

APPEAL NUMBER

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction ("ministry") reconsideration decision dated May 22, 2019 which found that the appellant does not qualify for the allowable deductions from his business income under the ministry's Self Employment Program, resulting in denial of disability assistance because the appellant's net income is greater than the rate of assistance for his family unit. Specifically, as the appellant is not eligible for the self-employment program, the ministry found that he does not qualify for the allowable deductions from his business income otherwise available under the self-employment program.

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 1, 9; Schedule A, sections 1, 2, 4; Schedule B, sections 1, 2, 3, 4

PART E – SUMMARY OF FACTS

Information before the minister at reconsideration included:

- A copy of the appellant's commercial lease, signed January 13, 1997.
- Copies of ledger pages for the period of January 1 to April 17, year not stated.
- A bank profile with statements for the period of February 12 to April 19, 2019.
- A bank profile with statements for the period of February 15 to April 10, 2019.
- The appellant's Request for Reconsideration, signed May 13, 2019, with a written submission.

At the hearing, the appellant submitted copies of his income tax assessment for 2017 and his income tax return for 2017. The ministry had no objection to the admission of these documents. Both documents were admitted by the panel under section 22(4) of the Employment and Assistance Act as written testimony in support of the information and records that were before the minister when the decision was made.

The appellant stated that his medical reports show rheumatism, anxiety and chronic migraines which make it difficult to work. He runs a [REDACTED]. He sells blocks of time and keeps a register which the ministry has seen, and he keeps track of expenses – the general ledger shows money in, and his database keeps track of expenses. He did not submit this to the ministry, but it shows on his tax forms. He has submitted his bank records and ledgers. The appellant stated that the business income shown is broadly accurate, but it does fluctuate. The appellant referred to the income tax documents he submitted, which show his total income as \$10,802, with net income of \$10,441. The appellant stated that his net income is not higher than his disability assistance rate of \$14,201.04 per year. The appellant stated that he is self-employed, and wants to enrol in the self-employment program, but he is caught in a "Catch 22" situation of the stated aim of the program vs. the requirement to be a recipient of assistance first. He asked if he has to intentionally reduce his income to qualify for assistance or go out of business. The appellant noted that the payments to an individual named in the Reconsideration Decision are just a misspelling of his own name. The appellant stated that he did not know what the ministry was asking for when he applied. The ministry website is not clear on the point of being a recipient before applying for the self-employment program, although the website makes it clear that the program is to assist persons with disabilities. He stated that the closure of this business would be a loss to the [REDACTED] community.

In response to questions from the panel, the appellant stated that his business is a proprietorship, not incorporated.

The ministry responded by referring to the definition of "recipient" and explaining how eligibility for assistance is calculated. The ministry reviewed the appellant's monthly income he receives from his business, applied the allowable deductions and found that his income exceeds his disability assistance rate. The ministry stated that the deductions permitted in the EAPWDR are not the same as those permitted by the Canada Revenue Agency (CRA). The ministry stated that the appellant has never been on assistance. He is designated as a Person with Disabilities (PWD), and that in order to participate in the self-employment program, he must first be a recipient.

In response to questions from the panel, the ministry stated that the appellant could apply for the self-employment program if he were a recipient. He was designated as a PWD, but denied assistance because his income was too high. With respect to the comments in the Reconsideration Decision about qualifying income and earned income, the ministry explained that this comment refers to the annual earnings exemption. The ministry stated that a person may apply for assistance if their income is below the disability rate.

PART F – REASONS FOR PANEL DECISION

The issue in this appeal is the reasonableness of the ministry decision which found that the appellant does not qualify for the allowable deductions from his business income under the ministry's Self Employment Program, resulting in denial of disability assistance because the appellant's net income is greater than the rate of assistance for his family unit.

Legislation

EAPWDA

Interpretation

1 (1) In this Act:

"recipient" means the person in a family unit to or for whom disability assistance, hardship assistance or a supplement is provided under this Act for the use or benefit of someone in the family unit, and includes

- (a) the person's spouse, if the spouse is a dependant, and
- (b) the person's adult dependants;

EAPWDR

Definitions

1 (1) In this regulation:

"earned income" means

- (a) any money or value received in exchange for work or the provision of a service,
- (b) Repealed. [B.C. Reg. 197/2012, Sch. 2, s. 1 (a).]
- (c) pension plan contributions that are refunded because of insufficient contributions to create a pension,
- (d) money or value received from providing room and board at a person's place of residence, or
- (e) money or value received from renting rooms that are common to and part of a person's place of residence;

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.

