

APPEAL NUMBER
2021-00030

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) reconsideration decision dated January 27, 2021, which found that the appellant was required to repay the government \$4698.46. The basis of the decision was that the appellant was not eligible to have received those funds and was liable to repay them in accordance with section 19 of the Employment and Assistance for Persons with Disabilities Act, for which the ministry may deduct amounts from subsequent disability assistance.

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons with Disabilities Act, section 18 and 19.
Employment and Assistance for Persons with Disabilities Regulation, section 1, 9 and 24.
Employment and Assistance for Persons with Disabilities Regulation, Schedule B, sections 1, 3, 6, 7 and 8.

PART E – SUMMARY OF FACTS

Information before the ministry at reconsideration:

- The appellant is a sole recipient of disability assistance with one dependant child.
- For the period of April 12, 2016 to October 9, 2018 the appellant’s spouse was a part of the family unit as a dependant spouse.
- On December 2, 2020, the ministry advised the appellant that a review of the file determined that the appellant had received \$4698.46 that the appellant was not eligible to receive but was overpaid due to the inaccurate declaration by the family unit which failed to include WCB disability payments to the spouse during the period from October 2016 to October 2018. The ministry found the appellant and spouse were jointly and separately liable to repay this overpayment to the ministry.
- The ministry provided the appellant with an Overpayment chart which illustrated the calculation of the overpayment amount based on the amount of assistance received by the family unit and the amounts of the WCB payments received (based on a statement from WorkSafeBC). The result was an overpayment amount of \$4698.46. A summary of this chart is as follows :

Date	Income Type	Actual Income Not Declared	Assistance Amount	Eligible	Overpayment Amount
16Dec	Income (unearned)	2328.03	1619.06	104.00	1515.06
17Jan	Income (unearned)	318.53	1673.06	1356.53	316.53
17Mar	Income (unearned)	318.09	1356.53	1354.97	1.56
17May	Income (unearned)	318.09	2618.06	2299.97	318.09
17Jun	Income (unearned)	318.09	1773.06	1454.97	318.09
17Aug	Income (unearned)	318.09	1773.06	1454.97	318.09
17Sep	Income (unearned)	318.09	1773.06	1454.97	318.09
17Oct	Income (unearned)	318.09	2223.06	1904.97	318.09
17Dec	Income (unearned)	318.09	2043.06	1724.97	318.09
17Jan	Income (unearned)	318.09	2077.06	1758.97	318.09
18Apr	Income (unearned)	319.34	2077.06	1757.72	319.34
18Oct	Income (unearned)	319.34	2077.06	1757.72	319.34

- On December 31, 2020 the appellant submitted a request for reconsideration in which the appellant indicated that the appellant should not be responsible for the entire debt because it was due to the appellant’s spouses income. The appellant acknowledged the marriage was legal but stated that the person was now an ex-spouse. The appellant was amenable to repaying half of the amount but was unable to pay more as the appellant had other obligations.

Request for Reconsideration

The appellant signed the request for reconsideration on December 30, 2020 with the following statement:

“I am requesting for reconsideration. The overpayment due to WCB disability payments of my ex-spouse of the amount \$4,698.46. As I do not think it is fair on my part I should pay all of the amount as it should be the ex-spouse responsibility as well more pay a bigger portion of the amount for the over payment. But legally we were married at the time so I think it would be more fair as the ex-spouse should be pay more of the part of the overpayment as the WCB was in the ex-spouse name not mine. But I can be responsible and agree to pay for some back. And I also have other obligations to pay for such as immigration and I also have a toddler and I am also almost 6 months pregnant. And I also have high rent to pay not like the ex-spouse pays as I know the place he lives as he pays less than \$500 month for rent and me like \$1250 month. And I also ask for an extension and also this is not a good year as we are still in pandemic during covid-19.”

Notice of Appeal

On February 1, 2021, the appellant signed a notice of appeal. Under reasons, the appellant stated: “I do not agree to pay full \$4698.46 as legally I was married to spouse (who is) now ex-spouse as he should be responsible as he

is also still receiving WCB and PWD benefits as I will pay half as it should be fair. And I am currently pregnant and don't need stress on this and not fair as not right on my behalf".

Appellant Submissions

The appellant provided no submissions outside the notice of appeal and request for reconsideration.

Admissibility

The appellant provided no information that would require an admissibility ruling under section 22(4) of the Employment and Assistance Act.

Hearing

The panel conducted a teleconference hearing on February 22, 2021. Attending the hearing were the panel and the ministry representative. The appellant did not attend the hearing. The panel delayed the hearing an appropriate amount of time to allow the appellant to attend. The panel then confirmed that the appellant had received the record and notice of the hearing and then proceeded with the hearing as allowed under the Employment and Assistance Act, section 86(b) which requires notice to be confirmed before proceeding with the hearing in the absence of one of the parties.

