

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry's reconsideration decision dated March 18, 2019 which held that the appellant was not eligible for a Persons With Disabilities designation and/or Medical Services Only (MSO) benefits, as per the Employment and Assistance for Persons with Disabilities Act (EAPWDA), Section 1, as well as the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Sections 9, 24 and 61.1, the Employment Assistance Act (EAA) Sections 1, 2 and 4, the Employment Assistance Regulation (EAR) Sections 1, 10, 28, 66.1, 67 and 76 and Schedules A Section 1, 2 and 4, Schedule B Section 1, 6, 7, and 8 and Schedule C Sections 3, 3.2, and 3.3.

Specifically, the ministry found that the appellant did not meet the income and asset tests for PWD designation or MSO eligibility because he collects \$910.95/month from CPP and \$526.16/month from an ICBC settlement, totalling \$1437.11 which exceeds the monthly PWD benefit amount of \$1133.42 by \$303.69. He also has monies in investments and savings accounts.

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons with Disabilities Act (EAPWDA), Section 1
Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Sections 9, 24 and 61.1
Employment Assistance Act (EAA) Sections 1, 2 and 4
Employment Assistance Regulation (EAR) Sections 1, 10, 28, 66.1, 67 and 76
Schedules A Section 1, 2 and 4
Schedule B Section 1, 6, 7, and 8
Schedule C Sections 3, 3.2, and 3.3

PART E – SUMMARY OF FACTS

The following key dates and information was noted:

- September 15, 2018: the ministry denied the request
- September 18, 2018: the ministry received the Request for Reconsideration
- March 18, 2019: the ministry completed the Request for Reconsideration

At the hearing the appellant and his representative stated that:

- He was injured in 2006 in a car accident that was his fault, as a result he has a structured settlement from ICBC
- He has a traumatic brain injury which has left him with issues including memory loss
- He uses an electric wheelchair as his injuries have left him unable to walk unaided
- It is dangerous to cook for himself (he has set things on fire because he forgets about them cooking) so he pays the local mission to cook for him every day and he utilizes the food bank for snacks
- He relies on his mother and friends to help him with his daily living needs such as housekeeping
- He uses the bus for transportation
- He is unable to pay child support
- He is unable to afford some of the medications prescribed to him, so he goes without
- His wheelchair is wearing out and he requires either extensive repairs to the one he has or a new one. He cannot afford to pay for this
- His wheelchair is his "lifeline" to be able to eat and make social connections; without it, he would starve

Both the panel and the ministry acknowledged the 19 page information package the appellant's representative submitted for this hearing.

At the hearing the ministry relied upon the Reconsideration Decision. The ministry has determined that the appellant is not eligible for benefits because his net income exceeds the ministry's assistance rates. They stated that a life-threatening need had not been established at the time of reconsideration. They also stated that there was no proof that his investments were locked in.

PART F – REASONS FOR PANEL DECISION

The decision under appeal is the Ministry's reconsideration decision dated March 18, 2019 which held that the appellant was not eligible for a Persons With Disabilities designation and/or Medical Services Only (MSO) benefits, as per the Employment and Assistance for Persons with Disabilities Act (EAPWDA), Section 1, as well as the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Sections 9, 24 and 61.1, the Employment Assistance Act (EAA) Sections 1, 2 and 4, the Employment Assistance Regulation (EAR) Sections 1, 10, 28, 66.1, 67 and 76 and Schedules A Section 1, 2 and 4, Schedule B Section 1, 6, 7, and 8 and Schedule C Sections 3, 3.2, and 3.3.

Applicable Legislation:

EAPWDA: Persons with disabilities

Interpretation

1 (1) In this Act:

"disability assistance" means an amount for shelter and support provided under section 5
[disability assistance and supplements];

EAPWR:

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.

Access to medical services only

61.1 (1) Subject to subsection (4), a person is a main continued person if

- (a) the person was
 - (i) part of a family unit identified in subsection (3) on the date the family unit ceased to be eligible for disability assistance, and
 - (ii) a person with disabilities on that date,
- (b) the person has not, since that date, been part of a family unit in receipt of income assistance, hardship assistance or disability assistance, and
- (c) in the case that the family unit referred to in paragraph (a) (i) was a family unit identified in subsection (3) (g), the agreement referred to in subsection (3) (g) is in force.

