

**PART C – DECISION UNDER APPEAL**

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) reconsideration decision of March 17, 2020 which determined that in accordance with section 9 (2) of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), the appellant is not eligible for March 2020 disability assistance because the appellant's January income of \$2387.50 exceeds the amount of the appellant's disability assistance under Schedule A.

**PART D – RELEVANT LEGISLATION**

EAPWDR Sections 1,9, 24 and 29

Schedule A Sections 1, 2 and 4

Schedule B Sections 1, 2, 3, 4, 6, and 7

**PART E – SUMMARY OF FACTS**

The appellant is a sole recipient with Persons with Disabilities designation. The file has been open since October 25, 2017.

The appellant receives \$1235.42 per month for disability assistance. This amount includes \$808.42 for support allowance, \$375 for shelter allowance and \$52 for transportation support allowance.

On February 14, 2020 the appellant declared \$473.58 for employment income and \$2387.50 as an ICBC settlement “from a car accident”.

- Confirmation was provided that the ICBC settlement was paid to the appellant on January 28, 2020.
- Pay slips were provided for January 12, 2020- \$430.52, January 28, 2020- \$43.06 and December 31, 2019- \$293.10.

On February 20, 2020 the appellant advised the settlement was for pain and suffering as the previously received money from ICBC was to cover wage loss, medical appointments, and ICBC also fixed the appellant’s car.

On March 3, 2020 the appellant submitted the request for reconsideration. The appellant wrote that

- The public site says all settlements are non-deductible regardless if one is a passenger or a driver.
- The settlement was intended to help with medical costs, loss of wages and extras like medical equipment, cost of extra gas, health supplements, pain killers, extra costs to car repairs.
- The loss of the March assistance cheque is causing serious hardship as the appellant has no food, no gas, and is behind with paying bills and rent.

In the Notice of Appeal dated March 26, 2020 the appellant wrote: “I received approximately \$2300 for not-at-fault car accident that I was injured in. The money was to facilitate my rehab- support equipment etc. Not for living.”

Hearing

At the hearing the appellant stated that their main reason in participating in this appeal is to request a change of the legislation. Following a question by the ministry the appellant explained that their vehicle was not a write-off after the accident but was repaired. The appellant explained further that there was only 1 ICBC payment, no previous payments. She is only getting a small amount for pain and suffering but is penalized by losing her March assistance.

The ministry stated it had no records of previous ICBC payments to the appellant. The only information the ministry has is the cheque stub for the January \$ 2387.50 settlement. The law is constantly changing but for this appeal the ministry has to apply current legislation. The ministry reiterated that the appellant’s ICBC settlement falls under EAPWDR section 1(d) “insurance benefits” and is unearned income.

Admissibility of New Information

The panel finds that the information provided by the appellant and the ministry in the Notice of Appeal and at the hearing is reasonably required for a full and fair disclosure of all matters related to the decision under appeal, as it contributes to the panel’s understanding of the circumstances surrounding the appellant’s ICBC settlement. The panel therefore admits this information as evidence pursuant to section 22(4) of the Employment and Assistance Act.

**PART F – REASONS FOR PANEL DECISION**

The issue under appeal is whether the ministry reasonably determined that the appellant is not eligible for March 2020 disability assistance because in accordance with section 9 (2) of the EAPWDR the appellant’s January income of \$2387.50 exceeds the appellant’s disability assistance amount under Schedule A.

**EAPWDR**

**1 Definitions**

(1) "**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;...

**9 Limits on income**

(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 Amount of disability assistance**

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.

**29 Reporting requirement**

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 ...

**Schedule A**

**1 Maximum amount of disability assistance before deduction of net income**

(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 Monthly support allowance**

(1) A monthly support allowance for the purpose of section 1 (a) is

Item	Column 1 <b>Family unit composition</b>	Column 2 <b>Age or status of applicant or recipient</b>	Column 3 <b>Amount (\$)</b>
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1	Sole applicant / recipient and no dependent children	Applicant / recipient is a person with disabilities	808.42
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**4 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
1	1 person	\$375

**Schedule B**

**1 Deduction and exemption rules**

When calculating the net income of a family unit for the purposes of section 24 (b) [*amount of disability assistance*] of this regulation, ...

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

**3 Annual exemption — qualifying income**

"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*

**4 Small business exemption**

**6 Deductions from unearned income**

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.

**7 Exemptions — unearned income**

(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  $(AB) \times C$ , 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.

## 8 Minister's discretion to exempt education related unearned income

### Appellant's Position

The appellant argues that the loss of the March 2020 assistance cheque causes serious hardship as the appellant has no food, no gas, and is behind with paying bills and rent. The appellant is only receiving a small amount for pain and suffering but is penalized by losing one month's assistance. A change in legislation is in order.

### Ministry Position

Under section 1 of the EAPWDR, "unearned income" means any income that is not earned income, and includes, without limitation, money or value received from insurance benefits.

Section 9(2) of the EAPWD Regulation states a family unit is not eligible for assistance if the net income of the family determined under Schedule B equals or exceeds the amount of income assistance determined under Schedule A.

Section 29 of the Regulation says the appellant must report income by the fifth of the month after the month when it was received. The ministry uses this information to calculate the appellant's net income and eligibility for the next month's disability assistance. For example, the appellant must report the income received in January by February 5 and it affects the March assistance.

