

PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development's (the "ministry") reconsideration decision dated December 16, 2016 which held that the appellant received disability insurance of \$756.31 into her bank account which is considered unearned income as per section 1(d) of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) and is not exempt under Schedule B EAPWDR and must be deducted from the appellant's disability assistance as required under section 24 EAPWDR.

PART D – Relevant Legislation

EAPWDR Section 1, 9 and 24, Schedule B

PART E – Summary of Facts

The information before the Ministry at reconsideration included the following:

The appellant began receiving employment assistance in August 2015. On September 22, 2015 the appellant was given the status as a person with a disability. The appellant is a sole recipient with Persons with Disabilities Designation receiving disability assistance of \$983.42 per month.

- During review the ministry found that the appellant was receiving \$756.31 per month of disability insurance for her vehicle loan.
- October 25, 2016 – the ministry determined that \$756.31 disability insurance received by the appellant into her bank account is considered unearned income and must be deducted from her disability assistance.
- November 22, 2016 - the appellant signed the Request for Reconsideration and referred to an attached letter from her advocate and a November 18, 2016 letter from the appellant's bank, as follows:
 - The appellant's advocate advises that the income the appellant received as an insurance payment should be exempt as unearned income because it should be considered a "disability-related cost to promote the persons independence" as per EAPWDR Schedule B, section 7.
 - The appellant's bank financial advisor stating that the insurance benefit payments are income to the appellant as the sole purpose is to satisfy the loan payments. The advisor confirms that going forward the insurance payments will be applied directly to the appellant's loan payments and will not go into the appellant's bank account.
- December 9, 2016 – the appellant's mother who was acting on the appellant's behalf advised the ministry that arrangements have been made to have the disability insurance payments paid directly to the loan and not into the appellant's bank account, however this did not occur in time and the appellant received a disability insurance payment into her bank account on November 22, 2016. The ministry informed the appellant that this income would be deducted from the appellants January 2017 disability assistance.

Notice of Appeal dated January 5, 2017, the appellant instructed to see the attached letter from the appellant's advocate, with summarized arguments as follows:

- The appellant is not appealing the minister's decision in its entirety, but is appealing the reasonableness of the decision to require the appellant to re-pay the disability insurance received. The ministry found that the \$756.31 disability insurance received by the appellant into her bank account was considered unearned income and must be deducted from her disability assistance. The appellant receives \$983.42 per month disability assistance and after the deduction of \$756.31 disability insurance would leave the appellant with \$227.11.
- The appellant is appealing the ministry's decision on equitable grounds and the appellant's reliance on representations made by the ministry at the time the appellant was approved for disability assistance. The appellant disclosed to the ministry that she was receiving disability

insurance benefits to pay her vehicle loan. In July 2015 the appellant provided additional documentation to the ministry which included two bank account statements showing the disability payments for her car loan being deposited into her bank account and then taken out of her bank account to pay the car loan. After additional information was provided by the appellant to the ministry regarding the disability insurance and the car loan payments, the ministry informed the appellant that the disability insurance would not be deductible from the appellant's PWD benefits. The ministry also advised the appellant that the appellant did not have to record these disability payments on the monthly reporting form required by the ministry, because these payments had already been disclosed at the beginning of the appellant's application and did not need to be disclosed further as they were not deductible. The appellant relied on this information.

- After the appellant received notification from the ministry that there was a requirement that the disability payments for the vehicle loan should be made directly from the disability insurer to the loan provider rather than first being deposited into her account, she promptly advised her bank and insurance company of same and had to await their processing of that request.
- In a December 16, 2016 letter from the ministry the minister informed the appellant that since she has made arrangements for the insurance provider to pay the loan payment directly, the disability insurance payment will no longer be considered income to her and therefore will not be deducted from her disability assistance moving forward.
- The appellant submits that if the ministry had at the outset informed the appellant that she needed to ensure that the insurance payments were paid directly to the vehicle loan, rather than being deposited into her bank account, then withdrawn by the bank to pay the vehicle loan, this could have easily been taken care of by the appellant prior to the first disability benefit payment being received and there would not now be any requirement for her to repay anything.

The appellant's submission to the written hearing the appellant' advocate argues:

- The advocate included arguments that were submitted in the Notice of Appeal, and
- The advocate writes that it is respectfully requested that the ministry waive any requirement for the appellant to repay any portion of the benefits received from November 2016 to February 2017 as it relates to the Reconsideration decision on this appeal.

The ministry's submission to the written hearing:

"The ministry's submission in this matter will be the reconsideration summary provided in the Record of Ministry Decision."

The panel admitted the appellant's written testimony, which either substantiated or further explained information already before the ministry, as being in support of the information and records before the ministry at reconsideration in accordance with section 22(4) of the Employment and Assistance

PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry's reconsideration decision of December 16, 2016 which held that the appellant received disability insurance of \$756.31 into her bank account which is considered unearned income as per section 1(d) of the Employment And Assistance for Persons with Disabilities Regulation (EAPWDR) and is not exempt under Schedule B EAPWDR and must be deducted from the appellant's disability assistance as required under section 24 EAPWDR was reasonably supported by the evidence or a reasonable application of the applicable legislation in the circumstance of the appellant.

The relevant legislation is from the EAPWDR:

Definitions

"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 \(Canada\)](#);
- (w) tax refunds;
- (x) gifts of money, annuities, stocks, bonds, shares, and interest bearing accounts or properties;
- (y) gifts in the form of payment by another person of a debt or obligation.

