

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction's (the ministry) reconsideration decision dated November 27, 2017 which determined that under section 9 of the *Employment and Assistance for Persons with Disabilities Regulation (EAPWDR)*, the appellant was not eligible for disability assistance for November 2017 because his net income in September 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)(a)

PART E – SUMMARY OF FACTS

Documents and Information Before the Minister at Reconsideration

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

1. Request for Reconsideration

The Appellant's undated Request for Reconsideration which included the Appellant's hand written statements in support of reconsideration, stating that

- he is allowed to earn income per year and had \$3,684.66 left in his earning allowance
- his weekly Employment Insurance amount "allowed" is \$485, which is cut in half to \$242 because he owes money for past overpayments and that is why 50% is deducted from his Employment Insurance benefits
- from September 2017 to November 5, 2017 he has filed for nine weeks in total at \$242, which equals \$2,178, allowing him another \$1,506.66 for his yearly allowable income
- he sees no difference if his money coming in is employment in time or otherwise and that he occasionally makes mistakes in filling out his reporting stub

2. Government of Canada Printouts

Government of Canada printouts showing net amounts paid to him for his Employment Insurance from the beginning of September 2017 to the beginning of November 2017, showing net benefits to him of \$242 per week

3. Monthly Report

His monthly report to the ministry for October 2016 reporting he received a \$660 Employment Insurance

4. The Decision to be Reconsidered

5. Other Facts – Information Provided on Appeal

In the Reconsideration Decision the Reconsideration Officer said that the Appellant had received \$3,198 from Employment Insurance in September 2017 and as that exceeded his monthly assistance of \$1,133.42 combined shelter, support and transportation allowance and is deducted dollar for dollar, the Appellant was not entitled to any assistance for November 2017.

At the appeal, the ministry explained that Service Canada, which deals with Employment Insurance benefits, cooperates with the ministry in the exchange of information and reported in a Common Claimant Report that the Appellant's benefits paid in September 2017 were \$3,198.

The ministry was unable to explain how that \$3,198 was arrived at. The ministry stated that the Appellant's income was confirmed through a "data match" with Service Canada, and that this report, presumably the Common Claimant Report, did exist within the ministry files. The Common Claimant Report was not included in the appeal documents provided by the ministry.

On questioning, the ministry representative was unable to explain either the amount or why the Common Claimant Report was not included in the appeal material. The ministry speculated that the amount of \$3,198 could have been the result of back-pay or cumulative payments for more than one month's worth of Employment Insurance, but was unable to explain the amount further.

The Appellant, in his Notice of Appeal, denied receiving the \$3,198 in September 2017 [Panel note: the amount referred to by the Appellant was \$3,195 was clearly a typographical error].

The Reconsideration Decision, which was before the Reconsideration Officer, also referred to the fact that the Appellant had a valid Employment Insurance claim for \$485 per week before deductions and this is not disputed by the Appellant. The Appellant had agreed, in his submission for Reconsideration, that his Employment Insurance benefits were \$485 per week, which the panel notes would come to \$1,940 for a four week period.

The Appellant Did Not Attend the Appeal

The appellant did not attend the hearing. After confirming that the appellant was notified of the date and time of the hearing, the hearing proceeded pursuant to Section 86(b) of the *Employment and Assistance Regulation*.

PART F – REASONS FOR PANEL DECISION

Issue on Appeal

The issue on appeal is whether the Ministry of Social Development and Poverty Reduction's (the ministry) reconsideration decision dated November 27, 2017, which determined that under section 9 of the *Employment and Assistance for Persons with Disabilities Regulation (EAPWDR)* the appellant was not eligible for disability assistance for November 2017 because his net income in September 2017 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:

-
(g) employment insurance;

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)

.....

(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).....

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 (\$)
1	Sole Applicant/recipient and No dependent children	Applicant/recipient is A person with disabilities	606.42	52.000

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

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 ©.]
- (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;
 - (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.

EAPWDR – Schedule B – Deductions from unearned income

6 Deductions from unearned income

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.

EAPWDR – Schedule B – Exemptions – unearned income

7 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;

© 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) © 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.

(2.1) Repealed. [B.C. Reg. 204/2015, App. 2, s. 4 (b).]

(3) Repealed. [B.C. Reg. 197/2012, Sch. 2, s. 13 (f).]

