

## PART C – Decision under Appeal

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision dated July 17, 2017 which determined that under section 9(2) of the *Employment and Assistance for Persons with Disabilities Regulation (EAPWDR)*, the appellant was not eligible for disability assistance for July 2017 because his net income in May 2017 determined under Schedule B of the *EAPWDR* exceeded his disability assistance rate determined under Schedule A of the *EAPWDR*.

## PART D – Relevant Legislation

*Employment and Assistance for Persons with Disabilities Regulation (EAPWDR)* Sections 1, 9 and 24  
*Employment and Assistance for Persons with Disabilities Regulation (EAPWDR)*, Schedule A, Section 2  
*Employment and Assistance for Persons with Disabilities Regulation (EAPWDR)*, Schedule B, Sections 1, 2 and 3(1)(b)

## PART E – Summary of Facts

Note: when the ministry representative had not joined the teleconference 5 minutes after the scheduled start time for this appeal, it was commenced in her absence. After the introduction had been made and just after the appellant had begun his submission, approximately 10 minutes after the scheduled start time, the ministry representative joined the teleconference. The chair did not recommence the hearing and continued with it.

### **Nature of the Appellant's Application**

The appellant, a person designated as a Person with Disabilities, earned more than his statutorily-designated Annual Earnings Exemption (AEE) so that when his May 2017 earnings exceeded that AEE, the amount of the excess was deducted dollar-for-dollar from his July assistance, resulting in him not being eligible for disability assistance for July . The appellant had spent all his money and had none available for the support of his family, and appeals the July assistance reduction.

### **Documents and Information Before the Minister at Reconsideration**

The evidence before the ministry at the time of the reconsideration decision included

#### **A. Request for Reconsideration**

The appellant's Request for Reconsideration dated July 5, 2017 which included

- the decision to be reconsidered
- the appellant's statement that he needs the assistance denied him because he has no food, can't pay bills and is looking for the government to help him out while he was down and out, that he has been truthful with all his earnings and has been paying down his debt while employed, but got laid off and now cannot afford food or to pay his bills; he does not think the government's decision is correct and he is sure there is something in writing where the government is responsible for families in dire need.

#### **B. Monthly Earnings Reports**

The appellant submitted monthly earnings reports for his spouse and himself dated

- January 27, 2017 showing employment income of \$1,931 plus child tax benefits of \$1,200
- February 22, 2017 showing employment income of \$1,528.60 plus child tax benefits of \$1,080
- March 22, 2017 showing employment income of \$3,434.32 plus income tax refund of \$1,300
- April 26, 2017 showing employment income of \$ 4,368.20 plus child tax benefits of \$1,300, &
- May 24, 2017 showing employment income of \$1,931 plus child tax benefits of \$1,200

### **Information Provided on Appeal**

Neither the appellant nor the ministry submitted additional evidence on appeal.

## PART F – Reasons for Panel Decision

### Issue on Appeal

The issue on appeal is whether the Ministry of Social Development and Social Innovation's (the ministry) reconsideration decision dated July 17, 2017, which determined that under section 9(2) of the *EAPWDR*, the appellant was not eligible for disability assistance for July 2017 because his net income determined under Schedule B of the *EAPWDR* exceeded his disability assistance rate determined under Schedule A of the *EAPWDR*, was a reasonable application of the legislation in the circumstances of the appellant or was reasonably supported by the evidence.

### Relevant Legislation

#### **EAPWDR Section 1 - "Unearned Income"**

"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.

#### **EAPWDR Section 9 - 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.

#### **EAPWDR Section 24 - 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.

**EAPWDR Schedule A Section 1**

**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.

**EAPWDR Schedule A Section 2 - Monthly support allowance**

2 (0.1) For the purposes of this section:

**"deemed dependent children"**, in relation to a family unit, means the persons in the family unit who are deemed to be dependent children under subsection (5);

.....

(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 (\$)
6	Two applicants / recipients and one or more dependent children	One applicant / recipient is a person with disabilities, the other is not a person with disabilities and is under 65 years of age	869.56	52.00

3 .....

**EAPWDR Schedule A Section 4 - 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;

.....

(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
2	2 persons	\$570
3	3 persons	\$660
4	4 persons	\$700
5	5 persons	\$750
6	6 persons	\$785
7	7 persons	\$820
8	8 persons	\$855
9	9 persons	\$890
10	10 persons	\$925

## **EAPWDR - Schedule B - Net Income Calculation**

### **Section 1 - 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;
- (iv.1) the Canada child benefit, 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;

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

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

(iii) 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;

(iiii) 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.

