

APPEAL NUMBER
2021-00004

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) reconsideration decision of December 30, 2020, which determined that the appellant's spouse's income from the sale of stocks must be deducted from the family unit's disability assistance (DA) in accordance with section 24 of the Employment and Assistance for Persons with Disabilities Regulation (EAPWDR).

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons with Disabilities Regulation sections 1, 24, Schedules A & B

PART E – SUMMARY OF FACTS

Background Information

- The appellant is in receipt of disability assistance as a two-parent family with three dependent children.
- On November 9, 2020 the appellant submitted a monthly report claiming income from selling stocks as \$685.
- On November 18, 2020 the ministry advised that the income the appellant had received was considered unearned income and must be deducted from the December DA.
- On November 23, 2020 the appellant submitted a letter to the ministry explaining that the income should be considered self-employment income as it was earned from being a day trader. Attached were web transactions confirming on September 28, 2020 the appellant's spouse had purchased 500 shares of a stock at \$1.97 per share, which came out to \$985 less \$10 trading fee. The spouse then sold the shares on October 2, 2020 for \$1610 less \$10 selling fee equalling \$1600. The total profit from this transaction was \$615.
- On December 14, 2020 the appellant submitted a Request for Reconsideration (RFR) of the decision to deduct their profit from stock selling as unearned income. She wrote as her reasons for requesting a reconsideration:
 - The spouse is self-employed as a stock trader and as such the income from trading in stocks should be considered earned income with the yearly \$24,000 earnings exemption;
 - The \$685 declared on November 9, 2020 was an error and in reality they ended up losing money in the month of October because the monthly record from the trading account's loss/gains shows they actually lost \$257.97;
 - They did make a profit in November, which was declared on the next monthly report (a November account statement is included in the appeal record);
 - Because of her and her family's disabilities, along with Covid 19, they have had to make many adjustments to their life. They found that a way to work from home would be to become a day trader on the stock exchange which the spouse started doing in June 2020 after taking several courses;
 - They consider that being self-employed as a stock trader is a real form of work. It requires due diligence and many hours of research in order to earn this income and they are also being taxed as a business income;Included with her reasons was a description of what is involved in being a day trader on the stock exchange and how the income must be reported as business income, which is then fully taxable according to Canadian tax requirements.
 - She would like to make a case for people with disabilities so that in the future people with disabilities can support their families and themselves with this form of self-employment. The current policy prevents them from doing so by deducting any profits off their support cheques dollar for dollar, which makes it impossible to get ahead in this form of self-employment. If the ministry would look at this job as a legitimate job it would open doors for people with disabilities and allow for more people to be able to earn income from home while caring for their children.
 - If she or her spouse was a farmer who bought tomato seeds, grew the tomatoes and then sold them at a market, the income would be considered earned income, which would be then deducted from the \$24,000 yearly earnings exemption. The spouse buys stock and grows the stock so it becomes worth more, and then sells for a profit, and that is his form of self-employment.

Additional Information and Admissibility

On the Notice of Appeal dated January 7, 2021 the appellant wrote that the legislation is out-dated and discriminatory.

At the hearing, the appellant confirmed she would like her spouse to represent the family at the hearing. The spouse read through the statement that he had submitted at the reconsideration stage, emphasizing his objective with this appeal is for the ministry to review their policy and legislation regarding the selling of stocks as a day trader, as the policy does not take into account the increase in the number of day traders in the current times. A day trader usually buys and sells their stocks within a month and should not be compared to the sale of stocks someone has had ownership of for many years. The appellant argues the policy is discriminatory against people with disabilities as this is a viable way for them to earn extra income to support themselves and their families. The spouse noted that if the income was considered earned income, which he believes it should because of all the

research, time and effort that is put into buying and selling stocks, the ministry's earnings exemptions could then be applied. The spouse's, and his family's, disabilities are such that he cannot work away from the home and having work as a day trader, which had a relatively low initial cost expense, would allow him to do so.

At the hearing, the ministry relied on its reconsideration decision and emphasized the legislation clearly identifies stocks as being unearned income, which is then deducted from DA. The ministry also reviewed the definition of earned income and notes that if the appellant worked and was being paid by another person or investing for other people and receiving money for this service, these would be considered earned income and the earnings exemption applied. They also noted the ministry has a self-employment program and the appellant's spouse could contact the ministry to discuss his options.

