

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 May 27, 2019 in which the ministry found that the disability assistance for the appellant's family unit must be reduced by the family unit's net income received from unearned income in the form of Workers' Compensation Board (WCB) benefits, pursuant to Section 24 of the Employment and Assistance for Persons With Disabilities Regulation (EAPWDR). The ministry found that there are no applicable exemptions or deductions under the EAPWDR Schedule B for WCB benefits paid pursuant to Section 23(1) of the *Workers' Compensation Act (WCA)*.

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons With Disabilities Regulation (EAPWDR), Sections 1 and 24, and Schedules A and B

PART E – SUMMARY OF FACTS

With the consent of both parties, the hearing was conducted as a written hearing, pursuant to section 22(3)(b) of the Employment and Assistance Act.

The evidence before the ministry at the time of the reconsideration decision included:

- 1) Letter dated May 26, 2010 from WorkSafe BC advising the appellant that he is entitled to a permanent partial disability award of \$359 per month, effective June 22, 2009, which has been assessed and granted under Section 23(1) of the WCA and “this percentage of disability reflects the extent to which a particular injury is likely to impair [his] ability to earn in the future.” Future payments will be made at the end of each month in the amount of \$359.00 beginning with the June 2010 payment.
- 2) Income Verification: Permanent Disability WorkSafe BC form indicating that the appellant would be paid \$378.71 on August 25, 2017 as a monthly payment;
- 3) Monthly report to the ministry dated September 15, 2017 in which the appellant indicated employment income of \$575, with no other income, including workers’ compensation;
- 4) Letter dated April 15, 2019 in which the ministry advised the appellant that the ministry had conducted a review of his disability assistance file and determined that he had received assistance for which he was not eligible and was overpaid by \$378.71
- 5) Overpayment Chart dated April 15, 2019 indicating that the appellant received \$378.71 on August 25, 2017 for WCB benefits, resulting in an overpayment of disability assistance in the amount of \$378.71; and,
- 6) The appellant’s Request for Reconsideration dated May 17, 2019, to which he attached his letter and additional documents.

In his Request for Reconsideration, the appellant wrote that:

- He inadvertently missed filling in the box on the monthly report to record his monthly WCB benefit and he notified the ministry as soon as he realized his mistake.
- The original award letter to him from WCB dated May 26, 2010 indicated that his entitlement to a permanent partial disability award has been assessed and granted under Section 23.1 (sic) of the WCA and that “this percentage of disability reflects the extent to which a particular injury is likely to impair [his] ability to earn in the future.”
- WCB makes a tremendous distinction between ‘temporary’ disability, covered in Section 29 of the WCA, and ‘permanent’ disability, covered in Section 30 of the WCA.
- The distinction between temporary and permanent WCB benefits should be reconsidered since he is essentially being paid an insurance benefit as compensation for a destroyed asset, i.e. his ability to earn in the future, and this benefit would be exempt.
- The monthly employment earning exemption that is afforded to all those who are not disabled should apply, rather than being automatically deducted dollar for dollar off the monthly benefit.

Additional Information

In his Notice of Appeal dated May 30, 2019 the appellant expressed his disagreement with the ministry's reconsideration decision and wrote that the details would follow.

Prior to the hearing, the appellant provided the following additional documents:

- 1) Letter dated September 29, 2010 to the appellant, in which the ministry approved his designation as a PWD.
- 2) Letter dated April 4, 2011 to the ministry, in which the appellant expressed frustration in dealings with the ministry and reiterated that none of his circumstances had changed.
- 3) Fax dated June 3, 2011 to the Ombudsperson, in which the appellant referred to attaching copies of his correspondence with the ministry.
- 4) Letter dated June 3, 2011 to the Ombudsperson, in which the appellant provided background information, including:
 - He was working in a trade until 2008 when he had an accident and amputated a finger.
 - He had an emotional breakdown in December 2009 and applied for social assistance at that time.
 - He received PWD designation in September 2010 and, in November 2010, WCB issued a lump sum payment for 'disfigurement and suffering'.
 - He failed to report the lump sum payment to the ministry but reported the payment on his January [2011] benefit form.
 - The ministry requested various types of information from him, including a copy of the letter from WCB, 3 months of bank statements, and details of his rental situation.
 - The ministry suggested that he was involved in a fraud and requested further verifying information, holding his benefits pending receipt.
 - He advised the ministry that they already had this information and that none of his circumstances had changed.
- 5) Copy of email dated June 7, 2011 to the appellant, in which the MLA's office outlined the efforts to clarify the documents required by the ministry.
- 6) Letter dated June 27, 2011 to the appellant, in which the ministry advised that the appellant's request to reconsider the ministry's decision to deny benefits had been approved.
- 7) Letter dated May 28, 2012 to the appellant, in which the Ombudsperson detailed the steps taken that settle the issue investigated and advising the investigation was complete.
- 8) Letter dated June 21, 2019, in which the appellant wrote:
 - His ability to earn in the future can be described as the ability to convert his efforts into cash and, therefore, within the definition of an "asset."
 - In business, one can purchase insurance designed to protect and insure one's ability to earn in the future, thereby defining this ability as an asset.
 - The *Bankruptcy Act* considers the ability to earn in the future to be the individual's only asset left to them, so much that it grants additional protections for 'tools of the trade.'

