

APPEAL NUMBER

2020-00220

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) reconsideration decision of September 14, 2020, which determined that the appellant's insurance income must be deducted from their disability assistance in accordance with section 24 of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR).

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) sections 1, 24, Schedule A & B

PART E – SUMMARY OF FACTS

The appellant is in receipt of disability assistance as a single parent with three dependent children.

Prior to any deductions, the appellant received \$1766.39 (\$949.08 support, \$700 shelter, \$10 diet, \$52 transportation supplement, \$15.31 family bonus top-up, \$40 nutritional supplement).

On August 20, 2020 the Insurance Corporation of BC (ICBC) adjustor provided the following information:

- The appellant is receiving \$343 bi-weekly Total Temporary Disability (TTD) benefits until July 31, 2020 and from August 1 to October 31, 2020 the appellant will be receiving \$411.95 bi-weekly.
- A detailed claim statistics report confirming bi-weekly payment dates from April 1, 2020 to July 20, 2020;
- An explanation to the appellant that TTD benefits are available to an insured who is temporarily totally disabled from all employment and that TTD is not wage loss, therefore not a taxable income. They continued, it is a contractual benefit that the appellant is entitled to under Part VII of the ICBC Regulation.
- A statement from April 15, 2020 indicating that TTD benefits of \$343.30 bi-weekly have been processed and are for the period March 19 to May 27.

On August 27, 2020 the ministry advised the appellant that the payments the appellant is receiving for TTD from ICBC in the amount of \$343 bi-weekly (\$686 per month) are considered to be unearned income and are not exempt from deduction on their disability assistance (DA). After the \$686 deduction the appellant received \$1080.39 for the month of September.

On August 28, 2020 the appellant submitted a Request for Reconsideration (RFR) and wrote:

- The ICBC adjuster explained the appellant is eligible for compensation payment due to the loss of work;
- They receive \$343 every two weeks;
- TTD is not a taxable income and shouldn't be considered income as it is compensation from the accident; and
- They are a single parent with three children with no income and request the TTD not be deducted, as it is compensation from an accident.

On the Notice of Appeal (NOA) dated September 18, 2020 the appellant wrote as their reason why they disagree with the ministry's reconsideration decision:

- TTD payment isn't taxable;
- it is compensation of an accident to everyone who had an accident; and
- being a single parent with three children with no income, for human reasons please consider again.

Hearing

The appellant did not attend the hearing. Upon confirming that the appellant was notified of the date and time, the panel conducted the appeal in the appellant's absence as it is authorized to do under section 86(b) of the EAR. The panel will reference the appeal record for the appellant's position.

The ministry reviewed the reconsideration decision and noted that TTD insurance income meets the definition of "unearned" income, (d), which is for "insurance benefits, except insurance paid as compensation for a destroyed asset". The ministry notes the insurance payment the appellant is receiving is not reimbursement for loss of an asset. The ministry argues the appellant's position that their TTD benefit should not be deducted because it is not taxable is not addressed anywhere in legislation. The ministry referenced the long list of allowable exemptions found in Schedule B of the EAPWDR and notes that TTD benefits are not listed as a possible exemption. The ministry argues, in response to the appellant's position that TTD should not be deducted because it is payment for wage loss, the only exemption permitted for wage loss in Schedule B is for payment received from Work Safe BC, not for TTD benefits. The ministry reiterated that pursuant to section 24 EAPWDR, the appellant's TTD insurance amount, which was \$686.60, must be deducted from the amount of DA determined under Schedule A, which, in the appellant's circumstance with three dependent children, is \$1663.39 plus supplements.

Admissibility of New Information

The panel admitted the information provided by the appellant on the NOA and the ministry's verbal information in accordance with section 22(4) of the Employment and Assistance Act because the information was reasonably required for a full and fair disclosure of all matters related to the decision under appeal.