Neither party provided additional documents or oral evidence that require an admissibility determination under section 22(4) of the *Employment and Assistance Act*. The ministry relied on the reconsideration decision and both parties provided argument at the hearing. The panel considers both parties' arguments in Part F - *Reasons for panel decision*.

PART F – REASONS FOR PANEL DECISION

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

Appellant Position

The appellant's position is that the work the spouse does as a day trader should be considered employment and any money he makes while doing so should be considered earned income, not unearned income. The appellant is requesting a review of the policy and legislation regarding income from stocks.

Ministry Position

The ministry's position is that income from stocks is listed as unearned income in section 1 EAPWDR and must therefore be deducted dollar for dollar from the appellant's DA pursuant to section 24 EAPWDR. The ministry noted, in the appellant's circumstance, that none of the exemptions respecting unearned income pursuant to sections 1, 7, and 8 of Schedule B applied.

Panel Decision

Section 1 of the EAPWDR provides definitions of "earned" and "unearned" income. The panel notes that earned income means any money or value received in exchange for work or the provision of a service, and money received from stocks is specifically identified under the unearned income definition.

Section 24 of the EAPWDR sets out that DA is calculated by subtracting the family's net income determined under Schedule B from the amount of DA determined under Schedule A. In the appellant's circumstance, the family's DA amount for December 2020 was \$2,347.06 and the net income declared was \$615. The panel notes the appellant's spouse does not dispute the fact he made a profit of \$615 from the sale of a stock in October 2020 so this amount is not in question, nor were any exemptions to unearned income identified at the hearing.

The panel will consider the appellant's argument that her spouse is employed at work because he researches what stock to buy and when to sell, and should this work be considered earned income or is the profit made unearned income.

The spouse argues that if he had grown tomatoes and then sold them the income would be considered earned and he relates the buying of stock as being similar in that he grows the stock and sells it at the appropriate time. The panel considers that how a stock grows is beyond the appellant's control as the value of a stock is related to how a company is managing and not by anything the appellant does. The panel found no evidence the spouse is being paid by someone for the exchange of the work he does in determining when to sell stocks, rather, he is receiving money back from an investment he made in a stock that happened to increase in value. The panel finds the ministry was reasonable to determine the income from the sale of stocks was not derived from the exchange for work or provision of a service so is not considered earned income.

The panel notes that day trading has changed in recent years with the advancement of computer programs. The general public is now able to buy and sell their own stock investments without the involvement of a trading company, and the tax laws have been amended to include income from day trading as business income. However, the current legislation that applies when determining DA is clear that money received from the sale of stocks is considered unearned income. Therefore, the panel finds the ministry was reasonable in its determination that the income from the sale of stocks is considered unearned income and must be deducted from the DA amount, as is required by section 24 of the EAPWDR.

Conclusion

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

circumstances. The appellant is not successful in her appeal.

Relevant Legislation

EAPWDR

Definitions

1

"**asset**" means

- (a) equity in any real or personal property that can be converted to cash,
- (b) a beneficial interest in real or personal property held in trust, or
- (c) cash assets;

"**cash assets**" in relation to a person, means

- (a) money in the possession of the person or the person's dependant,
- (b) money standing to the credit of the person or the dependant with
 - (i) a savings institution, or
 - (ii) a third party

that must pay it to the person or the dependant on demand,

- (c) the amount of a money order payable to the person or the dependant, or
- (d) the amount of an immediately negotiable cheque payable to the person or the dependant;

"**earned income**" means

- (a) any money or value received in exchange for work or the provision of a service,
-

"**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;
-

Amount of disability assistance

24 Disability assistance may be provided to or for a family unit, for a calendar month, in an amount that is not more than

- (a) the amount determined under Schedule A, minus
- (b) the family unit's net income determined under Schedule B.

Schedule A

Maximum amount of disability assistance before deduction of net income

1 (1) Subject to this section and sections 3 and 6 to 9 of this Schedule, the amount of disability assistance referred to in section 24 (a) [*amount of disability assistance*] of this regulation is the sum of

- (a) the monthly support allowance under section 2 of this Schedule for a family unit matching the family unit of the applicant or recipient, plus
- (b) the shelter allowance calculated under sections 4 and 5 of this Schedule.

