a supplement to or for a family unit that is eligible for it.

EAPWDR

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:

...

(e) superannuation benefits;

(f) any type or class of Canada Pension Plan benefits;

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.

Access to medical services only

61.1 (1) Subject to subsection (4), a person is a main continued person if

(a) the person was

(i) part of a family unit identified in subsection (3) on the date the family unit ceased to be eligible for disability assistance, and

(ii) a person with disabilities on that date,

(b) the person has not, since that date, been part of a family unit in receipt of income assistance, hardship assistance or disability assistance.

(c) In the case that the family unit referred to in paragraph (a) (i) was a family unit identified in subsection (3) (g), the agreement referred to in subsection (3) (g) is in force.

(2) Subject to subsection (6), a person is a dependent continued person if

(a) the person was a dependant of a main continued person under subsection (1) on the main continued person's continuation date, and is currently a dependent of the main continued person, or

(b) the person is a dependant of a person who is a main continued person under subsection (1) as a result of having been a part of a family unit identified in subsection (3) (b), (c), (d), (e), (f) or (g).

(3) A family unit is identified for the purposes of subsection (1) (a) if the family unit, while in receipt of disability assistance, ceases to be eligible for disability assistance

(a) on a date the family unit included a person aged 65 or older,

(b) as a result of a person in the family unit receiving an award of compensation under the Criminal Injury Compensation Act or an award of benefits under the Crime Victim Assistance Act,

(c) as a result of a person in the family unit receiving a payment under the settlement agreement approved by the Supreme Court in Action No. S50808, Kelowna Registry.

(d) as a result of a person in the family unit receiving employment income,

(e) as a result of a person in the family unit receiving a pension or other payment under the Canada Pension Plan(Canada),

(f) as a result of a person in the family unit receiving money or value that is maintenance under a maintenance order or a maintenance agreement or other agreement, or

(g) as a result of a person in the family unit receiving financial assistance provided through an agreement under section 12.3 of the Child, Family and Community Service Act.

(4) Subject to subsection (5), a person's status as a main continued person under subsection (1) is suspended for a calendar month if

(a) the person fails to meet an applicable income test under subsection (7) in the calendar month and in each of the immediately preceding 12 calendar months, and

(b) the person's continuation date is before those immediately preceding 12 calendar months.

(5) Subsection (4) does not apply to a person who is a main continued person under subsection (1) as a result of having been part of a family unit identified in subsection (3) (c) or (g).

(6) A person's status as a dependent continued person under subsection (2) of a main continued person under subsection (1) is suspended if the main continued person's status is suspended under subsection (4).

(7) For the purposes of subsection (4),

(a) a person who is a main continued person under subsection (1) as a result of having been part of a family unit identified in subsection (3) (a), (b), (d) or (f) meets the income test for a calendar month if,

(i) in the case that the main continued person is aged 65 or older or the main continued person's family unit includes a person aged 65 or older, the main continued person or another person in the family unit is in receipt of a qualifying federal benefit, and

(ii) in the case that neither the main continued person nor another person in the main continued person's family unit is aged 65 or older, the main continued person or another person in the family unit is eligible to receive premium assistance under the Medicare Protection Act, and

(b) a person who is a main continued person under subsection (1) as a result of having been part of a family unit identified in subsection (3) (e) meets the income test for a calendar month if,

(i) in the case that the main continued person is aged 65 or older or the main continued person's family unit includes a person aged 65 or older, the main continued person or another person in the family unit is in receipt of a qualifying federal benefit, and

(ii) in the case that neither the main continued person nor another person in the main continued person's family unit is aged 65 or older, the main continued person or another person in the family unit receives a pension or other payment under the Canada Pension Plan (Canada).

(8) Despite this Division, a person is not eligible, as a main continued person under subsection (1), to receive a health supplement under this Division for the calendar month in which the person's continuation date occurs.

(9) Despite this Division, a person is not eligible, as dependent continued person under subsection (2) of a main continued person under subsection (1), to receive a health supplement under this Division for the calendar month in which the main continued person's continuation date occurs.

Schedule A - Disability Assistance Rates (section 24 (a))

Maximum amount of disability assistance before deduction of net income

1 (1) Subject to this section and 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 (B.C. Reg. 197/2012)

(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.

