



PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (Ministry) Reconsideration Decision dated January 12, 2016, wherein the Ministry determined that the appellant received disability assistance for which she was not eligible under section 24 of the Employment and Assistance for Persons with Disabilities Regulation and is required to repay the amount to the ministry as per Employment and Assistance for Persons with Disabilities Act Section 18. The Ministry found that the Appellant had been in receipt of pension benefits from 2006 to 2015 which she had not declared as income.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (EAPWDA) section 18

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) sections 1(1) “unearned income; 24; Schedule B, sections 1, 6

PART E – Summary of Facts

Information before the minister at reconsideration included:

- A WorkSafe BC Pension Payment Detail list in the Appellant's name for the period April, 2006 to June, 2015.
- A copy of a Ministry Overpayment Chart for the period June, 2006 to March, 2015.
- A WorkSafe BC Vocational Rehabilitation Payment Detail list in the name of the Appellant for the period October, 2005 to March, 2010.
- A WorkSafe BC Wage Loss Payment Detail list in the Appellant's name for the period August, 1999 to September, 2002.
- A copy of a cover letter from WorkSafe BC to the Ministry dated July 9, 2015.
- A copy of a letter from WorkSafe BC to the Ministry dated May 6, 2015 confirming that the Appellant is in receipt of a disability pension.
- A letter from the Ministry to the Appellant dated April 7, 2015 requesting documents for an eligibility review.
- The Appellant's declaration and consent form for an eligibility review, signed November 22, 2004, declaring no income.
- The Appellant's Request for Reconsideration signed January 8, 2016, with attachments:
 1. A letter dated December 8, 2015 from a psychiatrist, stating that the Appellant was diagnosed with bipolar disorder in 2005, that she has had severe symptoms for 15 years without the likelihood of significant remission and that she has had some difficulties with her disability payments and accurately accounting for them and that it is possible that her difficulties with English comprehension and her cognitive concomitants of mood instability may be a mitigating factor.
 2. A letter from the Appellant's employer, who is executive director of a mental health society stating that the Appellant was not aware that her pension was not exempt, that she was not told that it was not exempt and that it is a hardship to repay such a large amount.
 3. A letter from the Appellant, in which she stated that she has been suffering from mental illness since 2000, that she has often encountered problems relating to financial matters and she had difficulty understanding the complexity regarding the payments she received in the past due to her cognitive impairment.

At the hearing the Appellant submitted the following documents:

1. A letter from a physician dated Feb. 25, 2016 stating that according to the Appellant, her mental status has deteriorated due to increasing stress.
2. A letter from the Appellant to the Ministry dated February 25, 2016, stating that their decision has caused her pressure and emotional pain.
3. A letter from the Appellant's roommate dated February 24, 2016 stating that she is under a great deal of stress.

The Ministry had no objection to the admission of any of the above listed documents. Document 1 was not admitted by the Panel as it has no relevance to the issue under appeal. Documents 2 and 3 were admitted as argument only. None of the documents were admitted as evidence under s. 22(4) of the Employment and Assistance Act (EAA) as they are not oral or written testimony in support of the information and records before the minister when the decision under appeal was made.

The Ministry submitted copies of the Appellant's monthly reports for the months of October, November and December, 2015. The Appellant had no objection to the admission of these documents. The Panel did not admit these documents under s.22(4) of the EAA as they are not oral or written testimony in support of the information and records before the minister when the decision under appeal was made. There is no reference to these records in the appeal decision.

The Appellant's employer, acting as witness, gave evidence that she has been the Appellant's employer for 9 years. The Appellant has worked at the society of which she is executive director in various capacities from assistant in the volunteer program to coordinator of the volunteer program, facilitating "all sorts of thing". She stated that the Appellant is an exemplary employee and has been volunteer coordinator for 3 years. In response to questions from the Panel, she stated that the Appellant does not have any deficit with respect to her ability to function in her role, but language can be a problem. She stated that the Appellant can have problems with daily routine, and she tends to express her emotions in metaphors. She stated that the Appellant is extremely efficient, has good computer skills, is able to teach others and seems to have good comprehension except for English. The witness stated that she had attended a Ministry office with the Appellant and they were told that the Appellant's WorkSafe BC payments were exempt from monthly reporting, and did not understand that when the payments were converted to a pension, they were no longer exempt. The witness clarified that the physician who wrote the letter presented to the Panel is not the Appellant's usual physician.

