

APPEAL NUMBER
2020-00247

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) reconsideration decision dated October 21, 2020 where the ministry found that the appellant's Workers Compensation (WCB) permanent disability benefit is considered unearned income and must be deducted from the disability assistance in accordance with Section 24 of the Employment and Assistance Persons with Disabilities Regulation.

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons with Disabilities Act (EAPWD) Section 24.
Employment and Assistance for Persons with Disabilities Act Regulation (EAPWD) Section 1 and 3.
Employment and Assistance for Persons with Disabilities Act Regulation (EAPWDR) Schedule A, sections 1, 2 and 4.
Employment and Assistance for Persons with Disabilities Act Regulation (EAPWDR) Schedule B, sections 1, 3, 6, 7, 8 and 9.

PART E – SUMMARY OF FACTS

Evidence before the ministry at reconsideration consisted of the following:

- The appellant is a sole recipient of disability assistance.
- On September 10, 2020, the ministry advised the appellant that the permanent disability benefit from WorkSafeBC (WSBC) is not exempt and must be deducted from the appellant's disability assistance.
- On October 7, 2020 the appellant submitted a request for reconsideration which stated the following:
*"I crushed my leg in 2012 at work and have been appealing and fighting for appropriate WCB compensation since then. Every time I have received a payout, I have reported it to the ministry and there has not been any problems in the past. 2019 I submitted a letter (included) informing the ministry of my income from WCB; no issues.
Then 2020 I submit same letter (also included) and was told "pension" gets taken off dollar for dollars. I contacted WCB disability awards department and got a letter (again included) explaining not a pension but the ministry is still taking it off dollar for dollar.
During all this, I have been struggling with liver failure, in and out of hospitals, mental health, medications and weekly blood work. Now diagnosed with a rare autoimmunity disease. I worry I will not be able to earn any extra income in the future."*
- Appended to the appellant's note was 3 letters from WorkSafe BC dated July 16, 2020, February 14, 2020 and August 5, 2020. The most recent letter noted the appellant was in receipt of a permanent disability benefit from WSBC in the amount of \$1085.23 payable monthly to January 2038.
- On October 21, 2020, the ministry received a call from WSBC which clarified that the payment received is not for wage loss and is a pension from a permanent disability award.

Request for Reconsideration

The appellant signed the request for reconsideration on October 7, 2020 with comments as noted above. Appended to the appellant's note was 3 letters from WSBC dated July 16, 2020, February 14, 2020 and August 5, 2020. The letter dated July 16, 2019 confirmed that the named pensioner has been in receipt of a disability pension since November 4, 2016 with a monthly pension amount of \$1075.93 payable to January 2038 and subject to a cost of living adjustment every January. The letter dated February 14, 2020 confirmed that the named pensioner has been in receipt of a disability pension with a monthly pension amount of \$1085.23 payable to January 2038 and subject to a cost of living adjustment every January. The letter dated August 5, 2020 confirmed that the named worker has been in receipt of a permanent disability pension since November 4, 2016 with a monthly benefit amount of \$1085.23 payable to January 2038 and subject to a cost of living adjustment every January.

Notice of Appeal

On October 27, 2020, the appellant signed a Notice of Appeal which offered the following comments:

"I would like the decision mailed to me, I am not able to open it or see it on Ipad.

The wcb money I received is due to my crushed leg injury and is for not being able to work full time. Now diagnosed with rare liver disease I can not earn any income. In 2019 I was able to collect both. I don't understand why this year I can not. Please help me.

I signed for my mental health worker to advocate (named Advocate) for me as I am still trying to reach remission. Medication has me sick and confused. Could really use help.

Ministry has also denied mask and thermometer. Nutrition benefits as well."

Appellant Submissions

On October 29, 2020, the appellant signed a Release of Information form authorizing the designated advocate to act on the appellant's behalf. On November 12, 2020, the appellant signed an Appeal Adjournment Request citing the need to meet with the advocate. The appeal (#2) was subsequently scheduled for December 3, 2020. On December 1, 2020, the appellant signed an Appeal Adjournment Request citing a need to substitute the previously designated advocate with another. On December 1, 2020, the appellant signed a release of Information form designating an additional advocate. The appeal hearing (#3) was subsequently scheduled for December 15, 2020.

