

APPEAL NUMBER  
2021-00029

**PART C – DECISION UNDER APPEAL**

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) Reconsideration Decision dated January 19, 2021, which denied the appellant's request for reimbursement of amounts deducted from the appellant's disability assistance. Specifically, the ministry denied the appellant's request for reimbursement of the amounts deducted for the federal Allowance for Spouse income which the appellant was subsequently required to repay to Service Canada.

**PART D – RELEVANT LEGISLATION**

Employment and Assistance for Persons with Disabilities Act (EAPWDA) sections 3, 5

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

Interpretation Act sections 2, 8

## PART E – SUMMARY OF FACTS

Information before the ministry at reconsideration included:

- A copy of a letter, undated and unsigned, explaining the appellant's circumstances leading to the appeal. The appellant wrote that their marital relationship ended shortly after the application for Old Age Security spousal allowance was approved, that Service Canada was informed and that the spousal allowance payments stopped, however the ministry had deducted them from the monthly disability assistance payments during the period the supplement had been received. The appellant wrote that the ministry was informed that Service Canada demanded repayment of the allowance. The appellant wrote that they were suffering from a major depressive disorder during that time and found it difficult to deal with Service Canada and ministry paperwork.
- A copy of a letter to the appellant from Service Canada dated October 9, 2020, advising of an overpayment for the months of April to July, 2020 in the amount of \$593.64.
- A copy of the appellant's monthly report to the ministry dated 05/08/2020, reporting a payment from OAS in the amount of \$98.41.
- A copy of a letter to the appellant from Service Canada, undated, showing a monthly entitlement of \$98.41 for the month of April, 2020.
- A copy of a letter to the appellant from Service Canada dated July 30, 2020, advising of an overpayment in the amount of \$593.64 for the period April to July, 2020.
- A copy of the appellant's bank account statement for the period August 21 to September 9, 2020, with a handwritten notation "August 2020 No OAS deposit".
- A copy of the appellant's bank statement for the period July 21 to August 5, 2020, with a handwritten notation "July 2020" and the amount of a deposit on July 29 in the amount of \$298.42 "Old Age Security Canada" circled.
- A copy of the appellant's bank statement for the period June 22 to June 29, 2020, with a handwritten notation "June 2020" and the amount of a deposit on June 26 in the amount of \$98.41 "Old Age Security Canada" circled.
- A copy of the appellant's bank statement for the period May 21 to June 5, 2020, with a handwritten notation "May 2020" and the amount of a deposit on May 27 in the amount of \$98.41 "Old Age Security Canada" circled.
- A copy of the appellant's bank statement for the period April 22 to May 11, with a handwritten notation "April 2020" and the amount of a deposit on April 28 in the amount of \$98.41 "Old Age Security Canada" circled.
- A copy of a bank statement "Deposit Account Details" for the period August 4 to November 10, 2020.
- The appellant's Request for Reconsideration submitted by an advocate on the appellant's behalf, dated January 5, 2020.

The appellant provided a written copy of the argument prior to the hearing, outlining their argument:

- The appellant submits that disability assistance benefits for the months of May to September, 2020 were underpaid and requests that the ministry reimburse them.
- The appellant applied for an Old Age Security (OAS) spousal allowance and subsequently the spouses were legally separated, which was extremely stressful for the appellant.
- The appellant's psychiatrist closed their practice, leaving the appellant without medication for a bipolar disorder.
- The OAS supplement payments started in April, 2020 in the amount of \$98.41 monthly. The appellant advised Service Canada of the change in eligibility due to marital separation. On May 8, 2020, the appellant called the ministry to inform them that eligibility for the OAS supplement changed and it would no longer be paid. The appellant was told to submit relevant paperwork and the ministry would "sort it all out". The ministry worker characterized the OAS payment as unexempt unearned income that would be deducted from disability assistance payments. The ministry continued to deduct the OAS payments from the appellant's disability assistance, and reduced the appellant's disability assistance by more than the \$98.41 he received for the months of May to August, 2020.
- In August, 2020 the appellant received a letter from Service Canada stating that the overpayment of OAS must be repaid in the amount of \$593.64. The appellant provided this letter to the ministry and requested reimbursement of the amount that had been deducted from disability assistance payments.

