

APPEAL NUMBER

PART C – DECISION UNDER APPEAL

The decision under appeal is the ministry's reconsideration decision dated November 5, 2019, which held the appellant was not eligible for disability assistance for the month of October, 2019, as net income was found to be more than the rate of assistance for the appellant's family size.

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR)

- Sections 1, 9 and 29
- Schedule A sections 1, 2 and 4
- Schedule B sections 1, 3, 6 and 7

PART E – SUMMARY OF FACTSEvidence before the Minister at reconsideration

The appellant is designated as a person with disabilities (PWD). The appellant's spouse is over 65 years of age and does not have designation as a PWD. In August of 2019 the appellant's spouse received:

- (a) \$1425.76 from Old Age Security / Guaranteed Income Supplement ("OAS/GIS"); and
- (b) \$741.95 from ICBC as a Total Temporary Disability Benefit ("TTD")

The appellant and their spouse reported the TTD benefit to the ministry in September of 2019 for income received in the month of August 2019. The ministry then determined that the appellant was not eligible for October, 2019 disability assistance as the income of the appellant's family unit exceeded the prescribed amount.

In request for reconsideration, the appellant:

- (a) stated that their spouse had been injured in a hit and run motor vehicle accident (the "MVA");
- (b) stated that family unit expenses had increased as a result of the MVA; and
- (c) stated that the TTD payment amounted to only 75% of the spouse's pre-MVA income.

None of the above facts are in dispute.

Additional Evidence on Appeal

On appeal the appellant provided a two page submission (the "Submission") dated December 22, 2019. The Submission:

- (a) provides further detail on the impact that the MVA has had on the appellant's spouse and the family unit;
- (b) requests that the appellant's spouse be designated as a person with disability. This request is supported by notes from a doctor, one dated August 16, 2019 (the "Dr. Notes");
- (c) requests that the TTD be accepted as qualifying income and exempted under Section 3 of Schedule B Appendix B of the EAPWDR;
- (d) provides information on additional family expenses and difficulties resulting from the MVA, which includes three pages of utility and bill payment information (the "Expense Documents").

Although provided with notice of the appellant's submissions and additional evidence, the ministry has made no submission for consideration at the written hearing.

Admission of Evidence on Appeal

The issue of whether the appellant's spouse is a PWD is not before this panel. This issue was first raised in the appellant's Submission. The ministry has not made a written submission to this appeal and therefore has made no response to the appellant's argument that their spouse should be designated as a PWD. In the absence of an objection from the ministry, the panel admits the Dr. Notes as evidence in this appeal. However, the panel notes that any determination by the ministry as to whether the appellant's spouse be designated as a PWD is not a decision forming part of this appeal, and therefore the panel assigns no weight to this evidence.

The evidence regarding the recent increased expenses of the appellant and their spouse resulting from the MVA support the appellant's arguments provided to the ministry before it made its reconsideration decision. Therefore the panel finds that this evidence is in support of information that was before the ministry at reconsideration.

PART F – REASONS FOR PANEL DECISION

The issue on appeal is whether the decision of the Ministry to include the TTD in calculation of the appellant's family unit income is a reasonable application of the relevant provisions of the EAPWDR in the circumstances of the appellant.

The relevant provisions of the EAPWDR are set out as follows:

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: ...

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

(u) Federal Old Age Security and Guaranteed Income Supplement payments ...

Limits on income

9...

(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.

Reporting requirement

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.

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...

(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 (\$)
... 4	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 65 or more years of age	1,276.06

Monthly shelter allowance

...

(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
... 2	2 persons	\$570

Annual exemption — qualifying income

3 (1) In this section:

"base amount" means

- (a) \$1 000, in the case of a family unit that includes only one recipient,
- (b) \$1 200, in the case of a family unit that includes two recipients, only one of whom is designated as a person with disabilities, and
- (c) \$2 000, in the case of a family unit that includes two recipients who are designated as persons with disabilities; ...

"qualifying income" means

- (a) earned income, except the deductions permitted under section 2, and
- (b) unearned income that is compensation paid under section 29 or 30 of the *Workers Compensation Act* ...

In the Submission the appellant requests that the TTD be exempt as "qualifying income" under section 3 of Schedule B of the EAPWDR. However, as the ministry noted in its reconsideration decision, "qualifying income" includes only "earned income" and compensation under section 29 and 30 of the *Workers Compensation Act*. The TTD is neither of these, and accordingly the panel finds that the ministry reasonably concluded that the TTD cannot be exempted as "qualifying income" under the legislation.

The appellant's Submission contained information on the increased expenses of the appellant's family unit, largely resulting from the MVA. While the panel is sympathetic to the appellant's circumstances, the amount of monthly disability assistance a family unit is eligible for under the legislation is purely an income test. There is no provision in the legislation for consideration of the appellant's increased expenses in particular circumstances.

In its reconsideration decision, the ministry:

- (a) determined that both the TTD and the OAS/GIS payment received by the appellant's spouse in the relevant months were "unearned income" under section 1 of the EAPWDR. The total of these two amounts in August of 2019 was \$2167.71;
- (b) noted that section 9(2) of the EAPWDR states that a family unit is not eligible for disability assistance if the net income of the family determined under Schedule B exceeds the amount of income assistance under Schedule A for the matching family unit; and
- (c) noted that the maximum allowable support in the appellant's circumstances under section 2 and section 4 of Schedule A totals \$1846.06.

As the income amount of \$2167.71 in August of 2019 exceeded the maximum amount of \$1846.06, the panel finds that the Ministry was reasonable in its application of the legislation, with the result that the appellant is not entitled to disability assistance in the month after the Ministry's determination. The panel therefore confirms the reconsideration decision. The appellant is not successful on 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

Chris McEwan

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2020/01/

PRINT NAME

Simon Clews

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020/01/

PRINT NAME

Wayne Reeves

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020/01