

**PART C – DECISION UNDER APPEAL**

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the "Ministry") reconsideration decision of November 5, 2018 (the "Reconsideration Decision"), which determined that, pursuant to section 24 of the *Employment and Assistance For Persons With Disabilities Regulation* ("EAPWDR"), \$1,030.00 was to be deducted from the Appellant's disability assistance for the month of October, 2018 because the Appellant had received that amount in employment insurance benefits in the month of August, 2018.

**PART D – RELEVANT LEGISLATION**

Sections 1 and 24 of the EAPWDR  
Sections 1, 2, and 4 of Schedule A to the EAPWDR  
Sections 1, 3, 6, 7, and 8 of Schedule B to the EAPWDR

## PART E – SUMMARY OF FACTS

The Appellant is a sole recipient of disability assistance.

The information before the Ministry at the time of the Reconsideration Decision included the following:

- The Appellant's monthly report, dated September 26, 2018 (the "September Report"), indicating that the Appellant had received \$824.00 in employment insurance benefits in September, 2018;
- The Appellant's monthly report, dated August 28, 2018 (the "August Report"), indicating that the Appellant had received \$1,030.00 in employment insurance benefits in August, 2018;
- A printout from Service Canada, showing the net employment insurance benefit payments made to the Appellant in the months of August and September, 2018;
- The Appellant's Request for Reconsideration ("RFR"), dated October 29, 2018 in which the Appellant stated that:
  - The Ministry's decision denied the Appellant money which she requires in order to pay her expenses;
  - She was required to give up her job in July, which was supplementing her disability benefits; and
  - Her disability benefits are insufficient to meet her needs and that it is unjust that money to which she would normally be entitled are being withheld by virtue of her being on disability.

In her Notice of Appeal, filed November 19, 2018, the Appellant stated that she disagreed with the Reconsideration Decision because:

- She was struggling financially;
- Her bank account was frequently in overdraft; and
- The employment insurance benefits which she had received were sick benefits payable when she became too unwell to work.

## PART F – REASONS FOR PANEL DECISION

The issue on appeal is whether the Ministry reasonably determined that \$1,030.00 was to be deducted from the Appellant's October, 2018 disability assistance, pursuant to section 24 of the EAPWDR, due to her having received that amount in employment insurance benefits in the month of August, 2018.

### *Statutory Framework*

Section 1 of the EAPWDR defines unearned income:

"**unearned income**" means

"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;

Section 24 of the EAPWDR governs the maximum amount of disability which may be paid to a recipient in a given month:

### **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.

Sections 1, 2, and 4 of schedule A to the EAPWDR set out the maximum amount of disability assistance and shelter allowance payable each month before accounting for deductions:

### **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:

...

- (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

...

**Monthly shelter allowance**

4 (1) For the purposes of this section:

...

- (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

Section 1 of Schedule B to the EAPWDR lists what income must be included and what types of income are exempt from inclusion in the calculation of a family unit's net income. Subsection (d) of section 1 of Schedule B to the EAPWDR provides that all unearned income, other than statutorily prescribed exceptions, must be included in the calculation of a family's net income.

## **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,

...

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

Section 3 of Schedule B to the EAPWDR sets out the annual earnings exemptions for qualifying income and defines qualifying income.

**"qualifying income"** means

- (a) earned income, except the deductions permitted under section 2, and
- (b) unearned income that is compensation paid under section 29 or 30 of the Workers Compensation Act;

...

