

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the Ministry's) reconsideration decision dated October 24, 2018 which held that the appellant did not meet the legislated criteria in Sections 1, 3, 4 and 5 of the Employment Assistance for Persons with Disabilities Act (EAPWDA) and Sections 1-5, 9, 24 and Schedule A & B of the Employment Assistance for Persons with Disabilities Regulation (EAPWDR) because his monthly income exceeded the threshold rate to qualify for assistance.

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons with Disabilities Act (EAPWDA), Sections 1, 3, 4, and 5

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), Sections 1-5, 9, 24 and Schedule A and B.

PART E – SUMMARY OF FACTS

The evidence before the Ministry at the time of reconsideration was as follows:

- The appellant states he is currently receiving CPP and OAS pension benefits in the amount of approximately \$1,200.00 per month.
- In June 2018 the appellant contacted the Ministry regarding whether he would qualify for assistance even though he receives CPP and OAS benefits.
- In July 2018 a Ministry representative contacted the appellant's representative and advised him that as the appellant was in receipt of CPP and OAS totalling approximately \$1,200.00 per month, his income exceeded the threshold to receive PWD benefits. The Ministry then provided the appellant with an application for PWD benefits in error.
- The appellant completed the application and submitted it to the Ministry.
- In August 2018, the Ministry noted that the appellant did not have an open file as he was neither in receipt of PWD benefits, nor did he meet the asset and income test under the EAPWD Act. The Ministry determined that as he did not first meet the initial and continuing conditions of eligibility, his application for benefits was denied.
- In September 2018 the Ministry received the Appellant's Request for Reconsideration
- On October 24, 2018 the Ministry issued a Reconsideration Decision denying the appellant benefits because his net monthly income of approximately \$1,200.00 is in excess of the disability assistance rate of \$1,133.42, therefore exceeding the income threshold

At the hearing, the appellant and his witness provided the following information:

- In June 2018, the appellant was advised to visit the ministry's website to create a My Services account and to complete the self test to see if he qualified. The appellant states that the Ministry worker advised him not to report his CPP and OAS income as they didn't count as income on the self test.
- In July 2018 the appellant contacted the Ministry further inquiring on his eligibility. He states he was advised that he would not qualify because the income he receives from CPP and OAS exceeded the income threshold to be entitled to PWD benefits. The appellant stated that the same Ministry worker called him back later that day to say that after speaking to their supervisor, they suggested the appellant complete and submit all of the forms to apply for PWD benefits.
- In August 2018, the appellant submitted the completed forms however he was unable to verify his income from CPP and OAS, stating that the government wouldn't release that information to him. The Ministry later informed the appellant that his application couldn't be considered because he did not have an active file with the Ministry. After contacting the Ministry it was discovered that this was an error and the appellant's file was reopened. Following that, the appellant received the letter from the Ministry denying his application.
- In September 2018 the appellant received his Application for Reconsideration, which he submitted on September 24, 2018.
- On October 31, 2018 the appellant received a letter from the Ministry denying him PWD benefits because his income exceeded the threshold. Also enclosed with the denial letter was a four page document entitled "Information for New Persons with Disabilities Designation".

The ministry relied upon the Reconsideration Decision at the hearing. They also informed the appellant that they were unsure as to why the "Information for New Persons with Disabilities Designation" document was sent to him.

The panel makes the following findings of fact:

- The appellant is a 71 year old sole applicant who is employed part time and is in receipt of CPP and OAS benefits in the self declared amount of approximately \$1,200.00 per month; he has not provided proof of income to the Ministry
- As per schedule A of the EAPWDR the income assistance rate for a sole PWD applicant with no dependents who is over the age of 65 is \$1133.42 per month. This includes a \$375 shelter allowance and a \$758.42 support allowance
- He applied for income assistance in July 2018, after which he was contacted by the Ministry informing him that as his income from CPP and OAS exceeded the threshold he would not be eligible for assistance. The Ministry then sent him an application for PWD benefits in error. He completed and submitted this application
- The Ministry contacted him in August 2018 to inform him that as he did not have an open file with the Ministry, his application was being returned to him, noting that a PWD applicant must receive income assistance or meet the asset and income test under the EAPWDA
- The Ministry later allowed the application to move forward with an open file and the appellant applied for a Request for Reconsideration in September 2018
- The reconsideration decision dated October 24, 2018 holds that the appellant did not meet the legislated criteria in Sections 1, 3, 4 and 5 of the EAPWDA and Sections 1-5, 9, 24 and Schedule A & B of the EAPWDR because his monthly income exceeded the threshold rate to qualify for assistance