- The ministry denied the appellant's request on October 27, 2020. The appellant repaid the OAS spousal allowance.

At the hearing, the appellant advised through an advocate that the amount of the requested reimbursement has been amended to \$553.64. The appellant's advocate stated that the appellant was married for 30 years, learned about the Old Age Security (OAS) spousal benefit and applied for it in March, 2019. The spouses legally separated in late 2019 and the appellant informed the OAS authorities through Service Canada in late April, 2020. Later in 2020, the appellant started to receive the supplement and reported it to the ministry in May, 2020 and advised the ministry that they were ineligible to receive it due to the legal separation. The appellant submits that the ministry advised that "they would sort it all out", and the ministry worker advised at that time that these payments were unexempt unearned income which must be deducted from the appellant's disability assistance. The appellant's advocate stated that the appellant was under great stress at this time and was unable to obtain medication to deal with bipolar disorder due to the retirement of their physician; as a result, the appellant's mental health and functional skills are submitted to have deteriorated.

The advocate stated that the appellant continued to receive the supplement until July, 2020. In August, 2020, a letter was received from Service Canada advising that there was an overpayment of \$563.64 which must be repaid. The OAS payment stopped and the ministry stopped deducting the payment from the appellant's disability assistance and refunded \$98.41 for October, 2020. The ministry had deducted the OAS payments from May to August, 2020 inclusive. The appellant was aware that a month elapsed before the ministry was advised, but they were having a health crisis due to a lack of medication. When the appellant requested a refund of the deducted payments that were required to be repaid, the ministry responded that there is no obligation to do so.

The ministry responded that \$98.41 was deducted from the appellant's monthly disability assistance from June to September, 2020. The appellant was determined to be a Person with Disabilities (PWD) in August, 2019. At that time the appellant's marital status was in question. It was updated when the family unit changed and it was clarified. In May, 2020, the appellant used the "My Self Serve" internet portal to update the file and included a copy of the letter received from Service Canada. The appellant contacted the ministry 7 times between May and August, 2020 about various matters; however, none of the calls were about the OAS spousal supplement. The first call about that matter was in October, 2020.

The ministry noted that all unearned income must be reported and deducted from disability assistance payments. The OAS spousal supplement is not exempted as a deduction under the legislation. The ministry stated that monthly income affects the next month's disability assistance. The ministry stated that there is no provision in the legislation to retroactively calculate eligibility.

In response to questions from the appellant, the ministry responded that their records show that the first deduction was for the appellant's June disability assistance cheque. Further the deductions were made from July to October inclusive, but the October deduction was changed and an adjustment was made. The ministry records reflect what was issued, not the deposits in the appellant's bank account. When the appellant started to receive disability assistance, the ministry had a question about their marital status and whether the spouse should be on file or not. The appellant verbally confirmed the separation and the monthly report submitted indicated they were not living together. With respect to the \$98.41 refund cheque, the ministry stated that this was done after they were notified by the appellant and a data match with the federal government system confirmed that they were not eligible for the OAS supplement. The appellant was reassessed in the same month that the information was received.

In response to questions from the Panel to clarify whether compliance review could be conducted at the prompting of an appellant, the ministry responded that compliance reviews are used for auditing and monitoring, but not for monthly reports, and not in this instance because there was no administrative underpayment. The Service Canada report shows that the appellant and spouse separated in 2017. The ministry stated that there is no record in their files of the appellant stating in any of the 7 contacts with them that the appellant reported to them that they were not eligible for the OAS supplement until October 5, 2020.

## **PART F – REASONS FOR PANEL DECISION**

The issue in this appeal is the reasonableness of the ministry reconsideration decision dated January 19, 2021, which denied the appellant's request for reimbursement of amounts deducted from the appellant's disability assistance. Specifically, the ministry denied the appellant's request for reimbursement of the amounts deducted for the federal Allowance for Spouse income which the appellant was subsequently required to repay to Service Canada.