The Appellant's roommate, acting as witness, stated that the Appellant did not know how to report her income, and that she has difficulty with daily routine.

The Appellant stated that she did not understand if the pension income had to be reported or not. She stated that she did not know the difference between pension and compensation, which is why she did not report it until she was asked.

The Ministry responded that the Appellant was required to report all income, whether it is considered to be exempt or not, and the Appellant did not do so. The Ministry was not advised that the Appellant was receiving this income, and therefore could not make a determination. In response to questions from the Panel the Ministry stated that unearned income that is compensation paid under s.29 or 30 of the Workers Compensation Act is exempt under s.3(1) "annual exemption - qualifying income (b)" in Schedule B, EAPWDR, but pension income is not, however all income must be reported, regardless of whether it is exempt.

PART F – Reasons for Panel Decision

The issue in this appeal is the reasonableness of the Ministry decision that the appellant received disability assistance for which she was not eligible under section 24 of the Employment and Assistance for Persons with Disabilities Regulation and is required to repay the amount to the ministry as per Employment and Assistance for Persons with Disabilities Act Section 18. The Ministry found that the Appellant had been in receipt of pension benefits from 2006 to 2015 which she had not declared as income.

Legislation

EAPWDA

Overpayments

18 (1) If disability assistance, hardship assistance or a supplement is provided to or for a family unit that is not eligible for it, recipients who are members of the family unit during the period for which the overpayment is provided are liable to repay to the government the amount or value of the overpayment provided for that period.

(2) The minister's decision about the amount a person is liable to repay under subsection (1) is not appealable under section 16 (3) [*reconsideration and appeal rights*].

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:

- (a) money, annuities, stocks, bonds, shares, and interest bearing accounts or properties;
- (b) cooperative associations as defined in the *Real Estate Development Marketing Act*;
- (c) war disability pensions, military pensions and war veterans' allowances;
- (d) insurance benefits, except insurance paid as compensation for a destroyed asset;
- (e) superannuation benefits;
- (f) any type or class of Canada Pension Plan benefits;
- (g) employment insurance;
- (h) union or lodge benefits;
- (i) financial assistance provided under the *Employment and Assistance Act* or provided by another province or jurisdiction;
- (j) workers' compensation benefits and disability payments or pensions;
- (k) surviving spouses' or orphans' allowances;
- (l) a trust or inheritance;
- (m) rental of tools, vehicles or equipment;

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- (n) rental of land, self-contained suites or other property except the place of residence of an applicant or recipient;
 - (o) interest earned on a mortgage or agreement for sale;
 - (p) maintenance under a court order, a separation agreement or other agreement;
 - (q) education or training allowances, grants, loans, bursaries or scholarships;
 - (r) a lottery or a game of chance;
 - (s) awards of compensation under the *Criminal Injury Compensation Act* or awards of benefits under the *Crime Victim Assistance Act*, other than an award paid for repair or replacement of damaged or destroyed property;
 - (t) any other financial awards or compensation;
 - (u) Federal Old Age Security and Guaranteed Income Supplement payments;
 - (v) financial contributions made by a sponsor pursuant to an undertaking given for the purposes of the *Immigration and Refugee Protection Act (Canada)* or the *Immigration Act (Canada)*;
 - (w) tax refunds.

Amount of disability assistance

- 24** Disability assistance may be provided to or for a family unit, for a calendar month, in an amount that is not more than
- (a) the amount determined under Schedule A, minus
 - (b) the family unit's net income determined under Schedule B.

Schedule 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;
 - (iii) Repealed. [B.C. Reg. 48/2010, Sch. 1, s. 2 (c).]
 - (iv) a family bonus, except the portion treated as unearned income under section 10 (1) of this Schedule;
 - (v) the basic child tax benefit;
 - (vi) a goods and services tax credit under the *Income Tax Act (Canada)*;
 - (vii) a tax credit under section 8 [*refundable sales tax credit*], 8.1 [*low income climate action tax credit*] or 8.2 [*BC harmonized sales tax credit*] of the *Income Tax Act (British Columbia)*;
 - (viii) individual redress payments granted by the government of Canada to a person of Japanese ancestry;

