

APPEAL NUMBER

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) reconsideration decision dated March 21, 2019 where the ministry determined that the appellant was ineligible for disability assistance for the month of April, 2019 as the money received from employment insurance in February 2019 is considered unearned income and must be deducted from April 2019 assistance as set out in the Employment and assistance for Persons with Disabilities Regulation (EAPWDR): Section 1, Section 9, Section 24, Schedule A Sections 1,2 and 4 and Schedule B Section 1,6,7,8.

PART D – RELEVANT LEGISLATION

Employment and assistance for Persons with Disabilities Regulation (EAPWDR): Section 1, Section 9, Section 24, Schedule A Sections 1,2 and 4 and Schedule B Section 1,6,7,8.

PART E – SUMMARY OF FACTS**Information before the ministry at reconsideration:**

The appellant has persons with disabilities (PWD) designation and is part of a 2-parent family unit who in February 2019 received \$2132 from Employment Insurance (EI) in addition to PWD assistance of \$1786.56 (made up of \$1121.56 support, \$647 shelter which is less than the maximum entitlement because the appellant's actual shelter costs are less than the maximum).

On March 11, 2019 the appellant was informed by the ministry that EI is considered unearned income and as the total amount of income received (\$2132) exceeds his PWD allowance (\$1786.56), he is not eligible for PWD assistance for April 2019.

On March 13, 2019 the appellant signed a request for reconsideration stating that he was not notified by anyone that his assistance would be taken away and that the EI cheque was paid on debt that he owed. He thinks that there should be more knowledge given to people with PWD status and while he may not be 100% right, he thinks EI should have let him know when he signed up that while collecting EI he cannot collect income assistance.

On March 21, 2019 the ministry reviewed the request for reconsideration and denied the appellant's request.

Notice of Appeal

On April 15, 2019 the appellant signed a notice of appeal in which he stated that he feels that he should have been told that he can't collect EI and income assistance at the same time. He has spent all his money.

Hearing

The panel conducted a written hearing on June 26, 2019 as requested by the appellant pursuant to section 22(3) (b) of the Employment and assistance Act.

In accordance with section 22(4) of the Employment and Assistance Act, the panel can only admit evidence that was before the ministry at the time of reconsideration and evidence that is in support of the information and records that were before the ministry at the time of reconsideration. The panel determined that there was no additional information outside of that available to the ministry at the time of reconsideration.

PART F – REASONS FOR PANEL DECISION

The issue in this appeal is whether the ministry's decision to deny the appellant's eligibility for disability assistance in April 2019 because:

1. \$2132 in EI was received in February 2019 is considered unearned income (under EAPWDR Section 1) and;
2. in accordance with EAPWDR Section 9 a family unit is not eligible for disability assistance if the net income, determined under EAPWDR Schedule B, equals or exceeds the amount of disability assistance determined under EAPWDR Schedule A ;

is reasonably supported by the evidence or is a reasonable application of the legislation in the circumstances of the applicant.

Legislation

Employment and Assistance for Persons with Disabilities Act, Regulations

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: (g) employment insurance;

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.

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Item	Column 1 Family unit composition	Column 2 Age or status of applicant or recipient	Column 3 Amount (\$)
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	1121.56

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
5	5 persons	\$750

Schedule B Net Income Calculation (section 24 (b))

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]

(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;

(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 [low income climate action tax credit] or 8.2 [BC harmonized sales tax credit] of the Income Tax Act (British Columbia); (viii) individual redress payments granted by the government of Canada to a person of Japanese ancestry; (ix) individual payments granted by the government of Canada under the Extraordinary Assistance Plan to a person infected by the human immunodeficiency virus; (x) individual payments granted by the government of British Columbia to a person infected by the human immunodeficiency virus or to the surviving spouse or dependent children of that person; (xi) individual payments granted by the government of Canada under the Extraordinary Assistance Plan to thalidomide victims; (xii) money that is (A) paid or payable to a person if the money is awarded to the person by an adjudicative panel in respect of claims of abuse at Jericho Hill School for the Deaf and drawn from a lump sum settlement paid by the government of British Columbia, or (B) paid or payable to or for a person if the payment is in accordance with the settlement agreement approved by the Supreme Court in Action No. C980463, Vancouver Registry; (xiii) the BC earned income benefit; (xiv) money paid or payable under the 1986-1990 Hepatitis C Settlement Agreement made June 15, 1999, except money paid or payable under section 4.02 or 6.01 of Schedule A or of Schedule B of that agreement; (xv) a rent subsidy provided by the provincial government, or by a council, board, society or governmental agency that administers rent subsidies from the provincial government;

(xvi) Repealed. [B.C. Reg. 197/2012]

- (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]
- (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. [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;
- (xxviii) Repealed. [B.C. Reg. 148/2015, App. 2]
- (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]
- (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 a result of intestacy, from the estate of a deceased person;
- (xlix) gifts;
- (l) education and training allowances, grants, bursaries or scholarships, other than student financial assistance;
- (li) money withdrawn from a registered education savings plan;