### **Legislation**

***The text of the applicable legislation is reproduced in full in the Appendix following these Reasons.***

The appellant's position:

- That the ministry has the legislative power and administrative ability to reassess the appellant's eligibility for PWD disability assistance payments for the months of May through September, 2020 and also has through the same framework the authority to reimburse the deductions to disability assistance payments for the period.
- The appellant argued that it was unreasonable to characterize the OAS spousal supplement as unearned income, as the appellant was not eligible for it and the ministry was aware. The ministry had a responsibility to inquire of Service Canada.
- The appellant conceded that although there is no legislative requirement to reimburse, there is power to do so under section 5 of the *Employment and Assistance for Persons with Disabilities Act* and, in fact, the ministry does recalculate eligibility.
- The appellant argued that the ministry should consider sections 2 and 8 of the *Interpretation Act* when considering whether they have an authority to reimburse.
- The appellant argued that the ministry ought to have accommodated the appellant given that it was aware of the appellant's disability.
- The appellant argued that the ministry said they would "sort it all out" when they were informed of the appellant's ineligibility for the OAS supplement.

The ministry's position is:

- That they were unaware of Service Canada's determination regarding the appellant's ineligibility for benefits until they were informed by the appellant on October 5, 2020 and this information was confirmed by a federal data match.
- The ministry argued that the appellant's relationship was in question at the time of the appellant's application for PWD designation and it was updated later.
- The ministry argued that they were not aware of the appellant's ineligibility for the OAS supplement until October, 2020 and there is no record in the appellant's file of a mention of this prior to that date.
- The ministry argued that the supplement was correctly categorized as unearned income that is not exempt from deduction from disability assistance and that there is no obligation for reimbursement in the legislation.

### **Analysis and Decision**

Categorization of the Allowance for Spouse benefits: The ministry argued that federal old age security payments are defined as unearned income in section 1(1) of the EAPWDR and are not listed under the exemptions from income in Schedule B. The appellant argued that the ministry did not independently confirm the payments with Service Canada and did not consider that the appellant was not entitled to keep the money. The Panel finds that the ministry reasonably categorized the appellant's Allowance for Spouse payments under this benefit as unearned income that is not exempted under s. 1 of Schedule B, EAPWDR. Indeed, it was the federal government who determines the appellant's eligibility for the Allowance for Spouse; therefore, the ministry's decision to categorize

the Allowance for Spouse as unearned income was reasonably based on information presented to it at the material time.

**Ministry's responsibility to inquire:** The appellant argued that the ministry should have inquired with Service Canada about the appellant's eligibility for the spousal supplement. The ministry argued that it stopped the payments as soon as they were advised and a data match showed that the appellant was not in receipt of the supplement. They further argued that the deduction made for the final month was reversed once they had been made aware. The Panel accepts the ministry's evidence, and that of the appellant that a month passed before they advised the ministry of the Service Canada letter due to health issues.

**Accommodation:** The Panel does not have jurisdiction to consider arguments based on the Human Rights Code. (*Employment and Assistance Act*, s 19.1(f))

**Authority to reassess and reimburse:** The appellant argued that the ministry has the power to repay deductions from disability assistance as they have the power to reassess eligibility and demand repayment of overpayments made when conducting compliance reviews. The appellant argued that section 5, EAPWDA, should be interpreted to include this authority considering that the ministry policy manual speaks to overpayments and underpayments. The ministry argued that there is no provision in the Act or Regulation to retroactively calculate eligibility and no legislative requirement to revisit it. The Panel finds that the ministry reasonably concluded that there is no legislative obligation to recalculate eligibility retroactively; therefore, the ministry's denial of a refund was reasonable. Section 5 of the EAPWDA speaks to the ministry's authority to provide assistance to a family unit that is eligible for it; it does not speak to retroactive eligibility. The Panel notes that ministry policy may be used for submissions; however, the Panel's jurisdiction is limited to determining the reasonableness of the application of the legislation.

In summary, the Panel finds that the ministry reasonably determined that the OAS spousal supplement in question is not exempted as a deduction under the applicable legislation; therefore, the OAS supplement had to be reported as unearned income and deducted from disability assistance payments made to the appellant. Further, the Panel finds that the appellant did not make the ministry aware of the Service Canada determination of ineligibility for the spousal supplement until one month after receipt of their letter in September, 2020. At that time, the ministry ceased deducting the amount of the spousal supplement from the appellant's disability assistance and reversed the deduction on the October, 2020 cheque. The Panel finds that the ministry reasonably determined that there is no provision to retroactively recalculate eligibility after a recipient incurs a repayment from a third party. The Panel finds that the ministry reasonably acted on the information it had available at the time.

