

APPEAL NUMBER

PART C – DECISION UNDER APPEAL

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Poverty Reduction (the ministry) dated November 5, 2019, which determined that the appellant was not eligible for disability assistance because the net income of the family unit exceeds the amount of disability assistance for a family unit matching that family unit under section 9 of the *Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR). The Ministry held that the long-term disability payments being received by the spouse are insurance benefits payable and are unearned income under section 1 (1) of the EAPWDR. The family unit's net income must include any amount attached, garnished or seized and must be deducted from the appellants disability assistance under section 9 (1) of the EAPWDR. The long-term disability benefit of \$2042.70 that the family unit receives exceeds the appellant's disability assistance rate of \$1577.56 making the family unit not eligible for disability assistance.

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons with Disabilities Act (EAPWDA), Sections 1, 3.
Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) Sections 1, 9, 24, Schedules A & B

PART E – SUMMARY OF FACTS

The appellant was not in attendance at the hearing. After confirming that the appellant was notified, the hearing proceeded under Section 86(b) of the Employment and Assistance Regulation.

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

The appellant is part of a two-person family unit where one person is a person with disabilities (PWD) and the other is not a PWD and is under 65. The appellant's disability rate includes \$1,027.56 support and \$570.00 shelter before a \$20.00 repayment is deducted for a total disability rate of \$1,577.56.

On July 29, 2019 the appellant submitted a monthly report dated August 24, 2019 including the spouse's income. The appellant declared the spouse's income is \$1,250.00 after \$750.00 child support is deducted. A bank statement provided shows that \$2042.70 from an Insurance company is deposited into the spouse's chequing account monthly. The bank statements also show that each month \$760.00 is taken from the same account and it shows as an attachment by Family Maintenance Enforcement Program.

On September 3, 2019 the spouse was added to the appellant's file. The spouse receives long term disability benefits from the insurance company. A letter dated June 21, 2019 verified that the insurance company provides long term disability benefits to the spouse in the amount \$2267.00, before tax deductions, each month.

The letter from the insurance company explains the policy under which the spouse's benefits are paid and defines disability as:

- *Restriction or lack of ability due to an illness or injury which prevents an Employee from performing any and every duty of:*
 - *[The Employee's] own occupation, during the qualifying period and 24 months immediately following the qualifying period; and*
 - *Any occupation for which the employee is qualified, or may be reasonably qualified by training, education or experience, after 24 months specified in part a of this provision*
- *The availability of work will not be considered by [the insurance company] in assessing the employee's disability*
- *An employee who must hold a government permit or licence to perform his duties will not be considered totally disabled solely because such permit or licence has been withdrawn or not renewed.*

In Section 3 of the appellant's Request for Reconsideration the appellant claims dissociative amnesia, directional issues and vertebral fracture. The appellant states that the spouse pays \$717.00 a month for support, and that they filed a hardship form three times in court however it was ignored. The appellant states the lawyer and the judge attended school together and are friends on social media . The appellant also states that the spouse's ex-spouse lied about the arrears.

At the hearing the Ministry summarized the information from the reconsideration decision. The ministry stated that when the new spousal arrangement was filed the family unit now included the spouse, who had wished the family maintenance support payment to be deducted from the private disability payment for calculation of income. The ministry took this into consideration. The Ministry also noted the language in the insurance company's letter that defined the payments as "Long Term Disability Benefits" and referenced Section 1 (1) (j) and (p) of the EAPWDR.

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Although there are several versions of how much money are received by the family unit and paid out under the family maintenance enforcement program, the panel finds the amounts demonstrated on the insurance company's letter and chequing account summary to be acceptable and provide income of \$2267.00, paid as \$2042.70 into the account, and a family maintenance amount paid of \$760.00.

PART F – REASONS FOR PANEL DECISION

The issue on this appeal is whether the Ministry's decision that the appellant was not eligible for disability assistance because the net income of the family unit exceeds the amount of disability assistance for a family unit matching that family unit under section 9 of the (EAPWDR) is reasonably supported by the evidence or a reasonable application of the applicable legislation.

The following legislation applies to this appeal:

EAPWDA*Interpretation***1. (1) In this Act:**

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

(a) the person's spouse,

Eligibility of family unit

3. For the purposes of this Act, a family unit is eligible, in relation to disability assistance, hardship assistance or a supplement, if

(a) each person in the family unit on whose account the disability assistance, hardship assistance or supplement is provided satisfies the initial and continuing conditions of eligibility established under this Act, and

(b) the family unit has not been declared ineligible for the disability assistance, hardship assistance or supplement under this Act.

EAPWDR*Section 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:

(d) insurance benefits, except insurance paid as compensation for a destroyed asset;

(j) workers' compensation benefits and disability payments or pensions;

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

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.

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.
- [am. B.C. Regs. 175/2016, App. 1; 193/2017.]

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.

Monthly support allowance

2.

	Family unit composition	Age or status of applicant or recipient	Amount (\$)
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 of age	1 027.56

Monthly shelter allowance

4.