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

(a.1)Repealed. [B.C. Reg. 193/2017, s. 9 (a).]

(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 (\$)
1	Sole applicant / recipient and no dependent children	Applicant / recipient is a person with disabilities	808.42

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
1	1 person	\$375

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, 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;
- (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;
- (liviv) 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.

Deductions from earned income

2 The only deductions permitted from earned income are the following:

- (a) any amount deducted at source for
 - (i) income tax,
 - (ii) employment insurance,
 - (iii) medical insurance,
 - (iv) Canada Pension Plan,
 - (v) superannuation,
 - (vi) company pension plan, and
 - (vii) union dues;
- (b) if the applicant or recipient provides both room and board to a person at the applicant's or recipient's place of residence, the essential operating costs of providing the room and board;
- (c) if the applicant or recipient rents rooms that are common to and part of the applicant's or recipient's place of residence, 25% of the gross rent received from the

rental of the rooms.

Annual exemption — qualifying income

3 (1) In this section:

"base amount" means

- (a) \$1 000, in the case of a family unit that includes only one recipient,
- (b) \$1 200, in the case of a family unit that includes two recipients, only one of whom is designated as a person with disabilities, and
- (c) \$2 000, in the case of a family unit that includes two recipients who are designated as persons with disabilities;

"initial qualifying month", in respect of a family unit and a calendar year, means the calendar month specified for the family unit under subsection (5);

"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;

"qualifying month", in respect of a family unit and a calendar year, means

- (a) the initial qualifying month for the family unit in the calendar year, and
- (b) any subsequent calendar month in the calendar year that is a calendar month for which the family unit is eligible to receive disability assistance under the Act;

"recognized family unit", in respect of a calendar year, means a family unit that

- (a) forms during the calendar year, and
- (b) includes at least one person who
 - (i) is designated as a person with disabilities, and
 - (ii) was previously a recipient in another family unit that was eligible to receive disability assistance under the Act for a calendar month in the calendar year.

(2) For the purposes of section 1 (c) and (d), the lesser of the following amounts is exempt income of a family unit for a qualifying month:

- (a) the qualifying income of the family unit for the qualifying month;
- (b) the exemption limit of the family unit for the qualifying month calculated in accordance with subsection (3).

(3) The exemption limit of a family unit for a qualifying month for the family unit in a calendar year is the following:

- (a) in the case of the initial qualifying month for the family unit in the calendar year, the amount calculated in accordance with subsection (4);
- (b) in the case of any other qualifying month for the family unit in the calendar year, the amount calculated in accordance with subsection (7).

(4) For the purposes of subsection (3) (a), the exemption limit of a family unit for the initial qualifying month for the family unit in a calendar year is calculated as follows:

- (a) in the case of a family unit other than a recognized family unit, the exemption limit is the product of
 - (i) the base amount for the family unit, and
 - (ii) 12 minus the number of calendar months in the calendar year that are before that initial qualifying month;
- (b) in the case of a recognized family unit that includes only one recipient, the exemption limit is the product of
 - (i) the base amount for the recognized family unit, and
 - (ii) 12 minus the number of calendar months in the calendar year that are before that initial qualifying month;
- (c) in the case of a recognized family unit that includes two recipients, the exemption limit is the

sum of the carryover amounts for the recipients calculated in accordance with subsection (6).

(5) For the purposes of subsection (4), the initial qualifying month for a family unit is the following:

- (a) in the case of a family unit described in subsection (4) (a), the initial qualifying month is
 - (i) the first calendar month for which the family unit is eligible to receive disability assistance under the Act, if
 - (A) a member of the family unit who is designated as a person with disabilities previously received disability assistance under the Act or a former Act, as a person with disabilities, or
 - (B) a member of the family unit received income assistance under the Employment and Assistance Act for the calendar month immediately preceding that first calendar month, or
 - (ii) if subparagraph (i) does not apply, the first calendar month, after the first calendar month referred to in that subparagraph, for which the family unit is eligible to receive disability assistance under the Act;
- (b) in the case of a family unit described in subsection (4) (b), the initial qualifying month is the first calendar month, after the calendar month in which the family unit forms, for which the family unit is eligible to receive disability assistance under the Act;
- (c) in the case of a family unit described in subsection (4) (c), the initial qualifying month is
 - (i) the calendar month in which the family unit forms, if the family unit is eligible to receive disability assistance under the Act for that calendar month, or
 - (ii) if subparagraph (i) does not apply, the first calendar month, after the calendar month in which the family unit forms, for which the family unit is eligible to receive disability assistance under the Act.

