



PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the “ministry”) reconsideration decision of November 24, 2015 wherein the ministry determined that the appellant was not eligible for income assistance for December 2015, as set out in section 10 Employment and Assistance Regulation (“EAR”), because in October 2015 the appellant received \$2,607.00 in survivor benefits, which is considered unearned income, and, must be included in calculating the appellant’s net income for November 2015 under Schedule B EAR to determine the amount of income assistance, if any, he will be eligible to receive in December 2015.

PART D – Relevant Legislation

EAR – section 10, 33 and Schedule B section 1, 6, and 7

PART E – Summary of Facts

The evidence before the ministry at the time of reconsideration:

- Letter dated September 25, 2015 to the appellant from Service Canada stating that his survivor monthly benefit has been released and he will receive \$118 a month and an arrears payment of \$2,799.96. The arrears payment is effective from October 2013 to September 2015.
- Request for Reconsideration dated November 19, 2015. In the reason for request the appellant stated that “he was no longer camping by the river and was just getting slightly better health wise. He stated that he did get a cheque for survivor benefits of \$2700.00 and he needed that money to repay loans from friends, purchase car insurance and other bills. He stated that he would be homeless by next week without (the ministry’s) help. He stated that given the weather conditions if he is being forced to go back camping at the river that it will have a detrimental on his health”.

The Service Canada letter stated the survivor benefit arrears payment is effective from October 2013 to September 2015. The Service office stated Canada Revenue Agency (CRA) had been contacted and asked about the Statutory Set-Off that had been received in 2013 which Service Canada were unable to action because the benefit was suspended. CRA advised Service Canada they could not discuss the matter for privacy reasons.

On November 6, 2015 the appellant confirmed to the ministry that he had received a retro-active survivor benefit payment in the amount of \$2,607.00. He expressed his concern on how this money will affect his benefits for December 2015. The ministry worker advised the appellant how income deductions are applied, further advising that should he be denied December benefits he does have the right to Reconsideration if he wishes.

At the hearing the appellant stated that he read the ministry’s decision and understands their decision. The appellant stated that only recently has he transitioned from living in a tent (camping) into warm accommodations (housing) found by the ministry. The appellant stated that he used the money he received to pay outstanding debts and to purchase insurance for his car that he needs to get around because of a debilitating health issue. The appellant requested the panel exercise some compassion in making their decision.

The oral statements by the appellant corroborated information that had been before the ministry at reconsideration. The panel accepted these statements as being oral testimony in support, in accordance with section 22(4) of the EAA.

The ministry relied on the facts as stated in the Reconsideration decision.

PART F – Reasons for Panel Decision

The issue under appeal is the reasonableness of the ministry's reconsideration decision of November 24, 2015 wherein the ministry determined that the appellant was not eligible for income assistance for December 2015, as set out in section 10 EAR, because in October 2015 the appellant received \$2,607.00 in survivor benefits which is considered unearned income and must be included in calculating the appellant's net income to determine the amount of income assistance, if any, he will be eligible to receive in December 2015.

The legislation considered: EAR

Limits on income

Section 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.

Schedule B

Definitions

Section

(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:

- (a) money, annuities, stocks, bonds, shares, and interest bearing accounts or properties;
- (b) cooperative associations as defined in the *Real Estate Development Marketing Act*;
- (c) war disability pensions, military pensions and war veterans' allowances;
- (d) insurance benefits, except insurance paid as compensation for a destroyed asset;
- (e) superannuation benefits;
- (f) any type or class of Canada Pension Plan benefits;**
- (g) employment insurance;
- (h) union or lodge benefits;
- (i) financial assistance provided under the *Employment and Assistance for Persons with Disabilities Act* or provided by another province or jurisdiction;
- (j) workers' compensation benefits and disability payments or pensions;
- (k) surviving spouses' or orphans' allowances; (B.C. Reg. 363/2012)
- (l) a trust or inheritance;
- (m) rental of tools, vehicles or equipment;
- (n) rental of land, self-contained suites or other property except the place of residence of an applicant or recipient;
- (o) interest earned on a mortgage or agreement for sale;
- (p) maintenance under a court order, a separation agreement or other agreement;
- (q) education or training allowances, grants, loans, bursaries or scholarships;
- (r) a lottery or a game of chance;
- (s) awards of compensation under the *Criminal Injury Compensation Act* or awards of benefits under the *Crime Victim Assistance Act*, other than an award paid for repair or replacement of damaged or destroyed property; (B.C. Reg. 344/2004)
- (t) any other financial awards or compensation;