(2) Despite subsection (1), disability assistance may not be provided in respect of a dependent child if support for that child is provided under section 8 (2) or 93 (1) (g) (ii) of the Child, Family and Community Service Act.

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 (4) for each dependent child in the family unit.

Table

Item	Family unit composition	Age or status of applicant or recipient	Amount of support
1	Sole applicant/recipient and no dependent children	Applicant/recipient is under 65 years of age	\$531.42

Monthly shelter allowance

4 ...

(2) The monthly shelter allowance for a family unit to which section 14.2 of the Act does not apply 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	Family Unit Size	Maximum Monthly Shelter
1	1 person	\$375

Schedule B - Net Income Calculation (section 24 (b))

Deduction and exemption rules

1 When calculating the net income of a family unit for the purposes of section 24 (b) [amount of disability assistance] of this regulation,

(a) the following are exempt from income:

- (i) any income earned by a dependent child attending school on a full-time basis;
- (ii) the basic family care rate paid in respect of a child in care; (B.C. Reg. 145/2015)
- (iii) Repealed (B.C. Reg. 48/2010)
- (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); (B.C. Reg. 180/2010)
- (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) Repealed (B.C. Reg. 197/2012)

(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)

(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) Repealed; (B.C. Reg. 85/2012) (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. (BC Reg. 209/2003) (B.C. Reg. 197/2012)

(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) Repealed (B.C. Reg. 148/2015) (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 under Plan I as established under the Drug Plans Regulation; (B.C. Reg. 146/95) (B.C. Reg. 292/2005) (B.C. Reg. 32/2012) (B.C. Reg. 73/2015)

(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) Repealed (B.C. Reg. 180/2010)

(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)

(xl) 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)

(xli) 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)

(xlii) 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)

(xliii) money paid or payable from a fund that is established by the government of British Columbia, the government of Canada and the City of Vancouver in relation to recommendation 3.2 of the final report of the Missing Women Commission of Inquiry, (B.C. Reg. 31/2014)

(xliv) payments granted by the government of British Columbia under the Temporary Education Support for Parents program, (B.C. Reg. 172/2014)

(xlv) a BC early childhood tax benefit, (B.C. Reg. 41/2015)

(xlvi) child support; (B.C. Reg. 148/2015)

(xlvii) orphan's benefits under the Canada Pension Plan Act (Canada), (B.C. Reg. 148/2015)

(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 (B.C. Reg. 332/2012) (B.C. Reg. 226/2014)

(d) all unearned income must be included, except the deductions permitted under section 6 and any income exempted under sections 7 and 8. (B.C. Reg. 332/2012) (B.C. Reg. 123/2013) (B.C. Reg. 226/2014)

Deductions from unearned income

6 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

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; (B.C. Reg. 197/2012)

"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; (B.C. Reg. 197/2012)

"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; (B.C. Reg. 197/2012)

“structured settlement annuity payment” means a payment referred to in subsection (2) (b) (iii) made under the annuity contract referred to in that subsection. (B.C. Reg. 197/2012)

(1) The following unearned income is exempt: (B.C. Reg. 83/2012)

(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;

(B.C. Reg. 197/2012)

(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; (B.C. Reg. 197/2012)

(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; (B.C. Reg. 197/2012)

(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;

(B.C. Reg. 83/2012) (B.C. Reg. 197/2012)

(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)

(f) a tax refund. (B.C. Reg. 197/2012)

(2) Subsection (1) (d.1) and (d.3) (ii) applies in respect of a person only if (B.C. Reg. 197/2012)

(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.

(B.C. Reg. 83/2012)

(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.

The ministry representative did not attend the hearing. The Tribunal confirmed that the ministry was properly notified of the time and place of the hearing and proceeded with the hearing in accordance with section 86(b) of the EAR.

In his reasons for appeal the appellant states: "I feel that other people are allowed 1700 month income still get benefits. No dental. Had limited prescription drugs. Will need dental glasses-limited prescription drugs ends soon."

At the hearing the appellant reiterated this position that those with Persons with Disabilities status are entitled to earn a certain amount of money per month without impact to their status or benefits available and that since his income is below this level he should qualify for Persons with Disabilities status.