(2) Subject to subsection (6), a person is a dependent continued person if

- (a) the person was a dependant of a main continued person under subsection (1) on the main continued person's continuation date and is currently a dependant of the main continued person, or

(b) the person is a dependant of a person who is a main continued person under subsection (1) as a result of having been part of a family unit identified in subsection (3) (b), (c), (d), (e), (f) or (g).

(3) A family unit is identified for the purposes of subsection (1) (a) if the family unit, while in receipt of disability assistance, ceases to be eligible for disability assistance

(a) on a date the family unit includes a person aged 65 or older,

(b) as a result of a person in the family unit receiving an award of compensation under the *Criminal Injury Compensation Act* or an award of benefits under the *Crime Victim Assistance Act*,

(c) as a result of a person in the family unit receiving a payment under the settlement agreement approved by the Supreme Court in Action No. S50808, Kelowna Registry,

(d) as a result of a person in the family unit receiving employment income,

(e) as a result of a person in the family unit receiving a pension or other payment under the *Canada Pension Plan* (Canada),

(f) as a result of a person in the family unit receiving money or value that is maintenance under a maintenance order or a maintenance agreement or other agreement, or

(g) as a result of a person in the family unit receiving financial assistance provided through an agreement under section 12.3 of the *Child, Family and Community Service Act*.

(4) Subject to subsection (5), a person's status as a main continued person under subsection (1) is suspended for a calendar month if

(a) the person fails to meet an applicable income test under subsection (7) in the calendar month and in each of the immediately preceding 12 calendar months, and

(b) the person's continuation date is before those immediately preceding 12 calendar months.

(5) Subsection (4) does not apply to a person who is a main continued person under subsection (1) as a result of having been part of a family unit described in subsection (3) (c) or (g).

(6) A person's status as a dependent continued person under subsection (2) of a main continued person under subsection (1) is suspended if the main continued person's status is suspended under subsection (4).

(7) For the purposes of subsection (4),

(a) a person who is a main continued person under subsection (1) as a result of having been part of a family unit identified in subsection (3) (a), (b), (d) or (f) meets the income test for a calendar month if,

(i) in the case that the main continued person is aged 65 or older or the main continued person's family unit includes a person aged 65 or older, the main continued person or another person in the family unit is in receipt of a qualifying federal benefit, and

(ii) in the case that neither the main continued person nor another person in the main continued person's family unit is aged 65 or older, the main continued person or another person in the family unit is eligible to receive premium assistance under the *Medicare Protection Act*, and

(b) a person who is a main continued person under subsection (1) as a result of having been part of a family unit identified in subsection (3) (e) meets the income test for a calendar month if,

(i) in the case that the main continued person is aged 65 or older or the main continued person's family unit includes a person aged 65 or older, the main continued person or another person in the family unit is in receipt of a qualifying federal benefit, and

(ii) in the case that neither the main continued person nor another person in the main continued person's family unit is aged 65 or older, the main continued person or another person in the family unit receives a pension or other payment under the *Canada Pension Plan* (Canada).

(8) Despite this Division, a person is not eligible, as a main continued person under subsection (1), to receive a health supplement under this Division for the calendar month in which the person's continuation date occurs.

(9) Despite this Division, a person is not eligible, as a dependent continued person under subsection (2) of a main continued person under subsection (1), to receive a health supplement under this Division for a calendar month in which the main continued person's continuation date occurs.

EAA:

Interpretation

1 (1) In this Act:

"disability assistance" means an amount for shelter and support provided under section 5 *[disability assistance and supplements]*;

Eligibility of family unit

2 For the purposes of this Act, a family unit is eligible, in relation to income assistance, hardship assistance or a supplement, if

(a) each person in the family unit on whose account the income 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 income assistance, hardship assistance or supplement under this Act.

Income assistance and supplements

4 Subject to the regulations, the minister may provide income assistance or a supplement to or for a family unit that is eligible for it.

EAR:

Definitions

"1 (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:

- (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 for Persons with Disabilities 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;

Limits on income

10 (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 income assistance if the net income of the family unit determined under Schedule B equals or exceeds the amount of income assistance determined under Schedule A for a family unit matching that family unit.