The ministry decision is confirmed.

The appeal is not successful.

## APPENDIX

### EAPWDA

#### **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.

#### **Disability assistance and supplements**

**5** Subject to the regulations, the minister may provide disability assistance or a supplement to or for a family unit that is eligible for it.

**EAPWDR**

**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:

(u) Federal Old Age Security and Guaranteed Income Supplement payments;

**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 A**

**Disability Assistance Rates**

**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.

(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) of the *Child, Family and Community Service Act*.

**Monthly support allowance**

**2** (0.1) For the purposes of this section:

"deemed dependent children", in relation to a family unit, means the persons in the family unit who are deemed to be dependent children under subsection (5);

"warrant" has the meaning of warrant in section 14.2 [*consequences in relation to outstanding arrest warrants*] of the Act.

(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

(a.1) Repealed. [B.C. Reg. 193/2017, s. 9 (a).]

(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 (\$)
1	Sole applicant / recipient and no dependent children	Applicant / recipient is a person with disabilities	808.42

#### Monthly shelter allowance

4 (1) For the purposes of this section:

"family unit" includes a child who is not a dependent child and who relies on the parent for the necessities of life and resides in the parent's place of residence for not less than 40% of each month;

"warrant" has the meaning of warrant in section 14.2 [*consequences in relation to outstanding arrest warrants*] of the Act.

(2) The monthly shelter allowance for a family unit to which section 14.2 of the Act does not apply is the smaller of

(a) the family unit's actual shelter costs, and

(b) the maximum set out in the following table for the applicable family size:

Item	Column 1 Family Unit Size	Column 2 Maximum Monthly Shelter
1	1 person	\$375

#### Schedule B

##### Net Income Calculation

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

(iii) Repealed. [B.C. Reg. 48/2010, Sch. 1, s. 2 (c).]

(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;
- (xii.1) money that is paid or payable to or for a person if the payment is in accordance with the settlement under the Final Settlement Agreement and Supplementary Agreement approved by the Federal Court June 22, 2018 in Court File No. T-370-17, *Todd Edward Ross et al. v. Her Majesty the Queen*;
- (xii.2) money that is paid or payable to or for a person if the payment is in accordance with the settlement under the Final Settlement Agreement approved by the Federal Court January 30, 2019 in Court File No. T-1068-14, *Raymond Michael Toth v. Her Majesty the Queen*;
- (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. 2, s. 11 (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;
- (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, s. 7.]
- (xxii) 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*;
- (xxiii) payments granted by the government of British Columbia under the Ministry of Children and Family Development's At Home Program;
- (xxiv) Repealed. [B.C. Reg. 85/2012, Sch. 2, s. 7.]
- (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, s. 1 (a).]
- (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. [B.C. Reg. 180/2010, s. 2 (b).]
- (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;
- (xlv.1)a BC child opportunity 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 the 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 Division 5 [*Compensation in Relation to Death of Worker*] of Part 4 [*Compensation to Injured Workers and Their Dependants*] or section 225 [*compensation in relation to worker death before July 1, 1974*] of the *Workers Compensation*

- Act to a dependant, as defined in section 1 of that Act, who is a child, as defined in section 165 (1) 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;
  - (lviv) 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);
  - (lxi) money, or goods or services in kind, received or to be received by a participant in the Ministry of Social Development and Poverty Reduction's Work Experience Opportunities Grant program from a grant under the program,
- (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 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** (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.

### **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.

### **Interpretation Act**

#### **Application**

**2** (1) Every provision of this Act applies to every enactment, whether enacted before or after the commencement of this Act, unless a contrary intention appears in this Act or in the enactment.

#### **Enactment remedial**

**8** Every enactment must be construed as being remedial, and must be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects.

**Employment and Assistance Act**

**Application of *Administrative Tribunals Act***

**19.1** The following provisions of the *Administrative Tribunals Act* apply to the tribunal:

(f )section 46.3 [*tribunal without jurisdiction to apply the Human Rights Code*];

APPEAL NUMBER  
2021-00029

**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

Reece Wrightman

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2021 March 26

PRINT NAME

Anil Aggarwal

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021 April 14

PRINT NAME

Maryam Majedi

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021 April 15