PART F – REASONS FOR PANEL DECISION

The issue under appeal is whether the ministry's decision, that the appellant's insurance income must be deducted from their disability assistance in accordance with section 24 EAPWDR, was reasonably supported by the evidence or was a reasonable application of the legislation in the appellant's circumstances.

Relevant Legislation**EAPWDR****Definitions****1**

"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:

- (a) money, annuities, stocks, bonds, shares, and interest bearing accounts or properties;
- (b) cooperative associations;
- (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;
- (i) financial assistance provided under the *Employment and Assistance for Persons with Disabilities Act* or provided by another province or jurisdiction;
- (j) workers' compensation benefits and disability payments or pensions;
- (k) surviving spouses' or orphans' allowances;
- (l) a trust or inheritance;
- (m) rental of tools, vehicles or equipment;
- (n) rental of land, self-contained suites or other property except the place of residence of an applicant or recipient;
- (o) interest earned on a mortgage or agreement for sale;
- (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;
- (u) Federal Old Age Security and Guaranteed Income Supplement payments;
- (v) financial contributions made by a sponsor pursuant to an undertaking given for the purposes of the *Immigration and Refugee Protection Act* (Canada) or the *Immigration Act* (Canada);
- (w) tax refunds;
- (x) gifts of money, annuities, stocks, bonds, shares, and interest bearing accounts or properties;
- (y) gifts in the form of payment by another person of a debt or obligation;

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.

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.

Monthly support allowance

2 (0.1) For the purposes of this section:

(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
- (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 of support
2	Sole recipient/dependent children	Applicant / recipient is a person with disabilities	949.08

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
4	24persons	\$700

Schedule B

Net Income Calculation

Deduction and exemption rules

1 When calculating the net income of a family unit for the purposes of section 28 (b) [amount of income 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;

(ii) Repealed. [B.C. Reg. 96/2017, App. 1, s. 2 (a).]

(iii) Repealed. [B.C. Reg. 48/2010, Sch. 1, s. 1 (b).]

(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 [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;

(xvi) Repealed. [B.C. Reg. 197/2012, Sch. 1, s. 22 (a).]

(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;

(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) Repealed. [B.C. Reg. 85/2012, Sch. 1, s. 5.]

(xxi) payments granted by the government of British Columbia under section 8 [agreement with child's kin and others] of the Child, Family and Community Service Act;

(xxii) payments granted by the government of British Columbia under the Ministry of Children and Family Development's At Home Program;

(xxiii) Repealed. [B.C. Reg. 85/2012, Sch. 1, s. 5.]

(xxiv) 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;

(xxv) a loan that is

(A) not greater than the amount contemplated by the recipient's business plan, accepted by the minister under section 77.2 of this regulation, and

(B) received and used for the purposes set out in the business plan;

(xxvi) 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;

(xxvii) Repealed. [B.C. Reg. 148/2015, App. 1, s. 1 (a).]

(xxviii) 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;

(xxix) a refund provided under Plan I as established under the Drug Plans Regulation;

(xxx) 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;

(xxxi) a Universal Child Care Benefit provided under the Universal Child Care Benefit Act (Canada);

(xxxii) 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;

(xxxiii) money withdrawn from a registered disability savings plan;

(xxxiv) a working income tax benefit provided under the Income Tax Act (Canada);

(xxxv) Repealed. [B.C. Reg. 180/2010, s. 1 (b).]

(xxxvi) the climate action dividend under section 13.02 of the Income Tax Act;

(xxxvii) 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;

(xxxviii) 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;

(xxxix) payments granted by the government of British Columbia under the Ministry of Children and Family Development's Family Support Services program;

(xl) payments granted by the government of British Columbia under the Ministry of Children and Family Development's Supported Child Development program;

(xli) payments granted by the government of British Columbia under the Ministry of Children and Family Development's Aboriginal Supported Child Development program;

(xlii) 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;

(xliii) payments granted by the government of British Columbia under the Temporary Education Support for Parents program;