Amount of income assistance

28 Income 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.

Division 5 — Health Supplements

Definitions

66.1 In this Division:

"continuation date",

- (a) in relation to a person who is a main continued person under section 66.3 (1) [*access to medical services only*] or 66.4 (1) [*access to transitional health services*] as a result of having been part of a family unit on the date the family unit ceased to be eligible for income assistance, means that date, and
- (b) in relation to a dependent continued person under section 66.3 (2) or 66.4 (2) of a main continued person, means the continuation date of the main continued person;

"continued person" means

- (a) a main continued person under section 66.3 (1) or 66.4 (1), or
- (b) a dependent continued person under section 66.3 (2) or 66.4 (2);

"nutrition-related supplement" means any of the following supplements:

- (a) a supplement under section 73 [*diet supplement*];
- (b) a supplement under section 74 [*nutritional supplement — short-term*];
- (c) a supplement under section 74.01 [*tube feed nutritional supplement*];
- (d) a supplement under section 2 (3) of Schedule C that is related to nutrition;

"qualifying federal benefit" means a supplement under Part II or an allowance under Part III of the *Old Age Security Act* (Canada);

"qualifying person" means a person who

- (a) has persistent multiple barriers to employment, or
- (b) is a recipient of income assistance who is described in section 8 (1) [*people receiving special care*] of Schedule A.

General health supplements

67 (1) The minister may provide any health supplement set out in section 2 [*general health supplements*] or 3 [*medical equipment and devices*] of Schedule C to or for

- (a) a family unit in receipt of income assistance, if
 - (i) the family unit includes a qualifying person, or
 - (ii) the health supplement is provided to or for a person in the family unit who is under 19 years of age,
- (b) a family unit in receipt of hardship assistance, if the health supplement is provided to or for a person in the family unit who is under 19 years of age, or

(c) a family unit, if the health supplement is provided to or for a person in the family unit who

(i) is a continued person under section 66.3 (1) or (2) [*access to medical services only*], or

(ii) is a continued person under section 66.4 (1) [*access to transitional health services*] and was, on the person's continuation date, a qualifying person or part of a family unit that then included a qualifying person, or

(iii) is a continued person under section 66.4 (2).

(1.1) and (1.2) Repealed. [B.C. Reg. 145/2015, Sch. 1, s. 8 (b).]

(2) Subject to subsection (3), the minister may provide any health supplement set out in section 2 [*general health supplements*] or 3 [*medical equipment and devices*] of Schedule C to or for a family unit if the health supplement is provided to or for a recipient in the family unit who

(a) has received income assistance under the *BC Benefits (Income Assistance) Act* or the Act continuously from March 31, 1997 and on March 30, 1997 was eligible under section 37 (1) (a) of the BC Benefits (Income Assistance) Regulations, B.C. Reg. 272/96, as it read on March 30, 1997, for the health care services and benefits referred to in that provision, or

(b) is a dependant of a recipient referred to in paragraph (a).

(3) Subsection (2) applies only until the earlier of the following dates:

(a) the date the recipient ceases to receive income assistance;

(b) the first day of the calendar month after the minister makes a determination that the recipient, or any dependant of the recipient other than a dependent child, is capable of accepting employment.

Health supplement for persons facing direct and imminent life threatening health need

76 The minister may provide to a family unit any health supplement set out in sections 2 (1) (a) and (f) [*general health supplements*] and 3 [*medical equipment and devices*] of Schedule C, if the health supplement is provided to or for a person in the family unit who is otherwise not eligible for the health supplement under this regulation, and if the minister is satisfied that

(a) the person faces a direct and imminent life threatening need and there are no resources available to the person's family unit with which to meet that need,

(b) the health supplement is necessary to meet that need,

(c) a person in the family unit is eligible to receive premium assistance under the *Medicare Protection Act*, and

(d) the requirements specified in the following provisions of Schedule C, as applicable, are met:

(i) paragraph (a) or (f) of section (2) (1);

(ii) sections 3 to 3.12, other than paragraph (a) of section 3 (1).