PART F – REASONS FOR PANEL DECISION

The issue before the panel is to determine the reasonableness of the Ministry's reconsideration decision dated October 24, 2018 which held that the appellant did not meet the legislated criteria in Sections 1, 3, 4 and 5 of the Employment Assistance for Persons with Disabilities (EAPWD) Act and Sections 1-5, 9, 24 and Schedule A & B of the Employment Assistance for Persons with Disabilities Regulation (EAPWD) because his monthly income exceeded the threshold rate to qualify for assistance.

The legislation applicable to this appeal is as follows:

EAPWD Act: Disability assistance and supplements, sections 1, 3, 4 and 5

Interpretation

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;

"disability assistance" means an amount for shelter and support provided under section 5 [*disability assistance and supplements*];

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

"hardship assistance" means an amount for shelter and support provided under section 6 (1) [*hardship assistance*];

"person with disabilities" means a person designated under section 2 [*persons with disabilities*];

"recipient" means the person in a family unit to or for whom disability assistance, hardship assistance or a supplement is provided under this Act for the use or benefit of someone in the family unit, and includes

(a) the person's spouse, if the spouse is a dependant, and

(b) the person's adult dependants;

"supplement" means any form of assistance specified by regulation, other than disability assistance, hardship assistance or financial assistance provided under section 7 [*financial assistance to service or program providers*] and, without limitation, includes access to programs established or funded under this Act;

"tribunal" means the Employment and Assistance Appeal Tribunal established under section 19 of the *Employment and Assistance Act*.

Eligibility of family unit

- 3** For the purposes of this Act, a family unit is eligible, in relation to disability assistance, hardship assistance or a supplement, if
- (a) each person in the family unit on whose account the disability assistance, hardship assistance or supplement is provided satisfies the initial and continuing conditions of eligibility established under this Act, and
 - (b) the family unit has not been declared ineligible for the disability assistance, hardship assistance or supplement under this Act.

Application of Act

- 4** To be eligible for disability assistance or hardship assistance under this Act, a family unit must include a person with disabilities.

Disability assistance and supplements

- 5** Subject to the regulations, the minister may provide disability assistance or a supplement to or for a family unit that is eligible for it.

EAPWDR: Sections 1-5, 9, 24 and Schedule A & B

Definitions

- 1** (1) In this regulation:

"**Act**" means the ;

"**assistance**" means disability assistance, hardship assistance or a supplement;

"**BC earned income benefit**" means an amount calculated for the purposes of section 10 (3) (b) of the *Income Tax Act*;

"**cash assets**" in relation to a person, means

(a) money in the possession of the person or the person's dependant,

(b) money standing to the credit of the person or the dependant with

(i) a savings institution, or

(ii) a third party

that must pay it to the person or the dependant on demand,

(c) the amount of a money order payable to the person or the dependant, or

(d) the amount of an immediately negotiable cheque payable to the person or the dependant;

"Community Living BC" means Community Living British Columbia established under the *Community Living Authority Act*;

"consumer price index" means the Consumer Price Index for Canada, as published by Statistics Canada under the authority of the *Statistics Act (Canada)*;

"disability assistance application date" means the date of an applicant's submission of

- (a) an application for disability assistance (part 2) form, or
- (b) an alternate application for disability assistance form;

"earned income" means

- (a) any money or value received in exchange for work or the provision of a service,
- (b) Repealed. [B.C. Reg. 197/2012, Sch. 2, s. 1 (a).]
- (c) pension plan contributions that are refunded because of insufficient contributions to create a pension,
- (d) money or value received from providing room and board at a person's place of residence, or
- (e) money or value received from renting rooms that are common to and part of a person's place of residence;