Sections 2 and 4 of Schedule A outline the maximum allowable rate of support and shelter for the size of the family unit before net income deductions. For a sole recipient with PWD designation, the rate of support is \$808.42, and the rate of shelter is \$375 for a total of \$1183.42.

Schedule B of the EAPWD Regulation shows us how to calculate net income:

- Section 1 says a family's net income includes all earned income, except for the specified deductions and exemptions. The panel notes that section 1 further says that a family's net income also includes all unearned income. It is not clear why the ministry left out "unearned income" in their above sentence when further down it addresses unearned income as well as includes it in APPENDIX B – APPLICABLE LEGISLATION of their reconsideration decision.
- Section 2 says that the only deductions permitted from earned income are any amount deducted at the source for income tax, employment insurance, medical insurance, Canada Pension Plan, superannuation, company pension plan and union dues.
- Section 3 explains the annual exemption for "qualifying income", which includes "earned income" from employment. Under section 3 of Schedule B, the first \$12,000 of your 2020 employment income is exempt under this annual exemption.
- Section 6 (a) says the only deductions permitted from unearned income are any income tax deducted at the source from employment insurance benefits.
- Section 7 lists unearned income that is exempt for the purposes of calculating net income. ICBC settlement income is not exempt.

The money the appellant received from Company A is earned income under Section 1 of the EAPWDR. As the appellant has not reached the Annual Earnings Exemption limit for 2020, this income is exempt and is not included in the net income calculation for January.

The money received on January 28, 2020 as an ICBC claim settlement is unearned income. There are no exemptions for this type of income. In the request for reconsideration the appellant explained what this money was intended for, including repairs to the appellant's vehicle. The ministry notes on February 20, 2020 the appellant advised that ICBC had previously fixed the vehicle and this settlement was for

pain and suffering. Accordingly, the minister is unable to establish that the money the appellant received from ICBC as a claim settlement on January 28 was insurance paid as compensation for a destroyed asset.

As a recipient of disability assistance, the appellant must report income received during the previous month by the fifth of the current month and it affects the following month's assistance (for example, the appellant reports January income by February 05 and this affects March assistance).

As per Section 9 (2) of the EAPWD Regulation, the appellant is not eligible for March disability assistance because the appellant's income of \$2387.50 exceeds the amount of disability assistance determined for the appellant's family unit size under schedule A.

### **Panel Decision**

While the appellant argues that the loss of the March assistance cheque is causing serious hardship and the legislation should be changed, the panel finds the ministry reasonably determined that, pursuant to section 9(2) of the EAPWDR, the appellant was not eligible to receive disability assistance for March 2020 because the appellant's net income of \$2387.50 exceeds the maximum assistance rate of \$1183.42 as set out in Schedule A. The panel's reasons are as follows:

Firstly, the panel had to determine whether the appellant's ICBC settlement had to be included as unearned income in the appellant's net income. An ICBC settlement is an insurance benefit and, as defined in section 1(d) of the EAPWDR, "unearned income" includes, without limitations, insurance benefits, except insurance paid as compensation for a destroyed asset. At the hearing the appellant confirmed that this insurance benefit was not paid as a compensation for a destroyed asset. Section 1(d) of Schedule B sets out that all unearned income must be included in net income, except the deductions permitted under section 6 and any exemptions set out in sections 3, 7 and 8. The panel finds that an ICBC insurance settlement is not included among the permitted deductions of section 6, and is also not included among the permitted exemptions set out in sections 3, 7, and 8.

Secondly, the panel determined that pursuant to section 1(d) of Schedule B all unearned income must be included in the appellant's net income, except the deductions permitted under section 6 and any income exempted under sections 3, 7 and 8.

An insurance settlement is not income tax deducted at source from employment insurance benefits and therefore is not a permitted deduction under section 6. An ICBC settlement does not fall under the Workers Compensation Act and therefore does not qualify for an annual exemption under section 3. It is also not among the exemptions listed in section 7, and it is not education related unearned income as set out in section 8. Consequently, the panel finds that the ministry was reasonable when it included the total settlement amount of \$2387.50 as unearned income in the appellant's January net income as set out in section 24(b).

The ministry determined that appellant's earned income from employment of January 2020 is exempt from net income because the appellant has not reached the annual exemption limit for 2020. The first \$12,000 of the appellant's 2020 employment income are exempt under this annual exemption.

While the appellant's earned employment income is exempt from their net income the panel finds that the appellant's unearned January income of \$2387.50 exceeds the amount of their disability assistance of \$1183.42 as determined in Schedule A (support allowance of \$ 808.42 plus shelter allowance of \$ 375 equals \$1183.42). Consequently, the panel finds the ministry reasonably determined that pursuant to section 9(2) of the EAPWDR, the appellant is not eligible for income assistance for March 2020.

**Conclusion**

After considering the evidence and the applicable legislation the panel finds that the ministry's reconsideration decision which held the appellant was not eligible for income assistance for March 2020 was reasonably supported by the evidence and was a reasonable application of the applicable legislation in the circumstances of the appellant. The panel confirms the decision and the appellant is not successful on appeal.



APPEAL NUMBER

2020-00097

**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)  and Section 24(1)(b) 

and

Section 24(2)(a)  or Section 24(2)(b) **PART H—SIGNATURES**

PRINT NAME

Inge Morrissey

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2020/04/20

PRINT NAME

Angie Blake

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020/04/20

PRINT NAME

Carman Thompson

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020/04/20