The ministry representative proceeded to summarize the facts of the situation and the reconsideration decision noting that the family unit is required to submit a "stub" each month confirming the amount of income the family unit received that the ministry would then assess to determine whether it would deduct this amount from the amount of assistance received so that an overpayment situation did not occur. The ministry determined that the family unit failed to report on the monthly "stub" a permanent disability pension payment from the WCB to the appellant's (then) spouse. The WCB payment is considered as unearned income under the legislation and should be deducted from the assistance amount. Using information from WorkSafeBC, which listed WCB payments received by a family unit member, the ministry constructed an overpayment chart which resulted in the calculation of an overpayment amount of \$4696.86 for the period December 2016 to October 2018.

Under the EAPWDR, section 18(1), recipients who are members of the family unit are under an obligation to repay this overpayment amount and under section 19(1)(b) the ministry is allowed to deduct this amount from subsequent assistance received by the family unit. Under questioning from the panel the ministry representative noted that the recipient of the WCB payment was no longer a dependant of the appellant and there would be no attempts to seek repayment from this individual as the legislation directs the ministry to look to the recipient of the assistance for repayment.

PART F – REASONS FOR PANEL DECISION

The issue under appeal is whether the ministry reconsideration decision which found the appellant was required to repay the government \$4698.46 that the appellant was not eligible for and in accordance with EAPWDR, section 19 is liable for repay the debt which may be deducted from any subsequent disability assistance, was reasonably supported by the evidence or is a reasonable application of the legislation in the circumstances of the appellant.

Appellant Position

The appellant's position is that it is not fair that the appellant bears the entire responsibility for repayment of the overpayment. The appellant agrees to pay a share of the overpayment back. However, the appellant notes that the now ex-spouse continues to receive the WCB payments, while the appellant has a toddler, is 6 months pregnant and has a higher rent payment than the ex-spouse.

Ministry Position

The ministry position in the reconsideration decision is that:

- The disability payments the appellant's spouse received were for a permanent disability and are therefore considered unearned income in accordance with EAPWDR, section 1 which defines unearned income as any income that is not earned income, and includes money or value received from workers compensation benefits and disability payments or pensions. During the period from December 2016 to October 2018, the appellant's (then) spouse was a member of the family unit and received WCB payments for a permanent disability which under EAPWDR, section 1 are considered unearned income for the family unit in which the appellant's spouse was a dependant.
- These payments were not exempt from the appellant's net income calculation. Sections 1, 3 7 and 8 of EAPWDR, Schedule B lists the exemptions from unearned income that are permitted and does not include the WCB payments the family unit received. It was not exempt under section 29 or 30 of the Workers Compensation Act in accordance with EAPWDR, Schedule B, section 3(1) as temporary disability payments. The WCB payments in this case relate to a permanent disability and therefore are not exempt. EAPWDR, Schedule B, section 6 lists the only permitted deductions and this does not include permanent disability payments.
- Section 9(2) of the EAPWDR states a family unit is not eligible for 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 of the EAPWDR. Section 24 of the EAPWDR states that a person's income as calculated under Schedule B of the EAPWDR must be deducted from their disability assistance.
- The ministry's review of an overpayment chart which matches monthly assistance payments and a list of WCB payments provided by WorkSafeBC reveal that an overpayment to the family unit totalling \$4698.46 occurred for the period December 2016 to October 2018.
- Therefore, in accordance with EAPWD, section 16, the appellant is required to repay this amount as the appellant was not eligible to receive it. Furthermore, in accordance with EAPWD, section 19, the appellant was a recipient in the family unit at the time the overpayment occurred and the repayment must be deducted from any subsequent disability assistance.

Panel Decision

The panel notes and is in sympathy with the appellant's concern that the recovery plan of the ministry is unfair to the appellant as it ignores the appellant's ex-spouse as a repayment source. The ex-spouse was a member of the family unit during the period in question and received the disqualifying WCB payments. However, the panel is in agreement with the ministry's analysis and determination that an overpayment situation has occurred and that the repayment request was a reasonable application of the legislation.

EAPWDR, section 9(2) states 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. Section 24 requires that the appellant's income, as calculated under Schedule B of the EAPWDR, must be deducted from the appellant's disability assistance which has been calculated under EAPWDR, Schedule A. The panel notes that the WCB payments are considered unearned income under EAPWDR, section 1 and must be included in the calculation of net income. These permanent disability payments are not exempt from the net income calculation as the only permitted exemptions are for temporary disability payments. Further, the WCB payments are not one of the two deductions from the net income

calculation listed in EAPWDR, Schedule B , section 6.

