

APPEAL NUMBER

**PART C – DECISION UNDER APPEAL**

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the "ministry") reconsideration decision of August 1, 2019 (the "Reconsideration Decision"), which held that the appellant was ineligible for disability assistance as the ongoing unearned income of the appellant's family unit from CPP and OAS/GIC is in excess of the rate of assistance prescribed for the Appellant's family unit size under Section 1, Section 9 Schedule A Section 1, 2, and 4, and Section B 1, 6 and 7.

APPEAL NUMBER

**PART D – RELEVANT LEGISLATION**

1. Employment and Assistance for Persons with Disabilities ACT (EAPWDA) Section 1.1;
2. Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Section 1, Section 9 – Schedule A Section 1, 2 and 4, and Section B Section 1, 6 and 767 and Schedule C Section 7.

**PART E – SUMMARY OF FACTS**

The information and evidence before the ministry at reconsideration included the following:

1. Six (6) pages of unannotated copies of the statements from the appellant's bank for the period 1<sup>st</sup> April 2019 to 11<sup>th</sup> June 2019.
2. Appellant's handwritten submission dated 4<sup>th</sup> July 2019 in support of the appellant's request for reconsideration, which amongst other matters state that:
  - a. Although the appellant and her partner live together, their finances and bills are not connected;
  - b. Each of the said parties have their own bank account and neither has access to the funds of the other;
  - c. (i) Rent is split; (ii) Appellant's partner transfers e-transfers \$85.00 to the appellant's bank account to pay for hydro; (iii) appellant pays for phone, TV and internet; (iv) vehicle belongs to the appellant's partner and he is responsible for all costs relating thereto; (v) the appellant relies upon the bus system paid by a Neighbourhood House in exchange for her volunteer services at the House; (vi) The appellant's bank statements always reflect a debit balance, as half of her CPP receipt goes towards the rent;
  - d. Although the appellant and her partner are in a "*relationship*" and "*share the same residence*", they absolutely do not share any finances; this is a relationship solely based for "companionship";
  - e. The appellant is suffering from several medical conditions and is unable to afford medications relating to them.
  - f. The annotations on the bank statements demonstrate that both the appellant and her partner buy a lot of their own groceries, including gluten free food; and
  - g. The appellant pays on her own for her daily needs and expenses, for travel and appointments; and she will not be able to remain healthy and independent, and may require care.
3. Six (6) pages of annotated statements from the appellant's bank for the period 1<sup>st</sup> April 2019 to 31<sup>st</sup> May 2019, which amongst other matters, state:
4. The appellant's partner has no access to her bank account;
5. The Appellant is not making enough to stay afloat and needs help in paying her medical needs, which she cannot afford;
6. One half of the rent is paid by the appellant's partner

In addition to the information described above, the panel reviewed the following additional information and evidence:

1. Reconsideration Decision dated 1<sup>st</sup> August 2019, which amongst other matter stated the following:
  - The appellant had applied for disability assistance as a part of a couple;
  - The appellant had PWD designation and her file was closed in 2012;
  - At the intake interview on 24<sup>th</sup> June 2019 to determine eligibility for disability assistance, the appellant reported that she was in a common-law relationship with her spouse;
  - The Appellant receives \$871.84 per month as CPP; her spouse receives \$229.32 as CPP and \$1084.10 as OSA/GIC per month;
  - The combined monthly income of the Unit is \$2185.00 per month and that there has been no recent change in the appellant's recent circumstances;

