

APPEAL NUMBER

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Social Innovation (the ministry) reconsideration decision of April 24, 2019 which determined that, in accordance with section 9 of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), the appellant is ineligible for March 2019 disability assistance as her net income of \$1765 is greater than her \$1183.42 disability assistance as determined under Schedule A.

PART D – RELEVANT LEGISLATION

EAPWDR sections 1, 9 and 24.

Sections 1, 2 and 4 of Schedule A.

Schedule B.

PART E – SUMMARY OF FACTS

The appellant is a sole recipient of disability assistance.

On February 21, 2019 the ministry processed the appellant's monthly report and determined she was ineligible for March assistance due to the Employment Insurance (EI) income she received in January. She reported receiving \$1765 in EI benefits in January and noted it was EI for the past 13 weeks.

Her bank statement displays a "Deposit Canada" of \$1765 on January 31, 2019.

On March 25, 2019 the appellant submitted a request for reconsideration regarding the denial of March assistance. The ministry verbally confirmed with her that she requires an extension as she intends to submit additional information.

On April 23, 2019 the ministry reviewed the EI/MHSD Common Claimant Report received by the ministry on March 18, 2019, which displayed 11 cheques, all dated January 29, totalling \$1765. Specifically, this chart showed one EI cheque in the amount of \$ 35 for November 11, 2018, and 10 EI cheques in the amount of \$173 each for November 18 and 25, December 2, 9, 16, 23 and 30, and January 6, 13 and 20.

On April 23, 2019 the ministry contacted the appellant who advised the ministry that she was faxing in the additional information this date.

The ministry did not receive additional information. On April 24, 2019 it proceeded with the reconsideration decision.

In her Notice of Appeal dated May 5, 2019 the appellant wrote: "1) The sum of my disability assistance and EI is below the poverty line and everyone including myself has the right to not suffer in poverty. 2) I have many medical expenses that are not covered by anyone but my-self. 3) I sent my reasons for appeal [sic] at 3:30pm April 23, 2019 but you don't check your faxes."

The ministry stood by its reconsideration decision.

The panel admits the appellant's statements in her Notice of Appeal as being in support of the information and record that was before the ministry at the time of reconsideration as this information relates to the appellant's financial circumstances.

PART F – REASONS FOR PANEL DECISION

The issue under appeal is whether the ministry's determination that, in accordance with section 9 of the EAPWDR, the appellant is ineligible for March 2019 disability assistance as her net income of \$1765 is greater than her \$1183.42 disability assistance determined under Schedule A.

EAPWDR**1 Definitions**

(1) In this regulation: "**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; ...

9 Limits on income

(1) For the purposes of the Act and this regulation, "**income**", in relation to a family unit, includes an amount garnished, attached, seized, deducted or set off from the income of an applicant, a recipient or a dependant.

(2) A family unit is not eligible for disability assistance if the net income of the family unit determined under Schedule B equals or exceeds the amount of disability assistance determined under Schedule A for a family unit matching that family unit.

Amount of disability assistance

24 Disability assistance may be provided to or for a family unit, for a calendar month, in an amount that is not more than

(a) the amount determined under Schedule A, minus

(b) the family unit's net income determined under Schedule B.

Schedule A**Disability Assistance Rates****Maximum amount of disability assistance before deduction of net income**

1 (1) Subject to this section and sections 3 and 6 to 9 of this Schedule, the amount of disability assistance referred to in section 24 (a) [*amount of disability assistance*] of this regulation is the sum of

(a) the monthly support allowance under section 2 of this Schedule for a family unit matching the family unit of the applicant or recipient, plus

(b) the shelter allowance calculated under sections 4 and 5 of this Schedule.

Monthly support allowance

2 (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, ...

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	808.42

Monthly shelter allowance

4 (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

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);

- (xlviii) money or other value received, by will or as the result of intestacy, from the estate of a deceased person;
- (xlix) gifts;
- (i) 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;

(ix) money that is paid or payable under the Memorial Grant Program for First Responders established under the authority of the *Department of Public Safety and Emergency Preparedness Act* (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.

