

APPEAL NUMBER  
2021-0106

**PART C – DECISION UNDER APPEAL**

The decision under appeal is the Ministry of Social Development and Poverty Reduction (ministry) reconsideration decision dated May 5, 2021, which determined that the appellant was not eligible for an exemption for CPP contributions from self-employment income, as per section 3 of the *Employment and Assistance for Persons with Disabilities Act* and sections 1, 9, and 24 and schedules A and B of the *Employment and Assistance for Persons with Disabilities Regulation*.

**PART D – RELEVANT LEGISLATION**

*Employment and Assistance for Persons with Disabilities Act* (EAPWDA) section 3

*Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR) sections 1, 9, and 24, schedule A sections 1, 2, and 4 and schedule B sections 1, 2, 3, and 4

## **PART E – SUMMARY OF FACTS**

### **Relevant Evidence Before the Minister at Reconsideration**

#### **Ministry records show:**

- The appellant is a sole recipient of disability assistance and is participating in the ministry's Self-Employment Program (SEP).
- On May 29, 2020 the ministry approved the appellant's participation in the SEP for the business he launched in January 2020.
- On October 1, 2020 the ministry determined that the appellant's annual earnings exemption (AEE) of \$12,000 had been exhausted and as a result, all income received would be deducted from his disability assistance except the permitted deductions for essential operating costs through the SEP.
- On October 22, 2020 the appellant's father contacted the ministry regarding the AEE. He believed the ministry was not recording the appellant's income accurately regarding deductions.
- The appellant's disability assistance was cancelled for the month of November because the ministry determined he had reached his AEE limit and his SEP income exceeded the rate of assistance.
- In November 2020, a ministry worker spoke with the appellant's father and advised the following were permissible to deduct:
  1. Room rental 38% from gross earnings
  2. COVID cleaning fee 4% from gross
  3. GST 5% from gross
  4. Taxes – Federal 15% of first \$48,000 Provincial 5% of the first \$41,000 thus 20% of net income
  5. EI – 1.58% per \$100 earned to a maximum of \$856.36 of net income
  6. CPP – 10.2% up to a maximum of \$57,000 of net income
- After further research, on February 2, 2021 the ministry advised the appellant's father that CPP contributions were not a permitted deduction as the CPP exemption applies to contributions an employer makes on behalf of an employee.
- On February 10, 2021 the ministry reviewed the appellant's self-employment income for 2020 and noted throughout 2020 the appellant deducted CPP payments from his gross earnings. The ministry revised the appellant's SEP reports to show the correct income amounts as the ministry determined that CPP was not an allowable business expense.
- Following the review, the ministry concluded by the end of October 2020 the appellant had earned \$13,609 net self-employment income and was ineligible for disability assistance for December, January and February due to excess income.

#### **Request for Reconsideration Summary (not dated)**

The appellant stated he is legally blind, has no vision in his left eye and very limited vision in his right eye. As well, he has a syndrome caused by a severe allergic reaction to a medication and also suffers from another syndrome as a result. This limits his work activity to part-time.

- In January 2020 the appellant started work at a clinic. He works under contract as a self-employed person and registered for the ministry's SEP while continuing to receive disability assistance benefits.
- In March 2020 the clinic closed because of the pandemic.
- From April to June 2020 the appellant did not work and received the Canada Emergency Response Benefit and other benefits.

- In June 2020, the appellant returned to work at the clinic while receiving disability income assistance benefits.

The appellant states the issue is the ministry's unequal treatment of persons enrolled in the SEP with respect to the denial of CPP deductions in determining the ministry's annual allowable income limit for recipients of disability assistance. This CPP deduction is allowed for employed clients under this same program. This produces an inequitable result, as both categories of workers are required to contribute to CPP if they have earned income, while only those that are employed get the benefit of the CPP deduction. The result of this differential treatment is a 16.35% difference between the amount of money that a self-employed person has in their pocket compared to a person who is employed.

For a recipient of disability assistance who earns employment income, the mandatory CPP contributions that are deducted "at source" by the employer are deducted from the employee's "earned income" when calculating net income. Employers are required to contribute half of the CPP contributions while employees contribute the other half.

In contrast, for a recipient of disability assistance who earns income through self-employment, there is no such exemption and, accordingly, the entire CPP contribution is included in the recipient's earned income when calculating net income. The regulation does not permit the division of the CPP contribution into an "employee-paid portion" and an "employer-paid portion" in the same manner as an employed Person with Disabilities (PWD) recipient. As a result, a participant of the SEP must pay double the amount that is paid by an employed recipient of disability assistance towards their mandatory CPP contribution. Meanwhile, if the disability assistance recipient participating in the SEP has employees, the CPP contributions they make as "employer" for those employees are deducted as a "permitted operating expense". In these circumstances, the regulation recognizes a participant of the SEP to be an employer insofar as it pertains to employees of the business.