Also at the hearing the appellant's advocate stated that had the appellant applied for persons with a disability status prior to accessing his pension benefits he would have continued to qualify for Medical Benefits Only even after accessing his pension benefits. By accessing his pension benefits before applying for Persons with Disabilities status the appellant unwittingly made himself ineligible for Medical Benefits Only. The appellant's advocate argues that this procedural mistake is unfair and should not be allowed to materially impact the appellant in such a drastic fashion.

Eligibility for Income Assistance

Section 1 of the EAR identifies pension income and Canada Pension Plan payments as "unearned income". Section 10 of the EAR establishes that an applicant does not qualify to receive income assistance if their income exceeds the amount of income assistance they would receive. Schedule "A" of the EAR sets out the assistance rates of a support amount of \$235.00 per month and \$375

shelter allowance per month for a total of \$610.00 per month. Section 1(d) of Schedule “B” of the EAR states that all unearned income must be taken into account when calculating a persons monthly income for the purpose of assessing their eligibility to receive income assistance. Sections 1(a), 6 and 7 set out all applicable exemptions and deductions from the calculation of a person’s unearned income.

The appellant had a monthly income of about \$1700.00. None of the exemptions or deductions in the legislation applies to this amount. As the appellant’s monthly income of about \$1700.00 is in excess of the monthly amount of income assistance to which he would be entitled to, \$610.00, the appellant did not qualify for income assistance.

Eligibility for Disability Assistance

Sections 1, 3 and 4 of the EAPWDA establish that in order to qualify for disability assistance a person must be a person with a disability.

Section 1 of the EAPWDR identifies pension income and Canada Pension Plan payments as “unearned income”. Section 9(2) of the EAPWDR establishes that an applicant does not qualify to receive disability assistance if their income exceeds the amount of disability assistance they would receive. Schedule “A” of the EAPWDR sets out the assistance rates of a support amount of \$531.42 per month and \$375 shelter allowance per month for a total of \$906.42 per month. Section 1(d) of Schedule “B” of the EAPWDR states that all unearned income must be taken into account when calculating a persons monthly income for the purpose of assessing their eligibility to receive disability assistance. Sections 1(a), 6 and 7 set out all applicable exemptions and deductions from the calculation of a person’s unearned income.

The appellant had a monthly income of about \$1700.00. None of the exemptions or deductions in the legislation applies to this amount. As the appellant’s monthly income of about \$1700.00 is in excess of the monthly amount of disability assistance to which he would be entitled to, \$906.42, the appellant did not qualify for disability assistance.

Eligibility for Medical Services Only

Sections 66.3 of the EAR and 61.1 of the EAPWDR set out the requirements for qualification to receive Medical Services Only benefits. The EAR requires that the recipient have been receiving income assistance. The EAPWDR requires that the recipient have been receiving disability benefits.

As the appellant was not receiving either income assistance or disability assistance he did not qualify for Medical Services only benefits.

The panel considered the appellant's argument that his pension income should not disqualify him from qualifying for income assistance or Persons with Disabilities status because those who currently receive income assistance or have Persons with a Disability status are able to deduct earnings in a similar amount without losing the status or benefits.

As discussed above, the legislation is clear that if an applicant’s monthly income exceeds the amount

of income assistance or disability assistance the applicant would receive, the applicant does not qualify for income assistance or disability assistance.

The panel considered the appellant's advocate's argument that the ministry's decision is unfair because had the appellant applied for Persons with Disabilities status before accessing his Canada Pension Plan, he would have qualified and, even with his current income, would be receiving Medical Services Only.

While the appellant's advocate's argument may be correct, this does not change the fact that the legislation is clear that if an applicant's monthly income exceeds the amount of income assistance or disability assistance the applicant would receive, the applicant does not qualify for income assistance or disability assistance. Also as stated above, the legislation is clear that a person cannot qualify for Medical Services Only unless they were receiving income assistance or disability assistance, which the appellant was not.

As neither of the appellant's arguments is compelling in the face of the provisions of the legislation, the panel concludes that the ministry's determination that the appellant is not eligible for income assistance, disability assistance, Persons with Disabilities status or Medical Services Only was a reasonable interpretation of the legislation in the circumstances and confirms the ministry's decision.