Schedule A:

Maximum amount of income assistance before deduction of net income

1 (1) Subject to this section and sections 3 and 6 to 10 of this Schedule, the amount of income assistance referred to in section 28 (a) [*amount of income 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) but subject to subsection (3), income 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*.

(3) If

- (a) an application is made by a parenting dependent child under section 5 (4) *[application by parent who is dependent youth]* of this regulation,
- (b) the family unit is found eligible for income assistance, and
- (c) support is provided for the parenting dependent child or his or her dependent child, or for both, under section 8 (2) or 93 (1) (g) (ii) of the *Child, Family and Community Service Act*, the restriction in subsection (2) does not apply, but the amount of income assistance that may otherwise be provided to the family unit is to be reduced by the amount of that support.

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 a warrant in section 15.2 *[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.

Item	Column 1 Family unit composition	Column 2 Age or status of applicant or recipient	Column 3 Amount of support
1	Sole applicant/recipient and no dependent children	Applicant/recipient is under 65 years of age	\$385.00

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 a warrant in section 15.2 *[consequences in relation to outstanding arrest warrants]* of the Act.

(2) The monthly shelter allowance for a family unit to which section 15.2 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:

Deduction and exemption rules

1 When calculating the net income of a family unit for the purposes of section 28 (b) [*amount of income 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. 1, s. 2 (a).]
- (iii) Repealed. [B.C. Reg. 48/2010, Sch. 1, s. 1 (b).]
- (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. 1, s. 22 (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) Repealed. [B.C. Reg. 85/2012, Sch. 1, s. 5.]
- (xxi) 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*;
- (xxii) payments granted by the government of British Columbia under the Ministry of Children and Family Development's At Home Program;
- (xxiii) Repealed. [B.C. Reg. 85/2012, Sch. 1, s. 5.]
- (xxiv) 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;
- (xxv) a loan that is
- (A) not greater than the amount contemplated by the recipient's business plan, accepted by the minister under section 77.2 of this regulation, and
 - (B) received and used for the purposes set out in the business plan;
- (xxvi) 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;
- (xxvii) Repealed. [B.C. Reg. 148/2015, App. 1, s. 1 (a).]
- (xxviii) 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;
- (xxix) a refund provided under Plan I as established under the Drug Plans Regulation;
- (xxx) 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);
- (xxxii) 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;

(xxxiii) money withdrawn from a registered disability savings plan;

(xxxiv) a working income tax benefit provided under the *Income Tax Act* (Canada);

(xxxv) Repealed. [B.C. Reg. 180/2010, s. 1 (b).]

(xxxvi) the climate action dividend under section 13.02 of the *Income Tax Act*;

(xxxvii) 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;

(xxxviii) 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;

(xxxix) payments granted by the government of British Columbia under the Ministry of Children and Family Development's Family Support Services program;

(xl) payments granted by the government of British Columbia under the Ministry of Children and Family Development's Supported Child Development program;

(xli) payments granted by the government of British Columbia under the Ministry of Children and Family Development's Aboriginal Supported Child Development program;

(xlii) 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;

(xliii) payments granted by the government of British Columbia under the Temporary Education Support for Parents program;

(xliv) a BC early childhood tax benefit;

(xlv) child support;

(xlvi) orphan's benefits under the *Canada Pension Plan Act* (Canada);

(xlvii) gifts, other than recurring gifts;

(xlviii) 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;

(xlix) 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;

(l) 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;
- (l.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;
- (l.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;
- (li) a disabled contributor's child's benefit paid or payable under the *Canada Pension Plan*;
- (lii) payments granted under an agreement referred to in section 94 of the *Child, Family and Community Service Act*;
- (liii) 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;
- (liv) money that is paid or payable from a settlement in respect of Treaty No. 8 agricultural benefits;
- (lv) 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;
- (lvi) 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 of this Schedule,
- (c) all earned income must be included, except the deductions permitted under section 2 and any earned income exempted under sections 3 and 4 of this Schedule, and
- (d) all unearned income must be included, except the deductions permitted under section 6 and any income exempted under sections 7 and 8 of this Schedule.