(6) For the purposes of subsection (4) (c), the carryover amount for a recipient who is part of a recognized family unit that includes two recipients is calculated as follows:

- (a) in the case of a recipient who is not designated as a person with disabilities, the product of
 - (i) the amount specified in paragraph (b) of the definition of "base amount" minus the amount specified in paragraph (a) of that definition, and
 - (ii) 12 minus the number of calendar months in the calendar year that are before the initial qualifying month for the recognized family unit;
- (b) in the case of a recipient who is designated as a person with disabilities, if the last family unit, before the recognized family unit, of which the person was a part that was eligible to receive disability assistance under the Act included no other recipients, the greater of
 - (i) nil, and
 - (ii) the exemption limit of that last family unit for the last qualifying month for that last family unit, adjusted as follows:
 - (A) by deducting the qualifying income of that last family unit in that last qualifying month;
 - (B) by deducting the product of
 - (I) the amount specified in paragraph (a) of the definition of "base amount", and
 - (II) the number of calendar months after that last qualifying month and before the initial qualifying month for the recognized family unit;
- (c) in the case of a recipient who is designated as a person with disabilities, if paragraph (b) does not apply, the product of
 - (i) the amount specified in paragraph (a) of the definition of "base amount", and
 - (ii) 12 minus the number of calendar months in the calendar year that are before the initial qualifying month for the recognized family unit.

(7) For the purposes of subsection (3) (b), the exemption limit of a family unit for any other qualifying month (an "index qualifying month") for the family unit in the calendar year is the greater of

- (a) nil, and
- (b) the exemption limit of the family unit for the last qualifying month for the family unit before the index qualifying month, adjusted as follows:
 - (i) by deducting the qualifying income of the family unit in that last qualifying month;
 - (ii) in the case of a family unit that includes a recipient whose designation as a person with disabilities was rescinded

- (A) in that last qualifying month, or
 - (B) in a calendar month after that last qualifying month and before the index qualifying month,
- by deducting the product of
- (C) the amount specified in paragraph (c) of the definition of "base amount" minus the amount specified in paragraph (b) of that definition, and
 - (D) 12 minus the number of calendar months in the calendar year that are before the index qualifying month;
- (iii) in the case of a family unit that includes a recipient whose designation as a person with disabilities was made
- (A) in that last qualifying month, or
 - (B) in a calendar month after that last qualifying month and before the index qualifying month,
- by adding the product of
- (C) the amount specified in paragraph (c) of the definition of "base amount" minus the amount specified in paragraph (b) of that definition, and
 - (D) 12 minus the number of calendar months in the calendar year that are before the index qualifying month;
- (iv) by deducting the product of
- (A) the base amount for the family unit, as the family is composed in that last calendar month before any rescission described in subparagraph (ii) or designation described in subparagraph (iii) is made, and
 - (B) the number of calendar months after that last qualifying month and before the index qualifying month.

Small business exemption

4 (1) In this section and section 5,

"permitted operating expenses" means costs, charges and expenses incurred by a person in the operation of a small business, under a self-employment program in which the person is participating, for the following:

- (a) purchase of supplies and products;
- (b) accounting and legal services;
- (c) advertising;
- (d) taxes, fees, licences and dues incurred in the small business;
- (e) business insurance;
- (f) charges imposed by a savings institution on an account and interest;
- (f.1) payments, including principal and interest, on a loan that is
 - (i) not greater than the amount contemplated by the recipient's business plan, accepted by the minister under section 70.1 of this regulation, and
 - (ii) received and used for the purposes set out in the business plan;
- (g) maintenance and repairs to equipment;
- (h) gross wages paid to employees of the small business, but not including wages paid to
 - (i) the person participating, or
 - (ii) a person in the family unit of the person participating;
- (i) motor vehicle expenses;
- (j) premiums for employment insurance or workers' compensation benefits;
- (k) employer contributions for employment insurance, workers' compensation or the *Canada Pension Plan*;
- (l) rent and utilities, excluding rent and utilities for the place of residence of the persons described in subparagraphs (i) or (ii) of paragraph (h) unless
 - (i) there is an increase for rent or utilities and the increase is attributable to the small business, and
 - (ii) the increase is not provided for in the calculation of the family unit's shelter allowance under