Parties' Positions at Appeal

Appellant's Position

Although the Appellant did not appear at this appeal, in his Notice of Appeal he argued that the ministry's facts were false, denied he made \$3,195 in September 2017 [tribunal note: the ministry said the amount was \$3,198], said he was moving and needed assistance to cover his damage deposit and ½ months rent.

In his written submission at reconsideration he said that his Employment Insurance was \$485 per week which, because of a pre-existing debt was reduced to \$242 per week. He argued that because he had filed for nine weeks of Employment Insurance for a total of \$2178 it would still allow him \$1,506.66 for his yearly allowable income before there are deductions from his assistance. He further argued that there should be no difference between employment income "or otherwise", and that he had proof but just could not pay.

He made many other representations about his poverty, attempts to get ahead, his desire for education and a better life, among other representations and comments, which have little to do with whether or not his Employment Insurance benefits are "earned income" or "unearned income" and how that affects his disability benefits.

Ministry Position

The ministry relied upon the reconsideration decision, and pointed out that while there was a yearly income exemption, allowing for monies to be earned up to a certain level before there was any deduction from the Appellant's assistance, and in the Appellant's case this limit was approximately \$11,000 per year, that exemption only applies to "earned income".

The ministry submitted that under the *EAPWDR* Employment Insurance benefits are not "earned income" but are statutorily defined as "unearned income", under *EAPWDR* section 1(g), and therefore the provisions allowing the Appellant an annual earnings exemption (before there is a deduction from his monthly assistance) are inapplicable.

The ministry explained that unearned income received in one month is reported to the ministry the following month and adjustments to the assistance paid to the Appellant are made in the month following that. Thus, money received by the Appellant in September 2017 is reported in October 2017 and in the case of the Appellant, is deducted from his November 2017 benefits.

The ministry also submitted that the appellant was not entitled to deduct the debt repayment of \$242 per week from his Employment Insurance benefits of \$485 per week, and is required to report unearned income of \$485 per week. The ministry further submitted that the Appellant's Employment Insurance benefits of \$485 per week exceeded the amount of his benefits for September 2017.

The ministry also stated that the amount for Base Support in the *EAPWDR* schedule A section 1(a) was \$606.42 at the time of Reconsideration, but since has increased to \$706.42, another \$100 than as shown in the Regulations, and it is this new amount that the ministry has used in calculating the Appellant's assistance.

Panel Determination

The panel finds that the Employment Insurance benefits that the Appellant received in September 2017 were "unearned income".

The panel finds that as the Appellant's Employment Insurance benefits were unearned income., and not subject to an allowable deduction nor an exemption, they are to be deducted dollar for dollar from the Appellant's disability benefits.

The panel notes that while the Reconsideration Decision was based upon the ministry's determination that the Appellant had received Employment Insurance benefits of \$3,198 in September 2017, the original decision, which was before the Reconsideration Officer, did deal with the Appellant's Employment Insurance benefits of \$485 per week, and the Reconsideration Officer did refer to that weekly Employment Insurance benefit in the Reconsideration Decision.

The panel also notes that the ministry, in submissions, said that the Appellant's Employment Insurance benefits of \$485 per week exceeded his assistance amount for September 2017.

The panel finds that it was not in dispute that the appellant was entitled to Employment Insurance of \$485 per week in September 2017 and that this amount comes to \$1,940 for a 4 week period. The panel finds that there was evidence before the Reconsideration Officer that the Appellant's Employment Insurance benefits exceeded his disability allowance for September 2017.

Only those things specifically provided for pursuant to *EAPWDR* Schedule B section 6 may be deducted from unearned income, and only those things specifically set out in *EAPWDR* Schedule B section 7 are exemptions from unearned income. The Appellant's Employment Insurance benefits of \$485 per week are none of these, and therefore may not be deducted from unearned income nor are they exempt. The panel finds that because the Appellant's Employment Insurance benefits of \$485 per week [an average monthly amount of \$1,940] for September 2017, exceeded his monthly assistance amount of \$1,133.42, the Appellant was not entitled to any disability assistance for November 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 November 2017 was reasonably supported by the evidence and was a reasonable application of the applicable enactment in the appellant's circumstances.

The Appellant is not successful in his appeal.