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) or (c) of the definition of disability-related cost in section 13 (1) [*assets held in trust for person receiving special care*] 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 13 (1) of this regulation;

"intended registered disability savings plan or trust", in relation to a person referred to in section 13.1 (2) [*temporary exemption of assets for person applying for disability designation or 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 11 [*asset limits*] of this regulation;

(d) a payment made from a trust to or on behalf of a person referred to in section 13 (2) [*assets held in trust for person receiving special care*] 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 13 (2) (a) 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 13.1 (2) [*temporary exemption of assets for person applying for disability designation or 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 13 (2) of this regulation;

(ii) a structured settlement annuity payment that, subject to subsection (2), is made to a person referred to in section 13 (2) (a) of this regulation;

(iii) money expended by a person referred to in section 13.1 (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.

(2.1) Repealed. [B.C. Reg. 204/2015, App. 1, s. 4 (b).]

(3) Repealed. [B.C. Reg. 197/2012, Sch. 1, s. 24 (f).]

Minister's discretion to exempt education related unearned income

8 (1) In this section:

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

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

(2) The minister may authorize an exemption for a student described in subsection (3) up to the sum of the student's education costs and day care costs, for a period of study, from the total amount of the following received by the student for the period of study:

(a) a training allowance;

(b) student financial assistance;

(c) student grants, bursaries and scholarships;

(d) disbursements from a registered education savings plan.

- (3) An exemption under subsection (2) may be authorized in respect of a student who is
- (a) a dependent child enrolled as a student in either a funded or an unfunded program of studies,
 - (b) an applicant or a recipient enrolled
 - (i) as a part-time student in an unfunded program of studies, or
 - (ii) with the prior approval of the minister, as a full-time student in an unfunded program of studies, or
 - (c) a person in a category listed in section 29 (4) [*consequences of failing to meet employment-related obligations*] of this regulation enrolled as a part-time student in a funded program of studies.
- (4) The minister may authorize an exemption for a student described in subsection (5) up to the sum of the student's education costs and day care costs, for a period of study, from the total amount of the following received by the student for the period of study:
- (a) a training allowance;
 - (b) student grants, bursaries and scholarships, except student grants, bursaries and scholarships provided under the *Canada Student Financial Assistance Act*;
 - (c) disbursements from a registered education savings plan.
- (5) An exemption under subsection (4) may be authorized in respect of a student who is
- (a) a recipient enrolled as a part-time student in a funded program of studies, or
 - (b) described in section 16 (1.1) [*effect of family unit including full-time student*] of this regulation

Schedule C: Health Supplements

Medical equipment and devices

- 3** (1) Subject to subsections (2) to (5) of this section, the medical equipment and devices described in sections 3.1 to 3.12 of this Schedule are the health supplements that may be provided by the minister if
- (a) the supplements are provided to a family unit that is eligible under section 67 [*general health supplements*] of this regulation, and
 - (b) all of the following requirements are met:
 - (i) the family unit has received the pre-authorization of the minister for the medical equipment or device requested;
 - (ii) there are no resources available to the family unit to pay the cost of or obtain the medical equipment or device;
 - (iii) the medical equipment or device is the least expensive appropriate medical equipment or device.
- (2) For medical equipment or devices referred to in sections 3.1 to 3.8 or section 3.12, in addition to the requirements in those sections and subsection (1) of this section, the family unit must provide to the minister one or both of the following, as requested by the minister:
- (a) a prescription of a medical practitioner or nurse practitioner for the medical equipment or device;
 - (b) an assessment by an occupational therapist or physical therapist confirming the medical need for the medical equipment or device.

(2.1) For medical equipment or devices referred to in section 3.9 (1) (b) to (g), in addition to the requirements in that section and subsection (1) of this section, the family unit must provide to the minister one or both of the following, as requested by the minister:

(a) a prescription of a medical practitioner or nurse practitioner for the medical equipment or device;

(b) an assessment by a respiratory therapist, occupational therapist or physical therapist confirming the medical need for the medical equipment or device.

(3) Subject to subsection (6), the minister may provide as a health supplement a replacement of medical equipment or a medical device, previously provided by the minister under this section or section 7.1 of this Schedule, that is damaged, worn out or not functioning if

(a) it is more economical to replace than to repair the medical equipment or device previously provided by the minister, and

(b) the period of time, if any, set out in sections 3.1 to 3.12 of this Schedule, as applicable, for the purposes of this paragraph, has passed.

