

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) reconsideration decision of May 28, 2020 which determined that the \$426.50 the appellant receives monthly as a municipal pension is unearned income as defined in section 1 of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR); therefore, in accordance with section 24 of the EAPWDR, it must be deducted from the appellant's disability assistance.

PART D – RELEVANT LEGISLATION

Employment and Assistance Regulation (EAR) Section 80

EAPWDR Sections 1 and 24

Schedule A Sections 1, 2 and 4

Schedule B Sections 1, 3, 6, 7, and 8

PART E – SUMMARY OF FACTS

The appellant is a sole recipient with Persons with Disabilities designation. The file re-opened on December 27, 2019.

The appellant's rate of assistance as a single person includes \$808.42 for support and \$375.00 for shelter for a total monthly amount of \$1183.42.

As part of the appellant's most recent application for assistance, confirmation was provided that the appellant receives \$426.50 per month as a municipal pension payment. The letter dated October 4, 2019 from Municipal Pension Plan in Victoria BC reports a monthly pension of 426.50, effective March 1, 2019.

On March 26, 2020 the appellant was advised that the pension income of \$426.50 is unearned income and is to be deducted from the disability assistance.

On April 30, 2020 the appellant requested an extension to submit a request for reconsideration.

On May 1, 2020 the appellant submitted the Request for Reconsideration

In section 3 of the request for reconsideration form the appellant wrote: "...included herewith, 3 pages, handwritten!" The following summarized information was provided in 3 handwritten pages:

- The appellant is "on the cusp of dire consequences all of which would be eliminated if only for the sake of discretionary authority and being so close so to the edge ... of abject poverty".
- The \$426.50 monthly is earned income and an amount set aside for eventualities.
- For an active EI claim, the federal government does not consider this amount relevant.
- "Use of the term 'private' to describe pension is disingenuous. Municipal pension plan hardly fits such a descriptive. Private pensions are where C.E.O.s put their money."
- After deducting the pension amount from the annualized earnings exemption, a yearly exemption of \$6882 still remains on earned income.
- Housing/heat is 101.13% of the appellant's income.
- Around \$100 monthly is owed each for hydro and Telus.
- The appellant has no internet or computer.
- The appellant experiences malnutrition, sleep deprivation due to significant sleep apnea, great cycles of depression, and barriers to employment.
- The appellant requires dentistry, vision correction and nutrition.
- The appellant has doubts to be able to earn \$6882.00 per year.
- \$106.62 per week would alleviate the experienced burden and allow for modest savings. "More importantly, it would foster and help create impetus for more social development and obviously facilitate poverty reduction."

In the Notice of Appeal received on June 10, 2020 the appellant wrote:

- " - Portions of my request somehow sent to ministry are incomplete but more so they were sent by 3rd party without my consent ...see request for extension 27 April 2020.
- reconsideration officer has no discretionary authority."

On August 12, 2020 the appellant submitted the following information which is summarized:

The appellant was working in BC for 31 years, quit the job and started a business to be able to parent their children for 14 years. Because of the spouse they lost their house, all their savings, and suffered additional losses such as financial losses from 2 encounters with the landlord. Late in the working life the

appellant suffered a major injury and is now depressed and agitated. Rent is paid currently but the appellant has no funds until the end of the month (no food, no hydro, no phone). "The monthly COVID supplement is a happy coincidence."

The appellant stated further: "I submitted the requisite form (I, and only I), nothing else. Yet, the ministry obtained an unfinished response, incomplete, unsigned no consent given not submitted by me."

Argument contained in this submission is included in part F of the decision.

Hearing

At the hearing the appellant reiterated points made in the August 12, 2020 submission and added the following information:

The appellant's 3 page handwritten submission was unfinished and was intended to be presented to the ministry after its completion.

9 years ago the appellant was descending from the heights of wellbeing into a valley of difficulties. The appellant does not understand the ruling by the Residential Tenancy Branch that forced the appellant to move out on May 31, 2019 and led to a loss of \$6300. Without these challenges the appellant would have been able to find lodging and work. The appellant now receives \$788 monthly assistance (\$808.42 support + \$375 shelter allowance + \$52 transportation supplement minus \$20 repayment minus \$426.50 for pension received), plus the COVID supplement. The appellant also received coverage from the ministry for a CPAP machine. The appellant has no assets and will be homeless. The sooner the appellant can earn money the better.

Further argument is included in part F.

The ministry stated that it has to apply legislation which is clear in the appellant's circumstances and leaved no room for discretion in the matter. The appellant receives PWD benefits since March 2020, and \$426.60 received for pension has been deducted from the assistance from then onwards.

The appellant asked how the ministry makes a decision if they don't have the full details of a client's life situation and the ministry answered that it determines income and assets and tries to apply legislation that is relevant in the appellant's circumstances. The ministry of Social Development and Poverty Reduction is not responsible for decisions of the Residential Tenancy Branch.

The ministry reported further that, according to its file notes, the disputed 3 page handwritten submission was included in the appellant's application for reconsideration which was deposited in the ministry's 24-hour-drop box on May 1, 2020.

The ministry suggested the appellant consider looking into low income housing options.

Admissibility of New Information

The panel finds that the information provided by the appellant 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 financial and life circumstances in relation to the issue in this appeal. 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 \$426.50 the appellant receives monthly as a municipal pension is unearned income as defined in section 1 of the EAPWDR in accordance and must therefore be deducted from the appellant's disability assistance in accordance with section 24 of the EAPWDR.

