

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry's reconsideration decision dated March 12, 2019 which held that the long-term disability benefits the appellant receives from a group insurance provider are considered non-exempt, unearned income and are to be deducted from her family unit's disability assistance, as per the Employment and Assistance for Persons with Disabilities Act (EAPWDA), Sections 1, 3, and 5 as well as the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Sections 1, 9 and 24 and Schedules A and B.

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons with Disabilities Act (EAPWDA), Sections 1, 3, and 5
Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Sections 1, 9 and 24
Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Schedules A and B.

PART E – SUMMARY OF FACTS

The appellant:

- is under 65 years of age
- was the family's sole wage earner
- has one child
- is a parent in a two-parent family where her spouse is a person with disabilities (PWD)
- is now disabled but does not receive PWD benefits from the ministry
- receives \$1,943.50 monthly disability benefits from a private, long-term disability (LTD) insurance provider

Under current legislation, the monthly rate of disability assistance for her family unit is \$1,021.56 support and \$660.00. In November and December of 2018 and January of 2019, the appellant declared \$1,943.50 in LTD benefits from her private insurer. On January 22, 2019 the ministry advised her that her LTD benefits were considered unearned income and not exempt. Consequently, the ministry deducted the LTD benefits from her monthly family income (\$1943.50 - \$1681.56 = \$261.94) which resulted in an excess of income and rendered her ineligible for January and February 2019 assistance and her file was closed on February 1, 2019.

In her written submissions, the appellant's advocate asserted that the ministry's actions may have created a discriminatory act under the BC Human Rights Code. This may occur when:

- The complainant has a personal characteristic protected under the code (example: marital status or disability)
- The respondent's conduct has a negative effect on the complainant regarding a service (example: significantly reducing a family's income)
- The ground of discrimination is a factor in the negative effect (example: financial stress and exacerbation of disability symptoms)

The appellant cited a case from 2016 wherein the ministry's claw back policies were found to be discriminatory in a situation where a woman lost her maternity leave employment insurance due to her husband receiving disability assistance and in response the policy was revised and maternity employment insurance was reclassified as exempt income. The appellant's position is that her own situation is mirrored in the case noted and she believes that the ministry's policies on unearned income are discriminatory and that their protected marital and disability characteristics have been compromised. She believes that policies that deny someone of their access to disability insurance, if their spouse is already disabled, and that people should be able to confidently purchase disability insurance (note: ironically, this is an allowable deduction) and have every right to collect LTD benefits, despite who they are married to and despite if the spouse is receiving employment assistance. They have requested that the ministry reconsider their policies and reclassify disability insurance as exempt income.

At the hearing, the appellant reiterated their position that a discriminatory act had occurred when the ministry declared her LTD benefits as unearned income. She provided a copy of the CBC News article that detailed the case from 2016 at the hearing and other supporting documents. The ministry objected to these documents being allowed into evidence and the panel determined that they would not be allowed into the record during the current hearing.

At the hearing the appellant also introduced the argument that Schedule B section 1(xxix) of the EAPWDR's Deduction and Exemption rules applies to her situation: "(xxix) payments made by a health authority or a contractor of a health authority to a recipient, who is a *"person with a mental health 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 a mental health or addictions rehabilitation program." She explained that her private insurer has made it mandatory that she participate in a mental health rehabilitation program if she is to continue receiving benefits. She states that her private insurer should be considered a private contractor. The ministry and panel objected to allowing this new argument into the record at the hearing.

The ministry relied on the reconsideration decision at the hearing, citing that there are no exemptions for insurance benefits, except where insurance is paid as compensation for a destroyed asset (EAPWDR section 1-Definitions 1(d)). The appellant is a dependent on her spouse's file and her income is the income of the family unit; therefore

her LTD benefits are deducted from the family unit's disability assistance under Schedule A and B of the EAPWDR. The ministry representative counseled the appellant that she could re-apply for benefits at any time, now that her file has been closed.