- Section 1 of EAPWDR describes "Unearned income" to include any monies received from any type or class of CPP, Federal Old age Security and Guaranteed Investment Income supplement payments. As described above, the appellant and her spouse declared a combined income of \$2185.86 in her application dated 24<sup>th</sup> June 2019 for assistance;
  - Schedule B Section 1, 7 and 8 of EAPWDR lists exemptions from "unearned income" for the purposes of calculating net income for assistance purposes. Such exemptions do not include any amounts received as CPP, OAS/GIS;
  - Section 7 (1)(e) of Schedule B provides a tax exemption for a portion of CPP benefit, but it does not apply to a voluntary CPP tax deduction. There was no evidence before the ministry that such an exemption applied to the appellant.
  - Schedule a of EAPWDR, a two-person family, where one adult person with disabilities, and the other adult is not a person with disabilities and is 65 or older, in receipt of disability assistance is eligible to receive up to \$1846.06, consisting of \$1285.26 for support and \$570.00 for shelter;
  - Section 9 of Schedule A states that a family unit is not eligible for assistance if the net income of the family determined under Schedule B equals or exceeds the amount of disability assistance determined under schedule A for family unit matching that family unit.
  - As stated above, the "unearned income" of the appellant calculated under Schedule B is \$2185.26 and her maximum assistance, calculated under Schedule A is \$1846.06.
  - Whilst the ministry acknowledged the appellant's position that (i) while she is in a common-law relationship with her spouse, (ii) the two of them do not share finances as such and (iii) her spouse's income should not be factored into the income calculation determining the eligibility of the appellant, the ministry noted that the appellant did not dispute that the appellant and her spouse live together in a common-law relationship, and as such, both of their income must be included when calculating eligibility for their family unit. How the two spouses choose to divide expenses is entirely their decision, but both of their income must be taken into consideration by the ministry as the appellant has clearly stated that she is living in a common-law relationship;
  - As the family unit's net income exceeds the maximum rate of assistance for the appellant's family size, under Section 9 of EAPWDR, the ministry found that the appellant was ineligible for disability assistance.
  - The ministry advised that the appellant may wish to discuss a life threatening health needs supplement with her local office.
  - Notice of Appeal dated 12<sup>th</sup> August 2019, which amongst other matters state that all that the appellant wants is for the ministry to reconsider for the appellant to go on "MSO".
2. Appellant's additional submission dated 23<sup>rd</sup> August 2019, which amongst other matters state, that:
- When the appellant was on some specified medication in 2005, he had obtained a line of credit loan of \$5000.00 from his bank to purchase a medical equipment costing \$6995.00; and currently a sum of \$2303.00 is outstanding under the said loan; and
  - Monthly cost of gluten free food required by the appellant is \$93.72 (annually: \$1124.64).

#### New Documentary Evidence

Having carefully considered the contents of the appellant's submission dated 12<sup>th</sup> August 2019, the panel finds that the submission is admissible as additional evidence under Section 22(4) of the Employment and Assistance Act, as it is in support of the records of information and records, corroborating the information before the minister at reconsideration.

#### Hearing

At the hearing the both the appellant and her representative made submissions. Both provided oral evidence that:

- The appellant needed financial assistance to pay for urgent medical conditions including, dental problems that are exacerbating her other medical conditions and prescription expenses;
- although the appellant and her spouse share rental expenses, and her spouse often purchased groceries for the appellant, the appellant pays the rest of her bills, which leaves her in a negative financial position

each month. In particular, the appellant stated that she purchases her own gluten free and special diet needs; and

- the appellant owes a debt of approximately \$2200.00 for critical medical equipment required for her medical condition.

In response to a question from the ministry representative, the appellant acknowledged and confirmed that she was in a common law relationship with her spouse.

The ministry relied upon the reconsideration decision and the admission of the appellant at the hearing to the effect that she lived in a common law relationship with her spouse. Based thereon, the ministry argued that, having regard thereto, it was reasonable for the ministry to take into account the combined income of the two-person family unit to determine the maximum eligible amount due to the appellant's family unit as disability and shelter allowances.

The panel finds that the written evidence of the appellant dated 23<sup>rd</sup> August 2019 about the funds borrowed by her from a bank for the purchase of a medical equipment and her oral evidence at the hearing about (i) her financial needs and (ii) her cost sharing arrangements with her relating to the rent and groceries purchased on her behalf by her spouse, are admissible under Section 22(4) of Employment Assistance Act as they are in support of the records before the ministry at reconsideration.

