

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 September 16, 2019 which held that, pursuant to Schedule B EAPWDR, the spousal support paid to the appellant’s spouse was unearned net income which was not exempt and it must be deducted from the appellant’s PWD monthly assistance payments.

PART D – RELEVANT LEGISLATION

- s. 1, 24, 29, Schedule A and Schedule B Employment and Assistance for Persons with Disabilities Regulation (“EAPWDR”)
- s. 1 Family Maintenance Enforcement Act (“FMEA”)

PART E – SUMMARY OF FACTS

The evidence before the Ministry at reconsideration was:

- The appellant receives disability assistance as a couple. Pursuant to Schedule A EAPWDR the appellant and the appellant's spouse earn \$2167.06 per month (\$1503.06 for support, \$560 for shelter, \$104 for transportation).
- The appellant's spouse is in receipt of spousal support in the amount of \$175 per month.
- The appellant declares this income on his monthly report and it is deducted from his disability assistance each month
- On August 9, 2019 the appellant requested reconsideration of the deduction from his disability assistance.
- The appellant's request for reconsideration which included:
 - o Statements from his spouse confirming that she is still responsible for taxation of the \$175 per month and that by having her disability assistance reduced by that amount she feels robbed.
 - o Statements from his spouse indicating that the spousal support was compensatory in nature and should be considered differently than non-compensatory spousal support.
 - o Statement from his spouse indicating that other sectors of the government considered spousal support to be earned income.
 - o Statements from his spouse indicating that a lump sum payment of spousal support wasn't available to her at the time of her divorce.
 - o Statements from his spouse indicating that spousal support should be considered to be similar to WCB temporary wage loss payments.
 - o A print out of references including the Spousal Support Advisory Guidelines calculator, the Justice Laws website, and print out from Canada Revenue Agency.
 - o A copy of the order of February 6, 2006 of the court.
 - o A copy of the order of March 2, 2012 of the court.

In the Notice of Appeal the appellant states the reasons for appeal as: "I understand the Ministry deducts my spousal support according to regulation. I do not believe the regulations are just and should be changed. My spousal support is compensatory.

At the hearing, the appellant's spouse spoke on his behalf as his representative. She argued the following:

- She feels robbed with her divorce to obtain spousal support.
- The spousal support that she received was a compensation for her for assisting her ex husband in fulfilling his educational and career goals. The spousal support is income that she earned.
- She understands that the Ministry and the Tribunal are bound by the legislation but she thinks the legislation ought to be changed.
- The spousal support should be considered earned income and should be added to her annual earnings exemption.

At the hearing the Ministry relied on their reconsideration decision. The Ministry agreed that there was not a definition of spousal support in the Ministry legislation, but that this was commonly treated as unearned, non exempt income in the past.

PART F – REASONS FOR PANEL DECISION

The issue on appeal is whether the Ministry's reconsideration decision which held that, pursuant to Schedule B EAPWDR, the spousal support paid to the appellant's spouse was net unearned income which was not exempt and it must be deducted from the appellant's PWD monthly assistance payments, was reasonably supported by the evidence or a reasonable application of the applicable legislation in the circumstances of the appellant.

The legislation provides:

EAPWDR

s.1 "unearned income" means any income that is not earned income, and includes, without limitation, money or value received from any of the following:

(...)

(p) maintenance under a court order, a separation agreement or other agreement;

(...)

Amount of disability assistance

s. 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.

Reporting requirement

s. 29 For the purposes of section 11 (1) (a) [reporting obligations] of the Act,

(a) the report must be submitted by the 5th day of the calendar month following the calendar month in which one or more of the following occur:

(i) a change that is listed in paragraph (b) (i) to (v);

(ii) a family unit receives earned income as set out in paragraph (b) (vi);

(iii) a family unit receives unearned income that is compensation paid under section 29 or 30 of the Workers Compensation Act as set out in paragraph (b) (vii), and

(b) the information required is all of the following, as requested in the monthly report form prescribed under the Forms Regulation, B.C. Reg. 87/2018:

(i) change in the family unit's assets;

(ii) change in income received by the family unit and the source of that income;

(iii) change in the employment and educational circumstances of recipients in the family unit;

(iv) change in family unit membership or the marital status of a recipient;

(v) any warrants as described in section 14.2 (1) of the Act;

(vi) the amount of earned income received by the family unit in the calendar month and the source of that income;

(vii) the amount of unearned income that is compensation paid under section 29 or 30 of the Workers Compensation Act received by the family unit in the calendar month.