One remedy would be for the regulation to recognize the unique employer-employee position that is occupied by a self-employed person within the SEP, and to permit the employer – employee portion of the mandatory CPP contribution to be deducted from their earned income calculation. This would remove the significant monetary penalty that is faced by participants in the SEP and bring the financial burden of their CPP obligation in line with an employed PWD recipient.

## **Additional Information**

### Appellant

#### **Notice of Appeal (May 20, 2021)**

At the hearing, the appellant relied on his submission to the ministry and added that there is a disconnect between the legislation and the intent of the legislation and stated that this issue could have broader implications. Clearly the SEP is intended to support persons with disabilities. Perhaps part of the issue is that the nature of employment is new (e.g. e-commerce has evolved). Traditional employment is not as accessible for some persons with disabilities and self-employment is the only option.

### Ministry

At the hearing, the ministry relied on its record and added that the ministry defines, "deductions at source", as funds a person never has access to.

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The panel determined that the additional information is reasonably required for a full and fair disclosure of all matters related to the decision under appeal and therefore is admissible under section 22(4) of the *Employment and Assistance Act*.

**PART F – REASONS FOR PANEL DECISION**

The issue on appeal is whether the ministry’s reconsideration decision, which determined that the appellant was not eligible for an exemption for CPP contributions from self-employment income, as per section 3 of the EAPWDA and sections 1, 9, and 24 and schedules A and B of the EAPWDR, was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the appellant.

Relevant sections of the legislation can be found in the Schedule of Legislation.

**Appellant Argument**

The appellant argues that schedule B of the regulation is patently discriminatory and inequitable. Furthermore, it seems to be contrary to the actual intent of the ministry’s SEP, which was established to support individuals with disabilities or persons with multiple barriers in their efforts to gain financial independence by creating their own businesses. In the ministry’s own words, the employment strategy for PWD is to develop training and employment related programs to assist PWDs into the labour market and to improve employment outcomes.

However, while the SEP proclaims to support the self-employed, the regulation favours those who are employed by others rather than those who create their own jobs. It does this by unfairly allowing the employed person’s CPP deduction to be considered against eligible income while not allowing this as a deduction by the self-employed person. The following table illustrates the significant difference in “money in the pocket” of a person with disability depending on if they are self-employed or employed and the impact on how quickly the annual income limit is achieved.

Employment Status of PWD	Earned Income	CPP Deduction Claimed (2021)	Deduction by SEP	Income deducted from Annual Income Allowance
Employed	\$1000.00	\$54.50	Allowed	\$945.50
Self-Employed	\$1000.00	\$109.00	Disallowed	\$1109.00
Real Net Difference in Earned Income				\$163.50 (16.35%)

To carry this example further one can consider this impact over the entire calculation for the \$15,000.00 annual limit on income earned before incurring a loss or reduction in benefits. An employed PWD (or anyone else who is receiving income assistance and is employed) can earn up to \$15,817.50 while the self-employed PWD can only earn \$13,365.00 before they face a reduction of their benefit. After paying CPP contributions, the employed person pays \$817.00 for CPP and enjoys the full \$15,000.00 earned income allowance while the self-employed person pays \$1,635.00 and only receives \$13,365.00 of the benefit. It becomes very apparent that it is significantly beneficial, in financial terms, to be employed rather than self-employed within this legislative framework.

*Appellant’s Economic Impact*

In 2020 the appellant earned \$19,984.00 as his net income after deducting permitted operating expenses under the SEP. This includes the mandatory CPP contribution of \$2,859.99 to the Canada Revenue Agency (CRA). If that amount was instead considered to be a permitted deduction, the appellant’s net income would have been \$17,124.00. This is a significant difference.

Self-employment is a critical avenue to employment, and financial independence for PWDs as vast portions of the job market remain unavailable to them due to both inadvertent and overt discrimination by employers.

The appellant submits there are two arguments to be made that would allow the ministry to treat the matter of CPP deductions fairly between those who are self-employed and those who are employed.

The first argument considers that the regulation specifies that the CPP contribution is allowed for an employed client because this amount is taken “at the source” (schedule B, subsection 2(a)(iv). One might infer this means “at the source of employment”. However, “at the source” is not defined in the ministry’s Act or Regulations. The question then becomes “how is a source of employment identified?” In reviewing the Act and Regulations the appellant notes that these documents often rely on the federal *Income Tax Act*, which also governs the CRA. The appellant submits the CRA’s treatment of self-employed may be prescriptive in the present circumstances. As per the CRA website, the CRA grants a tax credit on the “employee half” of the CPP contributions for self-employed persons and a tax deduction on the other “employer half” of the CPP contributions. In this manner, the CRA implicitly recognizes that CPP contributions are divided into employer and employee halves for self-employed individuals. The appellant therefore argues that as a self-employed person, he is recognized as an employer by the federal government and that any CPP deduction, or at the very least one half of the CPP deduction made under the SEP, should be considered an at source deduction and allowed.