The panel notes that the ministry calculation of the overpayment amount is demonstrated in a chart attached to the reconsideration decision and matches information from WorkSafeBC as to the dates and payments of the ex-spouses WCB payments. The appellant acknowledges and does not dispute these facts. The appellant does not dispute responsibility but considers it unfair to be solely responsible for the repayment.

The panel notes that the ministry does not explicitly state that the amount of assistance utilized in the overpayment calculation was calculated in accordance with EAPWDR, Schedule A. The panel finds that the amounts used in the referenced chart and in the overpayment calculation was the amount on the ministry records and therefore presumed to have been in accordance with the calculation in Schedule A for the family unit in place. The panel has reviewed the elements in schedule A for the appellant's family unit and confirms this was a reasonable assumption.

It is clear to the panel that the ministry properly determined and calculated the fact and extent of an overpayment which under EAPWDR, section 18(1), the recipient of assistance is required to repay and, under EAPWDR, section, 19(1)(b), may be deducted from future assistance.

The panel disagrees with the ministry that the legislation directs the ministry to only look to the appellant for recovery but finds that the ministry decision is a reasonable application of the applicable enactments in the circumstances of the appellant. The panel finds that unless it was an unreasonable application the panel has no authority to consider the fairness or equities of enforcing repayment against the appellant only or at all.

Conclusion

The panel confirms the ministry reconsideration decision as it was reasonably supported by the facts and 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

Part 4 General Provisions

Overpayments

18. (1) If disability assistance, hardship assistance or a supplement is provided to or for a family unit that is not eligible for it, recipients who are members of the family unit during the period for which the overpayment is provided are liable to repay to the government the amount or value of the overpayment provided for that period.

(2) The minister's decision about the amount a person is liable to repay under subsection (1) is not appealable under section 16 (3) [reconsideration and appeal rights].

Liability for and recovery of debts under Act

19. (1) An amount that a person is liable to repay under this Act is a debt due to the government that may be

(a) recovered in a court that has jurisdiction, or

(b) deducted, in accordance with the regulations, from any subsequent disability assistance, hardship assistance or supplement for which the person's family unit is eligible or from an amount payable to the person by the government under a prescribed enactment.

(2) Subject to the regulations, the minister may enter into an agreement, or accept any right assigned, for the repayment of an amount referred to in subsection (1).

(3) An agreement under subsection (2) may be entered into before or after the disability assistance, hardship assistance or supplement to which it relates is provided.

(4) A person is jointly and separately liable for a debt referred to under subsection (1) that accrued in respect of a family unit while the person was a recipient in the family unit.

Employment and Assistance for Persons with Disabilities Regulation

Part 1 – Interpretation

Definitions

1. (1) In this regulation:

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

(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);
 - (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.

Limits on income

9. (1) For the purposes of the Act and this regulation, "income", in relation to a family unit, includes an amount garnished, attached, seized, deducted or set off from the income of an applicant, a recipient or a dependant.
- (2) A family unit is not eligible for disability assistance if the net income of the family unit determined under Schedule B equals or exceeds the amount of disability assistance determined under Schedule A for a family unit matching that family unit.

Amount of disability assistance

24. Disability assistance may be provided to or for a family unit, for a calendar month, in an amount that is not more than
- (a) the amount determined under Schedule A, minus
 - (b) the family unit's net income determined under Schedule B.

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;

(xvi) Repealed.

(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. [B.C. Reg. 85/2012, Sch. 2]

(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. [B.C. Reg. 148/2015, App. 2]

(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;

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

Annual exemption – qualifying income

3 (1) In this section:

"base amount" means

- (a) \$800, in the case of a family unit that includes only one recipient,
- (b) \$1 000, in the case of a family unit that includes two recipients, only one of whom is designated as a person with disabilities, and
- (c) \$1 600, 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

3. (1) In this section:
(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.

(2) For the purposes of section 1 (c) and (d), the lesser of the following amounts is exempt income of a family unit for a qualifying month:

