

PART C – DECISION UNDER APPEAL

The decision under appeal is the reconsideration decision dated November 21, 2017, made by the Ministry of Social Development and Social Innovation (the ministry), which determined that the appellant was not eligible to receive disability assistance for the month of November 2017 due to receiving unearned income in excess of the amount of assistance she is entitled to.

PART D – RELEVANT LEGISLATION

The relevant legislation is sections 1 and 24, and sections 1, 6, 7 and 8 of Schedule B to the *Employment and Assistance for Persons with Disabilities Regulation* (EAPDWR).

PART E – SUMMARY OF FACTS

The evidence before the ministry at the time of the reconsideration decision consisted of:

1. A Notification of Assessment from the Ministry of Advanced Education dated July 27, 2017, setting out the appellant's eligibility for Student Assistance for the school year September 2017-May 2018. The overall amount is \$16,364, which would be paid in two instalments of \$8362 on September 5, 2017 and \$7011 on December 31, 2017.
2. A Course Registration Statement from the appellant's post-secondary institution undated indicating that the appellant had withdrawn from 2 of her 4 courses and that her net assessment amount is \$751.95.
3. A page from the appellant's online student profile from the appellant's post-secondary institution undated indicating a net reimbursement to the appellant of \$980.20.
4. A Request for Withdrawal for Medical or Compassionate Reasons form from the appellant's post-secondary institution dated November 8, 2017, completed by the appellant withdrawing from two courses and by her physician indicating that the appellant should take a leave from school due to severe medical conditions.
5. A Request for Reconsideration submission by the appellant dated November 9, 2017, in which she states:
 - a. She enrolled in 4 courses on September 5, 2017.
 - b. She received Student Assistance of \$8362 on September 5, 2017.
 - c. She declared this income on her September monthly report.
 - d. She did not receive disability assistance in October or November 2017.
 - e. She used \$2972.15 of the Student Assistance to pay education-related costs and \$5389.85 to catch up on "debts and bills that were in arrears", such as her mortgage and pad rent.
 - f. Due to health issues she withdrew from two courses on September 28, 2017.
 - g. Subsequently she has completely withdrawn from her studies due to health issues.
 - h. Her post-secondary institution will credit her tuition and health costs to next year but she cannot return her school books.
 - i. She has no funds to meet her expenses.

PART F – REASONS FOR PANEL DECISION

The issue under appeal is whether the ministry's determination that the appellant is not eligible to receive disability assistance for November 2017 was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the appellant.

The relevant legislation is sections 1 and 24, and sections 1, 6, 7 and 8 of Schedule B the EAPWDR:

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:

(q) education or training allowances, grants, loans, bursaries or scholarships;

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.

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;

(xlv) payments granted by the government of British Columbia under the Temporary Education Support for Parents program;

(xlvi) a BC early childhood tax benefit;

(xlvii) child support;

(xlviii) orphan's benefits under the [Canada Pension Plan Act](#) (Canada);

(xlix) money or other value received, by will or as the result of intestacy, from the estate of a deceased person;

(l) gifts;

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

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

(liii) 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;

(liiii) 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;

(lviii) money that is paid or payable from a settlement in respect of Treaty No. 8 agricultural benefits,

(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;
- (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.

ADDITIONAL EVIDENCE

As part of her appeal submission, the appellant included two letters addressed to her from the Ministry of Advanced Education that were not before the ministry at the time of the reconsideration decision. The first, dated November 21, 2017, informs the appellant that due to her withdrawal from studies she has an "overaward balance" on her Canada student loan of \$4058 repayable. The second letter, dated November 23, 2017, informs the appellant that due to her withdrawal from studies she has an "overaward balance" on her Canada student loan of \$4058 and on her BC student loan of \$2453 for a total repayable of \$6511.

At the appeal the appellant also introduced a letter from the ministry to the appellant dated October 18, 2017, informing the appellant that she had reached her Annual Earnings Exemption Limit for 2017 and was no longer eligible to receive disability assistance, although she may continue to be eligible for certain benefits such as transportation and Medical Services Only and that her eligibility would be reassessed as of January 1, 2018.

The ministry did not object to the panel admitting these letters as evidence. Notwithstanding the ministry's position, the panel must be guided by section 22(4) of the *Employment and Assistance Act*, which states:

22(4) In a hearing referred to in subsection (3), a panel may admit as evidence only

(a) the information and records that were before the minister when the decision being appealed was made, and

(b) oral or written testimony in support of the information and records referred to in paragraph (a).

