

PART C – DECISION UNDER APPEAL

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Poverty Reduction (“the ministry”) dated December 6, 2017 in which the ministry determined that the appellant’s family unit is ineligible for disability assistance as the appellant’s monthly net income is in excess of his disability assistance rate pursuant to Section 24 of the Employment and Assistance for Persons with Disabilities Regulation.

PART D – RELEVANT LEGISLATION

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

PART E – SUMMARY OF FACTS

With the consent of both parties, the hearing was conducted as a written hearing pursuant to Section 22(3)(b) of the Employment and Assistance Act.

On September 13, 2017, the appellant reapplied for disability assistance and was determined eligible for prorated assistance for September and full assistance for October.

The appellant has PWD designation and applied for assistance for himself, his spouse and 2 children both aged 16 years.

The appellant's monthly report to the ministry dated October 12, 2017 showed Private Pensions of \$4,901.11, (\$993.52 Public Service Pension and \$3,907.59 Veteran's Affairs Pension), Canadian Plan Pension (CPP) of \$865.31 and Child Tax Benefits of \$900. Total Pension Income per month of \$5,766.42.

On October 27, 2017, after submitting his monthly report, it was determined that the appellant was not eligible for disability assistance due to reporting monthly pension income in excess of his assistance rate.

A personal bank account activity sheet dated September 3, 2017 confirmed deposits of the family's income as well as a variety of expenses.

In the Request for Reconsideration dated November 7, 2017, the appellant stated that he was expecting to hear about an apology and to speak to the appropriate person. He indicated that his family hasn't received any assistance as far as emergency grocery vouchers for October and November. He advised that he saw that his service request was complete but he still never got help. He indicated that he has asked for reconsideration assistance but hasn't heard a thing and comments that "Must be nice to be able and have all this power over those who have challenges!"

In the Notice of Appeal dated December 22, 2017, the appellant indicates that he has been open and honest all along. "A more careful reading of the section will indicate that my DVA disability pensions are not included in the description per the pensions act".

Prior to the hearing, the appellant submitted a memo dated January 25, 2018 to the Employment and Assistance Appeal Tribunal office in which he indicates that he received his package on January 24, 2018 after returning from a family emergency. He states that there appears to be an issue about the DVA disability and allowances. "The same problem of disability payments arises with disabled pensioners and Spousal Maintenance, with a great difference of legal opinions, federal and provincial courts considering whether some pensions inviolate and how they should (or should not) be protected. .As you may know, DVA pensions are not considered taxable under the law and as such, are not considered income."

The panel finds that the information provided by the appellant in his Notice of Appeal is in support of the information before the minister at reconsideration. The panel therefore admits this information as evidence under Section 22(4) of the Employment and Assistance Act as it corroborates the appellant's circumstances.

PART F – REASONS FOR PANEL DECISION

The issue on appeal is whether the ministry's reconsideration decision dated December 6, 2017 in which the ministry determined that the appellant's family unit is ineligible for disability assistance as the appellant's monthly net income is in excess of his disability assistance rate pursuant to Section 24 of the Employment and Assistance for Persons with Disabilities Regulation was reasonably supported by the evidence or was a reasonable application of the applicable regulation in the circumstances of the appellant.

Relevant legislation is as follows:

Definitions

1 (1) In this regulation:

"Act" means the Employment and Assistance for Persons with Disabilities Act;

"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 A

Monthly support allowance

(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.

Column 1 - Family unit composition - Two applicants / recipients and one or more dependent children.

Column 2 - Age or status of applicant or recipient - One applicant / recipient is a person with disabilities, the other is not a person with disabilities and is under 65 years of age.

Column 3 - Amount of base support - \$ 969.56

Column 4 - Amount of transportation support - \$ 52.00

Schedule B

Net Income Calculation

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 1 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;
- (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.

7(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.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.

Ministry's Position.

The minister's position is that the appellant's family unit is ineligible for disability assistance as the appellant's net income is in excess of his disability assistance rate. The ministry argues that the PWD regulations, section 1 'unearned' income' includes any type or class or CPP benefits, superannuation (public pension), and war disability pensions, military pensions and war veteran's allowances. Section 24 states that disability assistance may be provided to or for a family unit, for a calendar month, in an amount that is not more than the amount determined under Schedule A minus the family unit's net income determined under Schedule B.

As per Schedule A, the disability rate for the appellant's family unit is \$1,726.62 which includes \$969.56 support, \$700 shelter, \$52 transportation support and \$5.06 top-up support for family bonus/child tax benefits.

As per Schedule B section 1(d) all unearned income must be included except the deductions permitted under

section 6 and any income under sections 3, 7, and 8. Section 7 speaks to allowable exemptions related to CPP and Veteran income. There is no exemption for superannuation benefits from the public pension that the appellant receives. Section 7(1)(e) allows for the taxable portion of a CPP cheque to be exempt which does not apply to the appellant as he does not have an CPP exemption portion included in his \$865.31 amount. Section 7(1)(b) allows for a \$50 exemption from Veteran Affairs income which as such the ministry is able to exempt \$50 of the \$5,766.42 the appellant receives from his various pensions. Therefore, the ministry concludes that the appellant's family unit is not eligible for disability assistance.

Appellant's Position

The appellant's position is that his veteran affairs disability pension and allowances are exempt from the unearned income amount as his pensions are unique in that they are not described in that section. He states that they are short \$400 to \$500 every month without the SS benefit, even with a fairly austere lifestyle. The appellant argues that his family needs the assistance and haven't received any of the food help they had asked for and they don't know why? They also don't know why they initially got then lost the benefit. The appellant further argues that the loss jeopardizes their ability to pay bills for the foreseeable future.

Panel Decision

The panel acknowledges that when the appellant reapplied for disability assistance for his family unit in September, 2017, he provided bank statements which disclosed his income; however, in error the ministry opened his file and provided the appellant prorated disability assistance for September as well as full disability benefits for October.

The panel finds that the definition provided in Section 1 of the EAPWDR for "unearned income" clearly includes any type or class of Canada Pension Plan benefits, superannuation benefits as well as all war disability pensions, military pensions and war veterans' allowances.

As per Section 24 of the EAPWDR, disability assistance may be provided to or for a family unit, for a calendar month, in an amount that is not more than the amount determined in Schedule A, minus the family unit's net income determined under Schedule B.

The panel finds that there is no dispute that the appellant's monthly net income is \$5,766.42 and the disability assistance rate for his family unit is \$1726.62. The panel notes that the appellant's net income is in excess of the allowable disability assistance rate and that the ministry has no discretion in applying the formula set out in Schedule A and B of the legislation.

The panel therefore finds that the ministry's reconsideration decision was reasonably supported by the evidence and confirms the ministry's reconsideration decision.

Conclusion

The panel finds that the ministry's reconsideration decision, which determined that the appellant's family unit was not eligible for disability assistance was a reasonable application of the legislation and confirms the decision. The appellant is not successful on appeal.