

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) reconsideration decision dated December 6, 2018 where the ministry determined that the Appellant was not eligible for her December 2018 disability assistance because the CPP benefits and OAS/GIS she reported and received are, in accordance Employment and Assistance for Persons with Disabilities (EAPWD) Regulation Section 1, considered unearned income which under EAPWD Regulation Section 24 must be deducted from the monthly assistance rate calculated under EAPWD Schedule A. Further, EAPWD Regulation Section 9 provides that a person is not eligible for assistance if their net income exceeds their assistance rate.

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons with Disabilities Regulation Section 1
Employment and Assistance for Persons with Disabilities Regulation Section 24
Employment and Assistance for Persons with Disabilities Regulation Section 9
Employment and Assistance for Persons with Disabilities Regulation Schedules A&B

PART E – SUMMARY OF FACTS

In her Notice of Appeal dated November 11, 2018 the Appellant requested a written appeal. By way of an Email dated December 28, 2018 the Ministry indicated that its submission is the reconsideration decision.

Information before the Ministry at reconsideration:

The Appellant is a two-person family receiving disability assistance with a monthly assistance rate of \$1746.06. On October 26, 2018 the Appellant submitted a monthly report showing she and her spouse declared \$1231.85 OAS/GIS and \$901.61 CPP for a total income of \$2133.46 (A copy of the reporting stub is included in the appeal record). The Ministry determined that because the income is unearned it must be deducted from the assistance entitlement. As the income exceeded the entitlement rate the ministry denied further benefits.

The Appellant provided the Ministry with the Request for Reconsideration dated November 11, 2018 in which the Appellant's spouse stated that the Appellant is disabled physically, depressed from fighting a 10-year battle with Work Safe BC over treatments and as a couple they are living below the poverty line and being forced to live separately. The Appellant attached correspondence to and from Work Safe BC and a cannabis medical clinic in which her depression pain and anxiety as well as treatment options and their costs are discussed, all stemming from a work place accident some 10 years ago.

On December 6, 2018 the ministry denied the request noting that the CPP benefits and OASS/GIS the Appellant receives (\$2133.46) exceeds the rate of disability assistance for which her family unit is eligible (\$1746.06). These CPP and OAS/GIS benefits are considered unearned income which under the legislation is not exempt and must be deducted from disability assistance. As background the ministry acknowledged receipt of material including medical documents that detail the Appellant's medical difficulties with pain and depression, the battle with Work Safe BC over treatment options and cost and inability to financially manage living as a couple.

Notice of Appeal and Appeal Submissions

On December 12, 2018 (date corrected from November 11, 2018 by Appellant spouse) the Appellant submitted a Notice of Appeal in which the appellants spouse writes that the Appellant is a Canadian citizen in peril, is disabled and cannot survive alone with no income and cannot afford prescribed medicine or therapy.

The Appellant also submitted two separate submissions after the written submission deadline which were accepted by the Panel Chair given it was received before Panel consideration and in the Chairs judgement was very much substantively like the other information provided with the Appellant's existing submission.

Hearing

The Panel conducted a written hearing as requested by the Appellant pursuant to section 22(3) (b) of the Employment and Assistance Act.

In accordance with section 22(4) of the Employment and Assistance Act, the Panel can only admit evidence that was before the Ministry at the time of reconsideration and evidence that is in support of the information and records that were before the Ministry at the time of reconsideration. The Panel reviewed a substantial volume of information provided as a part of the Appellant's submission to the Tribunal which consists of medical documents and opinions; correspondence and reports from Work Safe BC; correspondence with various political office holders; emails and letters from the Appellant and her spouse and references to various web sites concerned with Charter and Human Rights issues. The Panel has noted that this information collectively deals with the Appellant's medical situation stemming from her work place accident; dispute with Work Safe BC over treatment options and costs; information on Cannabis as a treatment option and the financial stress and factors leading to the filing of the PWD claim. The Panel has concluded that the information was either in support of and/or was an elaboration of the medical and financial information that was available to the ministry and was thus admissible.

PART F – RE Issue on Appeal

The issue on appeal is whether the ministry's decision which determined that under section 9(2) of the EAPWDR, the appellant was ineligible for December 2018 disability assistance because her net income determined under Schedule B of the EAPWDR exceeded her disability assistance rate determined under Schedule A of the EAPWDR was a reasonable application of the legislation in the appellant's circumstances, or was reasonably supported the by evidence?