Having regard to the relevant issues it has to decide, the panel finds that the evidence before it establishes the following facts:

1. At the intake interview to determine eligibility for disability assistance on 24<sup>th</sup> June 2019 the appellant had reported that she was in a common-law relationship with her spouse. This fact was acknowledged and reconfirmed orally by the appellant at the hearing of the appeal;
2. The appellant is eligible to apply for a monthly support allowance as well as a monthly shelter allowance;
3. The combined monthly income of the appellant's family unit of 2 persons is an aggregate sum of \$2185.26 each month, comprised of \$871.84 per month as CPP for the appellant; \$229.32 as CPP for appellant's spouse and \$1084.10 as OSA/GIC for appellant's spouse;
4. The maximum monthly support allowance and shelter allowance for the appellant's 2 person family unit is \$1846.06; and
5. There was no evidence before the ministry at the time of reconsideration that Section 7 (1)(e) of Schedule B, which provides a tax exemption for a portion of CPP benefit, applied to the appellant.

**PART F – REASONS FOR PANEL DECISION**

The issue on appeal is whether the Reconsideration Decision, which held that the appellant was ineligible for disability assistance as the ongoing unearned income of the appellant's family unit from CPP and OAS/GIC is in excess of the rate of assistance prescribed for the Appellant's family unit size under Section 1, Section 9 Schedule A Section 1, 2, and 4, and Section B 1, 6 and 7, was reasonably supported by evidence or was a reasonable application of applicable enactment in the circumstances of the appellant..

The relevant applicable legislation is as follows:

**Employment Assistance Persons with Disabilities Act****Meaning of "spouse"**

**1.1** (1) Two persons, including persons of the same gender, are spouses of each other for the purposes of this Act if

- (a) they are married to each other, or
- (b) they acknowledge to the minister that they are residing together in a marriage-like relationship.

(2) Two persons who reside together, including persons of the same gender, are spouses of each other for the purposes of this Act if

- (a) they have resided together for at least
  - (i) the previous 3 consecutive months, or
  - (ii) 9 of the previous 12 months, and
- (b) the minister is satisfied that the relationship demonstrates
  - (i) financial dependence or interdependence, and
  - (ii) social and familial interdependence,

consistent with a marriage-like relationship.

**Employment Assistance Persons with Disabilities 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:

- (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;

- (k) surviving spouses' or orphans' allowances;
- (l) a trust or inheritance;
- (m) rental of tools, vehicles or equipment;
- (n) rental of land, self-contained suites or other property except the place of residence of an applicant or recipient;
- (o) interest earned on a mortgage or agreement for sale;
- (p) maintenance under a court order, a separation agreement or other agreement;
- (q) education or training allowances, grants, loans, bursaries or scholarships;
- (r) a lottery or a game of chance;
- (s) awards of compensation under the *Criminal Injury Compensation Act* or awards of benefits under the *Crime Victim Assistance Act*, other than an award paid for repair or replacement of damaged or destroyed property;
- (t) any other financial awards or compensation;
- (u) Federal Old Age Security and Guaranteed Income Supplement payments;
- (v) financial contributions made by a sponsor pursuant to an undertaking given for the purposes of the *Immigration and Refugee Protection Act (Canada)* or the *Immigration Act (Canada)*;
- (w) tax refunds;
- (x) gifts of money, annuities, stocks, bonds, shares, and interest bearing accounts or properties;
- (y) gifts in the form of payment by another person of a debt or obligation.

**Limits on income**

**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.

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
2	Sole applicant / recipient and one or more dependent children	Applicant / recipient is a person with disabilities	899.08
3	Two applicants / recipients and no 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	949.08

**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;

(liv) 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.

**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.

### **Panel's Decision**

The appellant has applied for disability assistance in the form of monthly support allowance and shelter allowance. Based on the evidence on record, the panel has made a finding of fact in **Section E – Summary of Facts** above that the ministry reasonably determined that the appellant is eligible to apply for a monthly support allowance as well as a monthly shelter allowance.

The panel further notes that at the intake interview, the appellant informed the ministry that she was living with her spouse in a common law relationship. At the hearing of the appeal, this fact was reconfirmed by the appellant. In support of her application for income assistance on 11<sup>th</sup> June 2019, the appellant submitted financial information about the incomes of both herself as well as her spouse.