"gift" does not include

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

"income assistance" has the same meaning as in the *Employment and Assistance Act*;

"legal proceeding" includes a civil, criminal, quasi-criminal, administrative or regulatory action or proceeding;

"minister", in relation to a power, duty or function that the minister has delegated under section 25 of the Act to another person, includes that other person;

"nurse practitioner" has the same meaning as in the Nurses (Registered) and Nurse Practitioners Regulation;

"registered education savings plan" means a registered education savings plan as defined by section 146.1 of the *Income Tax Act (Canada)*;

"sole", in relation to an applicant or a recipient, means the applicant's or recipient's family unit includes no other applicant, recipient or adult dependant;

"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.

Definitions for Act

2 (1) For the purposes of the Act and this regulation, "**daily living activities**",

(a) in relation to a person who has a severe physical impairment or a severe mental impairment,

means the following activities:

(i) prepare own meals;

(ii) manage personal finances;

(iii) shop for personal needs;

(iv) use public or personal transportation facilities;

(v) perform housework to maintain the person's place of residence in acceptable sanitary condition;

(vi) move about indoors and outdoors;

(vii) perform personal hygiene and self care;

(viii) manage personal medication, and

(b) in relation to a person who has a severe mental impairment, includes the following activities:

(i) make decisions about personal activities, care or finances;

(ii) relate to, communicate or interact with others effectively.

(2) For the purposes of the Act, "**prescribed professional**" means a person who is

(a) authorized under an enactment to practise the profession of

(i) medical practitioner,

(ii) registered psychologist,

(iii) registered nurse or registered psychiatric nurse,

(iv) occupational therapist,

(v) physical therapist,

(vi) social worker,

(vii) chiropractor, or

(viii) nurse practitioner, or

(b) acting in the course of the person's employment as a school psychologist by

(i) an authority, as that term is defined in section 1 (1) of the *Independent School Act*, or

(ii) a board or a francophone education authority, as those terms are defined in section 1

(1) of the *School Act*,

if qualifications in psychology are a condition of such employment.

Alternative grounds for designation under section 2 of Act

2.1 The following classes of persons are prescribed for the purposes of section 2 (2) [*persons with disabilities*] of the Act:

(a) a person who is enrolled in Plan P (Palliative Care) under the Drug Plans Regulation, B.C. Reg.

73/2015;

(b) a person who has at any time been determined to be eligible to be the subject of payments made through the Ministry of Children and Family Development's At Home Program;

(c) a person who has at any time been determined by Community Living British Columbia to be eligible to receive community living support under the *Community Living Authority Act*;

(d) a person whose family has at any time been determined by Community Living British Columbia to be eligible to receive community living support under the **Act** to assist that family in caring for the person;

(e) a person who is considered to be disabled under section 42 (2) of the *Canada Pension Plan* (Canada).

Part 2 — Eligibility for Disability Assistance

Division 1 — Applications and Applicant Requirements

Repealed

3 Repealed. [B.C. Reg. 306/2005, s. 2.]

Process for assessment of eligibility for disability assistance

4 (1) The eligibility of a family unit for disability assistance must be assessed on the basis of the 2-stage process set out in sections 4.1 and 4.2.

(2) Despite subsection (1), the eligibility of a family unit for disability assistance may, at the minister's discretion, be assessed on the basis of the process set out in section 4.21, if disability assistance or income assistance has been provided to or for a person in the family unit in at least one of the 3 calendar months immediately preceding the calendar month for which the eligibility of that family unit is being assessed.

(3) Despite subsections (1) and (2), the eligibility of a family unit for disability assistance may be re-established in accordance with the process set out in section 4.4, if disability assistance has been provided to or for the family unit in a calendar year, but the family unit becomes ineligible under section 9 [*limits on income*] during that calendar year because the qualifying income of the family unit determined under section 3 of Schedule B equals or exceeds the amount of disability assistance determined under Schedule A that applies to a family unit matching that family unit.

