

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction's (the ministry) reconsideration decision dated March 22, 2018 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 because his family unit's net income determined under Schedule B of the *EAPWDR* exceeded the amount of disability assistance determined under Schedule A of the *EAPWDR*.

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons with Disabilities Act (EAPWDA) Section 1(1)

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 dated March 8, 2018, which included

- The Appellant's statement that as his disability is for life he should still be able to have the benefits of medical etc.
- The appellant's statement that his household expenses are \$1,875.45 plus garnishment of \$200, leaving his family unit with only \$480 per month for food and other expenses
- The Appellant's statement requesting that he be shown the law that states a partner is liable for the disabled persons expenses
- The Appellant's statement that his dental expense for last year was \$5,000 and so far this year is \$500

2. The Appellant's Partner's Life Income Fund Statement for January 1 to 31, 2018

The Appellant's partners Life Income Fund indicated an annual payment of \$9,203.57

3. The Appellant's Bank Profile

The Appellant's Bank Profile showing \$5.71 in his account as at January 8, 2018, and showing various deposits and withdrawals, including a monthly Old Age Security payment of \$439.12 and a Canada Pension Plan monthly payment of \$217.97

4. The Employment and Assistance for Persons with Disabilities Review form dated February 15, 2018, which showed

- the Appellant's monthly expenses of
 - hydro \$80
 - mortgage \$400
 - property taxes \$150
 - property insurance \$45
 - gas \$40
 - telephone \$130, and
 - strata fee \$415
- that the Appellant lives with a partner
- that the Appellant owns a 1995 BMW automobile with the value of \$3,000
- that the Appellant has other family assets of \$10
- that the Appellant receives Canada Pension Plan benefits of \$294.98 per month
- that the Appellant receives Old Age Security benefits of \$585.49 per month
- that the Appellant has negligible cash on hand
- that the Appellant's partner earns \$1,000 per month
- that the appellant's the partner has Canada Pension Plan benefits of \$593.35 per month
- that the Appellant's partner has private pension plan benefits of \$1,098.23 per month
- that the Appellant's partner has investments valued at \$579.06 and \$400 cash on hand
- that the Appellant's partner's bank accounts and Registered Investment Fund total approximately \$270,314

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 March 22, 2018 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 because his family unit's net income determined under Schedule B of the *EAPWDR* exceeded the amount of disability assistance 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

EAPWDA

1 (1) In this Act:

"applicant" means the person in a family unit who applies under this Act for disability assistance, hardship assistance or a supplement on behalf of the family unit, and includes

- (a) the person's spouse, if the spouse is a dependant, and
- (b) the person's adult dependants;

"dependant", in relation to a person, means anyone who resides with the person and who

- (a) is the spouse of the person,
- (b) is a dependent child of the person, or

"family unit" means an applicant or a recipient and his or her dependants;

"spouse" has the meaning in section 1.1;

Meaning of "spouse"

1.1 (1) Two persons, including persons of the same gender, are spouses of each other for the purposes of this Act if

- (a) they are married to each other, or
- (b) they acknowledge to the minister that they are residing together in a marriage-like relationship.

(2) Two persons who reside together, including persons of the same gender, are spouses of each other for the purposes of this Act if

- (a) they have resided together for at least
 - (i) the previous 3 consecutive months, or
 - (ii) 9 of the previous 12 months, and
- (b) the minister is satisfied that the relationship demonstrates
 - (i) financial dependence or interdependence, and
 - (ii) social and familial interdependence,consistent with a marriage-like relationship.

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;
- (f) any type or class of Canada Pension Plan benefits;
- (u) Federal Old Age Security and Guaranteed Income Supplement payments;

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 (\$)
1	Two applicants / recipients and no 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	927.56

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	2 persons	\$570

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;

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

(xlv) a BC early childhood tax benefit;

(xlvi) child support;

(xlvii) orphan's benefits under the *Canada Pension Plan Act* (Canada);

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

(xlix) gifts;

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

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

(lii) compensation paid or payable under section 17 [*compensation in fatal cases*] or 18 [*addition to payments*] of the *Workers Compensation Act* to a dependant, as defined in section 1 of that Act, who is a child, as defined in section 17 of that Act;

(liii) money that is paid or payable by or for Community Living BC to or for a person if the payment is in accordance with an award in a legal proceeding or with a settlement agreement in respect of a claim for injury, loss or damage caused by Community Living BC, an employee of Community Living BC or a person retained under a contract to perform services for Community Living BC;

(liv) money that is paid or payable by the government of British Columbia to or for a person if the payment is in accordance with an award in a legal proceeding or with a settlement agreement in respect of a claim for injury, loss or damage caused by the minister, the ministry, an employee of the ministry or a person retained under a contract to perform services for the ministry;

(lv) a disabled contributor's child's benefit paid or payable under the *Canada Pension Plan*;

(lvi) payments granted under an agreement referred to in section 94 of the *Child, Family and Community Service Act*;

(lvii) money that is paid or payable, in respect of a child, from property that comes into the control of, or is held by, the Public Guardian and Trustee,

(b) any amount garnished, attached, seized, deducted or set off from income is considered to be income, except the deductions permitted under sections 2 and 6,

(c) all earned income must be included, except the deductions permitted under section 2 and any earned income exempted under sections 3 and 4, and

(d) all unearned income must be included, except the deductions permitted under section 6 and any income exempted under sections 3, 7 and 8.

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) x 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

The Appellant said in his Notice of Appeal that he disagreed with the Reconsideration Decision "*as per cohabitation agreement dated March 8, 2013 copy attached*". On questioning, the Appellant acknowledged that this cohabitation agreement had not been provided to the ministry before he filed his appeal and although his Notice of Appeal is both undated and unsigned, it was received by the Tribunal on April 5, 2018, and attached to it, received the same date, was the cohabitation agreement.