- Schedule A of this regulation;
- (m) office expenses;
- (n) equipment purchases or rentals.

(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, established by the recipient in a savings institution, which account
 - (A) consists exclusively of funds reserved by the recipient for the purpose of paying permitted operating expenses of that small business, and
 - (B) the amount deposited does not increase the current balance of the separate account to a sum that exceeds \$5 000, or
 - (iii) is used for costs of renovations to the recipient's place of residence up to but not exceeding \$5 000 in total or a greater amount approved by the minister, if the renovations are part of a business plan accepted by the minister under section 70.1 of this regulation.

Exemptions — unearned income

7 (0.1) In this section:

"disability-related cost" means a disability-related cost referred to in paragraph (a), (b), (c) or (e) of the definition of disability-related cost in section 12 (1) [*assets held in trust for person with disabilities*] of this regulation;

"disability-related cost to promote independence" means a disability-related cost referred to in paragraph (d) of the definition of disability-related cost in section 12 (1) of this regulation;

"intended registered disability savings plan or trust", in relation to a person referred to in section 12.1 (2) [*temporary exemption of assets for person with disabilities or person receiving special care*] of this regulation, means an asset, received by the person, to which the exemption under that section applies;

"structured settlement annuity payment" means a payment referred to in subsection (2) (b) (iii) made under the annuity contract referred to in that subsection.

(1) The following unearned income is exempt:

- (a) the portion of interest from a mortgage on, or agreement for sale of, the family unit's previous place of residence if the interest is required for the amount owing on the purchase or rental of the family unit's current place of residence;
- (b) \$50 of each monthly Federal Department of Veterans Affairs benefits paid to any person in the family unit;
- (c) a criminal injury compensation award or other award, except the amount that would cause the family unit's assets to exceed, at the time the award is received, the limit applicable under section 10 [*asset limits*] of this regulation;
- (d) a payment made from a trust to or on behalf of a person referred to in section 12 (1) [*assets held in trust for person with disabilities*] of this regulation if the payment is applied exclusively to or used exclusively for
 - (i) disability-related costs,
 - (ii) the acquisition of a family unit's place of residence,
 - (iii) a registered education savings plan, or
 - (iv) a registered disability savings plan;
- (d.1) subject to subsection (2), a structured settlement annuity payment made to a person referred to in section 12 (1) of this regulation if the payment is applied exclusively to or used exclusively for

- an item referred to in subparagraph (i), (ii), (iii) or (iv) of paragraph (d) of this subsection;
- (d.2) money expended by a person referred to in section 12.1 (2) [*temporary exemption of assets for person with disabilities or person receiving special care*] of this regulation from an intended registered disability savings plan or trust if the money is applied exclusively to or used exclusively for disability-related costs;
- (d.3) any of the following if applied exclusively to or used exclusively for disability-related costs to promote independence:
 - (i) a payment made from a trust to or on behalf of a person referred to in section 12 (1) of this regulation;
 - (ii) a structured settlement annuity payment that, subject to subsection (2), is made to a person referred to in section 12 (1) of this regulation;
 - (iii) money expended by a person referred to in section 12.1 (2) of this regulation from an intended registered disability savings plan or trust;
- (e) the portion of Canada Pension Plan Benefits that is calculated by the formula $(A-B) \times C$, where
 - A = the gross monthly amount of Canada Pension Plan Benefits received by an applicant or recipient;
 - B = (i) in respect of a family unit comprised of a sole applicant or a sole recipient with no dependent children, 1/12 of the amount determined under section 118 (1) (c) of the *Income Tax Act* (Canada) as adjusted under section 117.1 of that Act, or
 - (ii) in respect of any other family unit, the amount under subparagraph (i), plus 1/12 of the amount resulting from the calculation under section 118 (1) (a) (ii) of the *Income Tax Act* (Canada) as adjusted under section 117.1 of that Act;
 - C = the sum of the percentages of taxable amounts set out under section 117 (2) (a) of the *Income Tax Act* (Canada) and section 4.1 (1) (a) of the *Income Tax Act*;
- (f) a tax refund;
- (g) a benefit paid under section 22, 23 or 23.2 of the *Employment Insurance Act* (Canada) to any person in the family unit.