Application for disability assistance — stage 1

4.1 (1) The first stage of the process for assessing the eligibility of a family unit referred to in section 4 (1) for disability assistance is fulfilling the requirements of subsection (2) of this section.

(2) The applicants for disability assistance in a family unit

(a) must complete and submit to the minister an application for disability assistance (part 1) form and must include as part of the application

(i) the social insurance number of each applicant in the family unit who is a person described in section 6 (2) [citizenship requirements], and

(ii) the information, authorizations, verifications and declarations specified by the minister, as required in the application for disability assistance (part 1) form, and

(b) subject to subsections (4), (5) and (6), must

(i) complete searches for employment as directed by the minister for the 3 weeks immediately following the date of the application under paragraph (a), or

(ii) demonstrate that each of the applicants has completed a search for employment satisfactory to the minister within the 30 day period prior to the date of the application under paragraph (a),

and in either case provide information about and verification of the searches for employment, in the form specified by the minister.

(3) Subsection (2) does not affect the minister's powers under section 10 of the Act.

(4) Subsection (2) (b) does not apply to a person who

(a) is prohibited by law from working in Canada,

(b) has reached 65 years of age,

(c) is a member of a family unit that includes a person with disabilities,

(d) is not a person with disabilities, but has a physical or mental condition that, in the minister's opinion, precludes the person from completing a search for employment as directed by the minister, or

(e) is fleeing an abusive spouse or relative.

(5) Subsection (2) (b) does not apply if any person in the family unit to which an application relates has an immediate need for food or shelter or needs urgent medical attention.

(6) Subsection (2) (b) does not apply to a sole applicant who

(a) has a dependent child, or

(b) provides care to a supported child

if the child has not reached 3 years of age.

Application for disability assistance — stage 2

4.2 (1) In this section, "**applicant orientation program**" means a program established by the minister to ensure that applicants are provided with information about their rights and obligations under the Act, including but not limited to information about all or any combination of

- (a) rules about eligibility for disability assistance or supplements,
- (b) the process of applying for disability assistance,
- (c) required employment search activities, community based job search resources and ministry and community programs,
- (d) mutual obligations of the minister, applicants and recipients,
- (e) employment plans,
- (f) the minister's authority to collect and verify information, and
- (g) the availability of alternate resources, such as, federal programs and other Provincial programs.

(2) The second stage of the process for assessing the eligibility of a family unit referred to in section 4 (1) for disability assistance is fulfilling the requirements of subsection (3) of this section.

(3) On completion of the first stage process provided for in section 4.1, the applicants for disability assistance in the family unit must complete and submit to the minister an application for disability assistance (part 2) form and must include as part of the application

- (a) proof of the identity of the persons in the family unit and of their eligibility under the Act,
- (b) subject to subsection (5), proof that the applicants have each completed an applicant orientation program, and
- (c) the information, authorizations, declarations and verifications specified by the minister as required in the application for disability assistance (part 2) form.

(4) Subsection (3) does not affect the minister's powers under section 10 of the Act.

(5) Subsection (3) (b) does not apply to a person who

- (a) has reached 65 years of age,
- (b) is not described in section 6 (2) [*citizenship requirements*] and is in a family unit that satisfies the requirement under section 6 (1), or
- (c) has a physical or mental condition that, in the minister's opinion, precludes the person from completing an applicant orientation program.

Alternate application for disability assistance

4.21 (1) The process for assessing the eligibility of a family unit referred to in section 4 (2) for disability assistance is fulfilling the requirements of subsection (2) of this section.

(2) The applicants for disability assistance in a family unit must complete and submit to the minister a report using the same form as in section 29 [*reporting requirement*].

Repealed

4.3 Repealed. [B.C. Reg. 313/2007, s. 2 (a).]

Re-establishment of eligibility for disability assistance

4.4 (1) The minister may re-establish the eligibility of a family unit referred to in section 4 (3) for disability assistance in accordance with subsection (2).

(2) The eligibility of the family unit referred to in section 4 (3) for disability assistance may be re-established based on monthly reports submitted under section 29.1 [*voluntary reporting*] during the period of ineligibility for disability assistance during the calendar year in which the family unit becomes ineligible.

