

APPEAL NUMBER

**PART C – DECISION UNDER APPEAL**

The decision under appeal is the Ministry of Social Development and Poverty Reduction's (the "ministry") Reconsideration Decision of September 13<sup>h</sup>, 2019 in which the ministry determined that the appellant was ineligible for income assistance for September 2019, because the net income of the family unit was in excess of the rate of assistance; pursuant to Section 9(2) of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR).

**PART D – RELEVANT LEGISLATION**

EAPWDR *Employment and Assistance for Persons with Disabilities Regulation, Section 9(2) and Schedule A & B*

**PART E – SUMMARY OF FACTS**

The information before the ministry at the time of reconsideration included the following:

- 1) The appellant receives disability assistance at a rate of \$1235.42 per month.
- 2) **August 2, 2019** – The appellant declared \$3290.00 that they received in July for medical employment insurance.
- 3) The appellant was advised by the ministry that their income was more than the rate of assistance (\$1235.42 per month) and that the appellant would not be eligible for assistance for the month of September - 2019.
- 4) **August 23, 2019** – the ministry received the appellant's request for reconsideration. The appellant described the challenges they had experienced when they first applied for income assistance. The appellant indicated that they received different information from different ministry workers and had found the process to be inconsistent. The appellant provided bank statements which indicated deposits of \$706.00 on July 16, \$1346.00 on July 23, \$888.00 on July 30. The appellant noted an additionally received payment of \$350.00 on July 3.

**Additional Information**

The ministry requested the attendance of a ministry observer. The appellant did not object to the attendance of the observer.

At the hearing, the appellant stated that they found that the process of qualifying for disability assistance to be not always consistent and at times confusing. The appellant said that they contacted the ministry on several occasions regarding the employment insurance benefits declared on their July 2019 monthly report and was told different things by the ministry representatives depending on who the appellant spoke to, including that the appellant would not have unearned income deducted from their monthly disability benefits.

The ministry relied on its reconsideration decision and stressed that a disability assistance client cannot receive benefits from both the federal and the provincial programs at the same time and clients are required to exhaust any other benefits to which they might be entitled before receiving disability assistance from the ministry as the ministry is considered the "payer of last resort". The ministry also explained that the monthly report is due by the 5<sup>th</sup> of the month following the month in which income is reported, and that the reported income determines the benefits to which the client is entitled for the month following the reporting month, such that July 2019 income must be reported by August 5<sup>th</sup> and determines disability benefits that a client is entitled to receive at the end of August 2019 for the month of September 2019.

**PART F – REASONS FOR PANEL DECISION**

The issue under appeal is the reasonableness of the ministry’s Reconsideration Decision of September 13<sup>th</sup>, 2019 in which the ministry determined that the appellant was ineligible for income assistance for September 2019, because the net income of the family unit was in excess of the rate of assistance; pursuant to Section 9(2) of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR).

**Employment and Assistance for Persons with Disabilities Regulation**

**Definitions**

1 (1) In this regulation:

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

(g) employment insurance;

**Limits on income**

9 (1) For the purposes of the Act and this regulation, **"income"**, in relation to a family unit, includes an amount garnished, attached, seized, deducted or set off from the income of an applicant, a recipient or a dependant.

**(2) A family unit is not eligible for disability assistance if the net income of the family unit determined under Schedule B equals or exceeds the amount of disability assistance determined under Schedule A for a family unit matching that family unit.**

**Schedule A**

**Monthly support allowance**

Item	Column 1 <b>Family unit composition</b>	Column 2 <b>Age or status of applicant or recipient</b>	Column 3 <b>Amount (\$)</b>
1	Sole applicant / recipient and no dependent children	Applicant / recipient is a person with disabilities	808.42

**Monthly shelter allowance**

Item	Column 1 <b>Family Unit Size</b>	Column 2 <b>Maximum Monthly Shelter</b>
1	1 person	\$375

**Schedule B****Exemptions — unearned income**

7 (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).]

### Panel Decision

The ministry's position is that the appellant declared that they received \$3290.00 of medical employment insurance (EI) income in the month of July 2019 which is over and above what was the set rate of assistance for the family unit for a given month (\$1235.42); pursuant to section 9(2) and Schedule A of the Employment and Assistance for Persons with Disabilities Regulation, and that therefore the appellant was not entitled to receive any disability benefits in September 2019.

The appellant's position, is that the appellant was told different things by the ministry depending on who they spoke to and would not have applied for employment assistance if they had realized that it would limit the amount of disability assistance that they would otherwise have received.

Section 9(2) of the Employment Assistance for Persons with Disabilities Regulation states that 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.

The panel finds that the evidence establishes that the appellant is entitled to \$1235.42 per month of disability income assistance (\$808.42 for support, \$375.00 for shelter, and \$52.00 for transportation supplement) net of any earned or unearned income received in a given month. Further, given the appellant did not deny receiving and declaring the medical employment insurance benefit on August 2, 2019 for a total of \$3290.00, the panel finds that the evidence establishes that the appellant's unearned income for the month of July 2019 exceeded the amount of \$1235.42 in shelter and support allowances for that month, as set out in Schedule A of the EAPWDR. Therefore the appellant was not entitled to receive any disability benefits at the end of August 2019 for the month of September 2019.

Accordingly, having considered all of the evidence, the panel finds that the decision of the ministry to deny the appellant the September 2019 income assistance due to their exceeded medical employment insurance income, was reasonably supported by the evidence. Therefore, the panel confirms the ministry's decision, pursuant to Section 24(1)(a) and 24(2)(a) of the Employment and Assistance Act. The appellant is therefore unsuccessful in their appeal.

<b>PART G – ORDER</b>	
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	
<b>LEGISLATIVE AUTHORITY FOR THE DECISION:</b>	
<i>Employment and Assistance Act</i>	
Section 24(1)(a) <input checked="" type="checkbox"/> or Section 24(1)(b) <input type="checkbox"/>	
and	
Section 24(2)(a) <input checked="" type="checkbox"/> or Section 24(2)(b) <input type="checkbox"/>	

<b>PART H – SIGNATURES</b>	
PRINT NAME Jennifer Armstrong	
SIGNATURE OF CHAIR	DATE (YEAR/MONTH/DAY) 2019/10/07

PRINT NAME Simon Clews	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2019/10/07
PRINT NAME Rosalie Turcotte	
SIGNATURE OF MEMBER	DATE (YEAR/MONTH/DAY) 2019/10/07