



PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the “ministry”) reconsideration decision of November 4, 2016 wherein the ministry held that pursuant to section 9(2) of the Employment and Assistance For Persons with Disabilities Regulation (“EAPWDR”) the appellant was not eligible for disability assistance for the month of October 2016 because her net income for August 2016, which included the \$1481.00 she received in Employment Insurance Earnings, exceeded her monthly disability assistance rate of \$983.42.

PART D – Relevant Legislation

Employment and Assistance For Persons with Disabilities Act - section 11
Employment and Assistance For Persons with Disabilities Regulation – section 9(2), 24, 29, Schedule B sections 1(g), 6 and 7

PART E – Summary of Facts

The evidence before the ministry at the time of reconsideration:

- Copy of statement of Service Canada payments covering the period of June 26, 2016 to September 17, 2016;
- Memo from BC Housing showing the appellant's rent payment due October 1, 2016 is outstanding;
- Service Canada Medical Certificate dated and signed on October 4, 2016 by the appellant's doctor indicating the appellant is incapable of working work for 16 weeks.
- Letter from the appellant's doctor dated October 4, 2016 stating the appellant suffers from multiple medical problems and has been advised to take a four month leave from work.
- Request for Reconsideration dated October 18, 2016.

The appellant is a single recipient of disability assistance and is eligible to receive \$983.42 a month (\$931.42 + \$52 transportation supplement). She is a seasonal worker, under contract, in her community, who was laid off work on June 23, 2016 and applied for Employment Insurance (EI) benefits. On August 7, 2016 EI processed the appellant's EI report covering the period of June 26, 2016 to August 6, 2016. The appellant did not receive any EI benefits for the period of June 26, 2016 to July 9, 2016. On August 7, 2016 the appellant received EI benefits for the period of July 10, 2016 to August 6, 2016 of \$955.00. On August 21, 2016 she also received \$526.00 for the period of August 7 to August 20, 2016. In total, in August 2016, the appellant received \$1481.00 in EI benefits. The appellant confirmed the receipt of her EI benefits to the ministry and when the ministry calculated the appellant's net income (EI benefits are not exempt) they determined her net income exceeded her monthly disability assistance rate and she was not eligible for disability assistance for October 2016. The appellant advised the ministry that the EI benefit of \$429.00 for July 23, 2016 should have been paid to her in July but due to a processing delay the benefit was not paid until August 7, 2016. The appellant also advised the ministry that her housing costs (rent) have also increased due to this change in her income which is also causing further problems.

At the hearing, the appellant stated she was laid off work on June 23, 2016 and she was late in applying for her EI benefits, which resulted in her not receiving her initial (1st) EI benefit cheque until August. The appellant stated that she thought that if she had received that 1st benefit cheque of \$429.00 in July 2016 when she thought it should have been received she would have been eligible for her disability assistance in October. The appellant stated that she understands the ministry's decision; she just doesn't agree with it. The appellant stated that her monthly rent is based on her income and because she worked more hours which increased her income, the amount of her monthly rent increased. She stated it's frustrating and is like a vicious circle and now, since her rent won't change for another year, she has to move.

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 4, 2016 wherein the ministry held that pursuant to section 9(2) of the EAPWDR the appellant was not eligible for income assistance for the month of October 2016 because her net income of \$1481.00 received in August 2016 exceeded her monthly disability assistance rate of \$983.42 as determined under Schedule A EAPWDR.

The legislation considered: EAPWDR

Definitions

Section 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;

Limits on income

Section 9 (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.

Reporting requirement

Section 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;

Schedule A - Disability Assistance Rates (section 24 (a))

Maximum amount of disability assistance before deduction of net income

Section 1

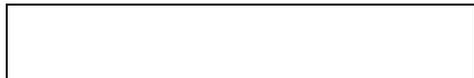
(1) Subject to this section and sections 3 and 6 to 9 of this Schedule, the amount of disability assistance referred to in section 24 (a) [*amount of disability assistance*] of this regulation is the sum of:

(a) the monthly support allowance under section 2 of this Schedule for a family unit matching the family unit of the applicant or recipient, plus

(b) the shelter allowance calculated under sections 4 and 5 of this Schedule.