Schedule B

Deductions from unearned income

6 The only deductions permitted from unearned income are the following:

(a) any income tax deducted at source from employment insurance benefits;

(b) essential operating costs of renting self-contained suites.

Exemptions — unearned income

7 (0.1) In this section:

"disability-related cost" means a disability-related cost referred to in paragraph (a), (b), (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.

(2.1) Repealed. [B.C. Reg. 204/2015, App. 2, s. 4 (b).]

(3) Repealed. [B.C. Reg. 197/2012, Sch. 2, s. 13 (f).]

Repealed

7.1-7.2 Repealed. [B.C. Reg. 226/2014, s. 4.]

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.

Family Maintenance Enforcement Act

"maintenance" means maintenance, support or alimony, whether payable

(a) periodically, annually or otherwise,

(b) for an indefinite or limited period or until the happening of a specified event, or

(c) as a lump sum,

"maintenance order" means a provision for the payment of maintenance in an order, judgment or family law arbitration award that is enforceable in British Columbia and includes

(a) an interim order, made under the Family Law Act, respecting support,

(b) an order made under section 21,

(c) an agreement deemed to be a maintenance order under subsection (2), and

(d) an order that is a support order under the Interjurisdictional Support Orders Act,

but does not include a provisional order or a provisional variation order, as defined in section 1 (1) of the Interjurisdictional Support Orders Act;

The panel finds:

Pursuant to s.24 EAPWDR disability assistance is paid to the family unit, which in the case of this appellant includes both he and his spouse. The amount of assistance is calculated pursuant to Schedule A of EAPWDR. Any net income whether earned or unearned by the family unit is determined pursuant to Schedule B and is deducted from the amount earned pursuant to Schedule A.

The appellant does not argue the accuracy or amount of income the family unit receives pursuant to Schedule A EAPWDR.

The appellant argues his spouse's income should be treated as unearned income but exempt and not deducted from his family's Schedule A assistance. In the alternative, the appellant argues that his spouse's spousal support should be treated as earned income added to her annual earnings exemption and not deducted from his family's Schedule A assistance. In the alternative, the appellant argues that the spousal support should not be considered income at all and not deducted from his family's Schedule A assistance.

Is spousal support unearned income?

The panel finds that it was reasonable for the Ministry to determine that the spousal support was unearned income. EAPWDR nor the Employment and Assistance for Persons with Disabilities Act ("EAPDA") define "spousal support". s.1 of EAPWDR states that unearned income includes "*maintenance under a court order, a separation agreement or other agreement*". Maintenance is not defined in the EAPWDR nor the EAPDA. Maintenance is defined in s.1 of FMEA. In FMEA Maintenance means:

maintenance, support or alimony, whether payable(a)periodically, annually or otherwise,

(b)for an indefinite or limited period or until the happening of a specified event, or

(c)as a lump sum,

The panel finds that given the terms "support" or "alimony", spousal support is covered by the definition of maintenance in FMEA. The panel finds that the maintenance paid to the appellant's spouse was pursuant to a court order and therefore covered by the definition of maintenance in EAPWDR.

Is the unearned income exempt?

The appellant argues that the unearned income should be exempt. The panel has reviewed the exemptions to unearned income in Schedule B and was not able to find any sections that exempted maintenance or spousal support payments. The appellant was not able to draw the panel to any exemptions of unearned income that could apply to spousal support. The panel therefore finds that it was reasonable for the Ministry to determine that there were no exemptions to the unearned income of spousal support.

For these reasons, the panel finds the Ministry's decision was a reasonable application of the applicable enactment in the circumstances of the appellant and confirms the decision.

APPEAL NUMBER

PART G – ORDER	
THE PANEL DECISION IS: (Check one) <input checked="" type="checkbox"/> UNANIMOUS <input type="checkbox"/> BY MAJORITY	
THE PANEL <input checked="" type="checkbox"/> CONFIRMS THE MINISTRY DECISION <input type="checkbox"/> 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? <input type="checkbox"/> Yes <input type="checkbox"/> No	
LEGISLATIVE AUTHORITY FOR THE DECISION:	
<i>Employment and Assistance Act</i>	
Section 24(1)(a) <input type="checkbox"/> or Section 24(1)(b) <input checked="" type="checkbox"/>	
and	
Section 24(2)(a) <input checked="" type="checkbox"/> or Section 24(2)(b) <input type="checkbox"/>	

PART H – SIGNATURES	
PRINT NAME MEGHAN WALLACE	
SIGNATURE OF CHAIR	DATE (YEAR/MONTH/DAY) 2019/10/19

PRINT NAME Carl Gorham	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2019/10/19

PRINT NAME Linda Pierre	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2019/10/19