Admissibility

Apart from appeal adjournment requests and release of information forms, the only submission from the appellant and advocate received after the date of reconsideration decision was the Notice of Appeal. The panel finds that the

information contained therein is not considered to be new evidence and is admissible under section 22(4) of the Employment and Assistance Act.

Hearing

The panel conducted a teleconference hearing on December 15, 2020. Attending the hearing were the panel, the ministry, the appellant, an advocate acting under a Release of Information Form dated December 3, 2020 and a representative from WSBC acting as a witness for the appellant.

At the hearing, the appellant introduced the advocate and a witness who is a representative of WCB. The advocate stated that the appellant is asking that money received by the appellant be seen as earned income and not unearned income which must be deducted from assistance. The appellant referred to the written note on page 12 of the record and indicated the appellant is suffering from medical conditions and cannot understand why WCB payment are an issue now when they were not before. The ministry representative summarized the ministry position and stated that the appellant had been receiving WCB benefits which were considered functional benefits and not considered unearned income up to 2019 when the benefit became a permanent benefit rather than temporary wage loss. EAPWDR, section 24 requires these permanent disability amounts to be deducted. The WSBC representative offered a summary of the appellant's history with WSBC and confirming information on the appeal record.

PART F – REASONS FOR PANEL DECISION

The issue under appeal is whether the ministry reconsideration decision, which found that the appellant's Workers Compensation permanent disability benefit is considered unearned income and must be deducted from the disability assistance in accordance with Section 24 of the Employment and Assistance Persons with Disabilities Regulation, was reasonably supported by the evidence or is a reasonable application of the legislation in the circumstances of the appellant.

Ministry Position

The ministry in its reconsideration decision notes that:

- Under EAPWDR Section 1, unearned income means any income that is not earned income and under paragraph j, includes money or value received from workers compensation benefits and disability payments or pensions.
- EAPWDR, Section 24 requires that a person's income, as calculated under EAPWDR, Schedule B, must be deducted from their disability assistance, as calculated under Schedule A. Schedule B section 1(a) lists all of the items which are exempt from the calculation of net income.
- EAPWDR, Schedule B, sections 7 and 8 lists all of the exemptions from unearned income that are exempted in calculating net income.
- EAPWDR, Schedule B, section 1(a)(lii) permits an exemption from income for 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 the act, who is a child, as defined in section 17 of that act.
- EAPWDR, Schedule B permits an annualized earnings exemption for unearned income that is compensation paid for a temporary total disability or a temporary partial disability in accordance with the Workers Compensation Act.

Based on this information the ministry informed the appellant that the income received from WorkSafe BC is considered unearned income as per EAPWDR, section 1, paragraph j of the definition of "unearned income", that it is not exempt from the calculation of disability

assistance because it is being received as a permanent disability benefit and is not as a loss of earnings for a temporary total or partial disability. In accordance with EAPWDR Section 24, income of \$1085.23 from WorkSafe BC must be deducted from the rate of disability assistance calculated under EAPWDR, Schedule A.

The ministry goes on to state that it is important to note that this reconsideration decision is regarding current eligibility to assistance and overpayment of assistance is beyond the scope of the reconsideration decision.

Appellant Position

The appellant notes that the WSBC payment is due to a crushed leg injury in 2012 and the appellant has been fighting for appropriate compensation since then. The appellant has reported payments periodically to the ministry over time and there has been no problem with any deductions from assistance. The appellant has provided a copy of a letter from WSBC dated July 16, 2019 which outlined receipt of disability pension monthly payment amounts of \$1075.93. The appellant confirms no deductions were made after its receipt by the ministry. In 2020, the appellant submitted a letter dated February 14, 2020 which outlined receipt of disability pension payments of \$1085.23. Following receipt of this letter by the ministry there was a reduction of disability assistance by the amount of this pension. Thinking the change in terminology used by WSBC in the February 14, 2020 letter was the cause of the deduction, the appellant requested another letter from WSBC which described permanent disability benefit payments of \$1085.23. This letter had no affect. During all of this the appellant has been struggling with liver failure. The appellant has been in and out of hospitals; dealing with mental health issues, medications and weekly blood work.