(3) If monthly reports under section 29.1 have not been submitted in respect of a family unit referred to in section 4 (3), the 2-stage process set out in sections 4.1 and 4.2 applies to the family unit for the re-establishment of eligibility.

[en. B.C. Reg. 175/2016, App. 1, s. 3; am. B.C. Reg. 151/2018, App. 2, s. 6.]

Applicant requirements

5 For a family unit to be eligible for disability assistance or a supplement, an adult in the family unit must apply for the disability assistance or supplement on behalf of the family unit unless

(a) the family unit does not include an adult, or

(b) the spouse of an adult applicant has not reached 19 years of age, in which case that spouse must apply with the adult applicant.

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 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

Disability Assistance Rates

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.

(2) Despite subsection (1), disability assistance may not be provided in respect of a dependent child if support for that child is provided under section 8 (2) or 93 (1) (g) (ii) of the *Child, Family and Community Service Act*.

Monthly support allowance

2 (0.1) For the purposes of this section:

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

"warrant" has the meaning of warrant in section 14.2 [*consequences in relation to outstanding arrest warrants*] of the Act.

(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) Repealed. [B.C. Reg. 193/2017, s. 9 (a).]

(b) the amount calculated in accordance with subsections (2) to (4) for each dependent child in the family unit.

Item	Column 1 Family unit composition	Column 2 Age or status of applicant or recipient	Column 3 Amount (\$)
1	Sole applicant / recipient and no dependent children	Applicant / recipient is a person with disabilities	758.42

Prorating of support allowance

3 In the calendar month that contains the disability assistance application date, the monthly support allowance is prorated based on the number of days remaining in that calendar month, beginning with the date of that submission.

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;

"warrant" has the meaning of warrant in section 14.2 [*consequences in relation to outstanding arrest warrants*] of the Act.

(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

How actual shelter costs are calculated

5 (1) For the purpose of this section, utility costs for a family unit's place of residence include only the following costs:

- (a) fuel for heating;
- (b) fuel for cooking meals;
- (c) water;
- (d) hydro;
- (e) garbage disposal provided by a company on a regular weekly or biweekly basis;
- (f) rental of one basic residential single-line telephone.

(2) When calculating the actual monthly shelter costs of a family unit, only the following items are included:

- (a) rent for the family unit's place of residence;
- (b) mortgage payments on the family unit's place of residence, if owned by a person in the family unit;
- (c) a house insurance premium for the family unit's place of residence if owned by a person in the family unit;
- (d) property taxes for the family unit's place of residence if owned by a person in the family unit;
- (e) utility costs;
- (f) the actual cost of maintenance and repairs for the family unit's place of residence if owned by a person in the family unit and if these costs have received the minister's prior approval.

(3) If utility costs fluctuate, they may be averaged over the periods

- (a) beginning on October 1 and ending on March 31, and
- (b) beginning on April 1 and ending on September 30.

(4) If 2 or more family units share the same place of residence, the actual shelter costs of any one of them are the smaller of

- (a) the amount calculated by
 - (i) dividing the actual shelter costs for all the family units by the number of persons occupying that place of residence, and
 - (ii) multiplying the result by the number of persons in that one family unit, and
- (b) the amount declared by the family unit as the shelter costs for that family unit.

People over 65 years of age

7 (1) For a family unit that includes at least one dependant and a person with disabilities who has reached 65 years of age and receives federal old age security payments, the amount referred to in section 24 (a) [*amount of disability assistance*] of this regulation is the sum of

- (a) the support allowance that is applicable under sections 2 and 3 of this Schedule for a family unit

matching the applicant's or recipient's family unit, plus

(b) the maximum shelter allowance that is applicable under section 4 of this Schedule for a family unit matching the applicant's or recipient's family unit.

(2) Subsection (1) applies regardless of the family unit's actual shelter costs or whether the family unit is sharing residential accommodation or receiving room and board.