EAR**80 Time limit for reconsidering decision**

The minister must reconsider a decision referred to in section 17 (1) of the Act, and mail a written determination on the reconsideration to the person who delivered the request under section 79 (1) [*how a request to reconsider a decision is made*],

- (a) within 10 business days after receiving the request, or
- (b) if the minister considers it necessary in the circumstances and the person consents, within 20 business days after receiving the request.

EAPWDR**1(1) Definitions**

"**earned income**" means

- (a) any money or value received in exchange for work or the provision of a service,
- (b) Repealed. [B.C. Reg. 197/2012, Sch. 2, s. 1 (a).]
- (c) pension plan contributions that are refunded because of insufficient contributions to create a pension,
- (d) money or value received from providing room and board at a person's place of residence, or
- (e) money or value received from renting rooms that are common to and part of a person's place of residence;

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

- (e) superannuation benefits;...

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.

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 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

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*

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 a pension is earned income because people have worked for it in order to receive it. The appellant earned it as a result of years of hard work and it should not be deducted from the assistance money because it is part of the yearly earned income exemption of \$12000. This money was set aside for eventualities and to prevent the appellant from falling into poverty. The ministry should have just given the pension money to the appellant, thus saving everyone a lot of trouble and putting this money back into the economy. With the pension exempted from income the appellant would be able to "function admirably and be fit to look for work."

The appellant argues further that legislation is flawed and outdated and needs to be changed; these changes should accommodate the future trend to equal status to all and the fact that the growing number of retirees in BC form the biggest non-working class. Legislative changes should also prevent unreasonably long waiting times for issues to be resolved as was the case the appellant's circumstances. The appellant needs to advocate for people who are in a similar situation.

Furthermore, the ministry's decision was unreasonable because it based its decision on incomplete information which was forwarded by a 3rd party without the appellant's consent. The appellant's request for extension should have put the reconsideration process on hold, and no reconsideration decision should have been rendered until the appellant provided the complete information.

Ministry Position

Section 1 of the Employment and Assistance for Persons with Disabilities Regulation (the Regulation) defines "unearned income" as any income that is not earned income, and includes, without limitation, money or value received from a superannuation benefit.

Schedule B, Sections 1, 6 and 7 set out types of unearned income that may be deducted or exempted from the calculation of the appellant's monthly income. Payments from a superannuation benefit are not listed as a type of unearned income that may be excluded from the calculation.

Section 9 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. Section 9 also indicates 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 appellant's family unit.

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

Schedule B, Section 3 of the EAPWD Regulation explains the annual exemption for "qualifying income", which includes "unearned income" that is compensation paid under section 29 or 30 of the Workers Compensation Act. As your municipal pension is not paid under the Workers Compensation Act, you do not qualify for exemptions under this section.

While the ministry is empathetic to the appellant's circumstance, legislation does not allow for discretion when calculating net income. In the request for reconsideration the appellant explained that the municipal pension should be considered earned income and therefore exempt. This pension does not meet the definition of earned income because it is not money received in exchange for work or the provision of a service. The municipal pension payment of \$426.50 is *unearned income* as defined by legislation because it is money received from a superannuation benefit; there are no exemptions for this type of income. In accordance with Section 24 of the EAPWD Regulation, the monthly \$426.50 municipal pension must be deducted from the appellant's disability assistance.

Panel Decision

Unearned income is defined in section 1(1)(e) of the EAPWDR as any income that is not earned income, and includes, without limitation, money or value received from superannuation benefits.

While the appellant argues that the appellant's municipal pension of \$426.50 monthly is earned income because it was earned through years of hard work, the panel finds the ministry reasonably determined that the municipal pension meets the definition of superannuation benefits under section 1(1)(e) and must therefore be considered unearned income.

Section 24 determines the amount of disability assistance the appellant is eligible to receive. It is the amount determined under Schedule A (support allowance plus shelter allowance) minus the appellant's net income determined under Schedule B.

Schedule B section 1 (d) sets out that when calculating the appellant's net income all unearned income must be included, except the deductions permitted under section 6 (income tax deducted at source from employment insurance benefits, and essential operating costs of renting self-contained suites) and any income exempted under sections 3 (compensation paid under the *Workers Compensation Act*), 7 (see listed exemptions) and 8 (education related). As the appellant's pension is neither a deduction permitted under section 6, nor an exemption under sections 3, 7 or 8, the panel finds the ministry reasonably determined the appellant's pension to be net income. As a result, the panel finds the ministry reasonably determined that in accordance with section 24 of the EAPWDR the monthly municipal pension amount must be deducted from the appellant's disability assistance.

While the appellant argues that the ministry's decision was unreasonable because it based its decision on incomplete information which was forwarded by a 3rd party without the appellant's consent, ministry records indicate that the submission was included with the appellant's reconsideration submission and there is insufficient proof for the panel to find that the ministry unreasonably considered this submission when reaching its conclusion.

While the appellant argues that the request for extension should have put the reconsideration process on hold longer, the panel finds that the extension granted by the ministry was a reasonable application of section 80(b) of the EAR which states that after a request for reconsideration and an extension request have been received by the ministry there is a time limit of 20 business days wherein the ministry must finalize its reconsideration.

Conclusion

After considering the evidence and the applicable legislation the panel finds that the ministry's reconsideration decision 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

2020-00155

PARTG-ORDER

THE PANEL DECISION IS: (Check one)

 UNANIMOUS BY MAJORITY

THE PANEL

 CONFIRM THE MINISTRY DECISION RESCIND 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) **PARTH-SIGNATURES**

PRINT NAME

Inge Morrissey

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2020/13/08

PRINT NAME

Margarita Papenbrock

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020/17/08

PRINT NAME

Joseph Rodgers

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020/13/08