The Appellant submitted that the cohabitation agreement provided evidence to the fact that the Appellant and his partner were not financially independent of each other, and should be required to show the financial dependence or independence of himself and his partner.

The ministry did not object to receiving the cohabitation agreement into evidence.

The panel finds that the cohabitation agreement was not a document that was before the minister at the time of reconsideration, and is not in support of the information and records that were before the ministry at the time of reconsideration, and therefore pursuant to section 22(4) *Employment and Assistance Act* is not admitted as evidence.

The Appellant submitted that upon turning age 65, he had made application for benefits and had declared his partner as his spouse.

The Appellant said that he had been designated as a Person With Disabilities, because of three types of vertigo from which he suffers. He explained some of his subjective experiences with vertigo. He said his partner was not designated as a Person with Disabilities, that they keep their finances separate, and that what belongs to his partner is hers, what belongs to him is his, and they each have responsibilities for their own expenses and debts. He submitted that is surprising to him that his partner is expected to look after him.

Ministry Position

The ministry said that although it was aware that the appellant lived with his partner in a marriage-like relationship, it did not have the cohabitation agreement at the time of reconsideration. The ministry said that it had based its determination that the appellant and his family were a “family unit” on the finding of the Federal Government because of its determination concerning eligibility for the Guaranteed Income Supplement. The ministry submitted that upon turning age 65 Appellant was required to reapply for benefits because he would now be eligible for Canada Pension Plan benefits, Old Age Security benefits and possibly the Guaranteed Income Supplement, all of which would be taken into account when calculating the benefits to which the Appellant wasn't entitled as a Person with Disabilities.

The ministry submitted that if two people are a “family unit” under the EAPWDA, then it is the family unit that must apply for disability assistance.

The ministry also submitted that the Appellant and his partner were a “family unit” because in applying for benefits when he turned age 65, the Appellant had declared that he and his partner were residing together in a marriage-like relationship.

The ministry argued that the Appellant's Canada Pension Plan benefits [\$294.98 per month], his Old Age Security benefits [\$585.49 per month], his partner's Canada Pension Plan benefits [\$593.35 per month] and his partner's private pension benefits [\$766.96 per month] were all “unearned income” as that term is defined in EAPWDR section 1.

The ministry further submitted that the Appellant's and his partner's benefits must be cumulated because the Appellant and his partner are spouses within the meaning of EAPWDA section 1.1 (1) which defines spouses as people who have acknowledged to the minister that they are residing together in a marriage-like relationship.

The ministry further submitted that when those benefits, the “unearned income” are cumulated they exceed the amount of disability assistance determined under EAPWDR Schedule A, which is \$927.56 per month for two applicants [where one is a Person with Disabilities, the other is not, and that person who is not designated as a Person with Disabilities and is under 65 years of age], plus the shelter allowance of \$570 per month. The ministry pointed out that the total of these two benefit amounts is \$1,497.56.

The ministry submitted that none of the Canada Pension Plan benefits, Old Age Security benefits or the Appellant's partners private pension benefits fell within any of the exemptions from income allowable under EAPWDR Schedule B section 1, because none of them were “income” as defined in the EAPWDR nor were any of them allowable deductions from “unearned income” under section 6, or exemptions from “unearned income” permitted under section 7.01 (1).

The ministry submitted that the unearned income of the Appellant and his partner exceeds the benefit amount of \$1,497.56 per month calculated under Schedule A EAPWDR. The ministry further submitted that therefore because the net income of the Appellant and his partner calculated under Schedule B EAPWDR exceeds the benefit amount calculated under Schedule A EAPWDR, the Appellant is not entitled to benefits. The ministry did observe that the Appellant remains entitled to medical and dental benefits.

Panel Determination

There are two ways in which two persons living together may be determined to be spouses of each other and therefore to comprise a “family unit”. One way, pursuant to EAPWDA section 1.1(1), is if the people are married to each other or acknowledge to the Minister that they are residing together in a marriage-like relationship. The other way, pursuant to EAPWDA section 1.1(2), is that if people reside together, and a number of factors, including whether or not they are financially dependent or independent are satisfied, then they are spouses of each other.

The ministry had argued that because the Appellant had declared his partner to be a spouse, they comprised a “family unit”. The Appellant argued that he and his partner lived together but were financially independent because they maintain separate bank accounts, separate property regimes, and were each responsible for their own debts. The Appellant's position was that he and his partner could not be considered “spouses” because they were not financially dependent, and therefore did not meet the definition of “spouse” under EAPWDA section 1.1(2).

The panel finds that, because the ministry was not made aware of the cohabitation agreement, nor had the appellant made the argument that he and his partner maintain financial independence at the time of the Reconsideration Decision, that the ministry was reasonable in applying EAPWDA section 1.1(1)(b) when it determined that the Appellant and his partner are “spouses of each other”.

As a “family unit” is defined in the EAPWDA to mean an applicant and his dependants and a “dependant” means someone who resides with the applicant and is that person’s spouse, the panel finds that the Appellant and his partner are a “family unit”.

The panel finds that the Canada Pension Plan benefits, Old Age Security benefits and the Appellant’s partners private pension benefits are all “unearned income”. The panel finds that the application for disability assistance must be made on behalf of and take into account all “unearned income” from both spouses. The panel finds that as these benefits are all “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 finds that the “unearned income” of the family unit are to be deducted dollar for dollar from the disability benefits otherwise payable to the Appellant, and that as the “unearned income” of the family unit calculated under EAPWDR Schedule B exceeds the amount of disability assistance calculated pursuant to EAPWDR Schedule A, the Appellant is not entitled to disability assistance.

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 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.