



PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (“Ministry”) reconsideration decision dated October 6, 2016 in which the Ministry determined that monies received in settlement of a Human Rights case was unearned income as defined in section 1(t) of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR). The Ministry determined that the unearned income must be deducted from the Appellant’s disability assistance, and that the Appellant was not eligible for disability assistance for the month of September, 2016 under section 9(2), EAPWDR, as her net income determined under Schedule B exceeded the amount of disability assistance determined under Schedule A, EAPWDR.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) sections 1(t), 9(2), 24; Schedule A, sections 1, 2, 4; Schedule B sections 1, 6, 7, 8

PART E – Summary of Facts

Information before the minister at reconsideration included:

- A copy of a cheque payable to the Appellant dated October 23, 2012 in the amount of \$500.
- A copy of a cheque payable to the Appellant dated February 3, 2014 in the amount of \$1,600.
- A copy of a cheque payable to the Appellant dated November 10, 2014 in the amount of \$4,000.
- A copy of a cheque payable to the Appellant dated January 13, 2015 in the amount of \$1,000.
- A copy of a cheque payable to the Appellant dated July 5, 2016 in the amount of \$500.
- A copy of a cheque payable to the Appellant dated July 5, 2016 in the amount of \$500.
- The Appellant's Request for Reconsideration signed September 26, 2016, with attachment:
 - o A copy of a Settlement Agreement and Release signed by the Appellant July 11, 2016, with an agreement to pay the Appellant \$1,000.

At the hearing, the Appellant stated that her settlement of a Human Rights case was a one-time non-recurring award similar to an ICBC settlement where a client of ICBC comes to an agreement for compensation before going to court. In response to a question by the Panel, the Appellant stated that the Human Rights Tribunal had no direct involvement in the settlement; it was arrived at with the assistance of a mediator.

The Ministry responded that the legislation is clear; the settlement received by the Appellant is unearned income, and must be deducted from her disability assistance.

PART F – Reasons for Panel Decision

The issue in this appeal is the reasonableness of the Ministry decision in which the Ministry determined that monies received in settlement of a Human Rights case was unearned income as defined in section 1(t) of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR). The Ministry determined that the unearned income must be deducted from the Appellant's disability assistance, and that the Appellant was not eligible for disability assistance for the month of September, 2016 under section 9(2), EAPWDR, as her net income determined under Schedule B exceeded the amount of disability assistance determined under Schedule A, EAPWDR.

Legislation

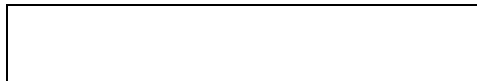
EAPWDR

Definitions

(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;
- (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)*;

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** Subject to section 24.1 (3), 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

Maximum amount of disability assistance before deduction of net income

- 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.
- (2) Despite subsection (1), disability assistance may not be provided in respect of a dependent child if support for that child is provided under section 8 (2) or 93 (1) (g) (ii) of the *Child, Family and Community Service Act*.

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
 - (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	Column 2	Column 3	Column 4
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	Family unit composition	Age or status of applicant or recipient	Amount of base support	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

4 (1) For the purposes of this section:

"**family unit**" includes a child who is not a dependent child and who resides in the parent's place of residence for not less than 40% of each month, under the terms of an order or an agreement referred to in section 1 (2) of this regulation;

"**warrant**" has the meaning of warrant in section 14.2 [*consequences in relation to outstanding arrest warrants*] of the Act.

(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;
- (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 3, 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;

The Appellant's position is that the settlement she received from a Human Rights case is an award, and is subject to the exemptions listed in Schedule B, section 7(1)(c), EAPWDR. The Appellant argued that the settlement she received was for discrimination, and as stated in the Settlement Agreement, was for general damages. She argued that the Ministry has exempted ICBC payments under their policy, and under Ministry policy, non-recurring awards that are not specifically defined in regulation as exempt can be considered "other

awards” under Schedule B, section 7, and exempt up to the family unit’s asset level. The Appellant argued that if the Ministry insists that the settlement is not an award because it came about by mutual agreement between parties rather than being awarded by someone in authority, it could be viewed as a disincentive for people to reach agreements without the use of other more costly processes which she will pursue in future if necessary. The Appellant argued that her previous Human Rights settlements were exempted by the Ministry as awards.

The Ministry position is that the legislation is clear; the settlement received by the Appellant is unearned income, and subject to deduction from her monthly disability assistance. The Ministry argued that ICBC settlements are treated as unearned income, and deducted dollar for dollar from assistance. The Ministry argued that the dictionary definition of “award” supports a determination that an award is something given after a judicial decree or similar consideration, not something agreed upon by two parties.

The Panel notes that the document submitted by the Appellant with respect to these funds, the Settlement Agreement and Release dated July 11, 2016, uses the word “settlement” consistently. The Appellant stated that the settlement was arrived at with the use of a mediator, not directly by the Human Rights Tribunal, which indicates that this was an agreement for payment arrived at by mutual agreement, not awarded. With regard to the Appellant’s and Ministry’s arguments about the Ministry’s treatment of ICBC payments, no evidence was provided by either party to establish how these payments are treated. Similarly, there is no evidence submitted to establish how the Ministry dealt with the Appellant’s previous Human Rights cases.

Section 1(t), EAPWDR includes any other financial awards or compensation under the definition of “unearned income”. The Appellant argued that the exemption for unearned income listed under Schedule B, section 7(1)(c), “a criminal injury compensation award or other award...” should apply to the monies she received as a result of her human rights settlement. The Panel accepts the common dictionary definition of an “award” as something that is granted by a court or tribunal following a judicial (or quasi-judicial) decision. An award, by definition, is something arrived at after a decision is made, and does not encompass a settlement, which is an agreement to resolve a dispute. Schedule B, section 7 of the EAPWD does not contain an exemption for a settlement. The Panel finds that the Ministry reasonably determined that the settlement funds received by the Appellant were unearned income and must be deducted from her disability assistance in accordance with section 24, EAPWDR.

As the Appellant’s net income exceeded her disability assistance, the Panel finds that the Ministry reasonably determined that the Appellant was not eligible for disability assistance for the month of September, 2016 in accordance with section 9(2), EAPWDR.

The Panel therefore confirms the Ministry decision. The Appellant is not successful on appeal.