**EAPWDR - Schedule B - 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.

**EAPWDR - Schedule B - Annual exemption — qualifying income**

3 (1) In this section:

"base amount" means

- (a) \$800, in the case of a family unit that includes only one recipient,
- (b) \$1 000, in the case of a family unit that includes two recipients, only one of whom is designated as a person with disabilities, and
- (C) .....

**General Scheme of the Legislation**

The general scheme of the legislation is that a person designated as a Person with Disabilities is allowed to earn money to a maximum annual amount established by the regulations before the amount of his assistance is affected. When the maximum is reached, then a person's monthly assistance is reduced dollar-for-dollar by the amount of the person's earnings. The reduction occurs, not in the month following that in which earnings were made, but the month following that.

**Parties' Positions at Appeal**

*Appellant's Position*

The appellant's position was that as a person trying to get ahead, who had been laid off through no fault of his own, and though responsibly trying to pay down his debt he now found himself in a position where he had no money. He agreed with the ministry's calculation of his benefits totaling \$1846.74 per month. He said he went out and got a job in a warehouse promptly after being laid off and applying for Employment Insurance, but although he is employed he would not receive pay for two weeks. He said he has always reported his income to the ministry as he is required to. The appellant agreed with the ministry that he received assistance as a PWD until he reached the \$12,000 AEE from his employment. He said he had no control over losing his job and needed money to pay his rent and for food to feed his children. He argued that, as he thought he would be going back to work, he had paid off some of his debt and now had no money. He argued that he was trying to help himself and keep working, but it was not his fault he got laid off. He had explored alternatives to paying off his debt, such as looking at bankruptcy, but said it would not make sense for a person of his age to do so.

*Ministry's Position*

The ministry representative explained that the required monthly earnings report determined whether or not an applicant would be entitled to support, not for the month immediately following, but for the month after that.

The ministry representative explained that the appellant's monthly entitlement of \$1,846.74 was made up of monthly amounts of \$869.56 support, plus another \$977.18 in various benefits, which totalled \$1,846.74 per month. This amount includes a \$45 per month natal supplement, which is temporary. When the family unit no longer qualifies for the natal supplement, the monthly entitlement will be \$1,801.75

The ministry stated that with the appellant's earnings to May 2017, the appellant's total earnings to date were just over \$15,382, which exceeded the AEE, such that the appellant was not entitled to support for the month of July 2017.

The ministry's reconsideration decision stated at the very beginning that the appellant was not eligible for assistance for the month of May 2017. The ministry representative clarified that the appellant did actually get May assistance and determined that the statement that he was not entitled to assistance for May was a typographical error; the last part of the reconsideration decision stated that the income the appellant received in May, reported in June, applied to the July assistance and as the May income took the appellant over his AEE, he would not be entitled to disability assistance for July 2017.

Therefore the appeal is concerned solely with whether or not the appellant is entitled to disability assistance for July 2017.

The ministry argued that pursuant to section 24 *EAPWDR* the amount of disability assistance is determined by a statutory formula found in that section, specifically that assistance is to be no more than a family's entitlement under Schedule A (the Disability Assistance Rates) minus the net income determined under Schedule B. Here, the appellant was entitled to a \$1,801.75 monthly combined shelter, support and transportation allowances (plus the temporary \$45 per month natal support). The ministry explained that when the appellant's AEE of \$12,000 had been reached, then further earnings for the month are deducted from the \$1,801.75, and if the earnings exceed that amount the appellant does not receive any more support for the applicable month. Thus if the appellant has exceeded his AEE, which he did in May when his reported earnings totalled more than his AEE, he would not be entitled to support for July 2017.

#### *Panel Finding*

The panel finds under Schedule A *EAPWDR*, the appellant is entitled to \$1,801.75 per month total assistance, plus the temporary \$45 per month natal support. The panel also finds that the maximum exemption of earned income under Schedule B section 3 is \$1,000 per month in the case of a family unit that includes two recipients, only one of whom is designated as a person with disabilities, and that therefore under Schedule B *EAPWDR*, the appellant's AEE is the maximum of \$12,000 per year. By earning slightly more than \$15,000 as at May 2017, the appellant had exceeded his AEE. In May 2017 the appellant reported earning \$4,119.59, which is more than the amount of his monthly disability assistance rate for the month. The panel further finds that as at May 2017 the appellant, by earning more than his AEE and by earning more in that month than his disability assistance rate, was disqualified from receiving disability assistance for July 2017.

Having reviewed and considered all of the evidence and relevant legislation, the panel finds that the ministry's reconsideration decision, which determined that the appellant was not eligible for disability assistance for July 2017 was reasonably supported by the evidence and was a reasonable application of the applicable enactment in the appellant's circumstances.

#### **Conclusion**

The appellant is not successful in his appeal.