Section 22(4) is designed to strike a balance between a pure appeal on the record of the ministry decision and a hearing *de novo* (a completely new hearing). It contemplates that while a party may wish to submit additional evidence to the panel on the appeal, the panel is only empowered to admit (i.e. take into account in making its decision) “oral or written testimony in support of” the record of the ministry decision; it provides appellants with a limited opportunity to augment their evidence on appeal but it does not provide them with a hearing *de novo*, as the panel is tasked with assessing the reasonableness of the ministry’s decision. If the additional evidence substantiates or corroborates the information and records before the minister at the reconsideration stage, the evidence should be admitted; if it does not, then it does not meet the test of admissibility under s. 22(4)(b) of the *Employment and Assistance Act* and should not be admitted.

The two letters from the Ministry of Advanced Education introduce new information indicating that the appellant is obliged to repay most of the amounts she received in Student Assistance in September 2017. This is not written testimony in support of evidence that was before the ministry at the time of the reconsideration decision as it introduces a completely new matter – that the funds which disqualified her from receiving disability assistance are now repayable – in considering the eligibility of the appellant to receive disability assistance for November 2017.

The panel finds that the content of these letters cannot be said to corroborate or substantiate the information before the ministry, as they go beyond, or introduce new information different from that which was provided to the ministry at reconsideration. Pursuant to section 22(4) of the EAR, the panel therefore finds that these two letters are not admissible.

The letter from the ministry appears to be a result of the appellant’s situation in which she has been deemed ineligible for disability assistance for a period that extends to or beyond December 31, 2017. As such it is not relevant to this appeal. Accordingly, the panel finds that this letter is admissible but carries little weight.

THE APPELLANT’S POSITION

In her Request for Appeal the appellant writes: “Further information has come to light.” At the hearing the appellant clarified that this statement refers to the letters from the ministry of Advanced Education. These letters have been deemed inadmissible.

At the hearing, the appellant stated that she received incorrect information from the ministry in that she was told that her attending post-secondary education and receiving Student Assistance would not impact her eligibility for disability assistance. She also stated that it was her understanding that receiving a lump-sum payment of Student Assistance in September should not have affected her eligibility for disability assistance in November. Finally, the appellant argued that since she now has to repay her Student Assistance, her eligibility for disability assistance in November should be reviewed.

THE MINISTRY’S POSITION

The ministry’s position at the appeal hearing was that as the amount the appellant received in Student Assistance in September and reported in October, less education expenses ($\$8362 - \$2972.15 = \$5389.85$), exceeds the total amount of her monthly disability benefit entitlement in November 2017, ($\$1116.42$), the appellant was not entitled to receive disability assistance for November 2017.

The ministry also stated that it for the purposes of calculating monthly assistance amounts it applies the amount of Student Assistance received over the entire period for which is what paid. In this instance, $\$5389.85$ in Student Assistance was received for the period September to December 2017 for a monthly amount of $\$5389.85 / 4 = \1347.46 per month, which is in excess of her monthly disability allowance amount of $\$1116.42$ making her ineligible to receive her disability allowance for each of those months, including November.

THE PANEL'S DECISION

Section 1(1)(q) of the EAPWDR states that education grants and loans are to be considered as "unearned income". Section 24 states that disability assistance may be provided "*for a calendar month*" in an amount that is not more than the amount determined under Schedule A minus the amount determined under Schedule B. Neither of the deductions for unearned income in section 6 of Schedule B apply here. Nor do any of the exemptions listed in section 7. Section 8(1) allows the minister to deduct certain education costs from unearned income.

In its decision, the ministry calculated that the appellant's net unearned income for each of the months September to December was \$1347.46, which was in excess of her disability allowance amount of \$1116.42 making her ineligible to receive disability assistance for the month of November. This calculation is in accordance with the legislation set out above.

There is a significant discrepancy in the evidence provided by the ministry and that of the appellant in that the appellant states that she reported her Student Assistance to the ministry in September and did not receive assistance in October. The ministry states that it was not made aware of the appellant's Student Assistance until the end of October. However, as based on the ministry's calculations under the legislation, which the panel has found correct, the appellant would not have been entitled to a disability assistance amount in October in any case, this discrepancy is not material to this decision.

Accordingly, the panel finds that the ministry's reconsideration decision finding that the appellant was not eligible to receive disability assistance in November 2017 was a reasonable application of the applicable enactment in the circumstances of the appellant and confirms the ministry's decision.