

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 May 24, 2017 where the ministry determined that \$236 US Social Security payments received by the appellant is unearned income and must be fully deducted from the appellant's monthly disability assistance as required under Section 24 of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR). Additionally, the appellant pays \$221 US to the IRS and the ministry has determined that this amount is not exempted under Schedule B EAPWDR.

PART D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Sections 1,9,24, Schedule B

PART E – Summary of Facts

. The evidence before the ministry at reconsideration was as follows:

The appellant is a single person in receipt of Employment and Assistance for Persons with Disabilities benefits.

- April 4, 2017 – the appellant contacted the ministry to advise that he receives a small US pension of \$236 that is deposited into a United States bank account and pays \$221 each month on a debt he owes to the IRS from that bank account.
- April 11, 2017 – the ministry advised the appellant that the pension he receives is considered income that must be declared each month. The pension is in American funds and the appellant must declare the Canadian equivalent. The appellant was informed that there are no exemptions for the debt paid to the IRS each month.
- May 10, 2017 – the minister received the appellant's Request for Reconsideration in which the appellant stated you are a 62 year old Person with Disabilities and have been in receipt of disability assistance since March 2015...he receives \$236 US per month in social security from the period he lived in the United States...he confirms that he is paying \$221 US monthly instalments towards his tax debt from 2011-2013 with payments beginning March 31, 2017. The appellant states that the social security benefits should not be treated as income or an asset because he is required to maintain his \$221 monthly instalments payments to the IRS which makes the pension benefits inaccessible until the balance is paid... he states that he requires his full disability assistance to meet all of this needs.

Additional Submissions:

June 1, 2017 – the appellant writes in the Notice of Appeal – the ministry's decision continues to reflect a preference for expedient recourse to arbitrarily citing and applying legislative guidelines in lieu of more objective – and more justly humane- interpretation. The decision does not at all take into consideration the current and future circumstances of a person according to PWD status and assistance based on demonstrated long-term need. The US Social Security pension is not income to which he has access for the next five years. The Ministry's decision seems almost to be a punitive action for one of my pre-existing conditions.

At the hearing:

The appellant supported his arguments submitted with his request for reconsideration and Notice of Appeal and commented "The evidence provided is subject to interpretation. The pension he receives from the US is a matter of fact, however he has no access to the pension so it is common sense that it is not income. The minister's decision is an apparatus of the state and should be a social contract based on need and he is being punished by the states interpretation of the facts."

The ministry relied on the facts in the Reconsideration decision.

The panel admitted the appellant's 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 EAA.

PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry reasonably determined that the \$226 US Social Security payments received by the appellant is unearned income and must be fully deducted from the appellant's monthly disability assistance as required under Section 24 of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR). Additionally, the appellant pays \$221 US to the IRS and the ministry has determined that this amount is not exempted under Schedule B EAPWDR.

Relevant Legislation:

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;
- (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.

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 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) Repealed. [B.C. Reg. 96/2017, App. 2, s. 2 (a).]

(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;
(lv) a disabled contributor's child's benefit paid or payable under the Canada Pension Plan;
(lvi) payments granted under an agreement referred to in section 94 of the Child, Family and Community Service Act;
(lvii) money that is paid or payable, in respect of a child, from property that comes into the control of, or is held by, the Public Guardian and Trustee,
(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 earned income

2 *The only deductions permitted from earned income are the following:*

- (a) any amount deducted at source for*
 - (i) income tax,*
 - (ii) employment insurance,*
 - (iii) medical insurance,*
 - (iv) Canada Pension Plan,*
 - (v) superannuation,*
 - (vi) company pension plan, and*
 - (vii) union dues;*
- (b) if the applicant or recipient provides both room and board to a person at the applicant's or recipient's place of residence, the essential operating costs of providing the room and board;*

(c) if the applicant or recipient rents rooms that are common to and part of the applicant's or recipient's place of residence, 25% of the gross rent received from the rental of the rooms.

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;

(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,

(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.

Minister's discretion to exempt education related unearned income

8 (1) In this section:

"day care costs" means the difference between a student's actual day care costs and the maximum amount of child care subsidy that is available under the Child Care Subsidy Act to a family unit matching the student's family unit;

"education costs", in relation to a student and a program of studies, means the costs, including the costs of tuition, student fees, books, equipment, supplies and transportation, that, in the opinion of the minister, are reasonably required for the student to participate in the program of studies.

(2) The minister may authorize an exemption for a student up to the sum of the student's education costs and day care costs, for a period of study, from the total amount of student financial assistance received by the student for the period of study.

Application of deductions and exemptions

9 (1) *The deductions and exemptions in this Schedule apply only in the calendar month in which the income is actually received, despite any of the following:*

- (a) the date the income is payable;*
- (b) the period for which the income is payable;*
- (c) the date the income is reported to the minister;*
- (d) the date the minister receives notice of the income.*

(2) Despite subsection (1), income that is received before the date that subsection (1) comes into force is subject to the application of section 9 of this regulation as it read immediately before subsection (1) came into force.

