

### PART C – Decision under Appeal

The decision under the appeal is the Ministry of Social Development (ministry) reconsideration decision dated December 17, 2011, which determined that the appellant was ineligible for disability assistance from February 2010 through July 2011 and that he is liable to repay disability assistance he received during this time pursuant to Sections 18 and 19 of the *Employment and Assistance for Persons with Disabilities Act (EAPWDA)*. The ministry held that from December 2009 to May 2011 the appellant received weekly indemnity payments from an insurance company that he was required to report in accordance with Section 11 of the *EAPWDA* and Section 29 of the *Employment and Assistance for Persons with Disabilities Regulation (EAPWDR)*. The ministry determined that the payments received by the appellant were unearned income as defined in section 1 of the *EAPWDR* and must be deducted from his disability assistance pursuant to Section 24 of the *EAPWDR*.

### PART D – Relevant Legislation

*Employment and Assistance for Persons with Disabilities Act – EAPWDA – Sections 11, 18 and 19*

*Employment and Assistance for Persons with Disabilities Regulation – EAPWDR – Sections 1, 24, 29 and Schedules A and B*

## PART E – Summary of Facts

The evidence before the ministry at the reconsideration decision included:

- A copy of Consent to Disclosure of Information for a period of one year signed by both the appellant and his wife on October 6, 2009;
- A letter from the ministry to the appellant dated September 28, 2011 requesting information about the appellant's earnings;
- A fax transmittal dated October 5, 2011 from an insurance company to the ministry confirming payments made to the appellant for the period 2009 -2011;
- A letter from the ministry to the appellant dated October 7, 2011 requesting information;
- A letter from the ministry to the appellant dated November 16, 2011 requesting to meet with the appellant to discuss the overpayments;
- An overpayment chart for the period of February 2010 – July 2011;
- Request for reconsideration dated December 5, 2011.

The appeal hearing was initially scheduled for January 18, 2012 but adjourned several times at the appellant's request on January 16, 2012, January 11, 2013, May 29, 2013; June 13, 2013, July 23, 2013, August 2, 2013, and August 16, 2013. At today's hearing, the appellant again requested an adjournment stating that he has medical problems and submitted a letter signed by his physician on August 20, 2013 stating that the appellant was assessed and was/is unable to attend due to medical reasons from August 21 to August 24. Upon review, the panel notes that the physician has not provided information regarding reasons for his recommendation nor has he provided information about the appellant's inability to participate in a hearing. The ministry did not consent to adjourn the rescheduled hearing stating that several adjournments have caused unreasonable delay in this proceeding. The panel notes that this appeal has been adjourned several times at the request of the appellant since January 2012. Further, the appellant and his advocate were present at the hearing and, following further discussion, the panel noted that the appellant was able to communicate, understood the procedure, the issue under appeal, and was willing to submit evidence and was therefore able to participate in the appeal hearing.

In accordance with Section 85 of the Employment and Assistance Regulation (EAR) a hearing must be held within 15 business days after the appeal form is delivered. Given the number of previous adjournments that resulted in a lengthy delay, the attendance of both the appellant and his advocate at the today's hearing, the lack of the explanation from the physician regarding the appellant's inability to attend the hearing, the appellant's apparent ability to communicate and participate in the hearing, and the legislative requirement to provide a timely hearing, the panel did not grant the adjournment.

The appellant in his request for reconsideration stated that he does not dispute that he received monthly payments from an insurance company as a result of his inability to work following a motor vehicle accident on August 6, 2009. However, the appellant stated that he was not permitted to contact the ministry directly and his file was referred to a third party. The appellant submitted that he requested the third party to contact the ministry but he did not receive any directions or answers regarding to how and when to inform the ministry about the payments.

At the hearing, the appellant again submitted that he was not able to contact the ministry and was referred to the third party. The appellant said that he had a very difficult time communicating with the third party, most of his phone messages were not returned including his questions regarding his

income and that how he should report his income to the ministry. The appellant further said that the third party agency was located in another city, it is open only 3 days a week and it did not assist him nor answered his questions.

The appellant's advocate said that he has had difficulty contacting this agency as well and that he and the appellant did not have a copy of the appeal record. The appellant confirmed that he received information from the Tribunal; however, he said that he did not review them thoroughly. After confirming that the appellant received at least 7 letters from the tribunal advising him that he should bring the appeal record to the hearing, the appellant agreed to share the panel's appeal record and had an opportunity to review the documents therein.

The appellant further said that he accepts that he received assistance while receiving payments from the insurance company; he understands that he is liable to pay back the assistance he received during this period and has a desire to pay his debt to the ministry.

The ministry submitted that the appellant signed the application for assistance on September 17, 2009 and again with his wife on September 21, 2009. The appellant was aware that he must report any income he received to the ministry in order to continue receiving assistance. The ministry further stated that the appellant does not dispute that he received monthly payments from the insurance company and he did not make any effort to inform the ministry about such income.