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 [*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;

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

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

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

(iv) 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;

(v) 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;

(vi.1) 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 of Children and Family Development, that ministry, an employee of that ministry or a person retained under a contract to perform services for that ministry;

(vi.2) money that is paid or payable by the government of British Columbia to or for a person because the person was a resident of Woodlands School;

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

(viii) 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;

(lviv) money that is paid or payable from a settlement under

(A) the Cadboro Bay Litigation Settlement Agreement, dated for reference November 1, 2017, between the Esquimalt Nation and Canada, or

(B) the settlement agreement, dated for reference October 30, 2017, between the Songhees Nation and Canada,

(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 earned income

2 The only deductions permitted from earned income are the following:

(a) any amount deducted at source for

(i) income tax,

(ii) employment insurance,

(iii) medical insurance,

(iv) Canada Pension Plan,

(v) superannuation,

(vi) company pension plan, and

(vii) union dues;

(b) if the applicant or recipient provides both room and board to a person at the applicant's or recipient's place of residence, the essential operating costs of providing the room and board;

(c) if the applicant or recipient rents rooms that are common to and part of the applicant's or recipient's place of residence, 25% of the gross rent received from the rental of the rooms.

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.

(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).]

Application of deductions and exemptions

9 (1) The deductions and exemptions in this Schedule apply only in the calendar month in which the income is actually received, despite any of the following:

(a) the date the income is payable;

(b) the period for which the income is payable;

(c) the date the income is reported to the minister;

(d) the date the minister receives notice of the income.

(2) Despite subsection (1), income that is received before the date that subsection (1) comes into force is subject to the application of section 9 of this regulation as it read immediately before subsection (1) came into force.

Backdated CPP treated as unearned income

11 (1) In this section, "**pension benefit**" means a pension or other payment under the *Canada Pension Plan* (Canada).

(2) If

(a) disability assistance is provided to a family unit for a calendar month or any portion of a calendar month that would not have been provided if a pension benefit had been paid for that calendar month, and

(b) subsequently a pension benefit becomes payable or payment of a pension benefit may be made under the *Canada Pension Plan* (Canada) to a recipient in the family unit for that calendar month or any portion of that calendar month the amount of the pension benefit that becomes payable for that month or portion of that month must be treated as unearned income and is considered to have been received by the recipient in that month.

The appellant's self declared income per month is \$1,200.00 which includes CPP, OAS and potentially employment income. He has not provided any proof of his income. The Ministry's income threshold for PWD benefits for an individual in the appellant's circumstances is \$1,133.42, therefore, the appellant's income exceeds the threshold and income test for entitlement to PWD benefits.

Conclusion

The panel finds that the ministry's reconsideration decision, which held that the appellant was not eligible for PWD benefits as per Sections 1, 3, 4 and 5 of the EAPWDA and Sections 1-5, 9, 24 and Schedule A & B of the EAPWDR because his income is too high is a reasonable application of the legislation in the circumstances of the appellant and is reasonably supported by the evidence. The panel confirms the ministry's reconsideration decision. The appellant is not successful on appeal.

PARTG-ORDER	
THE PANEL DECISION IS: (Check one) <input checked="" type="checkbox"/> UNANIMOUS <input type="checkbox"/> BY MAJORITY	
THE PANEL <input checked="" type="checkbox"/> CONFIRM THE MINISTRY DECISION <input type="checkbox"/> RESCIND THE MINISTRY DECISION If the ministry decision is rescinded, is the panel decision referred back to the Minister for a decision as to amount? Yes <input checked="" type="checkbox"/> No	
LEGISLATIVE AUTHORITY FOR THE DECISION: <i>Employment and Assistance Act</i> Section 24(1)(a) <input checked="" type="checkbox"/> or Section 24(1)(b) and Section 24(2)(a) <input checked="" type="checkbox"/> or Section 24(2)(b)	

PARTH-SIGNATURES	
PRINTNAME Jan Lingford	
SIGNATURE OF CHAIR	DATE (YEAR/MONTH/DAY) 2018/12/06

PRINTNAME Bill Haire	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2018/12/06
PRINTNAME Chris McEwan	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2018/12/06