(4) Subject to subsection (6), the minister may provide as a health supplement repairs of medical equipment or a medical device that was previously provided by the minister if it is more economical to repair the medical equipment or device than to replace it.

(5) Subject to subsection (6), the minister may provide as a health supplement repairs of medical equipment or a medical device that was not previously provided by the minister if

(a) at the time of the repairs the requirements in this section and sections 3.1 to 3.12 of this Schedule, as applicable, are met in respect of the medical equipment or device being repaired, and

(b) it is more economical to repair the medical equipment or device than to replace it.

(6) The minister may not provide a replacement of medical equipment or a medical device under subsection (3) or repairs of medical equipment or a medical device under subsection (4) or (5) if the minister considers that the medical equipment or device was damaged through misuse.

Medical equipment and devices — wheelchairs

3.2 (1) In this section, "**wheelchair**" does not include a stroller.

(2) Subject to subsection (4) of this section, the following items are health supplements for the purposes of section 3 of this Schedule if the minister is satisfied that the item is medically essential to achieve or maintain basic mobility:

(a) a wheelchair;

(b) an upgraded component of a wheelchair;

(c) an accessory attached to a wheelchair.

(3) The period of time referred to in section 3 (3) (b) of this Schedule with respect to replacement of an item described in subsection (2) of this section is 5 years after the minister provided the item being replaced.

(4) A high-performance wheelchair for recreational or sports use is not a health supplement for the purposes of section 3 of this Schedule.

Medical equipment and devices — wheelchair seating systems

3.3 (1) The following items are health supplements for the purposes of section 3 of this Schedule if the minister is satisfied that the item is medically essential to achieve or maintain a person's positioning in a wheelchair:

(a) a wheelchair seating system;

(b) an accessory to a wheelchair seating system.

(2) The period of time referred to in section 3 (3) (b) of this Schedule with respect to replacement of an item described in subsection (1) of this section is 2 years from the date on which the minister provided the item being replaced

Conclusion:

In the written submissions and during the hearing, the appellant and his representative provided testimony that he is significantly impacted by his injuries. He stated that he cannot cook because it is a danger to his safety and therefore uses the services of the local mission to cook for him and the food bank to supplement his grocery needs. He travels to the mission and foodbank in his wheelchair, which needs repairs or replacement. Without his wheelchair, he would not be able to eat or get food. He pointed out the irony between the fact that he is clearly disabled but cannot get a PWD designation. As a result, he must pay for his medication, wheelchairs costing \$10,000 or more, glasses, bus passes etc. out of his own pocket. He states that as his investments are locked in, he is saving that money to live on when he reaches age 65 (when his ICBC settlement runs out). He maintains that he does not have the money to pay for his medical costs.

The ministry relied upon the reconsideration decision during the hearing, explaining the current legislation pertaining to this appeal and answering the appellant's questions. It was noted that at the time of the reconsideration, the ministry was not aware that his investments are locked in and they did not know that it is dangerous for him to cook for himself due to his memory losses.

All information submitted to the appeal panel was carefully reviewed and the appellant's and his representative's testimony was considered. Although the appellant may have disabling injuries and conditions, his income is too high to qualify for PWD benefits. He must already be designated as a PWD in order to apply for MSO benefits. The information submitted at the time of reconsideration did not include that his investments are locked in and that he may suffer a life-threatening need if he does not have a wheelchair to go to the mission to be fed.

The panel finds that the ministry's reconsideration decision of March 18, 2019 which held that the appellant's application for PWD designation was denied because his net income exceeds the ministry's assistance rates was a reasonable application of the Employment and Assistance for Persons with Disabilities Act (EAPWDA), Section 1, as well as the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Sections 9, 24 and 61.1, the Employment Assistance Act (EAA) Sections 1, 2 and 4, the Employment Assistance Regulation (EAR) Sections 1, 10, 28, 66.1, 67 and 76 and Schedules A Section 1, 2 and 4, Schedule B Section 1, 6, 7, and 8 and Schedule C Sections 3, 3.2, and 3.3.

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

2019/04/24

PRINT NAME

Mel Donhauser

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019/04/24

PRINT NAME

Marilyn Mellis

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019/04/24