



PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (Ministry) Reconsideration Decision dated February 18, 2016, wherein the Ministry determined that the Appellant is not eligible for disability assistance. The Ministry found that the Appellant is in receipt of unearned income, rental income for a suite in a residence owned by him, which together with his Canada Pension Plan (CPP) benefits, exceed his disability assistance rate. The Ministry cites Section 9(2) of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) which states that a family unit is not eligible for disability assistance if the net income of the family unit equals or exceeds the amount of disability assistance for which they would be eligible.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) sections 1(1), 9, 24; Schedule A sections 2 and 4; and Schedule B sections 1, 6, and 7

PART E – Summary of Facts

Information before the minister at reconsideration included:

- A bank statement in the name of the Appellant for the period April 21 to July 2, 2015, showing deposits totaling \$1,700 in addition to CPP.
- A copy of a Bank Profile in the Appellant's name, dated July 17, 2015.
- A copy of an Employment and Assistance for Persons with Disabilities Review, signed by the Appellant on February 2, 2016.
- The Appellant's Request for Reconsideration dated February 17, 2016, with a note from the Appellant stating that he does not receive any money from his son. It was a misunderstanding. His son helps only his mother, not him.
- A bank statement in the name of the Appellant for the period November 6, 2015 to February 1, 2016 showing deposits for CPP and one other credit in the amount of \$90.00 and a transfer of \$500 in November to the Appellant's mortgage account.
- A letter from the Appellant's son dated February 3, 2016 stating that he pays rent in the amount of \$700.00 to the Appellant every month.
- A copy of a bank statement in the Appellant's name for the period November 18 to December 15, 2015.
- A copy of a bank statement in the Appellant's name for the period December 22, 2015 to January 15, 2016.
- A copy of a bank statement in the Appellant's and his spouse's names headed "residential mortgage" for the period August 20, 2015 to January 28, 2016.

The Appellant submitted two letters with his Notice of Appeal to the Tribunal: (1) from the Appellant's son, dated February 24, 2016 stating that he pays rent in the amount of \$700 to his mother every month; and (2) from the Appellant's spouse, dated February 24, 2017 stating that she receives \$700 rent from her son every month.

The Panel admitted these documents under section 22(4)(b) of the Employment and Assistance Act as they are written testimony in support of the records that were before the Ministry at reconsideration. The Appellant's son initially submitted a letter confirming that he pays his father monthly rent; the Appellant later disputed this and provides these two letters for the purpose of correcting the information that was before the Ministry at reconsideration.

The Ministry submitted a letter to the Tribunal dated March 18, 2016 stating that at the time of reconsideration all of the evidence indicated that the Appellant was receiving \$700 per month rental income. The Panel accepted this letter as argument in support of the Ministry's position.

PART F – Reasons for Panel Decision

The issue in this appeal is the reasonableness of the Ministry decision that the Appellant is not eligible for disability assistance because he has income in excess of the amount of disability assistance for which he would be eligible. The Ministry found that the Appellant is in receipt of unearned income, rental income for a suite in a residence owned by him, which together with his CPP benefits, exceed his disability assistance rate. The Ministry cites Section 9(2) of the EAPWDR which states that a family unit is not eligible for disability assistance if the net income of the family unit equals or exceeds the amount of disability assistance for which they would be eligible.

Legislation

EAPWDR

Definitions

1 (1) In this regulation:

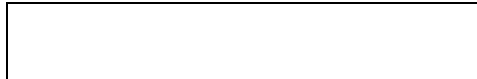
"unearned income" means any income that is not earned income, and includes, without limitation, money or value received from any of the following:

- (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;
- (n) rental of land, self-contained suites or other property except the place of residence of an applicant or recipient;

Limits on income

9 (1) For the purposes of the Act and this regulation, **"income"**, in relation to a family unit, includes an amount garnished, attached, seized, deducted or set off from the income of an applicant, a recipient or a dependant.

(2) A family unit is not eligible for disability assistance if the net income of the family unit determined under Schedule B equals or exceeds the amount of disability assistance determined under Schedule A for a family unit matching that family unit.



