



PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (Ministry) Reconsideration Decision dated October 28, 2015 which denied the Appellant's request to exempt superannuation benefits from the calculation of total income for her family unit. The Ministry found that superannuation benefits are included in the definition of unearned income in the Employment and Assistance Regulation (EAR) definition and are not identified as a type of unearned income that may be exempted from the calculation of annual income under EAR Schedule B, sections 1, 6 or 7, The Ministry determined that the unearned income must be deducted from the Appellant's income assistance.

PART D – Relevant Legislation

Employment and Assistance Regulation (EAR) sections 1(1) Definitions, "unearned income"; 28; Schedule B, sections 1, 6, 7

PART E – Summary of Facts

Information before the Ministry at reconsideration included:

- A copy of a letter to the Ministry from the Appellant's representative, undated.
- The Appellant's Request for Reconsideration, dated October 20, 2015.

At the hearing, the Appellant submitted:

1. A statement of the Appellant's spouse's covered wages under a retirement and disability fund, dated June 30, 2006, showing the Appellant as first beneficiary.
2. A letter dated December 16, 2004 with a certificate for a union trust fund dated December 3, 2004, showing the Appellant as beneficiary.

The Ministry did not object to the admission of these documents. The documents were admitted by the Panel under section 22(4) of the Employment and Assistance Act (EAA) as they were in support of the records before the minister at reconsideration. The Ministry had the records listed below, which they did not include with the appeal record, and which were admitted by the Panel at the hearing. These included statements of income from the two funds.

The Appellant stated that her partner tried to make financial arrangements for his daughter before he died, but was unable to do so. She stated that his intention was that she was made beneficiary in order to have the money for their daughter's benefit. The Appellant stated that before their daughter was born, the Appellant's spouse's sister was the beneficiary, but it was changed that year to her, as shown by the union trust fund certificate. She stated that this benefit is not income for income tax purposes.

The Ministry submitted:

- the Appellant's Request for Reconsideration, the Ministry's Employment and Assistance Review form
- a copy of the Ministry's September 22, 2014 letter to the Appellant advising her of their decision.
- a copy of a letter dated May 30, 2013 to the Appellant from a financial service company outlining the Appellant's survivor annuity.
- a copy of a letter dated September 22, 2015 to the Ministry from a benefits administrator outlining the Appellant's pension benefits.
- a copy of a letter from pension fund administrator dated April 30, 2013 confirming the Appellant's monthly survivor pension.
- a copy of a CPP document related to an orphan's benefit for the Appellant's child.
- a copy of a deposit record from the Appellant's financial institution.

The Appellant had no objection to the admission of these documents. The documents submitted by the Ministry were admitted by the Panel under s. 22(4), EAA, as they were all before the Ministry at reconsideration. The matter of the CPP Orphan's benefits was resolved in the Appellant's favour at reconsideration.

The Ministry responded that their review of the Appellant's income assistance showed that she signed an application in 2013 which required her to report all money received, which she did not do. The Ministry stated that the Appellant is shown as the beneficiary of the pensions, and regardless of whether they are direct or secondary; they are not exempt under the legislation. The Ministry stated that the pensions received by the Appellant are unearned income and must be deducted from income assistance.

PART F – Reasons for Panel Decision

The issue in this appeal is the reasonableness of the Ministry's decision which denied the Appellant's request to exempt superannuation benefits from the calculation of total income for her family unit. The Ministry found that superannuation benefits are included in the definition of unearned income in the Employment and Assistance Regulation (EAR) definition and are not identified as a type of unearned income that may be exempted from the calculation of annual income under EAR Schedule B, sections 1, 6 or 7, The Ministry determined that the unearned income must be deducted from the Appellant's income assistance.

Legislation

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;

Amount of income assistance

28 Income assistance may be provided to or for a family unit, for a calendar month, in an amount that is not more than

- (a) the amount determined under Schedule A, minus
- (b) the family unit's net income determined under Schedule B.

Schedule B – Net Income Calculation

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;
- (iii) Repealed. [B.C. Reg. 48/2010, Sch. 1, s. 1 (b).]
- (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;

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- (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. 1, s. 22 (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) Repealed. [B.C. Reg. 85/2012, Sch. 1, s. 5.]
 - (xxi) 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*;
 - (xxii) payments granted by the government of British Columbia under the Ministry of Children and Family Development's At Home Program;
 - (xxiii) Repealed. [B.C. Reg. 85/2012, Sch. 1, s. 5.]
 - (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;
 - (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;
 - (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;

- (xxvii) Repealed. [B.C. Reg. 148/2015, App. 1, s. 1 (a).]
- (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;
- (xxix) a refund provided under Plan I as established under the Drug Plans Regulation;
- (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;
- (xxxi) a Universal Child Care Benefit provided under the *Universal Child Care Benefit Act* (Canada);
- (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;
- (xxxiii) money withdrawn from a registered disability savings plan;
- (xxxiv) a working income tax benefit provided under the *Income Tax Act* (Canada);
- (xxxv) Repealed. [B.C. Reg. 180/2010, s. 1 (b).]
- (xxxvi) the climate action dividend under section 13.02 of the *Income Tax Act*;
- (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;
- (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;
- (xxxix) payments granted by the government of British Columbia under the Ministry of Children and Family Development's Family Support Services program;
- (xl) payments granted by the government of British Columbia under the Ministry of Children and Family Development's Supported Child Development program;
- (xli) payments granted by the government of British Columbia under the Ministry of Children and Family Development's Aboriginal Supported Child Development program;
- (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;
- (xlili) payments granted by the government of British Columbia under the Temporary Education Support for Parents program;
- (xliv) a BC early childhood tax benefit;
- (xlv) child support;
- (xlvi) orphan's benefits under the *Canada Pension Plan Act* (Canada),
- (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.

Exemptions — unearned income

7 (0.1) In this section:

"disability-related cost" 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.

(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 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;

(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.

The Appellant's position is that the income received from the two pensions she receives as a result of her spouse's death are actually a form of child benefit and should be treated by the Ministry as child support and not be subject to deduction from her income assistance.

The Appellant argued that her spouse changed his beneficiary when his child was born in an attempt to provide for her, and the pensions should be treated as child support. She stated that her spouse did not know that a minor child could have been named as beneficiary. In response to questions from the Panel, she stated that she does not know what discussions her spouse may have had regarding his superannuation. The

Appellant argued that the Ministry acted unreasonably by not differentiating between pension payments made directly to a person who was the contributor and those paid to a designated beneficiary. She argued that by treating the pensions as unearned income, the Ministry is trapping her in a welfare situation, and if the Ministry cannot exempt the income, it should be included in her earnings deduction. The Appellant argued that her circumstances should be considered, and noted that the Ministry amended their treatment of CPP orphan's benefits in September, 2015.

The Ministry's position is that pension or annuity payments are not exempt under the legislation, they are unearned income. The Ministry argued that the legislation is clear on this issue.

The Panel notes that the Appellant is named as beneficiary for her late spouse's pension annuity and survivor's pension; there is no mention of his child. Section 1, EAR, Definitions, "unearned income" is explicit with respect to superannuation payments; it does not distinguish between superannuation benefits received directly by an employee and those received by a designated beneficiary, and there is no exemption as unearned income in sections 1, 6 or 7 of Schedule B, EAR, Net Income Calculation. The Panel finds that the Ministry applied the legislation reasonably in classifying the Appellant's superannuation payments as unearned income and not the type of income that may be exempted from the calculation of income received and therefore must be deducted from the Appellant's income assistance.

The Panel therefore confirms the Ministry decision as reasonably supported by the evidence.