Panel Decision

The ministry reconsideration decision correctly states, in the panels view, that under EAPWD Section 24, disability assistance may be provided to a family unit in an amount no more than the amount determined under EAPWDR, Schedule A that must be reduced by a person's net income as determined by the calculation under Schedule B. The panel finds that this means that the appellant's net income, as determined by the calculation under Schedule B, must be deducted from the appellant's disability assistance which has been calculated under EAPWDR, Schedule A. With respect to the calculation of the appellant's net income under Schedule B, the panel finds:

- Under EAPWDR, Section 1(1), unearned income is defined as any income which is not earned and specifically includes a number of specific items. The panel notes that under 1(1)(j), included is any workers' compensation benefits and disability payments or pension and therefore the appellant's WSBC payments must be considered as unearned income as they match the legislated definition.
- The net income calculation described under EAPWDR Schedule B includes a number items which are exempt and may be deducted from the calculation under EAPWDR, Schedule B, and the panel notes that WSBC disability payments are not listed here. Under section 1(a)(iii) there is a permitted exemption from income for 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 the act, who is a child, as defined in section 17 of that act. This does not apply in the appellant's circumstances.
- EAPWDR, Schedule B sections 6 lists all of the deductions from unearned income and neither of those are WSBC disability pension payments. EAPWDR, Schedule B, section 7 lists all of the unearned income exemptions and none of the exemptions are WSBC disability pension payments Section 8 lists the minister's discretion to exempt education related unearned income and this does not apply to the appellant's circumstances.
- The panel notes that EAPWDR, Schedule B, section 3 sets out the calculation of an annual exemption amount in the net income calculation which defines qualifying income as earned income, except for certain deductions and unearned income that is compensation paid under section 29 or 30 of the Workers compensation Act both of which relate to temporary total and partial disability payments. The appellant is in receipt of a permanent disability pension and therefore doesn't apply to the appellant.

The panel's analysis has determined that the appellant's net income includes unearned income from the WSBC disability pension and there being no applicable deduction or exemptions as provided under Schedule B, the panel concludes the WSBC disability pension amount of \$1085.23 must be deduction from the appellant's disability assistance amount calculated under Schedule A.

The panel notes with sympathy the confusion and distress the appellant has suffered over the ministry's apparent inconsistency in the treatment of the appellant's WSBC payments. Prior to the appellant submitting a letter from the WSBC in February of 2020, the ministry did not deduct the pension payment amounts from the appellants assistance, notwithstanding that WSBC confirms in their letter of July 16, 2019 that the appellant has been in receipt of a WSBC disability pension since November 4, 2016. The appellant saw nothing outside of some changed descriptive language to account for the change. However, it is clear to the panel that EAPWDR, section 24 requires the disability pension amounts to be deducted. Neither the appellant or the advocate were able to present evidence which disputed the facts here.

Conclusion

The panel confirms the ministry reconsideration decision as it was a reasonable application of the legislation in the appellant's circumstances. The appellant is not successful upon appeal.

Employment and Assistance for Persons with Disabilities Act

Eligibility of family unit

3. For the purposes of this Act, a family unit is eligible, in relation to disability assistance, hardship assistance or a supplement, if (a) each person in the family unit on whose account the disability assistance, hardship assistance or supplement is provided satisfies the initial and continuing conditions of eligibility established under this Act, and (b) the family unit has not been declared ineligible for the disability assistance, hardship assistance or supplement under this Act.

Employment and Assistance for Persons with Disabilities Regulation

Part 1 – Interpretation Definitions

(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:

- (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 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; (ADD)
- (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

Disability Assistance Rates (section 24 (a))

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) 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)

Schedule B

Net Income Calculation (section 24 (b))

Deduction and exemption rules:

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:

(i) any income earned by a dependent child attending school on a full-time basis;

(ii) Repealed.

(iii) Repealed.

(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 [low income 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;

(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;

(xvii.1) money that is paid or payable to or for a person if the payment is in accordance with (A) the Sixties Scoop Settlement made November 30, 2017, or (B) the Federal Indian Day Schools Settlement made March 12, 2019, as amended May 13, 2019;

(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) money paid by the government of British Columbia, under a written agreement, to a person with disabilities or to a trustee for the benefit of a person with disabilities to enable the person with disabilities to live in the community instead of in an institution;

(xxi) Repealed.

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

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

(xxiv) Repealed.