## PART F – Reasons for Panel Decision

The issue in this appeal is whether the ministry reasonably determined that the appellant is required to repay the disability assistance he received from February 2010 to July 2011 for which he was not eligible pursuant to Section 18 and 19 of the *EAPWDA*. The ministry held that the appellant was receiving undeclared unearned income as defined in Section 1 of the *EAPWDR* which is not exempt or deductible under Schedule B and which should have been deducted from his disability assistance in accordance with Section 24 of the *EAPWDR*.

The relevant legislation applicable to the issue in this appeal is as follows:

### ***EAPWDA***

Pursuant to Section 11 (1) of the *EAPWDA*, For a family unit to be eligible for disability assistance, a recipient, in the manner and within the time specified by regulation, must

- (a) submit to the minister a report that
  - (i) is in the form prescribed by the minister, and
  - (ii) contains the prescribed information, and
- (b) notify the minister of any change in circumstances or information that
  - (i) may affect the eligibility of the family unit, and
  - (ii) was previously provided to the minister

(2) A report under subsection (1) (a) is deemed not to have been submitted unless the accuracy of the information provided in it is affirmed by the signature of each recipient.

Pursuant to Section 18 (1) of the *EAPWDA*, if disability assistance, hardship assistance or a supplement is provided to or for a family unit that is not eligible for it, recipients who are members of the family unit during the period for which the overpayment is provided are liable to repay to the government the amount or value of the overpayment provided for that period.

Section 19 of the *EAPWDA* states that

- (1) An amount that a person is liable to repay under this Act is a debt due to the government that may be
  - (a) recovered in a court that has jurisdiction, or
  - (b) deducted, in accordance with the regulations from any subsequent disability assistance, hardship assistance or supplement for which the person's family unit is eligible or from an amount payable to the person by the government under a prescribed enactment.
- (2) Subject to the regulations, the minister may enter into an agreement, or accept any right assigned, for the repayment of an amount referred to in subsection (1).
- (3) An agreement under subsection (2) may be entered into before or after the disability assistance, hardship assistance or supplement to which it relates is provided.
- (4) A person is jointly and separately liable for a debt referred to under subsection (1) that accrued in respect of a family unit while the person was a recipient in the family unit.

### ***EAPWDR***

Section 1 of the *EAPWDR* states *unearned income* means any income that is not earned income, and includes, without limitation, money or value received from (t) any other financial awards or compensation.

Pursuant to Section 24 of the *EAPWDR*, 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.

Section 29 of the EAPWDR states that for the purposes of section 11 (1) (a) [reporting obligations] of the Act, (a) the report must be submitted by the 5th day of the calendar month following the calendar month in which there is a change that is listed in paragraph (b), and (b) the information required is all of the following, as requested in the monthly report form prescribed under the Forms Regulation, B.C. Reg. 315/2005:

- (i) change in the family unit's assets;
- (ii) change in income received by the family unit and the source of that income;
- (iii) change in the employment and educational circumstances of recipients in the family unit;
- (iv) change in family unit membership or the marital status of a recipient.

**Schedule A of the EAPWDR**

**Disability Assistance Rates**

Under Schedule A of the EAPWDR the maximum amount of disability assistance before deduction of net income is as follows:

1 Subject to 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.

Monthly support allowance

- (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
  - (b) the amount calculated in accordance with subsections (2) to (5) for each dependent child in the family unit.

two applicant/recipients and no dependent children	One applicant/recipient is a person with disabilities	\$700.56
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Pursuant to Subsection 4 monthly shelter allowance:

(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: for 2 persons in a family unit is \$570.

**Schedule B of the EAPWDR**

Pursuant to the Schedule B of the EAPWDR; 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) the basic family care rate paid for foster homes;
  - (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;
  - (v) the basic child tax benefit;
  - (vi) a goods and services tax credit under the *Income Tax Act* (Canada);
  - (vii) a tax credit under section 8 [refundable sales tax credit], 8.1 [low income climate action tax credit] or 8.2

[BC harmonized sales tax credit] of the *Income Tax Act* (British Columbia);

(viii) individual redress payments granted by the government of Canada to a person of Japanese ancestry;

(ix) individual payments granted by the government of Canada under the Extraordinary Assistance Plan to a person infected by the human immunodeficiency virus;

(x) individual payments granted by the government of British Columbia to a person infected by the human immunodeficiency virus or to the surviving spouse or dependent children of that person;

(xi) individual payments granted by the government of Canada under the Extraordinary Assistance Plan to thalidomide victims;

(xii) money that is

(A) paid or payable to a person if the money is awarded to the person by an adjudicative panel in respect of claims of abuse at Jericho Hill School for the Deaf and drawn from a lump sum settlement paid by the government of British Columbia, or

(B) paid or payable to or for a person if the payment is in accordance with the settlement agreement approved by the Supreme Court in Action No. C980463, Vancouver Registry;