- (2) Subsection (1) (d.1) and (d.3) (ii) applies in respect of a person only if
- (a) the person has entered into a settlement agreement with the defendant in relation to a claim for damages in respect of personal injury or death, and
 - (b) the settlement agreement requires the defendant to
 - (i) make periodic payments to the person for a fixed term or the life of the person,
 - (ii) purchase a single premium annuity contract that
 - (A) is not assignable, commutable or transferable, and
 - (B) is designed to produce payments equal to the amounts, and at the times, specified in the settlement agreement,
 - (iii) make an irrevocable direction to the issuer of the annuity contract to make all payments under that annuity contract directly to the person, and
 - (iv) remain liable to make the payments required by the settlement agreement.

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 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.

Application of deductions and exemptions

9 (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.

(2) Despite subsection (1), income that is received before the date that subsection (1) comes into force is subject to the application of section 9 of this regulation as it read immediately before subsection (1) came into force.

The appellant's position is that the ministry inaccurately determined his net income, and that if his actual net income were considered, it would not exceed his disability assistance rate and he would be eligible for assistance. The appellant argued that his net income as calculated by the CRA for income tax purposes is significantly less than the net income calculated by the ministry. The appellant argued that he is caught in a situation where he would qualify for the exemptions under the self-employment program if he were a recipient, including deductions of his business expenses, lowering his net income to below his disability assistance rate, but because he is not a recipient, all of his income except for the much shorter list of exemptions in section 2 of Schedule B, EAPWDR must be included.

The ministry position is that because the appellant has earned income that exceeds his disability assistance rate, he is not eligible for assistance, and the deductions from earned income for recipients of disability assistance who are participating in a self-employment program do not apply to the appellant because he is not a recipient. As the self-employment program is only available to recipients, the appellant is currently not eligible to participate as he is not a recipient and not eligible for disability assistance, although he has been designated a Person with Disabilities. The appellant is not able to deduct business expenses that would be deductible under the self-employment program, resulting in his income being higher than his disability assistance rate.

The panel notes that under section 1 of the EAPWDR, Definitions, earned income includes any money or value received in exchange for work or the provision of a service, which applies to the appellant's income from rental of studio space. The panel further notes that the exemptions from earned income permitted under section 2(a) of Schedule B, EAPWDR are any amount deducted at source for income tax, employment insurance, medical insurance, Canada Pension Plan, superannuation, company pension plan and union dues, most of which apply to income earned from employment. The appellant's permitted operating expenses under the self-employment program would include purchase of supplies, accounting, advertising, taxes, fees, business insurance, maintenance and repairs and other costs associated with operating a business, which would reduce his net income considerably. Because the appellant is not enrolled in a self-employment program, these deductions do not apply.

The panel finds that the ministry reasonably determined that the appellant's income as calculated is in excess of his disability assistance rate and he is therefore ineligible for assistance. As a result of not being a recipient of disability assistance, the panel finds that the ministry reasonably determined that the appellant is not eligible for the self-employment program, and the deductions listed in section 4 of Schedule B, EAPWDR do not apply.

The panel notes that although the ministry decision is confirmed, the facts of this appeal lead to the conclusion that this appellant is subject to an ironic situation where if he were a recipient of disability assistance and enrolled in a self-employment program, his business operating expenses could be deducted from his gross income, resulting in a much lower net income which would be below his disability assistance rate. In other words, the appellant is in a situation where he cannot qualify for assistance due to his operating expenses being considered as income and cannot access the deductions from income that would be available under a self-employment program because he is not a recipient of assistance.

The panel confirms the ministry decision.

The appeal is not successful.

APPEAL NUMBER

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

Reece Wrightman

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2019 June 28

PRINT NAME

Kim Read

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019 June 28

PRINT NAME

Katherine Wellburn

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019 June 28