- (u) Federal Old Age Security and Guaranteed Income Supplement payments;
- (v) financial contributions made by a sponsor pursuant to an undertaking given for the purposes of the *Immigration and Refugee Protection Act* (Canada) or the *Immigration Act* (Canada);
- (w) tax refunds; (B.C. Reg. 197/2012)
- (x) gifts of money, annuities, stocks, bonds, shares, and interest-bearing accounts or properties; (B.C. Reg. 204/2015)
- (y) gifts in the form of payment by another person of a debt or obligation; (B.C. Reg. 204/2015)

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

Deduction and exemption rules

Section 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;
- (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.
- (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)
- (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. 195/2007)
- (xxxiiii) money withdrawn from a registered disability savings plan, (B.C. Reg. 362/2007)
- (xxxv) a working income tax benefit provided under the *Income Tax Act* (Canada),
- (xxxvi) Repealed (B.C. Reg. 180/2010)
- (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. (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)

(xlvi) orphan's benefits under the *Canada Pension Plan Act* (Canada), (B.C. Reg. 148/2015)
(xlvii) gifts, other than recurring gifts. (B.C. Reg. 204/2015)

(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

Section 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

Section 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.

(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) any of the following if applied exclusively to or used exclusively for disability-related costs to promote independence:
 - (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;
 - (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;
(B.C. Reg. 83/2012) (B.C. Reg. 197/2012) (B.C. Reg. 204/2015)
 - (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.

The ministry's position is that on November 6, 2015 the appellant confirmed to the ministry that he received had \$2,607.00 as a retro-payment for survivor benefits plus the \$118.00 monthly survivor benefit in October 2015. The ministry stated that a survivor benefit is a Canada Pension Plan ("CPP") benefit and is defined under section 1(1)(f) EAR as "unearned income" and must be included in calculating his monthly net income for November 2015 as set out under Schedule B, section 1(d) EAR. The ministry argued, as stated in section 33 EAR, income received in October 2015 and reported in November 2015 may affect the amount of income assistance the person (appellant) is eligible to receive in December 2015. The ministry argued that the appellant is eligible to receive \$610.00 in income benefits (shelter and support allowance) and since his net income exceeded this amount he was not eligible to receive income assistance for December 2015.

The ministry argued that Schedule B, sections 6 and 7 set out the types of "unearned income" that may be exempt when calculating the appellant's net income for the month of November. CPP benefits are not listed as a type of "unearned income" that may be exempt and therefore the entire amount of the survivor benefit (2,607.00 + 118.00) must be included in calculating his monthly net income for November 2015 and deducted from the amount of income assistance he would be eligible to receive in December 2015.

The ministry stated the ministry does not have any discretion on these matters and is guided by the

EAR legislation.

The appellant's position is that he understands the ministry's position and that the legislation states the survivor benefit he received is considered unearned income and must be deducted from his monthly assistance. The appellant argued that he didn't use any of the money he received on himself personally and asked for the panel to exercise compassion in this matter.

Both, the ministry and the panel must be guided by the legislation with the *Employment and Assistance Act and Employment and Assistance Regulation* and do not have any legislated authority to exercise discretion on these matters.

The panel finds that a survivor benefit is defined as unearned income under section 1(1)(f) EAR and is not set out as a type of unearned income that may be deducted under Schedule B section 6 or 7.

The panel finds that based on the evidence that the appellant's net income for the month of November 2015 (considering the retro-survivor benefit \$2607.00) exceeded the amount of income assistance he was eligible to receive - \$610.00.

Therefore, the panel finds that the ministry's decision to determine the appellant was not eligible to receive income assistance for the month of December 2015 was reasonable as there is no discretion provided to the ministry or the panel on not applying the legislation set out in Schedule B, section 28 or section 10 of the EAR.

The panel finds that the ministry's decision is reasonably supported by the evidence and confirms the decision pursuant to section 24(1)(a) and section 24(2)(a) of the Employment and Assistance Act.