Relevant Legislation

EAPWD REGULATION

Part 1 - Interpretations

"**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.

EAPWDR

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

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.

[am. B.C. Regs. 175/2016, App. 1, s. 4; 193/2017, s. 2.]

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;

(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);

(xlviiii)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;

(liv.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;

(liv.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;

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

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

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

(lviii)money that is paid or payable from a settlement in respect of Treaty No. 8 agricultural benefits;

(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 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.

Ministry Position

The ministry position is that the Appellant was not eligible for December 2018 disability assistance because the CPP benefits and OAS/GIS she received (\$2133.46) are considered unearned income as per Employment and Assistance for Persons with Disabilities (EAPWD) Regulation Section 1, and under EAPWD Section 24, unearned income must be deducted from the monthly assistance rate calculated under EAPWD Schedule A (\$1746.06) and under EAPDWR Section 9 a person is not eligible for assistance if their net income exceeds their assistance rate. Further the ministry found that CPP and OAS/GIS benefits are not listed as exempt types of unearned income under EAPWD Schedule B,

Sections 1, 6 and 7.

Appellant's Position

The Appellant's position as stated in the Notice of Appeal is that she disagrees with the Ministry position because she is in peril, cannot survive alone and cannot afford prescribed medicine or therapy. In the Appellant submission the Appellant and her spouse provided substantial information on her medical status involving pain, depression and anxiety stemming from her work place accident 10 years ago including medical opinions, correspondence with Work Safe BC and various political office holders and reference to Charter and Human Rights concerns. This information also details the financial strain of the situation and the circumstances of the initial filing of the application for PWD and the subsequent reporting of income as a couple which led to the Ministry decision.

Panel Decision

The Ministry has acknowledged the information the Appellant provided respecting pain, emotional distress and financial difficulty stemming from the Appellant's work place accident 10 years ago. However, the Ministry has denied the Appellant's disability assistance for December 2018 solely based on the reporting by the appellant of unearned income which exceeds the amount her family unit was eligible to receive under the legislation and the panel finds the Ministry position to be reasonable. Further they have concluded that the forms (CPP, OAS/GIS) of reported income are not a deduction as provided in the legislation and the Panel finds that the exemptions respecting unearned income are set out in Sections 1, 6 and 7 of Schedule B and that the Ministry was reasonable in concluding that those exemptions do not apply. In reaching this conclusion, the Panel notes that the Ministry did consider the monthly tax exemption on Gross CPP but concluded that it did not apply in the Appellant's circumstances. In the absence of any evidence or argument that tax had been deducted from the Appellant's CPP payment, the Panel finds this conclusion to be reasonable. The Panel also finds the Ministry has reasonably applied the disability assistance calculation of Section 24 and that, as the unearned income declared by the Appellant is in excess of the rate of disability assistance, the Ministry also reasonably concluded that the Appellant was not eligible for disability assistance for December 2018 based on unearned income reported on the October 31, 2018 monthly reporting stub.

The amounts reported are not in dispute by the Appellant who instead has documented the medical and psychological trauma from a 10-year old workplace accident with insufficient financial resources to deal with all of this along with Charter and Human Rights concerns as the basis for disagreeing with the Ministry decision. The panel concludes that the Ministry approach is a reasonable application of the legislation and notes that in reaching its decision, the Panel is restricted to consideration of the reasonableness of the Ministry reconsideration decision. In addition, under Sections 45, 46 and 47 of the Administrative Tribunals Act, the Panel is restricted from dealing with Charter of Rights issues and defer Human Rights Code issues to a more appropriate forum.

Conclusion

The panel confirms the ministry's reconsideration decision as it was a reasonable application of the legislation. The appellant is not successful on appeal.

PART G – ORDER

THE PANEL DECISION IS: (Check one) UNANIMOUS BY MAJORITY

THE PANEL CONFIRMS THE MINISTRY DECISION 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? Yes No

LEGISLATIVE AUTHORITY FOR THE DECISION:

Employment and Assistance Act

Section 24(1)(a) or Section 24(1)(b)

and

Section 24(2)(a) or Section 24(2)(b)

PART H – SIGNATURES

PRINT NAME

Keith Lacroix

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2019-01-17

PRINT NAME

Robert Fenske

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019-01-17

PRINT NAME

Jane Nielsen

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2018-01-21