Section 1.1 of the Employment Assistance Persons with Disability Act described the meaning of a "spouse" as follows:

**Meaning of "spouse"**

**1.1** (1) Two persons, including persons of the same gender, are spouses of each other for the purposes of this Act if

- (a) they are married to each other, or
- (b) they acknowledge to the minister that they are residing together in a marriage-like relationship.

(2) Two persons who reside together, including persons of the same gender, are spouses of each other for the purposes of this Act if

- (a) they have resided together for at least
  - (i) the previous 3 consecutive months, or
  - (ii) 9 of the previous 12 months, and
- (b) the minister is satisfied that the relationship demonstrates
  - (i) financial dependence or interdependence, and
  - (ii) social and familial interdependence,

consistent with a marriage-like relationship.

The panel finds that the common law relationship acknowledged by the appellant is a "marriage-like relationship" described in Section 1.1 above. Furthermore, the panel finds that the evidence of the appellant establishes that the said relationship includes financial *dependence or interdependence between the two spouses*, as (i) the appellant and her spouse share the rent for the premises they occupy and (ii) the spouse purchases most groceries for the appellant, and the appellant purchases her own gluten free and special diet needs. Therefore, the panel finds that the ministry reasonably determined that the appellant is in a common law relationship and her application for assistance therefore has to be calculated based upon a family unit of 2 persons.

The panel has also considered the provisions (set out above) of (i) **Section 24(a) of EDPWDR**, which describes the formula for the calculation of monthly disability assistance, (ii) **Section 1 of Schedule A of the EAPWDR**, which describes the formula for the calculation of monthly support allowance and the monthly shelter allowance, and (iii) **Section 1 of Schedule D of EAPWDR**, which prescribes the maximum amount of monthly support allowance for a 2 person family Unit, and the finding of facts made by the panel in **SECTION E – SUMMARY OF FACTS**. Based thereon the panel finds that the ministry reasonably determined that the appellant family unit of 2 persons is eligible to receive a maximum allowance of up to \$1846.06, consisting of \$1276.06 for monthly support allowance and \$570.00, as monthly support allowance in accordance with the said applicable legislation. The panel further notes that the appellant has not disputed this determination made by the ministry.

The panel noted that the combined incomes of the appellant and her spouse, as a family unit of 2 persons for the

month of June 2019, and as reported by the appellant to the ministry, is \$2185.26 comprising of \$871.84 CPP for the appellant, \$229.32 CPP for the spouse plus \$1084.10 as OAS/GIS for the spouse. The panel further noted that, at the time of intake interview, the appellant informed the ministry that there had been no change in the appellant's recent circumstances at that time. Within that context, the panel noted that there was no evidence before the ministry at reconsideration that any portion of the CPP benefits being received by the appellant's family unit were eligible for "unearned exemptions" described in **Section 7 under Schedule B**. Therefore, the panel finds that the ministry reasonably determined that the combined income of the appellant and her spouse, as a family unit of 2 persons, for the month of June was \$2185.26. The panel notes that the appellant has not disputed this determination made by the ministry.

As the appellant's family unit's net combined income of 2 persons amounting to \$2185.26 exceeds the maximum rate of assistance for the appellant's family unit amounting to \$1846.06, the panel finds that the ministry's reconsideration decision reasonably supported by evidence and a reasonable application of the applicable enactment in the circumstances of the appellant.

The panel confirms the reconsideration decision of the ministry.

In conclusion, the panel wishes to note the following two points without expressing any opinion relating thereto:

1. At the end of the reconsideration decision, the ministry opined that the appellant may wish to discuss with her local office her potential eligibility for a "life-threatening health needs supplement".
2. In response to the appellant's request, in her written submission dated 12<sup>th</sup> August 2019, to be considered for "MSO" status, the ministry representative opined at the hearing that this is an option that could also be discussed by the appellant with her local office. The panel has not considered this issue in its decision above, as this issue was not before the ministry at the time of reconsideration.



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

TAJDIR MITHA

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2019/09/09

PRINT NAME

NANCY EIDSVIK

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019/09/09

PRINT NAME

SUSAN MACKAY

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019/09/09