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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. 2, s. 11 (a).]
 - (xvii) money paid or payable to a person in settlement of a claim of abuse at an Indian residential school, except money paid or payable as income replacement in the settlement;
 - (xviii) post adoption assistance payments provided under section 28 (1) or 30.1 of the Adoption Regulation, B.C. Reg. 291/96;
 - (xix) a rebate of energy or fuel tax provided by the government of Canada, the government of British Columbia, or an agency of either government;
 - (xx) money paid by the government of British Columbia, under a written agreement, to a person with disabilities or to a trustee for the benefit of a person with disabilities to enable the person with disabilities to live in the community instead of in an institution;
 - (xxi) Repealed. [B.C. Reg. 85/2012, Sch. 2, s. 7.]
 - (xxii) payments granted by the government of British Columbia under section 8 [*agreement with child's kin and others*] of the *Child, Family and Community Service Act*;
 - (xxiii) payments granted by the government of British Columbia under the Ministry of Children and Family Development's At Home Program;
 - (xxiv) Repealed. [B.C. Reg. 85/2012, Sch. 2, s. 7.]
 - (xxv) payments granted by the government of British Columbia under an agreement referred to in section 93 (1) (g) (ii) of the *Child, Family and Community Service Act*, for contributions to the support of a child;
 - (xxvi) a loan that is
 - (A) not greater than the amount contemplated by the recipient's business plan, accepted by the minister under section 70.1 of this regulation, and
 - (B) received and used for the purposes set out in the business plan;
 - (xxvii) payments granted by the government of British Columbia under the Ministry of Children

and Family Development's

(A) Autism Funding: Under Age 6 Program, or

(B) Autism Funding: Ages 6 — 18 Program;

(xxviii) Repealed. [B.C. Reg. 148/2015, App. 2, s. 1 (a).]

(xxix) payments made by a health authority or a contractor of a health authority to a recipient, who is a "person with a mental disorder" as defined in section 1 of the *Mental Health Act*, for the purpose of supporting the recipient in participating in a volunteer program or in a mental health or addictions rehabilitation program;

(xxx) a refund provided under Plan I as established under the Drug Plans Regulation;

(xxxi) payments provided by Community Living BC to assist with travel expenses for a recipient in the family unit to attend a self-help skills program, or a supported work placement program, approved by Community Living BC;

(xxxii) a Universal Child Care Benefit provided under the *Universal Child Care Benefit Act* (Canada);

(xxxiii) money paid by the government of Canada, under a settlement agreement, to persons who contracted Hepatitis C by receiving blood or blood products in Canada prior to 1986 or after July 1, 1990, except money paid under that agreement as income replacement;

(xxxiv) money withdrawn from a registered disability savings plan;

(xxxv) a working income tax benefit provided under the *Income Tax Act* (Canada);

(xxxvi) Repealed. [B.C. Reg. 180/2010, s. 2 (b).]

(xxxvii) the climate action dividend under section 13.02 of the *Income Tax Act*;

(xxxviii) money paid or payable to a person under the *Criminal Injury Compensation Act* as compensation for non-pecuniary loss or damage for pain, suffering mental or emotional trauma, humiliation or inconvenience that occurred when the person was under 19 years of age;

(xxxix) money that is paid or payable to or for a person if the payment is in accordance with the settlement agreement approved by the Supreme Court in Action No. S024338, Vancouver Registry;

(xl) payments granted by the government of British Columbia under the Ministry of Children and Family Development's Family Support Services program;

(xli) payments granted by the government of British Columbia under the Ministry of Children and Family Development's Supported Child Development program;

(xlii) payments granted by the government of British Columbia under the Ministry of Children and Family Development's Aboriginal Supported Child Development program;

(xlili) money paid or payable from a fund that is established by the government of British Columbia, the government of Canada and the City of Vancouver in relation to recommendation 3.2 of the final report of the Missing Women Commission of Inquiry;

(xliv) payments granted by the government of British Columbia under the Temporary Education Support for Parents program;

(xlv) a BC early childhood tax benefit;

(xlvi) child support;

(xlvii) 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,

(c) all earned income must be included, except the deductions permitted under section 2 and any earned income exempted under sections 3 and 4, and

(d) all unearned income must be included, except the deductions permitted under section 6 and any income exempted under sections 7 and 8.