(xiii) the BC earned income benefit;

(xiv) money paid or payable under the 1986-1990 Hepatitis C Settlement Agreement made June 15, 1999, except money paid or payable under section 4.02 or 6.01 of Schedule A or of Schedule B of that agreement;

(xv) a rent subsidy provided by the provincial government, or by a council, board, society or governmental agency that administers rent subsidies from the provincial government;

(xvi) an income tax refund, or part of an income tax refund, that arises by reason of a payment made by the government of British Columbia to the government of Canada on behalf of a person who incurred a tax liability due to income received under the Forest Worker Transition Program;

(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) payments granted by the government of British Columbia as Interim Early Intensive Intervention Funding;

(xxii) payments granted by the government of British Columbia under section 8 of the *Child, Family and Community Service Act* [agreement with child's kin and others];

(xxiii) payments granted by the government of British Columbia under the Ministry of Children and Family Development's At Home Program;

(xxiv) payments granted by the government of British Columbia under the Ministry of Children and Family Development's Extended Autism Intervention Program;

(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 to a person other than a parent of that 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) that portion of the maintenance paid for and passed on to a person with disabilities or a person aged 19 or older under a maintenance order or agreement filed with a court;

(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 by the Fair PharmaCare program of the Ministry of Health Services;

(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,

(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 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.
- Exemption — earned income

**3** (1) The amount of earned income calculated under subsection (2) is exempt for a family unit if

- (a) a recipient in the family unit has been receiving continuously for the 3 calendar months immediately preceding the calendar month for which the exemption is claimed
- (i) disability assistance under the Act,
  - (ii) income assistance under the *Employment and Assistance Act*,
  - (iii) disability assistance or income assistance under a former Act,
  - (iv) a youth allowance under the *BC Benefits (Youth Works) Act*, or
  - (v) any combination of the assistance and allowances referred to in subparagraphs (i) to (iv).
- (b) Repealed. [B.C. Reg. 369/2002.]
- (2) The exempt amount for a family unit that qualifies under subsection (1),

(a) in the case of a family unit that is composed of one recipient who is designated as a person with disabilities, is calculated as the lesser of

(i) \$500, and

(ii) the family unit's total earned income in the calendar month of calculation, or

(b) in the case of a family unit that is composed of two recipients, both of whom are designated as persons with disabilities, is calculated as the lesser of

(i) \$750, and

(ii) the family unit's total earned income in the calendar month of calculation.

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.

Section 7 states 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 (2) [*assets held in trust for person with disabilities*] of this regulation

(i) the payment is applied exclusively to or used exclusively for disability – related costs as defined in section 12 (1) of this regulation, and

(ii) the amount of the exemption under subparagraph (i) for all payments that, during a calendar year, are applied exclusively for the costs referred to in paragraph (d) of the definition does not exceed \$5,484.

The appellant argues that he made several efforts to avoid the potential overpayment issues. However, he was not allowed to contact the ministry and the third party agency was not helpful and did not answer his questions. If he knew how he should report his income from the insurance company he would have not had such a huge amount of debt.

The ministry said that with every paycheque clients receive a card that advises them to complete and report their income. The ministry said the appellant and his wife failed to provide information regarding their income; therefore, based on the evidence and pursuant to the legislation the ministry's decision was reasonable.

The panel notes that pursuant to Section 1(1) of the EAPWDR unearned income means any income that is not earned income and includes, without limitation, any other financial awards or compensation. The panel finds from December 2009 to May 2011 the appellant received weekly indemnity payments from the insurance company that is considered to be unearned income and must be deducted from his disability assistance pursuant to Section 24 of the EAPWDR.

Section 18(1) of the *EAPWDA* states that if the family unit is not eligible for the disability assistance, the recipients is liable to repay to the government the amount or value of the overpayment. The panel notes that the appellant does not dispute the fact that he and his wife received disability assistance while he was receiving payments from the insurance company from December 2009 through May 2011. The appellant said that he would like to payback his debt to the government. While the panel acknowledges the appellant's assertion that he did not receive support and



information from the third party agency, the panel finds that the appellant, by signing the application for disability assistance agreed to report his income to the ministry as is required by Section 11 of the *EAPWDA* and Section 29 of the *EAPWDR*. The panel further finds that the appellant received disability assistance while he was receiving weekly indemnity payments from the insurance company from December 2009 to May 2011 and that those undeclared payments were not deducted from his monthly assistance. Therefore, he received disability assistance he was ineligible to receive.

Accordingly, the panel finds that the ministry's decision that the appellant was ineligible for disability assistance from December 2009 to May 2011 and is liable to repay to the government the amount or value of the overpayment provided for that period pursuant to Section 18 (1) of the *EAPWDA* was reasonably supported by the evidence and is a reasonable application of the legislation in the appellant's circumstances.

In conclusion, the panel confirms the Ministry's decision.