- Permanent pension payments should be considered exempt income, like the temporary payments under Section 29 and 30 of the WCA, since he has lost an asset and these payments are an insurance award being paid out as an annuity.
- The WCB/EI benefits should also qualify for the \$1,000 per month exemption, since they replace the exempt earnings.

The ministry relied on its reconsideration decision as its submission on the appeal.

Admissibility of Additional Information

The ministry did not raise an objection to the admissibility of the additional documents in its submission on the appeal. The panel reviewed the documents and determined that the information in the letters, faxes and emails provide background information regarding the appellant's difficulties in his interactions with the ministry with respect to his WCB benefits, which was before the ministry at reconsideration. Therefore, the panel admitted this additional information as being in support of information before the ministry at reconsideration, in accordance with Section 22(4)(b) of the *Employment and Assistance Act*.

The appellant's arguments set out in his letter dated June 21, 2019, will be addressed in Part F-Reasons for Panel Decision, below.

PART F – REASONS FOR PANEL DECISION

The issue in this appeal is whether the ministry reasonably determined that the disability assistance for the appellant's family unit must be reduced by the family unit's net income received from unearned income in the form of WCB benefits, pursuant to Section 24 of the EAPWDR. The ministry found that there are no applicable exemptions or deductions under the EAPWDR Schedule B for WCB benefits paid pursuant to Section 23(1) of the Workers' Compensation Act (WCA).

The relevant sections of the legislation are as follows:

Section 1 of the EAPWDR defines "asset" as:

"asset" means

- (a) equity in any real or personal property that can be converted to cash,
- (b) a beneficial interest in real or personal property held in trust, or
- (c) cash assets;

Section 1 of the EAPWDR defines "unearned income" as:

"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 Act or provided by another province or jurisdiction;
- (j) workers' compensation benefits and disability payments or pensions; . . .

Section 24 of the EAPWDR provides:**Amount of disability assistance**

24 Subject to Section 24.1 (3), 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 of the EAPWDR sets out the total amount of disability assistance payable as the sum of the monthly support allowance for a family unit matching the family unit of the applicant or recipient plus the applicable shelter allowance.

In calculating the net income of a family unit under Schedule B, some deductions and exemptions from income are provided for but, otherwise, all earned and unearned income must be included.

Section 1 of Schedule B of the EAPWDR provides as follows:

When calculating the net income of a family unit for the purposes of section 24 (b) [*amount of disability assistance*] of this regulation. . . .

- (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 [annual exemption- qualifying income], 7 [exemptions- unearned income] and 8 [minister's discretion to exempt education-related unearned income].

Section 3 of Schedule B of the EAPWDR provides as follows:

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.

(8) If October 2017 is a qualifying month, other than an initial qualifying month, for a family unit, the exemption limit of the family unit for October 2017 is calculated in accordance with subsection (7) and then increased by the amount set out in Column 2 or 3 of the following table, as the case may be, that corresponds to the earliest initial qualifying month for the family unit in 2017 set out in Column 1 of the table.

Item	Column 1 Earliest initial qualifying month for the family unit in 2017	Column 2 Family unit that includes only one person with disabilities on October 1, 2017 (\$)	Column 3 Family unit that includes two persons with disabilities on October 1, 2017 (\$)
1	January	2 400	4 800
2	February	2 200	4 400
3	March	2 000	4 000
4	April	1 800	3 600
5	May	1 600	3 200
6	June	1 400	2 800

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7	July	1 200	2 400
8	August	1 000	2 000
9	September	800	1 600

Panel's decision

In the reconsideration decision, the ministry wrote that Section 24 of the EAPWDR requires that a recipient's net income calculated under Schedule B of the EAPWDR must be deducted from their disability assistance calculated under Schedule A of the EAPWDR. The ministry wrote that in October 2017 the appellant, as a sole recipient with PWD designation, received disability assistance in the total amount of \$1,133.42. The ministry also wrote that under Section 1(d) of Schedule B of the EAPWDR, all unearned income must be included in the calculation of net income unless there is an allowed deduction or an amount is specifically exempted and, according to sub-sections 1(j) of the EAPWDR, "unearned income" is defined to include, without limitation, "workers' compensation benefits and disability payments or pensions." The ministry wrote that on August 25, 2017 the appellant received \$378.71 as a permanent disability payment from WorkSafe BC and, as there are no allowable deductions or exemptions for this type of income, this amount must be included in the appellant's net income and deducted from his assistance amount in accordance with Section 24 of the EAPWDR.