- (2.1) The monthly shelter allowance for a family unit to which section 14.2 of the Act applies is the smaller of
- (a) the family unit's actual shelter costs, and
 - (b) the maximum set out in the following table for the applicable family unit composition:

Item	Column 1 Family Unit Composition	Column 2 Maximum Monthly Shelter
2	Family with dependent children, family unit size = 2 persons	\$570

SCHEDULE 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;*
- (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 [low income 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;*
- (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;*
- (xvii.1) money that is paid or payable to or for a person if the payment is in accordance with*
- (A) the Sixties Scoop Settlement made November 30, 2017, or*
- (B) the Federal Indian Day Schools Settlement made March 12, 2019, as amended May 13, 2019;*
- (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;
- (xxii) payments granted by the government of British Columbia under section 8 of the Child, Family and Community Service Act [agreement with child's kin and others];
- (xxiii) payments granted by the government of British Columbia under the Ministry of Children and Family Development's At Home Program;
- (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;
- (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;
- (xxxii) 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;
- (xxxiii) a Universal Child Care Benefit provided under the Universal Child Care Benefit Act (Canada);
- (xxxiv) 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;
- (xxxv) money withdrawn from a registered disability savings plan;
- (xxxvi) a working income tax benefit provided under the Income Tax Act (Canada);
- (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 a 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;*
- (lix) 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;

(ix) money that is paid or payable under the Memorial Grant Program for First Responders established under the authority of the Department of Public Safety and Emergency Preparedness Act (Canada),

(b) any amount garnished, attached, seized, deducted or set off from income is considered to be income, except the deductions permitted under sections 2 and 6,

(c) all earned income must be included, except the deductions permitted under section 2 and any earned income exempted under sections 3 and 4, and

(d) all unearned income must be included, except the deductions permitted under section 6 and any income exempted under sections 3, 7 and 8.

Deductions from 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.

(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) x 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; (g) a benefit paid under section 22, 23 or 23.2 of the Employment Insurance Act (Canada) to any person in the family unit.

Positions of the Parties

The Appellant's position appears to be that the amount paid under the family maintenance program should be deducted from the family unit's net income.

The ministry's position is that there are ongoing conditions of eligibility that must be satisfied under the EAPWDA including income, and there was a change reported by the appellant on July 29, 2019 which caused the spouse to be added to the file in September of that year. The appellant had provided income documentation, from the insurance company and the appellant's chequing account, that the Ministry believes confirms receipt of a long-term disability payment and has classified this as "unearned income". This is confirmed by the insurance company's letter dated 21 June 2019.

Section 1(1) of the EAPWDR defines "unearned income" as any income that is not earned income, and includes, without limitation, d) insurance benefits, (j) workers' compensation benefits and disability payments, and (p) maintenance under a court order.

The panel finds that the insurance company payments are unearned income.

Section 9 (1) of the EAPWD Regulation provides that the family unit's income includes any amounts deducted, set off, garnished or seized from the recipient of the income.

Schedule B of the EAPWDR is for the calculation of the family unit net income. Sections 1, 6 and 7 set out types of income that may be deducted or exempted from the calculation of the monthly net income. Disability payments is not listed as a type of unearned income that may be excluded from the calculation. For unearned income, section 1 (b) also provides that for income any amount garnished, attached, seized, deducted or set off is considered to be income, except the deductions permitted under section 6. In the appellant's situation the only deduction permitted from unearned income is income tax deducted at source from employment insurance benefits. The facts show the spouse receives \$2267 in monthly payments from the insurance company which are taxable, and \$2042.70 after source tax deductions in the chequing account.

For these reasons the panel finds that the ministry correctly interpreted that the Family Maintenance Enforcement support payment of \$760 per month must be included as part of the calculation of net income, that the tax withheld is an allowable deduction and that the family unit net income calculated under schedule B is \$2042.70.

Under Section 24 of the EAPWD Regulation the amount of monthly assistance is determined by deducting the amount of net income calculated under Schedule B from the amount of shelter and support allowances calculated under Schedule A for the family unit.

The facts available to the ministry at reconsideration provide a disability rate, including \$1,027.56 support and \$570.00 shelter, before a \$20.00 repayment is deducted, for a total disability rate of \$1,577.56 and the ministry has used this figure for the calculation required under section 24 of the EAPWDR. The panel notes that Schedule A, section 1 (1) does not allow for the reduction in this calculation due to set offs or repayment such that the \$20.00 must be included.

Section 9 (2) of the EAPWDR states that the family unit is not eligible for disability assistance if the family unit's net income equals or exceeds the amount of disability assistance determined under Schedule A for the family unit that matches the family unit. As previously stated, the panel found the net income to be \$2042.70, which

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exceeds the maximum amount of disability assistance before deduction of net income of \$1597.56. Therefore, the panel finds the family unit is not eligible for disability assistance.

The panel finds that the ministry's decision to deny the appellant's eligibility for disability assistance was reasonably supported by the evidence. The panel therefore confirms the ministry's decision.

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PARTG-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)

PARTH-SIGNATURES

PRINT NAME

Donald M Stedeford

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2019/12/12

PRINT NAME

Marnee Pearce

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019/12/12

PRINT NAME

Inge Morrissey

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019/12/12