Monthly support allowance

2 (0.1) For the purposes of this section:

(1) A monthly support allowance for the purpose of section 1 (a) is the sum of

- (a) the amount set out in Column 3 of the following table for a family unit described in Column 1 of an applicant or a recipient described in Column 2, plus
- (b) the amount calculated in accordance with subsections (2) to (4) for each dependent child in the family unit.

Item	Column 1 Family unit composition	Column 2 Age or status of applicant or recipient	Column 3 Amount of support
7	Two applicants/dependent children	Both applicants are persons with disabilities	1597.06

Monthly shelter allowance

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

- (a) the family unit's actual shelter costs, and
- (b) the maximum set out in the following table for the applicable family size:

Item	Column 1 Family Unit Size	Column 2 Maximum Monthly Shelter
5	5 persons	\$750

Schedule B

Net Income Calculation

Deduction and exemption rules

1 When calculating the net income of a family unit for the purposes of section 28 (b) [amount of income assistance] of this regulation,

(a) the following are exempt from income:

- (i) any income earned by a dependent child attending school on a full-time basis;
- (ii) Repealed. [B.C. Reg. 96/2017, App. 1, s. 2 (a).]
- (iii) Repealed. [B.C. Reg. 48/2010, Sch. 1, s. 1 (b).]
- (iv) a family bonus, except the portion treated as unearned income under section 10 (1) of this Schedule;
- (iv.1) the Canada child benefit, except the portion treated as unearned income under section 10 (1) of this Schedule;
- (v) the basic child tax benefit;
- (vi) a goods and services tax credit under the Income Tax Act (Canada);
- (vii) a tax credit under section 8 [refundable sales tax credit], 8.1 [climate action tax credit] or 8.2 [BC harmonized sales tax credit] of the Income Tax Act (British Columbia);
- (viii) individual redress payments granted by the government of Canada to a person of Japanese ancestry;
- (ix) individual payments granted by the government of Canada under the Extraordinary Assistance Plan to a person infected by the human immunodeficiency virus;
- (x) individual payments granted by the government of British Columbia to a person infected by the human immunodeficiency virus or to the surviving spouse or dependent children of that person;
- (xi) individual payments granted by the government of Canada under the Extraordinary Assistance Plan to

thalidomide victims;

(xii) money that is

(A) paid or payable to a person if the money is awarded to the person by an adjudicative panel in respect of claims of abuse at Jericho Hill School for the Deaf and drawn from a lump sum settlement paid by the government of British Columbia, or

(B) paid or payable to or for a person if the payment is in accordance with the settlement agreement approved by the Supreme Court in Action No. C980463, Vancouver Registry;

(xiii) the BC earned income benefit;

(xiv) money paid or payable under the 1986-1990 Hepatitis C Settlement Agreement made June 15, 1999, except money paid or payable under section 4.02 or 6.01 of Schedule A or of Schedule B of that agreement;

(xv) a rent subsidy provided by the provincial government, or by a council, board, society or governmental agency that administers rent subsidies from the provincial government;

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

(xvii) money paid or payable to a person in settlement of a claim of abuse at an Indian residential school, except money paid or payable as income replacement in the settlement;

(xviii) post adoption assistance payments provided under section 28 (1) or 30.1 of the Adoption Regulation, B.C. Reg. 291/96;

(xix) a rebate of energy or fuel tax provided by the government of Canada, the government of British Columbia, or an agency of either government;

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

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

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

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

(xxiv) payments granted by the government of British Columbia under an agreement referred to in section 93 (1) (g) (ii) of the Child, Family and Community Service Act, for contributions to the support of a child;

(xxv) a loan that is

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

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

(xxvi) payments granted by the government of British Columbia under the Ministry of Children and Family Development's

(A) Autism Funding: Under Age 6 Program, or

(B) Autism Funding: Ages 6 — 18 Program;

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

(xxviii) payments made by a health authority or a contractor of a health authority to a recipient, who is a "person with a mental disorder" as defined in section 1 of the Mental Health Act, for the purpose of supporting the recipient in participating in a volunteer program or in a mental health or addictions rehabilitation program;