The appellant does not dispute that he was in receipt \$378.71 from WorkSafe BC as he wrote in his Request for Reconsideration that he inadvertently missed filling in the box on the monthly report to record his monthly WCB benefit and he notified the ministry as soon as he realized his mistake. The appellant wrote that the original award letter to him from WCB dated May 26, 2010 indicated that his entitlement to a permanent partial disability award has been assessed and granted under Section 23.1 (sic) of the WCA and that "this percentage of disability reflects the extent to which a particular injury is likely to impair [his] ability to earn in the future." The panel notes that the letter to the appellant from WCB indicated that his entitlement to a permanent partial disability award of \$359 per month, effective June 22, 2009, was assessed and granted under Section 23(1), as opposed to Section 23.1, of the WCA.

In his Request for Reconsideration, the appellant wrote that his WCB benefits are essentially paid as an insurance benefit as compensation for a destroyed asset, i.e. his ability to earn in the future, and this benefit would be exempt. The appellant's underlying argument is that his WCB benefits do not fall within the definition of "unearned income" in Section 1 of the EAPWDR since sub-section (d) includes insurance benefits, "*except insurance paid as compensation for a destroyed asset.*" In his letter dated June 21, 2019, the appellant argued that his ability to earn in the future can be described as the ability to convert his efforts into cash and, therefore, within the definition of an "asset." The appellant wrote that, in business, one can purchase insurance designed to protect and insure one's ability to earn in the future, thereby defining this ability as

an asset. As well, the appellant argued that the Bankruptcy Act considers the ability to earn in the future to be the individual's only asset left to them, so much that it grants additional protections for 'tools of the trade.' In the reconsideration decision, the ministry considered the definition of "asset" as set out in Section 1 of the EAPWDR and the panel finds that the ministry reasonably concluded that the appellant's ability to earn in the future is not "equity in any real or personal property that can be converted to cash," which are specific forms of tangible property. The panel finds the ministry also reasonably considered that the appellant's WCB benefits are specifically included in the definition of "unearned income" in Section 1(j) of the EAPWDR as, without limitation, money or value received from "workers' compensation benefits and disability payments or pensions."

In his Request for Reconsideration, the appellant wrote that the monthly employment earning exemption that is afforded to all those who are not disabled should apply, rather than being automatically deducted dollar for dollar off the monthly benefit. In his June 21, 2019 letter, the appellant wrote that the WCB/EI benefits should also qualify for the \$1,000 per month exemption, since they replace the exempt earnings. The appellant further argued that permanent pension payments should be considered exempt income, like the temporary payments under Section 29 and 30 of the WCA, since he has lost an asset and these payments are an insurance award being paid out as an annuity.

In the reconsideration decision, the ministry wrote that Section 3 of Schedule B of the EAPWDR provides an annual earnings exemption for "qualifying income" defined as earned income as well as unearned income that is compensation paid under Sections 29 or 30 of the WCA. The ministry reasonably considered that the appellant's WCB benefits in the amount of \$378.71 were paid under Section 23(1) of the WCA, as confirmed in the letter from WorkSafe BC dated May 26, 2010 and acknowledged by the appellant. The panel finds that the ministry reasonably included the amount of the appellant's WCB benefits in the calculation of his net income as "unearned income" for which there were no applicable deductions or exemptions.

The appellant pointed out in his Request for Reconsideration that a tremendous distinction is made between his permanent partial disability, paid under Section 23 of the WCA, and the temporary partial disability, paid under Section 30 of the WCA, as the latter is eligible for the annual earnings exemption while his permanent benefits are not. The appellant also argued that the ministry allows a client to earn up to \$1,000 per month before deducting any money from their monthly benefit but, if they are injured or laid off or sick, the ministry deducts the WCB/EI benefits dollar for dollar from the client's monthly benefits. While the appellant took issue with the limited applicability of the annual earnings exemption in Section 3 of Schedule B of the EAPWDR, these are broader issues that would require a legislative review beyond the panel's limited jurisdiction on the appeal, which is circumscribed by Section 24 of the *Employment and Assistance Act* to determine whether the ministry's reconsideration decision is reasonably supported by the evidence or a reasonable application of the applicable enactment in the appellant's circumstances.

The panel notes that the use of the word “must” in Schedule B of the EAPWDR requires the ministry to include all unearned income in the calculation of the net income of a family unit, except for permitted deductions and applicable exemption amounts as specifically set out in the Schedule, and does not give the ministry the discretion to do otherwise. The panel finds that the ministry reasonably determined that the disability assistance for the appellant’s family unit must be reduced by the family unit’s net income received from WCB, pursuant to Section 24 of the EAPWDR.

Conclusion

The panel finds that the ministry’s decision, that the disability assistance for the appellant’s family unit must be reduced by the family unit’s net income received from unearned income in the form of WCB benefits, pursuant to Section 24 of the EAPWDR, and there are no applicable exemptions or deductions under Schedule B of the EAPWDR, is a reasonable application of the applicable enactment in the appellant’s circumstances and confirms the decision pursuant to Section 24(1)(b) of the *EAA*. Therefore, the appellant is not successful in his appeal.

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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

S. Walters

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2019-07-24

PRINT NAME

Bill Haire

DATE (YEAR/MONTH/DAY)

2019-07-24

SIGNATURE OF MEMBER

PRINT NAME

Bill Reid

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019-07-24