Section 6 sets out what amounts may be deducted from the calculation of a recipient's unearned income:

## **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.

Sections 7 and 8 specify a number of types of unearned income that are excluded from the calculation of a recipient's net income:

## **Exemptions – unearned income**

**7** (0.1) In this section:

**"disability-related cost"** means a disability-related cost referred to in paragraph

- (a), (b), (c) or (e) of the definition of disability-related cost in section 12 (1) [*assets held in trust for person with disabilities*] of this regulation;

**"disability-related cost to promote independence"** means a disability-related cost referred to in paragraph (d) of the definition of disability-related cost in section 12 (1) of this regulation;

**"intended registered disability savings plan or trust"**, in relation to a person referred to in section 12.1 (2) [*temporary exemption of assets for person with disabilities or person receiving special care*] of this regulation, means an asset, received by the person, to which the exemption under that section applies;

**"structured settlement annuity payment"** means a payment referred to in subsection (2) (b) (iii) made under the annuity contract referred to in that subsection.

(1) The following unearned income is exempt:

- (a) the portion of interest from a mortgage on, or agreement for sale of, the family unit's previous place of residence if the interest is required for the amount owing on the purchase or rental of the family unit's current place of residence;
- (b) \$50 of each monthly Federal Department of Veterans Affairs benefits paid to any person in the family unit;
- (c) a criminal injury compensation award or other award, except the amount that would cause the family unit's assets to exceed, at the time the award is received, the limit applicable under section 10 [*asset limits*] of this regulation;
- (d) a payment made from a trust to or on behalf of a person referred to in section 12 (1) [*assets held in trust for person with disabilities*] of this regulation if the payment is applied exclusively to or used exclusively for
  - (i) disability-related costs,
  - (ii) the acquisition of a family unit's place of residence,
  - (iii) a registered education savings plan, or
  - (iv) a registered disability savings plan;
- (d.1) subject to subsection (2), a structured settlement annuity payment made to a person referred to in section 12 (1) of this regulation if the payment is applied exclusively to or used exclusively for an item referred to in subparagraph (i), (ii), (iii) or (iv) of paragraph (d) of this subsection;
- (d.2) money expended by a person referred to in section 12.1 (2) [*temporary exemption of assets for person with disabilities or person receiving special care*] of this regulation from an intended registered disability savings plan or trust if the money is applied exclusively to or used exclusively for disability-related costs;
- (d.3) any of the following if applied exclusively to or used exclusively for

disability-related costs to promote independence:

- (i) a payment made from a trust to or on behalf of a person referred to in section 12 (1) of this regulation;
- (ii) a structured settlement annuity payment that, subject to subsection (2), is made to a person referred to in section 12 (1) of this regulation;
- (iii) money expended by a person referred to in section 12.1 (2) of this regulation from an intended registered disability savings plan or trust;

(e) the portion of Canada Pension Plan Benefits that is calculated by the formula  $(A-B) \times C$ , where

A = the gross monthly amount of Canada Pension Plan Benefits received by an applicant or recipient;

B = (i) in respect of a family unit comprised of a sole applicant or a sole recipient with no dependent children, 1/12 of the amount determined under section 118 (1) (c) of the *Income Tax Act*(Canada) as adjusted under section 117.1 of that Act, or  
(ii) in respect of any other family unit, the amount under subparagraph (i), plus 1/12 of the amount resulting from the calculation under section 118 (1) (a) (ii) of the *Income Tax Act*(Canada) as adjusted under section 117.1 of that Act;

C = the sum of the percentages of taxable amounts set out under section 117 (2) (a) of the *Income Tax Act* (Canada) and section 4.1 (1) (a) of the *Income Tax Act*;

(f) a tax refund;

(g) a benefit paid under section 22, 23 or 23.2 of the *Employment Insurance Act* (Canada) to any person in the family unit.

(2) Subsection (1) (d.1) and (d.3) (ii) applies in respect of a person only if

(a) the person has entered into a settlement agreement with the defendant in relation to a claim for damages in respect of personal injury or death, and

(b) the settlement agreement requires the defendant to

(i) make periodic payments to the person for a fixed term or the life of the person,

(ii) purchase a single premium annuity contract that

(A) is not assignable, commutable or transferable, and

(B) is designed to produce payments equal to the amounts, and at the times, specified in the settlement agreement,

(iii) make an irrevocable direction to the issuer of the annuity contract to make all payments under that annuity contract directly to the person, and

(iv) remain liable to make the payments required by the settlement agreement.