- (a) the qualifying income of the family unit for the qualifying month;
- (b) the exemption limit of the family unit for the qualifying month calculated in accordance with subsection (3).
- (3) The exemption limit of a family unit for a qualifying month for the family unit in a calendar year is the following:
- (a) in the case of the initial qualifying month for the family unit in the calendar year, the amount calculated in accordance with subsection (4);
- (b) in the case of any other qualifying month for the family unit in the calendar year, the amount calculated in accordance with subsection (7).
- (4) For the purposes of subsection (3) (a), the exemption limit of a family unit for the initial qualifying month for the family unit in a calendar year is calculated as follows:
- (a) in the case of a family unit other than a recognized family unit, the exemption limit is the product of
- (i) the base amount for the family unit, and
- (ii) 12 minus the number of calendar months in the calendar year that are before that initial qualifying month;
- (b) in the case of a recognized family unit that includes only one recipient, the exemption limit is the product of
- (i) the base amount for the recognized family unit, and
- (ii) 12 minus the number of calendar months in the calendar year that are before that initial qualifying month;
- (c) in the case of a recognized family unit that includes two recipients, the exemption limit is the sum of the carryover amounts for the recipients calculated in accordance with subsection (6).
- (5) For the purposes of subsection (4), the initial qualifying month for a family unit is the following:
- (a) in the case of a family unit described in subsection (4) (a), the initial qualifying month is
- (i) the first calendar month for which the family unit is eligible to receive disability assistance under the Act, if
- (A) a member of the family unit who is designated as a person with disabilities previously received disability assistance under the Act or a former Act, as a person with disabilities, or
- (B) a member of the family unit received income assistance under the Employment and Assistance Act for the calendar month immediately preceding that first calendar month, or
- (ii) if subparagraph (i) does not apply, the first calendar month, after the first calendar month referred to in that subparagraph, for which the family unit is eligible to receive disability assistance under the Act;
- (b) in the case of a family unit described in subsection (4) (b), the initial qualifying month is the first calendar month, after the calendar month in which the family unit forms, for which the family unit is eligible to receive disability assistance under the Act;
- (c) in the case of a family unit described in subsection (4) (c), the initial qualifying month is
- (i) the calendar month in which the family unit forms, if the family unit is eligible to receive disability assistance under the Act for that calendar month, or
- (ii) if subparagraph (i) does not apply, the first calendar month, after the calendar month in which the family unit forms, for which the family unit is eligible to receive disability assistance under the Act.
- (6) For the purposes of subsection (4) (c), the carryover amount for a recipient who is part of a recognized family unit that includes two recipients is calculated as follows:
- (a) in the case of a recipient who is not designated as a person with disabilities, the product of
- (i) the amount specified in paragraph (b) of the definition of "base amount" minus the amount specified in paragraph (a) of that definition, and

(ii) 12 minus the number of calendar months in the calendar year that are before the initial qualifying month for the recognized family unit;

(b) in the case of a recipient who is designated as a person with disabilities, if the last family unit, before the recognized family unit, of which the person was a part that was eligible to receive disability assistance under the Act included no other recipients, the greater of

(i) nil, and

(ii) the exemption limit of that last family unit for the last qualifying month for that last family unit, adjusted as follows:

(A) by deducting the qualifying income of that last family unit in that last qualifying month;

(B) by deducting the product of

(I) The amount specified in paragraph (a) of the definition of "base amount", and

(II) The number of calendar months after that last qualifying month and before the initial qualifying month for the recognized family unit;

(c) in the case of a recipient who is designated as a person with disabilities, if paragraph (b) does not apply, the product of

(i) the amount specified in paragraph (a) of the definition of "base amount", and

(ii) 12 minus the number of calendar months in the calendar year that are before the initial qualifying month for the recognized family unit.

(7) For the purposes of subsection (3) (b), the exemption limit of a family unit for any other qualifying month (an "index qualifying month") for the family unit in the calendar year is the greater of

(a) nil, and

(b) the exemption limit of the family unit for the last qualifying month for the family unit before the index qualifying month, adjusted as follows:

(i) by deducting the qualifying income of the family unit in that last qualifying month;

(ii) in the case of a family unit that includes a recipient whose designation as a person with disabilities was rescinded

(A) in that last qualifying month, or

(B) in a calendar month after that last qualifying month and before the index qualifying month,

by deducting the product of

(C) the amount specified in paragraph (c) of the definition of "base amount" minus the amount specified in paragraph (b) of that definition, and

(D) 12 minus the number of calendar months in the calendar year that are before the index qualifying month;

(iii) in the case of a family unit that includes a recipient whose designation as a person with disabilities was made

(A) in that last qualifying month, or

(B) in a calendar month after that last qualifying month and before the index qualifying month,

by adding the product of

(C) the amount specified in paragraph (c) of the definition of "base amount" minus the amount specified in paragraph (b) of that definition, and

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(D) 12 minus the number of calendar months in the calendar year that are before the index qualifying month;

(iv) by deducting the product of

(A) the base amount for the family unit, as the family is composed in that last calendar month before any rescission described in subparagraph (ii) or designation described in subparagraph (iii) is made, and

(B) the number of calendar months after that last qualifying month and before the index qualifying month.

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

7. (.01) 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.

(2.1) Repealed.

(3) Repealed.

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.

APPEAL NUMBER
2021-00030

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 Lacroix

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2021-02-22

PRINT NAME

Kent Ashby

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021-02-22

PRINT NAME

Carman Thompson

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021-02-22