

PART C – Decision under Appeal

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Social Innovation (the ministry) dated July 13, 2016 which held that Employment Insurance (EI) received by the appellant in May 2016 is unearned income as defined in section 1(1) of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR). As the EI is not exempt from the calculation of net monthly income under Schedule B, it must be deducted when calculating the amount of July 2016 disability assistance in accordance with section 24.

PART D – Relevant Legislation

EAPWDR – sections 1(1), 24, 29, and Schedules A and B

PART E – Summary of Facts

The appellant is a sole recipient of disability assistance at a monthly rate of \$906.42. His December 2015 disability assistance had been reduced by EI benefits received in October 2015.

On June 8, 2016, the ministry received confirmation from Service Canada that the appellant received two EI payments in May 2016 (\$248.00 on May 9th and \$274.00 on May 22nd) totaling \$522.00. A copy of a Government of Canada printout entitled “My Payments” which identifies both payments as “Net Amount Paid”, is included in the appeal record. The appellant does not dispute that he received these payments and the appellant’s advocate confirms that the appellant received \$522.00 in EI in May 2016 in the Request for Reconsideration dated June 30, 2016. The advocate also writes that the appellant did not realize that the EI was not exempt and that the appellant used the money for groceries and debt payments.

In his Notice of Appeal, the appellant writes that a full submission is to follow. No additional written submission was provided.

At the hearing, the appellant stated that due to the reduction of his disability assistance two months after he received the EI, he has had to rely on the food bank and other public resources and was left without enough money as a lump sum to pay rent.

At the hearing, the ministry relied on its reconsideration decision.

PART F – Reasons for Panel Decision

Issue under appeal

The issue under appeal is whether the ministry decision which held that EI received by the appellant in May 2016 is non-exempt unearned income under section 1(1) and Schedule B of the EAPWDR which must be deducted from the appellant's July 2016 disability assistance in accordance with section 24, was reasonably supported by the evidence or a reasonable application of the legislation in the circumstances of the appellant.

Relevant 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:

(g) employment insurance;

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.

Reporting requirement

29 For the purposes of section 11 (1) (a) [*reporting obligations*] of the Act,

(a) the report must be submitted by the 5th day of the calendar month following the calendar month in which one or more of the following occur:

- (i) a change that is listed in paragraph (b) (i) to (v);
- (ii) a family unit receives earned income as set out in paragraph (b) (vi);
- (iii) a family unit receives unearned income that is compensation paid under section 29 or 30 of the

Workers Compensation Act as set out in paragraph (b) (vii), and

(b) the information required is all of the following, as requested in the monthly report form prescribed under the Forms Regulation, B.C. Reg. 95/2012:

- (i) change in the family unit's assets;
- (ii) change in income received by the family unit and the source of that income;
- (iii) change in the employment and educational circumstances of recipients in the family unit;
- (iv) change in family unit membership or the marital status of a recipient;
- (v) any warrants as described in section 14.2 (1) of the Act;
- (vi) the amount of earned income received by the family unit in the calendar month and the source of that income;
- (vii) the amount of unearned income that is compensation paid under section 29 or 30 of the Workers Compensation Act received by the family unit in the calendar month.

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

Deduction and exemption rules

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

(a) the following are exempt from income:

- (i) any income earned by a dependent child attending school on a full-time basis;
- (ii) the basic family care rate paid in respect of a child in care;
- (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

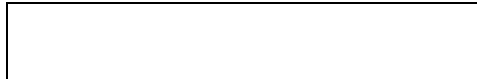
(B) Autism Funding: Ages 6 — 18 Program;

(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;

(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;

(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);

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

(xlix) gifts;

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

(li) money withdrawn from a registered education savings plan;

(lii) compensation paid or payable under section 17 [*compensation in fatal cases*] or 18 [*addition to payments*] of the [Workers Compensation Act](#) to a dependant, as defined in section 1 of that Act, who is a child, as defined in section 17 of that Act,

(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.....

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

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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) x 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.

Appellant's position

The appellant's position, as set out by his advocate in the Request for Reconsideration, is that he did not realize that the EI he received in May 2016 would be deducted from his July 2016 disability assistance. As he used the EI for groceries and debt payments, the reduced amount of disability assistance will cause undue hardship. At the hearing, the appellant argued that deducting EI payments does not provide compensation or a safety net for a person with disabilities who gets sick,

which does not seem fair.

Ministry's position

The ministry's position is that the EI received by the appellant in May 2016 is defined as unearned income in section 1(1) of the EAPWDR and is not included in the types of unearned income listed in sections 1, 3, 6 and 7 of Schedule B which are exempt when calculating net monthly income. Based on the reporting schedule set out in section 29, the EI received in May 2016 must be reported by the 5th of June 2016 and included when determining the amount of disability assistance for which the appellant is eligible for July 2016. Consequently, in accordance with section 24, the \$522.00 of EI received in May 2016 must be deducted from the amount of disability assistance determined under Schedule A (\$906.42).

Panel Decision

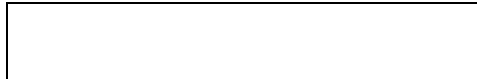
Section 1(1) of the EAPWDR defines "unearned income" as including EI and the appellant does not dispute that this is the case or that he received a total of \$522.00 in EI payments in May 2016.

Schedule B of the EAPWDR sets out how net income is calculated and provides that certain types of earned and unearned income are not included in a person's net income. Sections 1, 3, 6, and 7 of Schedule B address exemptions and deductions for unearned income.

Section 1 of Schedule B lists various payments which are exempt when calculating net income but does not include EI payments. Section 3 of Schedule B sets out permissible annual exemptions for earned income as well for unearned income that is "compensation paid under section 29 or 30 of the Workers Compensation Act." Section 6 of Schedule B provides that the only deductions from unearned income are income tax deducted at source from EI benefits and essential operating costs of renting self-contained suites. The information from Service Canada indicates that both May 2016 EI payments were the net amounts paid and as such do not include income tax deducted at source. The deduction respecting rental suites does not apply in the appellant's circumstances. Section 7 of Schedule B sets out specific types of unearned income that are exempt from net income, including certain trust and annuity payments, but does not include EI payments.

The panel finds that the ministry reasonably determined that the EI received by the appellant in May 2016 in the amount of \$522.00 is unearned income under section 1(1) that is not exempt or deductible and must be included when calculating the appellant's net income under Schedule B.

Section 29 of the EAPWDR requires that income received in one calendar month must be reported by the 5th of the following calendar month. In this case, the unearned income received in May 2016 was to be reported by June 5th, 2016 and consequently, the earliest opportunity to include this unearned income in the calculation of the amount of monthly disability assistance was July 2016. In accordance with section 24 of the EAPWDR, the amount of disability assistance that may be provided to or for a family unit is the amount of disability assistance determined under Schedule A, which is \$906.42 in the appellant's circumstances, minus the net income determined under Schedule B, which is



\$522.00. The legislation does not provide the ministry with the discretion to vary from this calculation regardless of the circumstances of the recipient.

Therefore, the panel finds that the ministry's reconsideration decision which held that the unearned income received by the appellant in May 2016 must be deducted from his July 2016 disability assistance is a reasonable application of the legislation. The reconsideration decision is confirmed and the appellant is unsuccessful on appeal.