### **Minister's discretion to exempt education related unearned income**

**8** (1) In this section:

**"day care costs"** means the difference between a student's actual day care costs and the maximum amount of child care subsidy that is available under the *Child Care Subsidy Act* to a family unit matching the student's family unit;

**"education costs"**, in relation to a student and a program of studies, means the costs, including the costs of tuition, student fees, books, equipment, supplies and transportation, that, in the opinion of the minister, are reasonably required for the student to participate in the program of studies.

(2) The minister may authorize an exemption for a student up to the sum of the student's education costs and day care costs, for a period of study, from the total amount of student financial assistance received by the student for the period of study.

#### *Panel Decision*

The Appellant's entitlement to disability assistance and shelter allowance is, as set out in sections 2 and 4 of Schedule A to the EAPWDR, \$1,133.42 per month.

Subject to section 24 of the EAPWDR, the Appellant's entitlement to disability assistance for October is the above amount less the amount of the Appellant's family unit's net income for the month of August.

Schedule B of the EAPWDR sets out how net family income is calculated and provides for an exhaustive list of income items that are either exempt from inclusion in the calculation of a family unit's net income or are deductible from a family unit's net income.

In the Appellant's case, the income at issue is employment insurance benefits received by her in the month of August, 2018.

That the Appellant received \$1,030.00 in employment insurance benefits in August, 2018 is not in dispute. The August Report and the Service Canada printout confirm the receipt of employment insurance benefits in that amount in August, 2018.



Section 1 of the EAPWDR sets out that employment insurance received by a recipient is included in the definition of "unearned income." Moreover, the section does not restrict what is included in "unearned income" to any particular type or types of employment insurance benefits.

Section 1 of Schedule B to the EAPWDR sets out clearly that, for the purposes of determining the amount, if any, that is deductible from a recipient's disability benefits under section 24 of the EAPWDR, all unearned income must be included in the calculation of a family unit's net income, except for the deductions described in section 6 and the exemptions described in sections 3, 7 and 8 of Schedule B to the EAPWDR.

Section 6 permits the deduction of any income tax deducted at source from employment insurance benefits from a recipient's unearned income. In this case, there is no indication that any income tax was deducted at source and the Service Canada printout indicates that the benefits received by the Appellant were net amounts. In the result, the panel finds that the Ministry reasonably determined that no portion of the Appellant's employment insurance benefits for August, 2018 are eligible to be deducted from inclusion in her unearned income for that month under section 6 of Schedule B to the EAPWDR.

Section 3 of Schedule B to the EAPWDR provides for an annual deduction for specific income which meets the definition of "qualifying income." However, the only unearned income which meets that definition is unearned income paid under section 29 or 30 of the *Workers Compensation Act*. The panel finds that the Ministry reasonably determined that the Appellant's employment insurance benefits for August, 2018 do not meet the definition of "qualifying income" and no portion can be exempted from inclusion in her unearned income on that basis.

Likewise, the panel finds that the Ministry reasonably determined that the Appellant's August, 2018 employment insurance benefits do not fit any of the exemption categories in subsections (a) through (g) of section 7(1) or section 8 of Schedule B to the EAPWDR and are not exempt from inclusion in the calculation of the Appellant's unearned income for the month of August 2018 under those sections.

In the result of all of the foregoing, the panel finds that the Ministry reasonably determined that the employment insurance benefits paid to the Appellant in August, 2018 were properly deducted from her October, 2018 disability benefits. The Appellant is not successful in this appeal.

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

<b>PART H – SIGNATURES</b>	
PRINT NAME Adam Shee	
SIGNATURE OF CHAIR	DATE (YEAR/MONTH/DAY) 2019/01/02

PRINT NAME Kevin Ash	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2019/01/02
PRINT NAME Barbara Insley	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2019/01/03