Assets held in trust for person with disabilities

12 (1) In this section, "disability-related cost" means the cost of providing to a person with disabilities

or a person receiving accommodation or care in a private hospital or a special care facility, other than a drug or alcohol treatment centre,

(a) devices, or medical aids, related to improving the person's health or well-being,

(b) caregiver services or other services related to the person's disability,

(c) education or training,

(d) any other item or service that promotes the person's independence, and

(e) if a person with disabilities does not reside in a special care facility, a private hospital or an extended care unit in a hospital,

(i) renovations to the person's place of residence necessary to accommodate the needs resulting from the person's disability, and

(ii) necessary maintenance for that place of residence.

(2) If a person referred to in subsection (1) complies with subsection (4), up to \$200 000, or a higher limit if authorized by the minister under subsection (3), of the aggregate value of the person's beneficial interest in real or personal property held in one or more trusts, calculated as follows:

(a) the sum of the value of the capital of each trust on the later of April 26, 1996 or the date the trust was created, plus

(b) any capital subsequently contributed to a trust referred to in paragraph (a),

is exempt for the purposes of section 10 (2) [asset limits].

(3) If the minister is satisfied that, because of special circumstances, the lifetime disability-related costs of a person referred to in subsection (2) will amount to more than \$200 000, the minister may authorize a higher limit for the person for the purposes of subsection (2).

(4) A person referred to in subsection (2) who has a beneficial interest in one or more trusts must keep records of the following and make the records available for inspection at the request of the minister:

(a) for a trust created before April 26, 1996, the capital of the trust on that date;

(b) for a trust created on or after April 26, 1996, the capital of the trust on the date the trust was created;

(c) the amount of capital contributed in each subsequent year to a trust referred to in paragraph (a) or (b);

(d) all payments made after April 26, 1996 to or on behalf of the person from a trust in which that person has a beneficial interest.

(5) For the purposes of this section, the real or personal property of a "patient", as defined in the [Patients Property Act](#), who is a person with disabilities is to be treated as if the real or personal property were held in trust for the patient by the patient's committee.

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 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;
- (liii) money that is paid or payable by or for Community Living BC to or for a person if the payment is in accordance with an award in a legal proceeding or with a settlement agreement in respect of a claim for injury, loss or damage caused by Community Living BC, an employee of Community Living BC or a person retained under a contract to perform services for Community Living BC;
- (liv) money that is paid or payable by the government of British Columbia to or for a person if the payment is in accordance with an award in a legal proceeding or with a settlement agreement in respect of a claim for injury, loss or damage caused by the minister, the ministry, an employee of the ministry or a person retained under a contract to perform services for the ministry,
- (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.

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:

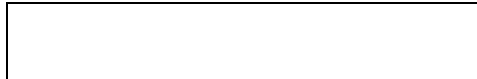
(a) the portion of interest from a mortgage on, or agreement for sale of, the family unit's previous place of residence if the interest is required for the amount owing on the purchase or rental of the family unit's current place of residence;

(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;

(g) a benefit paid under section 22, 23 or 23.2 of the [Employment Insurance Act](#) (Canada) to any person in the family unit.

(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,

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- (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.*

Panel Decision:

The issue the panel must consider is the reasonableness of the ministry's decision that the appellant received disability assistance and that the appellant be required to repay such disability insurance by having it deducted from the appellant's November, December, and January assistance. The appellant received disability insurance of \$756.31 per month into her bank account to cover the payments of her vehicle loan. The appellant argues that this financial arrangement was disclosed to the ministry prior to her being approved for the receipt of disability benefits. When the appellant became aware of the ministry's concerns of the payment procedure followed by her insurance company and her bank, the appellant instructed the insurance company to make the payments directly to the bank and not to her bank account. The ministry then informed the appellant that since she has made arrangements for the insurance provider to pay the loan payment directly, the disability insurance payment will no longer be considered income to her and therefore will not be deducted from her disability assistance moving forward.

The panel finds that the appellant has declared the disability insurance benefit payments for her car loan since she first started receiving assistance in 2015. The panel finds that the ministry made the determination that once the disability insurance benefit went directly to the loan payment and not into the appellant's account the disability insurance payment would no longer be considered income to the appellant.

The panel finds that a letter from appellant's bank confirms that sometime after November 18, 2016 the disability insurance benefit payments that were originally paid to the appellant began to be made directly to the loan debit account.

It is unclear to the panel which or how many of the disability insurance payments for the car loan the ministry is seeking to recover from the appellant. The reconsideration decision states that as of February 2017 the disability insurance benefit will no longer be included in the net income calculation pursuant to Schedule B of the EAPWDR. The ministry did not state which section of Schedule B of the EAPWR they relied on. The ministry only seeks to have the appellant's disability insurance benefits deducted from three months of assistance payments being November, December and January assistance. The ministry does not state how many of these disability insurance benefit payments will be deducted or explain which months of payments are actually in dispute.

The panel finds that although the insurance benefit is not an exemption to unearned income pursuant to Schedule B, s.7(1) of the EAPWDR, the ministry has not cited any legislation supporting why they are seeking to recover disability insurance payments (of an unknown amount) by deducting those payments from three months of the appellant's disability assistance.

The decision of the ministry is not a reasonable application of the applicable enactment in the



circumstances of the person appealing the decision.

Therefore, the panel rescinds the ministry's decision pursuant to section 24(2)(b) of the Employment and Assistance Act. The appellant is successful on appeal.