2 Deductions from earned income

3 Annual exemptions-qualifying income

(1) In this section:

"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;

4 Small business exemption

(2) Earned income of a recipient of disability assistance is exempted from the total income of the recipient's family unit if

(a) the recipient is participating in a self-employment program, and

(b) the earned income is derived from operating a small business under the self-employment program in which the recipient is participating and

(i) is used for permitted operating expenses of the small business,

or

(ii) is deposited in a separate account, ...

5 Withdrawals and expenditures from reserve account

The amount of any expenditure or withdrawal out of a separate account described in section 4 (2)

(b) (ii) of this Schedule, is earned income for all purposes of this regulation, unless

(a) the expenditure or withdrawal is for the payment of permitted

operating expenses of the small business referred to in section 4 (2) of this Schedule, and

(b) in the case of a withdrawal, the amount withdrawn is used within one month after the date of withdrawal to pay permitted operating expenses of the small business referred to in section 4 (2) (b) (i) of this Schedule.

6 Deductions from unearned income

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.

7 Exemptions – unearned income

(1) The following unearned income is exempt:

...

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

8 Minister's discretion to exempt education related unearned income

(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.

9 Application of deductions and exemptions

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

- (a) the date the income is payable;
- (b) the period for which the income is payable;
- (c) the date the income is reported to the minister;
- (d) the date the minister receives notice of the income.

10 Portion of backdated family bonus or Canada child benefit treated as unearned income

11 Backdated CPP treated as unearned income

Appellant's position

The appellant argues that her combined disability assistance and EI are below the poverty line and everyone has the right to not suffer poverty. She has many medical expenses that are not covered and she has to pay for them out of her own pocket.

Ministry position:

As per the EAPWD Act and Regulation, eligibility for disability assistance is determined by deducting the net income as determined in Schedule B from the disability assistance rate for the family unit as determined by Schedule A. A family unit is not eligible for disability assistance if their net income exceeds the assistance rate for their family unit.

As per Schedule A, a sole recipient with no dependents is eligible for a maximum of \$1183.42 for disability assistance for support and shelter.

Income listed in section 1(a) of Schedule B is exempt;

Any amount garnished, attached, seized, deducted or set off from income is considered to be income, except the deductions permitted under section 2 and 6;

All earned income must be included, except the deductions permitted under section 2 and any earned income exempted under sections 3 and 4;

All unearned income must be included, except the deductions permitted under section 6 and any income exempted under sections 3, 7 and 8.

As per section 9, deductions and exemptions apply only in the calendar month in which the income is actually received, despite the date the income is payable, the period in which the income is payable, the date the income is reported to the ministry, and the date the ministry receives notice of the income.

"Unearned income" includes money or value received from EI.

Recipients of disability assistance are required to report changes in income and the source of that income by the 5th of the month following the calendar month that it is received.

Upon review of the information and applicable legislation it is the ministry's decision that the \$1765 EI income she received in January is not exempt and must be fully deducted from the March assistance. As it is in excess of the appellant's assistance rate she is ineligible for disability assistance for March.

Eligibility for a family unit is determined by deducting the net income as determined in Schedule B from the disability assistance rate as determined in Schedule A. As per Schedule A the appellant's disability rate for support and shelter is \$1183.42. As per Schedule B, her net income for January is \$1765. Upon review of the applicable legislation the ministry has determined that all of the EI she received in January must be included.

The appellant's EI does not qualify for an exemption in accordance with sections 6 and 7 of Schedule B for the following reasons:

Section 6 allows for deductions for income tax deducted at source from EI benefits. The appellant's EI did not include a deduction for income tax; therefore section 6 is not applicable. The amount of EI received and reported was after any applicable deductions and confirmed by her bank statement. The ministry reviewed the Common Claimant Report to confirm the type of benefits, amount received, and if income tax was deducted. The amount provided did not include a deduction for income tax.

Section 7 is not applicable as the appellant is in receipt of regular EI which is not exempt. The ministry noted that section 7(1)(g) provides an exemption for EI paid under section 22, 23 and 23.2 of the Employment and Insurance Act. These are special benefits received as maternity benefits, parental benefits, and special benefits for parents of critically ill children.

- As per the Common Claimant Report from EI the appellant is in receipt of regular EI. Her current EI claim commenced November 4, 2018. To-date the appellant has received 15 weeks of Regular EI Benefits. Her benefit rate is \$173 per week. In January the appellant received \$1765 in EI benefits. January 29, 2019 EI paid her first EI cheque, covering 11 weeks of EI benefits, for the weeks starting November 11 through January 20. She did not receive benefits for the week starting November 4. In February the appellant received \$692 in EI benefits covering the next 4 weeks (the weeks starting January 27, February 3, February 10, and February 17).