The second argument to support allowing the mandatory CPP contribution as a self-employed business deduction against annual income limits is based on a different provision referred to in schedule B. This provision allows for the creation of a cash account reserved for paying permitted business operating expenses. The appellant suggests that the monthly CPP contribution is an on-going business expense, which could be deposited into a separate business bank account with ministerial oversight. In this manner, the ministry could allow the CPP as a deduction against the earned income limit knowing funds will be available at year end or for quarterly payment to CRA.

The appellant submits that the request for reconsideration of the ministry’s decision not to allow federally required CPP contributions as a business deduction for a self-employed person with a disability in the calculation of the annual limit on earned income is unfair and inequitable. The regulation is applied inconsistently – favours the employed and is against the self-employed. In the appellant’s view, the intention of the provincial employment strategy and the SEP are consistent with Article 27 of the United Nations Convention on the Rights of Persons with Disabilities, which Canada ratified in 2010. This calls for recognition of the right of a person with disabilities to work, on an equal basis with others and includes the right to the opportunity to gain a living with work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to persons with disabilities.

The appellant argues that the ministry’s SEP is designed to encourage unemployed PWDs to work in order to supplement income assistance and to achieve financial independence.

*Information Source:*

The appellant cites the following information source: CRA website – CPP and EI Rulings – CPP/EI explained – Responsibilities, benefits, and entitlements for employees and self-employed workers “Responsibilities, benefits and entitlements for employees and self-employed workers  
A self-employed worker may operate a business on their own as a sole proprietorship or with others under a partnership. All self-employed workers pay both the employer and employee portions of CPP contributions when they file their T1 income tax and benefit return”...

## Ministry Argument

The ministry argues that when the appellant declared his 2020 employment income, his net income was deducted from the \$12,000 earnings exemption amount each month until he reached the \$12,000 exemption limit for the 2020 calendar year. Once he exhausted the earnings exemption limit, employment earnings were deducted dollar for dollar from the disability assistance rate of \$1183.42.

If the monthly net income exceeds the ministry's rate of \$1183.42, the appellant is not eligible for disability assistance, but would be eligible for medical services only. It is important to note as the appellant is also participating in the SEP, the ministry determined the amount of income to be deducted from his 2020 AEE limit of \$12,000 after the ministry determined what amount if any, of his self-employment income was exempt for permitted operating expenses.

Although the appellant argues the inequity between the permitted deductions for CPP contributions under section 2 of schedule B of the EAPWDR, which allows deductions for CPP from the source and the permitted exemptions under section 4 of schedule B of the EAPWDR for the SEP, the ministry finds that CPP contributions are not a permitted operating expense under section 4 of the EAPWDR unless it is from an employer's CPP contribution for their employee. The CPP exemption applies to contributions an employer makes on behalf of an employee. Because the appellant owns a small business, which operates as a sole proprietorship (not corporation), a sole proprietorship owner is not the employer of himself and therefore does not make employer contributions to CPP.

At the hearing, the ministry stated that it defines "deducted at source" (EAPWDR, schedule B, section 2(iv) as funds a person never has access to and section 4 (small business exemption) then follows section 2. In other words, if the deduction is not at source, section 4 would not apply.

## Analysis

### Section 3 (EAPWDA) – eligibility for disability assistance

Section 3 outlines the eligibility requirements for disability assistance. Ministry records state the appellant is a sole recipient of disability assistance and is participating in the ministry's SEP.

### Section 1 (EAPWDR) – definition of earned income

Section 1 defines earned income as "any money or value received in exchange for work or the provision of a service". The appellant does not dispute that his self-employment income is considered income.

### Sections 9, 24 (EAPWDR) – limit on disability assistance

Section 9 states that "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..." and section 24 states that disability assistance may be provided 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

Support for a sole applicant who is a PWD - \$808.42.

Shelter for one person - \$375

Total: \$1183.42

Schedule B - net income calculation

**Section 1** outlines the deductions and exemptions rules. The panel notes the only reference to Canada Pension under this section pertains to orphan's benefits under the *Canada Pension Plan Act* and a disabled contributor's child's benefit paid or payable under the Canada Pension Plan.

**Section 2** outlines the possible deductions from earned income and states deductions permitted from earned income include "any amount deducted at source for...Canada Pension Plan..." 2(a)(iv).