- (lii) compensation paid or payable under section 17 [compensation in fatal cases] or 18 [addition to payments] of the Workers Compensation Act to a dependant, as defined in section 1 of that Act, who is a child, as defined in section 17 of that Act;
- (liii) money that is paid or payable by or for Community Living BC to or for a person if the payment is in accordance with an award in a legal proceeding or with a settlement agreement in respect of a claim for injury, loss or damage caused by Community Living BC, an employee of Community Living BC or a person retained under a contract to perform services for Community Living BC;
- (liv) money that is paid or payable by the government of British Columbia to or for a person if the payment is in accordance with an award in a legal proceeding or with a settlement agreement in respect of a claim for injury, loss or damage caused by the minister, the ministry, an employee of the ministry or a person retained under a contract to perform services for the ministry,
- (liv.1) money that is paid or payable by the government of British Columbia to or for a person if the payment is in accordance with an award in a legal proceeding or with a settlement agreement in respect of a claim for injury, loss or damage caused by the Minister of Children and Family Development, that ministry, an employee of that ministry or a person retained under a contract to perform services for that ministry;
- (liv.2) money that is paid or payable by the government of British Columbia to or for a person because the person was a resident of Woodlands School
- (lv) a disabled contributor's child's benefit paid or payable under the Canada Pension Plan;
- (lvi) payments granted under an agreement referred to in section 94 of the Child, Family and Community Service Act;
- (lvii) money that is paid or payable, in respect of a child, from property that comes into the control of, or is held by, the Public Guardian and Trustee;
- (lviii) money that is paid or payable from a settlement in respect of Treaty No. 8 agricultural benefits;
- (lix) 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;
- (lx) 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.

Annual exemption – qualifying income

3. (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;

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;

(SUB) Dec 01/15

(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.

(2.1) Repealed. [B.C. Reg. 204/2015, App. 2]

(REP) Oct 01/12

(3) Repealed. [B.C. Reg. 197/2012]

Ministry Position

The ministry position is that the appellant received \$2132 EI in February 2019 which is considered unearned income under EAPDWR Section 1. In accordance with EAPDWR Section 24 a family unit's income, calculated in accordance with Schedule B must be deducted from its disability assistance, as calculated under Schedule A, except any income meets that meets the exemption or deduction criteria as set out in Schedule B. Section 24 further states that net income received in one calendar month (February) must be declared in the following calendar month (March) and deducted from disability assistance received in the third calendar month (April).

EAPDWR Schedule B Sections 1, 6, 7, and 8 set out eligible deductions or exemptions from unearned income for the purposes of calculating net income. The appellant is in receipt of EI sickness benefits and not in receipt of maternity or parental benefits and Section 6(a) states the only deductions that are permitted from EI are income tax deductions.

Section 9 of the EAPWDR states that a family unit is not eligible for 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 matching family unit.

Unearned income from EI calculated under Schedule B is \$2132 and the rate of income assistance calculated under Schedule A is \$1768.56 (the ministry notes that the actual shelter rent is lower than the allowance). As the appellant's net income in February exceeds the family unit's assistance rate the ministry finds that the appellant is ineligible for disability assistance in April 2019.

The ministry appended the appellants monthly report dated March 8, 2019 which shows receipt of \$2132 EI in addition to other reports which appear to be unconnected to the appeal and documentation from EI stating the appellant received sickness benefits.

Appellant Position

The appellant's position is that no one told him that he cannot collect EI and income assistance at the same time. He feels that people should be given more information and that EI should have told him that while collecting EI he cannot collect income assistance. He used the EI to pay debts owed and he has no money.

Panel Decision

The appellant received \$2132 in February 2019 and the ministry has determined that this is considered unearned income in accordance with EAPWDR Section 1. The panel has reviewed this section and agrees with this determination as employment insurance is specifically included. The ministry notes that under EAPWDR Section 24 the appellant's income, calculated in accordance with EAPWDR Schedule A must be deducted from his disability assistance except for any income that meets the exemption or deduction criteria set out in EAPWDR Schedule B. The panel notes that none of the deductions and exemptions apply to the appellant and therefore agrees with this finding as well. The ministry notes that EAPWDR Schedule B Sections 1, 6, 7, and 8 sets out the eligible deductions and exemptions from unearned income for the purposes of calculating net income. The ministry notes also that the appellant is in receipt of sickness benefits and not maternity benefits and that the only deductions that are permitted from EI are income tax deductions. In agreeing with the ministry's determination the panel notes that EAPWDR Schedule B, paragraph 7(1)(g) allows benefits paid under sections 22, 23 and 23.2 of the *Employment Insurance Act* (Canada) to be exempt from the calculation of unearned income; however, benefits paid under these sections do not apply to the appellant as they relate specifically to Pregnancy, Parental Benefits and Work Sharing and the appellant is receiving sickness benefits.

Citing Section 9 of the EAPWDR the ministry notes that a family unit is not eligible for assistance if the net income of the family unit determined under EAPWDR Schedule B equals or exceeds the amount of disability assistance determined under EAPWDR Schedule A for a matching family unit. As the unearned income from EI calculated under EAPWDR Schedule B is \$2132 and the appellant's rate of assistance as per EAPWDR Schedule A is \$1786.56 the panel agrees with the ministry determination that the appellant is ineligible for disability assistance in April 2019.

The panel has reviewed the appellant's response and does not consider it sufficient evidence to cause the Panel to conclude that the ministry's position was not reasonably supported by the evidence or a reasonable application of the applicable enactment in the circumstances of the appellant.

For clarity, the Panel notes that section 11 of the *Employment and Assistance for Persons with Disabilities Act* creates reporting obligations on recipients of disability assistance and section 29 of the EAPWDR requires a recipient to submit a report by the 5th day of the calendar month following the calendar month in which a family unit receives unearned income.

Conclusion

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

APPEAL NUMBER

THE PANEL DECISION IS: (Check one)

UNANIMOUS

BY MAJORITY

THE PANEL

CONFIRMS THE MINISTRY DECISION

RESCINDS THE MINISTRY DECISION

If the ministry decision is rescinded, is the panel decision referred back to the Minister for a decision as to amount? Yes No

LEGISLATIVE AUTHORITY FOR THE DECISION:

Employment and Assistance Act

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

and

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

PART H – SIGNATURES

PRINT NAME

Keith Lacroix

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2019/06/26

PRINT NAME

Sarah Bijl

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019/06/26

PRINT NAME

Angie Blake

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019/06/27