There is no exemption within section 7 for regular EI benefits.
- The appellant's EI was not for maternity leave, parental leave, or special benefits for a parent of a critically ill child.

The following sections have also been reviewed however are not applicable to the appellant's income:

- Section 2: applies to earned income
- Section 3: applies to annual exemption on qualifying income received as earned income and unearned income received as temporary disability benefits from WorksafeBC.
- Section 8: applies to education related unearned income received as student financial assistance.

As per section 9, the deductions apply only in the calendar month in which the income is actually received, despite the period for which the income is payable. As such, the \$1765 the appellant received in January for 11 weeks of EI is all considered January income. As per the 2 months reporting cycle January income is reported in February and affects March assistance.

Panel Decision

While the appellant argues that she should not have to live in poverty the panel finds that based on the evidence the ministry reasonably determined that in March 2019 the appellant was not eligible for disability assistance in accordance with section 9 of the EAPWDR as her net income of \$1765 exceeded the amount of disability assistance determined under Schedule A (\$808.42 support allowance plus \$375 shelter allowance equal \$1183.42 disability assistance).

The panel finds the ministry reasonably determined that EI is defined as unearned income in accordance with section 1 of the EAPWDR.

The panel finds that as EI is not among the exemptions listed in section 1(a) of Schedule B it cannot be exempted from the appellant's net income. While the ministry states that "income listed in section 1(a) is exempt" the panel notes that ministry failed to provide a reason why the appellant's EI is not exempted pursuant section 1(a); it is not clear whether the ministry implies that EI is not among the deductions and exemptions listed in section 1(a) and therefore does not qualify as an exemption.

The panel further finds that the ministry reasonably determined that the appellant's EI benefits do not qualify as a deduction or exemption under sections 6 and 7 as there is no evidence that income tax was deducted at source from her EI (section 6(a)), and no evidence that her EI benefits were paid under section 22, 23 or 23.2 of the Employment Insurance Act for maternity leave, parental leave, or special benefits for a parent of a critically ill child (section 7(g)).

While the ministry stated that it reviewed the following sections of Schedule B which are not applicable -

- o "Section 2: applies to earned income
- o Section 3: applies to annual exemption on qualifying income received as earned income and unearned income received as temporary disability benefits from WorkSafeBC.
- o Section 8: applies to education related unearned income received as student financial assistance" -

it is not clear why the ministry omitted to review sections 4, 5, 10 and 11 which are also not applicable.

As a matter of fact, the ministry states: "Upon review of Schedule B (which means all sections of Schedule B), the EI you receive does not qualify for an exemption." The panel notes that the ministry failed to provide reasons why these Schedule B sections do not apply.

The panel finds that sections 2 (Deductions from Earned Income), 3 (Annual Exemptions - (b)unearned income that is compensation paid under section 29 or 30 of the Workers Compensation Act), 4 (Small Business exemption), 5 (Withdrawals and expenditures from reserve account), 8 (Minister's discretion to exempt education related unearned income), 10 (Portion of backdated family bonus or Canada child benefit treated as unearned income) and 11 (Backdated CPP treated as unearned income) are not applicable in the appellant's circumstances as there is no evidence that the appellant's EI benefits fall into any of these categories.

Consequently, the panel finds the ministry was reasonable when it included all of the appellant's EI benefits in calculating her net income for disability assistance eligibility in accordance with section 24 of the EAPWDR as there is no evidence that the appellant's EI benefits are exempt under any section of Schedule B.

Conclusion

After considering all the evidence and the applicable legislation the panel finds that the ministry's reconsideration decision which held that the appellant was not eligible for March 2019 disability assistance was reasonably supported by the evidence. The panel confirms the decision and the appellant is not successful on appeal.

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

PARTH-SIGNATURES	
PRINT NAME Inge Morrissey	
SIGNATURE OF CHAIR	DATE (YEAR/MONTH/DAY) 2019/06/06

PRINT NAME Jim Jones	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2019/06/06

PRINT NAME Margarita Papenbrock	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2019/06/07