Annual exemption — qualifying income

3 (1) In this section:

"base amount" means

(a) \$800, in the case of a family unit that includes only one recipient,

(b) \$1 000, in the case of a family unit that includes two recipients, only one of whom is designated as a person with disabilities, and

(c) \$1 600, in the case of a family unit that includes two recipients who are designated as persons with disabilities;

"initial qualifying month", in respect of a family unit and a calendar year, means the calendar month specified for the family unit under subsection (5);

"qualifying income" means

(a) earned income, except the deductions permitted under section 2, and

(b) unearned income that is compensation paid under section 29 or 30 of the Workers Compensation Act;

"qualifying month", in respect of a family unit and a calendar year, means

(a) the initial qualifying month for the family unit in the calendar year, and

(b) any subsequent calendar month in the calendar year that is a calendar month for which the family unit is eligible to receive disability assistance under the Act;

"recognized family unit", in respect of a calendar year, means a family unit that

(a) forms during the calendar year, and

(b) includes at least one person who

(i) is designated as a person with disabilities, and

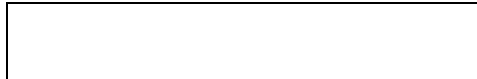
(ii) was previously a recipient in another family unit that was eligible to receive disability assistance under the Act for a calendar month in the calendar year.

(2) For the purposes of section 1 (c) and (d), the lesser of the following amounts is exempt income of a family unit for a qualifying month:

(a) the qualifying income of the family unit for the qualifying month;

(b) the exemption limit of the family unit for the qualifying month calculated in accordance with subsection (3).

(3) The exemption limit of a family unit for a qualifying month for the family unit in a calendar year is the following:



(a) in the case of the initial qualifying month for the family unit in the calendar year, the amount calculated in accordance with subsection (4);

(b) in the case of any other qualifying month for the family unit in the calendar year, the amount calculated in accordance with subsection (7).

(4) For the purposes of subsection (3) (a), the exemption limit of a family unit for the initial qualifying month for the family unit in a calendar year is calculated as follows:

(a) in the case of a family unit other than a recognized family unit, the exemption limit is the product of

(i) the base amount for the family unit, and

(ii) 12 minus the number of calendar months in the calendar year that are before that initial qualifying month;

(b) in the case of a recognized family unit that includes only one recipient, the exemption limit is the product of

(i) the base amount for the recognized family unit, and

(ii) 12 minus the number of calendar months in the calendar year that are before that initial qualifying month;

(c) in the case of a recognized family unit that includes two recipients, the exemption limit is the sum of the carryover amounts for the recipients calculated in accordance with subsection (6).

(5) For the purposes of subsection (4), the initial qualifying month for a family unit is the following:

(a) in the case of a family unit described in subsection (4) (a), the initial qualifying month is

(i) the first calendar month for which the family unit is eligible to receive disability assistance under the Act, if

(A) a member of the family unit who is designated as a person with disabilities previously received disability assistance under the Act or a former Act, as a person with disabilities, or

(B) a member of the family unit received income assistance under the Employment and Assistance Act for the calendar month immediately preceding that first calendar month, or

(ii) if subparagraph (i) does not apply, the first calendar month, after the first calendar month referred to in that subparagraph, for which the family unit is eligible to receive disability assistance under the Act;

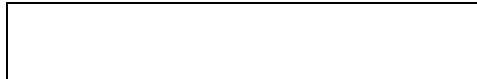
(b) in the case of a family unit described in subsection (4) (b), the initial qualifying month is the first calendar month, after the calendar month in which the family unit forms, for which the family unit is eligible to receive disability assistance under the Act;

(c) in the case of a family unit described in subsection (4) (c), the initial qualifying month is

(i) the calendar month in which the family unit forms, if the family unit is eligible to receive disability assistance under the Act for that calendar month, or

(ii) if subparagraph (i) does not apply, the first calendar month, after the calendar month in which the family unit forms, for which the family unit is eligible to receive disability assistance under the Act.

