

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 November 12, 2019 in which the ministry determined that the appellant was not eligible for disability assistance for September and October 2019 because the appellant had \$7000.00 and \$1500.00 of unearned income in September and October, that had exceeded the maximum rate of disability assistance, pursuant to section 9(2) of the Employment and Assistance for Persons with Disabilities Regulation.

PART D – RELEVANT LEGISLATION

EAPWDR *Employment and Assistance for Persons with Disabilities Regulation, section 1, 9, 24, Schedule A & B*

PART E – SUMMARY OF FACTS

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

- 1) The appellant had applied for a person with disabilities designation as a sole recipient. The file had been previously closed in June 2018 and was reapplied for in September 2019.
- 2) **October 4, 2019** – The appellant was found ineligible for disability assistance for the month of September 2019 due to unearned income (\$7000.00) from a game of chance (gambling) in excess of the family unit's rate of assistance.
- 3) **October 7, 2019** – The appellant was found ineligible for disability assistance for the month of October, 2019 due to unearned income (\$1500.00) from a game of chance (gambling) in excess of the family unit's rate of assistance.
- 4) October 18, 2019 – The appellant requested a reconsideration of the decision.
- 5) November 12, 2019 – The reconsideration decision was made to deny disability assistance for September and October 2019.

Additional Information

At the hearing, the appellant provided three copies of purchase statements for items the appellant had sold on September 10 and 30th for a total value of \$4600.12. The ministry representative reviewed the information and objected to the admissibility of the evidence based on its non-relevance to the appeal. The panel reviewed the information submitted and determined that during the hearing the appellant argued the fact that much of the larger bank deposits were non-distinguishable from that of inherited property sold - and were actually from the selling of inherited goods, rather than casino winnings. That said, the panel admitted the evidence, as it related to the larger totalled bank balance (\$8500.00) for September and October 2019 at the time the reconsideration decision was made, pursuant to section 22(4) of the Employment and Assistance Act.

The panel notes that the bank statements detailing the said \$7000.00 and \$1500.00 deposits referred to by both the ministry and the appellant were not submitted as part of the appeal package.

PART F – REASONS FOR PANEL DECISION

The issue under appeal is the reasonableness of the Ministry of Social Development and Poverty Reduction's (the "ministry") Reconsideration Decision of November 12, 2019 in which the ministry determined that the appellant was not eligible for disability assistance for September and October 2019 because the appellant had \$7000.00 and \$1500.00 of unearned income in September and October, that had exceeded the maximum rate of disability assistance, pursuant to section 9(2) of the Employment and Assistance for Persons with Disabilities Regulation.

The relevant section of the legislation is as follows:

Employment and Assistance for Persons with Disabilities 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;
- (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;

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.

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.

(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

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
 (a.1) Repealed. [B.C. Reg. 193/2017, s. 9 (a).]
 (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

Monthly shelter allowance

4 (1) For the purposes of this section:

"family unit" includes a child who is not a dependent child and who resides in the parent's place of residence for not less than 40% of each month, under the terms of an order or an agreement referred to in section 1 (2) of this regulation;

"warrant" has the meaning of warrant in section 14.2 [*consequences in relation to outstanding arrest warrants*] of the Act.

(2)The monthly shelter allowance for a family unit to which section 14.2 of the Act does not apply 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 size:

Item	Column 1 Family Unit Size	Column 2 Maximum Monthly Shelter
1	1 person	\$375

Schedule B

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:
- (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 (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).]

Panel Decision

The ministry's position, as set out in the Reconsideration Decision, is that the appellant is not eligible for disability assistance for September and October 2019 because the appellant's unearned income for the months of September and October (2019) exceeded the maximum rate of disability assistance.

The appellant's position is that the ministry is discriminatory regarding people with disabilities on assistance and unearned income. Specifically, this is demonstrated by the fact that people in the general population who visit gaming establishments do not have to deduct their winnings, whereas people who are on disability assistance do. The appellant posits a change in legislation is needed. At the hearing, the appellant noted that the deposits indicated on her bank statements cannot be distinguished from the selling of inherited goods, from that of casino winnings.

As noted, the appellant submitted three purchase agreements for the inherited property (items) totalling over \$4000.00 for the month of September.

The ministry relied upon section 9(2) of the *Employment and Assistance for Persons with Disabilities Regulation* which sets out; a person is not eligible for disability assistance if their income calculated under Schedule B equals or exceeds the amount of disability assistance they would otherwise be eligible to receive under Schedule A.

Under Schedule A, a sole recipient of disability assistance is eligible to receive up to \$1183.42 consisting of \$808.42 for support and up to \$375.00 for shelter.

The panel finds that the evidence establishes that the appellant had deposits totalling \$8500.00 for September and October 2019, as this fact was not argued by the appellant at the hearing. The panel finds that no bank documentation was included in the appeal package for the panel to consider the purchase statements submitted as evidence. In other words, the panel could not align the possible funds generated from the selling of inherited goods with the bank statements, as the appellant suggested. The panel therefore had limited information related

to what deposits, other than the fact that the deposit amounts were not disputed by the appellant, to rely upon. As such, the total amount of deposited funds (\$7000.00) in September, and (\$1500.00) in October did in fact exceed the legislated maximum disability rate of \$1183.42 for each of those months.

Accordingly, the panel finds that the decision of the ministry to deny the appellant disability assistance for September and October based on the appellant's unearned income exceeding the maximum rate of disability assistance, is reasonably supported by the evidence in this case. Therefore, the panel confirms the ministry's decision pursuant to section 24(1)(a) and section 24(2)(a) of the *Employment and Assistance Act*. The appellant therefore is not successful in this appeal.

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

Jennifer Armstrong

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2019/12/11

PRINT NAME

Kulwant Bal

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019/12/11

PRINT NAME

Tina Ahnert

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2019/12/11