(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



(a.1) subject to section 24.1 [*disability assistance in the form of transportation support allowance*], the amount set out in Column 4 of the following table for the family unit, 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 base support	Column 4 Amount of transportation support
1	Sole applicant/recipient and no dependent children	Applicant/recipient is a person with disabilities	\$556.42	\$52.00

Monthly shelter allowance

Section 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 - Net Income Calculation [Section 24(b) EAPWDR]

Deduction and exemption rules

Section 1

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

...
 (d) all unearned income must be included, except the deductions permitted under section 6 and any income exempted under sections 3, 7 and 8.

Annual exemption — qualifying income

Section 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;

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

Section 6

The only deductions permitted from unearned income are the following:

- (a) any income tax deducted at source from employment insurance benefits;

Exemptions — unearned income

Section 7

(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...
- (b) \$50 of each monthly Federal Department of Veterans Affairs benefits paid ...
- (c) a criminal injury compensation award or other award ...
- (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 ...
 - (d.1) subject to subsection (2), a structured settlement annuity payment ...
 - (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 ...
 - (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...
- (f) a tax refund;

Ministry's Position

The ministry's position is that the appellant must report all income she received in the month, August 2016, by the 5th day of the following month, September 2016, as set out in section 29(b)(ii) EAPWDR, which determines the amount of disability assistance she is eligible to receive in October 2016. The ministry stated that for all recipients of disability assistance, income received during the previous month and reported by the 5th of the current month, as per section 29 EAPWDR, affects the following month's disability assistance (for example, income received in August is reported by September 5th and affects October disability assistance).

The ministry stated the appellant is eligible to receive a monthly disability assistance of \$983.42 and in August 2016 she reported that she had received three (3) EI payments totaling \$1481.00. The ministry argued that EI benefits are considered unearned income and not exempt from calculating a family unit's net income.

The ministry stated 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 and EI benefits are not listed as a type of "unearned income" that may be exempt. The ministry argued that the EI benefits, \$1481.00, received in August 2016 must be included in calculating the appellant's monthly net income for September 2016 and then deducted from the amount of disability assistance she would be eligible to receive in October 2016.

The ministry argued section 9(2) EAPWDR states that if the family's net income exceeds the monthly disability assistance rate then the family unit is not eligible to receive disability assistance for that month.

Appellant's Position

The appellant's position is that EI took too long in processing her application and the EI benefit of \$491.00 she was eligible to receive for the period of July 10 to July 23, 2016 should have been paid in July. The appellant argued that if this EI benefit had been received in July she would not have gone over her disability assistance rate and become ineligible for disability assistance in October.

Panel Decision

An EI benefit is defined as unearned income under section 1(1)(g) EAPWDR and under Schedule B section 2(d) EAPWDR all unearned income must be included, except the deductions permitted under Schedule B, sections 6 and any income exempted under sections 7 and 8.

The panel finds that paid EI benefits do not meet the legislated criteria under Schedule B section 6 or section 7 and 8 EAPWDR.

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

The evidence before the panel is that the appellant received EI benefits totaling \$1481.00 in the month of August that was reported to the ministry in September 2016 which affected the amount of disability assistance she was eligible to receive in October 2016.

The panel finds that the appellant's net income for the month of August 2016 (\$1481.00) exceeded the amount of disability assistance she was eligible to receive in October (\$938.32) which rendered her ineligible for disability assistance for the month of October 2016. The appellant's position is that had she received the EI benefit of \$429.00 in July instead of August she would have been eligible for disability assistance in October. The appellant's position is not supported by the evidence, since when the \$429.00 is deducted from \$1,481.00, the result is that the appellant would have received EI benefits of \$1,052.00 in August – an amount that still exceeds her disability assistance rate of \$983.00.

The panel finds the ministry's decision to determine the appellant was not eligible to receive disability assistance for the month of October 2016 was a reasonable application of the legislation in the circumstances of the appellant.

Therefore, the panel confirms the ministry's reconsideration decision of November 4, 2016 pursuant to section 24(1)(a) and section 24(2)(a) of the EAA.