(xliv) a BC early childhood tax benefit;

(xlv) child support;

(xlvi) orphan's benefits under the Canada Pension Plan Act (Canada);

(xlvii) gifts, other than recurring gifts;

(xlviii) 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;

(xlix) 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;

(l) 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;

(l.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;

(l.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;

(li) a disabled contributor's child's benefit paid or payable under the Canada Pension Plan;

(lii) payments granted under an agreement referred to in section 94 of the Child, Family and Community Service Act;

(liii) 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;

- (liv) money that is paid or payable from a settlement in respect of Treaty No. 8 agricultural benefits,
- (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 of this Schedule,
- (c) all earned income must be included, except the deductions permitted under section 2 and any earned income exempted under sections 3 and 4 of this Schedule, and
- (d) all unearned income must be included, except the deductions permitted under section 6 and any income exempted under sections 7 and 8 of this Schedule.

Annual exemption — qualifying income

3(1)

"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;

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.

Minister's discretion to exempt education related unearned income

8 (1) In this section:

"day care costs" means the difference between a student's actual day care costs and the maximum amount of child care subsidy that is available under the *Child Care Subsidy Act* to a family unit matching the student's family unit;

"education costs", in relation to a student and a program of studies, means the costs, including the costs of tuition, student fees, books, equipment, supplies and transportation, that, in the opinion of the minister, are reasonably required for the student to participate in the program of studies.

(2) The minister may authorize an exemption for a student up to the sum of the student's education costs and day care costs, for a period of study, from the total amount of student financial assistance received by the student for the period of study.

Appellant's Position

The appellant's position is that they are a single parent with three children and the TTD insurance they receive should not be deducted from their DA because they had an accident, and the compensation payment they receive is not taxable, it is for loss of work, therefore it shouldn't be considered income.

Ministry's Position

The ministry's position is that the appellant's TTD insurance does not meet any of the allowable exemptions therefore it must be deducted from the amount of DA the appellant is eligible for, pursuant to section 24 of the EAPWDR.

Panel Decision

Section 24 of the EAPWDR states that DA may be provided to a family unit in an amount that is not more than the amount determined under Schedule A minus the family unit's net income determined under Schedule B. In the appellant's situation, the DA rate for a family of four is \$1649.08 (\$949.08 support and \$700 shelter) per month, plus additional supplements, and their TTD insurance income was \$686.60 for the month of July 2020, with an anticipated increase to \$411.96 bi-weekly for the months of August to October 2020.

In considering what type of income the TTD insurance is, the panel finds the definition of "unearned" income, subsection (d), which is for insurance benefits, applicable in the appellant's circumstance because the TTD benefit is payable from ICBC, an insurance company.

In considering the appellant's argument that the TTD benefit is payment for wage loss, the panel reviewed Schedule B and found that the only exemption pertaining to wage loss is referenced in the annual exemption definition under section 3 of "qualifying income". This section allows a person who has been paid compensation under section 29 or 30 of the Workers Compensation Act (WCB) to have that income exempted. This does not apply in the appellant's circumstance, as the TTD benefit they receive is not a wage loss payable by WCB, it is a payment made by ICBC. ICBC also confirmed that TTD is not a wage loss, it is a contractual benefit the appellant is entitled to under ICBC regulation. The panel did not find TTD benefits listed as one of the allowable exemptions provided by Schedule B. Therefore, the panel finds the ministry was reasonable in their determination that the appellant's TTD insurance income is considered unearned income and therefore must be deducted from the DA amount, as is required by section 24 of the EAPWDR.

Conclusion

The panel finds the Ministry reconsideration decision, which determined the appellant was not eligible for IA pursuant to EAPWDR section 24, was a reasonable application of the legislation in the appellant's circumstances

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2020-00220

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
Janet Ward

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)
2020 October 8

PRINT NAME
Roy Wares

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)
2020 October 8

PRINT NAME
Julie Luvancigh

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)
2020 October 8