Admissibility of submissions

PART F – REASONS FOR PANEL DECISION

The decision under appeal is the Ministry's reconsideration decision dated March 12, 2019 which held that the long-term disability benefits the appellant receives from a group insurance provider are considered non-exempt, unearned income and are to be deducted from her family unit's disability assistance, as per the Employment and Assistance for Persons with Disabilities Act (EAPWDA), Sections 1, 3, and 5 as well as the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Sections 1, 9 and 24 and Schedules A and B.

Applicable Legislation:

EAPWD Act

Part 1. Introductory Provisions

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:

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.

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.

EAPWD Regulations:

Definitions

1. "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;

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 (section 24 (a))

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

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

Section 2(6)

Two applicants / recipients and one or more dependent children

One applicant / recipient is a person with disabilities, the other is not a person with disabilities and is under 65 years of age: \$1021.56.

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
3	3 persons	\$660

Schedule B, sections 1, 6 and 7:

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;

(REP) Apr 01/17

(ii) Repealed. [B.C. Reg. 96/2017, App. 2]

(REP) Apr 01/10

(iii) Repealed. [B.C. Reg. 48/2010, Sch. 1]

(iv) a family bonus, except the portion treated as unearned income under section 10 (1) of this Schedule;

(ADD) Jul 01/17

(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);

(AM) Jul 01/10

(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;

(REP) Oct 01/12

(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;

(REP) May 01/12

(xxi) Repealed.

(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) Repealed. & nbsp [B.C. Reg. 85/2012, Sch. 2]

(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;

(REP) Sep 01/15

(xxviii) Repealed.

(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;

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);

(REP) Jul 01/10

(xxxvi) Repealed. [B.C. Reg. 180/2010]

(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;

(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. (01) 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.

Conclusion:

In her submissions and during the hearing, the appellant provided testimony that having her family income reduced by the amount of her LTD payments has created significant hardship and stress, thus hampering her from rehabilitating herself through her mental disability and caring for her child and disabled spouse. She agreed that under the current EAPWDR legislation (Section 1(d)), her LTD benefits are considered unearned income and must therefore be deducted from her family's monthly benefits. She stated that the ministry is preventing her and her disabled husband from accessing government services and benefits due to their marital status and her own mental health disability. The BC Human Rights Code identifies marital status and disabilities as being protected personal characteristics. The appellant believes that the ministry should re-classify LTD benefits as exempt to rectify the compromise of their human rights.

At the hearing the appellant also introduced the argument that Schedule B section 1(xxix) of the EAPWDR's Deduction and Exemption rules applies to her situation: "*payments made by a health authority or a contractor of a health authority to a recipient, who is a "person with a mental health 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 a mental health or addictions rehabilitation program*". The ministry objected to allowing this argument to be factored into the panel's considerations as it was new information that the ministry did not have before them at the time of reconsideration. The panel recognized the ministry's position and accepted that the argument could not be factored into the current considerations.

The ministry relied upon the reconsideration decision during the hearing, explaining the current legislation pertaining to this appeal and answering the appellant's questions.

The panel finds that the ministry's reconsideration decision of March 12, 2019 which held that the appellant's LTD benefits were considered unearned income and were not exempt as a deduction from her family unit's income was a reasonable application of the legislation (Employment and Assistance for Persons with Disabilities Act (EAPWDA), Sections 1, 3, and 5 as well as the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Sections 1, 9 and 24 and Schedules A and B) in the circumstances of the appellant.

The panel also found that the appellant's claim that her family's human rights may have been compromised by the ministry's decision may have merit, however this appeal process was not the correct venue to resolve that issue.

The panel confirms the ministry's decision. The appellant is unsuccessful in her 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

Jan Lingford

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2019/04/18

PRINT NAME

Bill Haire

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019/04/18

PRINT NAME

William Reid

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019/04/18