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

(xxx) payments provided by Community Living BC to assist with travel expenses for a recipient in the family unit to attend a self-help skills program, or a supported work placement program, approved by Community Living BC;

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

(xxxii) money paid by the government of Canada, under a settlement agreement, to persons who contracted Hepatitis C by receiving blood or blood products in Canada prior to 1986 or after July 1, 1990, except money paid under that agreement as income replacement;

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

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

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

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

(xxxvii) money paid or payable to a person under the Criminal Injury Compensation Act as compensation for non-pecuniary loss or damage for pain, suffering mental or emotional trauma, humiliation or inconvenience that occurred when the person was under 19 years of age;

(xxxviii) money that is paid or payable to or for a person if the payment is in accordance with the settlement agreement approved by the Supreme Court in Action No. S024338, Vancouver Registry;

(xxxix) payments granted by the government of British Columbia under the Ministry of Children and Family

- Development's Family Support Services program;
- (xl) payments granted by the government of British Columbia under the Ministry of Children and Family Development's Supported Child Development program;
- (xli) payments granted by the government of British Columbia under the Ministry of Children and Family Development's Aboriginal Supported Child Development program;
- (xlii) money paid or payable from a fund that is established by the government of British Columbia, the government of Canada and the City of Vancouver in relation to recommendation 3.2 of the final report of the Missing Women Commission of Inquiry;
- (xliii) payments granted by the government of British Columbia under the Temporary Education Support for Parents program;
- (xliv) a BC early childhood tax benefit;
- (xlv) child support;
- (xlvi) orphan's benefits under the Canada Pension Plan Act (Canada);
- (xlvii) gifts, other than recurring gifts;
- (xlviii) compensation paid or payable under section 17 [compensation in fatal cases] or 18 [addition to payments] of the Workers Compensation Act to a dependant, as defined in section 1 of that Act, who is a child, as defined in section 17 of that Act;
- (xlix) money that is paid or payable by or for Community Living BC to or for a person if the payment is in accordance with an award in a legal proceeding or with a settlement agreement in respect of a claim for injury, loss or damage caused by Community Living BC, an employee of Community Living BC or a person retained under a contract to perform services for Community Living BC;
- (l) money that is paid or payable by the government of British Columbia to or for a person if the payment is in accordance with an award in a legal proceeding or with a settlement agreement in respect of a claim for injury, loss or damage caused by the minister, the ministry, an employee of the ministry or a person retained under a contract to perform services for the ministry;
- (l.1) money that is paid or payable by the government of British Columbia to or for a person if the payment is in accordance with an award in a legal proceeding or with a settlement agreement in respect of a claim for injury, loss or damage caused by the Minister of Children and Family Development, that ministry, an employee of that ministry or a person retained under a contract to perform services for that ministry;
- (l.2) money that is paid or payable by the government of British Columbia to or for a person because the person was a resident of Woodlands School;
- (li) a disabled contributor's child's benefit paid or payable under the Canada Pension Plan;
- (lii) payments granted under an agreement referred to in section 94 of the Child, Family and Community Service Act;
- (liii) money that is paid or payable, in respect of a child, from property that comes into the control of, or is held by, the Public Guardian and Trustee;
- (liv) money that is paid or payable from a settlement in respect of Treaty No. 8 agricultural benefits,
- (b) any amount garnished, attached, seized, deducted or set off from income is considered to be income, except the deductions permitted under sections 2 and 6 of this Schedule,
- (c) all earned income must be included, except the deductions permitted under section 2 and any earned income exempted under sections 3 and 4 of this Schedule, and
- (d) all unearned income must be included, except the deductions permitted under section 6 and any income exempted under sections 7 and 8 of this Schedule.

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

...

(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.

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2021-00004

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

PRINTNAME

Janet Ward

SIGNATURE OF CHAIR

DATE(YEAR/MONTH/DAY)

2021 February 6

PRINTNAME

Kevin Ash

SIGNATURE OF MEMBER

DATE(YEAR/MONTH/DAY)

2021 February 6

PRINTNAME

Susanne Dahlin

SIGNATURE OF MEMBER

DATE(YEAR/MONTH/DAY)

2021 February 6