(6) For the purposes of subsection (4) (c), the carryover amount for a recipient who is part of a recognized family unit that includes two recipients is calculated as follows:



- (a) in the case of a recipient who is not designated as a person with disabilities, the product of
 - (i) the amount specified in paragraph (b) of the definition of "base amount" minus the amount specified in paragraph (a) of that definition, and
 - (ii) 12 minus the number of calendar months in the calendar year that are before the initial qualifying month for the recognized family unit;

(b) in the case of a recipient who is designated as a person with disabilities, if the last family unit, before the recognized family unit, of which the person was a part that was eligible to receive disability assistance under the Act included no other recipients, the greater of

- (i) nil, and
- (ii) the exemption limit of that last family unit for the last qualifying month for that last family unit, adjusted as follows:
 - (A) by deducting the qualifying income of that last family unit in that last qualifying month;
 - (B) by deducting the product of
 - (I) the amount specified in paragraph (a) of the definition of "base amount", and
 - (II) the number of calendar months after that last qualifying month and before the initial qualifying month for the recognized family unit;

(c) in the case of a recipient who is designated as a person with disabilities, if paragraph (b) does not apply, the product of

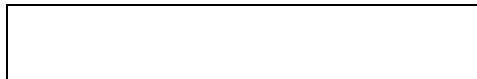
- (i) the amount specified in paragraph (a) of the definition of "base amount", and
- (ii) 12 minus the number of calendar months in the calendar year that are before the initial qualifying month for the recognized family unit.

(7) For the purposes of subsection (3) (b), the exemption limit of a family unit for any other qualifying month (an "index qualifying month") for the family unit in the calendar year is the greater of

(a) nil, and

(b) the exemption limit of the family unit for the last qualifying month for the family unit before the index qualifying month, adjusted as follows:

- (i) by deducting the qualifying income of the family unit in that last qualifying month;
 - (ii) in the case of a family unit that includes a recipient whose designation as a person with disabilities was rescinded
 - (A) in that last qualifying month, or
 - (B) in a calendar month after that last qualifying month and before the index qualifying month,
- by deducting the product of
- (C) the amount specified in paragraph (c) of the definition of "base amount" minus the amount specified in paragraph (b) of that definition, and
 - (D) 12 minus the number of calendar months in the calendar year that are before the index qualifying month;
- (iii) in the case of a family unit that includes a recipient whose designation as a person with disabilities was made
 - (A) in that last qualifying month, or
 - (B) in a calendar month after that last qualifying month and before the index qualifying



- month,
- by adding the product of
- (C) the amount specified in paragraph (c) of the definition of "base amount" minus the amount specified in paragraph (b) of that definition, and
 - (D) 12 minus the number of calendar months in the calendar year that are before the index qualifying month;
- (iv) by deducting the product of
- (A) the base amount for the family unit, as the family is composed in that last calendar month before any rescission described in subparagraph (ii) or designation described in subparagraph (iii) is made, and
 - (B) the number of calendar months after that last qualifying month and before the index qualifying month.

The Appellant's position is that she was not aware that the WorkSafe BC payments had to be deducted from her disability assistance payments after they were converted to a pension and that her mental health is a factor affecting her understanding of her reporting requirements. The Appellant argued that the Ministry's decision has caused her a great deal of anxiety, to the point where she has had to seek medical treatment. She argued that she has difficulty understanding Ministry reporting requirements, and when she originally asked, she was advised that the payments she was receiving from WorkSafe BC were exempt from deduction, and she did not know that when the payments were converted to a pension they were no longer exempt. The Appellant argued that her mental health condition is a factor in her failure to report the income.

The Ministry position is that the Appellant was required to report all income whether it is exempt or not, and she is liable to repay the amount of disability assistance which she was not entitled to receive. The Ministry argued that the Appellant did not report any income related to her WorkSafe BC payments.

The Panel notes that there is no clear statement from a medical professional stating that the Appellant is unable to understand her reporting obligations; the letter from her psychiatrist states that her difficulties with English comprehension and her cognitive concomitants [sic] of mood instability may be a mitigating factor, however this is not a definitive statement. When questioned, the Appellant's employer, who is the executive director of a mental health society, stated that the Appellant has no cognitive deficits with respect to her role as volunteer coordinator and that she is extremely efficient, has good computer skills and is able to teach others who have less comprehension than she does.

The Panel notes that there is a requirement for all recipients to report all money received each month, which is stated in the "my responsibilities" section of the review form signed by the Appellant. There is no dispute that the Appellant did in fact receive the payments in question, and there is no evidence to demonstrate that the Appellant is unable, for medical reasons, to understand her reporting requirements.

The Panel finds that the Ministry reasonably determined that the Appellant received disability assistance payments for which she was not eligible and that she is required to repay it.

The Panel finds that the Ministry's decision was reasonably supported by the evidence and was a reasonable application of the applicable enactment in the circumstances of the Appellant. The Panel confirms the Ministry decision.