Portion of backdated family bonus treated as unearned income

10 (0.1) *In this section:*

"backdated family bonus payment", in relation to a child benefits cheque, means the portion of the cheque, if any, attributable to the family bonus for one or more calendar months preceding the calendar month in which the cheque is issued;

"supplement" means a supplement referred to in section 59 [supplement for delayed, suspended or cancelled family bonus] of this regulation.

(1) If a person in the applicant's or recipient's family unit receives a backdated family bonus payment and all or part of the payment is attributable to one or more calendar months for which the family unit was also provided with a supplement, the lesser of the following amounts must be treated as unearned income:

- (a) the portion of the backdated family bonus payment that is attributable to those calendar months for which the family unit was provided with a supplement;*
- (b) the sum of the supplements that are attributable to those calendar months for which the family unit received the backdated family bonus payment.*

(2) For the purposes of subsection (1), an amount that, under the Income Tax Act (British Columbia) or the Income Tax Act (Canada), is deducted or set off from a family bonus is considered to have been paid to a person in the applicant's or recipient's family unit.

(3) Subsection (1) does not apply to an amount included in that portion of a child benefits cheque attributable to family bonus

(a) to replace a lost or stolen cheque for which an amount was advanced under section 58 [advance for lost or stolen family bonus cheque] of this regulation, or

(b) to replace a cheque for which no amount was advanced under section 58 [advance for lost or stolen family bonus cheque] of this regulation if the replacement is received in the calendar month following the calendar month for which the lost or stolen cheque was issued.

(c) Repealed. [B.C. Reg. 48/2010, Sch. 1, s. 2 (d).]

Backdated CPP treated as unearned income

11 (1) *In this section, "pension benefit" means a pension or other payment under the Canada Pension Plan (Canada).*

(2) If

(a) disability assistance is provided to a family unit for a calendar month or any portion of a calendar month that would not have been provided if a pension benefit had been paid for that calendar month, and

(b) subsequently a pension benefit becomes payable or payment of a pension benefit may be made under the Canada Pension Plan (Canada) to a recipient in the family unit for that calendar month or any portion of that calendar month

the amount of the pension benefit that becomes payable for that month or portion of that month must be treated as unearned income and is considered to have been received by the recipient in that month.

Appellant's position

The appellant argues – the evidence provided is subject to interpretation. The ministry's decision continues to reflect a preference for expedient recourse to arbitrarily citing and applying legislative guidelines in lieu of more objective – and more justly humane - interpretation. The decision does not at all take into consideration the current and future circumstances of a person according to PWD status and assistance based on demonstrated long-term need. The US Social Security pension is not income to which he has access for the next five years. The Ministry's decision seems almost to be a punitive action for one of his pre-existing conditions.

Ministry position

The appellant receives a US pension of \$236 that is deposited into a United States bank account and then pays \$221 from that bank account to the IRS on a debt he owes. The ministry has determined that the \$236 US social security payments is unearned income and must be fully deducted from the appellant's disability assistance in accordance with Schedule B EAPWDR. The ministry has also determined that there are no permitted exemptions for the \$221 US monthly payment on a debt to the IRS.

Panel Decision

The panel considered the appellant's argument that the evidence provided is subject to interpretation. The appellant argues that although he receives a \$236 US social security pension, it is paid into a bank account in the US and he must make monthly payments from this bank account of \$221 to the IRS and he has no access to this pension.

The ministry argues that the legislation requires that the \$236 US social security pension be classified as unearned income and must be deducted from the appellant's disability assistance in accordance with Schedule B EAPWDR. The ministry further argues that there are no exemptions available in Schedule B EAPWDR for the \$221 US paid to the IRS.

EAPWDR section 1 definition - "unearned income" means any income that is not earned income, and includes, without limitation, money or value received from any of the following: section (1)(t) any other financial awards or compensation."

EAPWDR section 24 states – 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.

The appellant is a single person in receipt of Employment and Assistance for Persons with Disabilities benefits in accordance with Schedule A EAPWDR.

The panel finds that the appellant is in receipt of \$236 US unearned income from a Social Security pension as determined in section (1)(t) EAPWDR and the Canadian funds equivalent must be deducted from the appellant's monthly disability benefits in accordance with section 24(b) EAPWDR.

By agreement, the appellant pays \$221 US monthly to the IRS which is withdrawn monthly from the same bank account the social security pension is deposited to in the US. The panel has reviewed all applicable legislation and finds that the ministry was reasonable to determine that the \$221 US monthly payment to the IRS is not exempted from the \$236 US Social Security pension. EAPWDR

Schedule B section (1)(b) states “*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.*” The panel finds that the \$221 US monthly payment to the IRS is not permitted under Schedule B sections 2 and 6 EAPWDR.

The panel finds that the ministry’s reconsideration decision was a reasonable application of the applicable enactment in the circumstances of the appellant and confirms the ministry’s reconsideration decision. The appellant is not successful in his appeal.