Amount of disability assistance

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

Schedule A

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.

Item	Column 1 Family unit composition	Column 2 Age or status of applicant or recipient	Column 3 Amount of support
1	Sole applicant/recipient and no dependent children	Applicant/recipient is a person with disabilities	\$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	Column 1 Family Unit Size	Column 2 Maximum Monthly Shelter
1	1 person	\$375

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;
- (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;

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

(xlvi) a BC early childhood tax benefit;

(xlvii) child support;

(xlviii) orphan's benefits under the *Canada Pension Plan Act* (Canada);

(xlix) money or other value received, by will or as the result of intestacy, from the estate of a deceased person;

(l) gifts;

(i) education and training allowances, grants, bursaries or scholarships, other than student financial assistance;

(ii) money withdrawn from a registered education savings plan,

(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

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;

"disability-related cost to promote independence" means a disability-related cost referred to in paragraph (d) of the definition of disability-related cost in section 12 (1) of this regulation;

"intended registered disability savings plan or trust", in relation to a person referred to in section 12.1 (2) [*temporary exemption of assets for person with disabilities or person receiving special care*] of this regulation, means an asset, received by the person, to which the exemption under that section applies;

"structured settlement annuity payment" means a payment referred to in subsection (2) (b) (iii) made under the annuity contract referred to in that subsection.

(1) The following unearned income is exempt:

(a) the portion of interest from a mortgage on, or agreement for sale of, the family unit's previous

place of residence if the interest is required for the amount owing on the purchase or rental of the family unit's current place of residence;

(b) \$50 of each monthly Federal Department of Veterans Affairs benefits paid to any person in the family unit;

(c) a criminal injury compensation award or other award, except the amount that would cause the family unit's assets to exceed, at the time the award is received, the limit applicable under section 10 [asset limits] of this regulation;

(d) a payment made from a trust to or on behalf of a person referred to in section 12 (1) [assets held in trust for person with disabilities] of this regulation if the payment is applied exclusively to or used exclusively for

- (i) disability-related costs,
- (ii) the acquisition of a family unit's place of residence,
- (iii) a registered education savings plan, or
- (iv) a registered disability savings plan;

(d.1) subject to subsection (2), a structured settlement annuity payment made to a person referred to in section 12 (1) of this regulation if the payment is applied exclusively to or used exclusively for an item referred to in subparagraph (i), (ii), (iii) or (iv) of paragraph (d) of this subsection;

(d.2) money expended by a person referred to in section 12.1 (2) [temporary exemption of assets for person with disabilities or person receiving special care] of this regulation from an intended registered disability savings plan or trust if the money is applied exclusively to or used exclusively for disability-related costs;

(d.3) 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 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;
- (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;

(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.

The Appellant's position is that he does not receive any money from his son, and it was a misunderstanding on his part; his son helps only his mother, not him.

The Ministry's position is that they received information from the Appellant's son that he pays rent of \$700 per month to his father, and if there has been a change in circumstances, the Appellant's eligibility for assistance can be reassessed.

The Panel notes that the two letters admitted as evidence, one from the Appellant's son and one from his spouse, state that the son pays rent to his mother, not his father, however the information contained in the letters do not clarify that deposits are made to the Appellant's spouse's account. Although there are no \$700 deposits or notations indicated in the bank statements that would confirm the receipt of rental income and the Appellant stated in his Request for Reconsideration that he does not receive income from his son, there are, nevertheless, unexplained deposits to that account.

The information before the Ministry at reconsideration was that the Appellant receives rental income from his son each month in the amount of \$700. No evidence is available to show payments to the mother or that deposits are made to the Appellant's spouse's account.

The Panel finds that the Ministry reasonably concluded that the Appellant is in receipt of income that exceeds the amount of disability assistance for which he would be eligible. Section 24 EAPWDR states that disability assistance may be provided monthly in an amount that is not greater than the amount determined under Schedule A minus the family unit's net income determined under Schedule B. The Ministry noted that the disability rate for a sole recipient is \$906.42.

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