(xxv) 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;

- (xxvi) a loan that is (A) not greater than the amount contemplated by the recipient's business plan, accepted by the minister under section 70.1 of this regulation, and (B) received and used for the purposes set out in the business plan;
- (xxvii) 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;
- (xxviii) Repealed.
- (xxix) 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;
- (xxx) a refund provided under Plan I as established under the Drug Plans Regulation;
- (xxxi) 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;
- (xxxii) a Universal Child Care Benefit provided under the Universal Child Care Benefit Act (Canada);
- (xxxiii) 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;
- (xxxiv) money withdrawn from a registered disability savings plan;
- (xxxv) a working income tax benefit provided under the Income Tax Act (Canada);
- (xxxvi) Repealed.
- (xxxvii) the climate action dividend under section 13.02 of the Income Tax Act;
- (xxxviii) 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;
- (xxxix) 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;
- (xl) payments granted by the government of British Columbia under the Ministry of Children and Family Development's Family Support Services program;
- (xli) payments granted by the government of British Columbia under the Ministry of Children and Family Development's Supported Child Development program;
- (xlii) payments granted by the government of British Columbia under the Ministry of Children and Family Development's Aboriginal Supported Child Development program;
- (xliii) 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;
- (xliv) payments granted by the government of British Columbia under the Temporary Education Support for Parents Program;
- (xlv) a BC early childhood tax benefit;
- (xlvi) child support;
- (xlvii) orphan's benefits under the Canada Pension Plan Act (Canada),
- (xlviii) money or other value received, by will or as a result of intestacy, from the estate of a deceased person; (xlix) gifts;
- (l) education and training allowances, grants, bursaries or scholarships, other than student financial assistance;
- (li) money withdrawn from a registered education savings plan; (lii) 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;
- (liii) 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;
- (liv) 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,
- (liv.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;

(liv.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;

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

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

(lvii) 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;

(lviii) money that is paid or payable from a settlement in respect of Treaty No. 8 agricultural benefits;

(lix) money that is paid or payable from a settlement under (A) the Cadboro Bay Litigation Settlement Agreement, dated for reference November 1, 2017, between the Esquimalt Nation and Canada, or (B) the settlement agreement, dated for reference October 30, 2017, between the Songhees Nation and Canada;

(lx) money that is paid or payable under the Memorial Grant Program for First Responders established under the authority of the Department of Public Safety and Emergency Preparedness Act (Canada), (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 earned income

2. The only deductions permitted from earned income are the following:

- (a) any amount deducted at source for (i) income tax, (ii) employment insurance, (iii) medical insurance, (iv) Canada Pension Plan, (v) superannuation, (vi) company pension plan, and (vii) union dues;
- (b) if the applicant or recipient provides both room and board to a person at the applicant's or recipient's place of residence, the essential operating costs of providing the room and board;
- (c) if the applicant or recipient rents rooms that are common to and part of the applicant's or recipient's place of residence, 25% of the gross rent received from the rental of the rooms. (SUB) Jan 01/15

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;

"initial qualifying month" , in respect of a family unit and a calendar year, means the calendar month specified for the family unit under subsection (5);

"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;

"qualifying month" , in respect of a family unit and a calendar year, means (a) the initial qualifying month for the family unit in the calendar year, and (b) any subsequent calendar month in the calendar year that is a calendar month for which the family unit is eligible to receive disability assistance under the Act;

"recognized family unit" , in respect of a calendar year, means a family unit that (a) forms during the calendar year, and (b) includes at least one person who (i) is designated as a person with disabilities, and (ii) was previously a recipient in another family unit that was eligible to receive disability assistance under the Act for a calendar month in the calendar year.

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

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. (AM) May 01/12 (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: (AM) Sep 01/15 "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.

Application of deductions and exemptions

9. (1) The deductions and exemptions in this Schedule apply only in the calendar month in which the income is actually received, despite any of the following:

- (a) the date the income is payable;
- (b) the period for which the income is payable;
- (c) the date the income is reported to the minister;
- (d) the date the minister receives notice of the income.

(2) Despite subsection (1), income that is received before the date that subsection (1) comes into force is subject to the application of section 9 of this regulation as it read immediately before subsection (1) came into force.

APPEAL NUMBER
2020-00247

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

Keith Lascroix

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2020-12-16

PRINT NAME

Kent Ashby

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020-12-16

PRINT NAME

Angie Blake

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2020-12-16