The appellant argues that "at source" is not defined in the ministry's Act or Regulations and that the CRA implicitly recognizes that CPP contributions are divided into employer and employee halves for self-employed individuals. As a self-employed person the appellant is recognized as an employer by the federal government and therefore any CPP deduction, or at the very least, one half of the CPP deduction made under the SEP, should be considered an at source deduction and allowed.

The ministry argues that "deducted at source" is defined as funds a person never has access to.

Although the panel acknowledges that federal legislation distinguishes between employee and employer, the panel is bound by provincial legislation and although the legislation does not define, "at source", the panel finds the ministry reasonably interpreted "deducted at source" as funds a person never has access to. The panel finds that as the appellant (as a self-employed person), has access to all funds before claiming permitted operating expenses, the CPP contribution cannot be considered a deduction at source.

**Section 3** outlines the annual exemption for qualifying income and shows the monthly base amount as \$1,000/monthly or \$12,000 annually for one recipient.

**Section 4** includes small business exemptions, and defines permitted operating expenses as "costs, charges and expenses incurred by a person in the operation of a small business, under a self-employment program in which the person is participating...". Employer contributions to the Canada Pension Plan are included as a permitted operating expense in this section, 4(1)(k).

The ministry argues that because the appellant owns a small business, which operates as a sole proprietor, he is not the employer of himself, and therefore does not make employer contributions to CPP. As well, at the hearing the ministry stated that if the CPP contribution is not "deducted at source", section 4 does not apply.

Although the appellant argues that as a self-employed person he is recognized as an employer by the federal government, the panel cannot apply this legislation as it is bound by provincial legislation. The panel finds the ministry reasonably determined that because the appellant owns a small business, which operates as a sole proprietor (and has no employees), he cannot make employer contributions to CPP as allowed under 4(1)(k). In addition, the panel finds the ministry reasonably determined that as the CPP deduction cannot be considered an "at source" permitted deduction under section 2(a)(iv), section 4(1)(k) would not be applicable.

As well, as the panel determined that CPP deductions are not permitted, the creation of a cash account reserved for paying permitted business operating expenses (4(2)), as argued by the appellant, would not apply.



The panel acknowledges the appellant's argument regarding unequal treatment of persons enrolled in the SEP versus employed clients in the same program. However, the panel must apply the legislation in the EAPWDA and EAPWDR. The panel encourages the appellant to discuss with the ministry permitted forms of business structure that might work better in these circumstances.

### **Conclusion**

In conclusion, the panel finds the ministry's reconsideration decision, which determined that the appellant was not eligible for an exemption for CPP contributions from self-employment income, as per section 3 of the EAPWDA and sections 1, 9, and 24 and schedules A and B of the EAPWDR, was a reasonable application of the legislation in the circumstances of the appellant.

The appellant is not successful on appeal

## Schedule of Legislation

### Employment and Assistance for Persons with Disabilities Act

#### **Eligibility of family unit**

**3** For the purposes of this Act, a family unit is eligible, in relation to disability assistance, hardship assistance or a supplement, if

(a) each person in the family unit on whose account the disability assistance, hardship assistance or supplement is provided satisfies the initial and continuing conditions of eligibility established under this Act, and

(b) the family unit has not been declared ineligible for the disability assistance, hardship assistance or supplement under this Act.

### Employment and Assistance for Persons with Disabilities Regulation

#### **Definitions**

**1** (1) In this regulation:

"earned income" means

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

...

#### **Limits on income**

**9**

...

(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 (section 24 (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...

- prior to May 1,2021

Item	Column 1 <b>Family unit composition</b>	Column 2 <b>Age or status of applicant or recipient</b>	Column 3 <b>Amount (\$)</b>
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...

"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 <b>Family Unit Size</b>	Column 2 <b>Maximum Monthly Shelter</b>
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1

1 person

\$375

## 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. [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 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**

*Prior to January 1, 2021*

**3** (1) In this section:

"base amount" means

- (a) \$1 000, in the case of a family unit that includes only one recipient,
- (b) \$1 200, in the case of a family unit that includes two recipients, only one of whom is designated as a person with disabilities, and

(c)\$2 000, in the case of a family unit that includes two recipients who are designated as persons with disabilities;

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

"qualifying income" means

- (a)earned income, except the deductions permitted under section 2, and
- (b)unearned income that is compensation paid under section 191 [*temporary total disability*] or 192 [*temporary partial disability*] of the *Workers Compensation Act*;

"qualifying month", in respect of a family unit and a calendar year, means

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

"recognized family unit", in respect of a calendar year, means a family unit that

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

(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

(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.

(8) Repealed. [B.C. Reg. 268/2020, App. 4, s. 1 (b).]...

#### **Small business exemption**

**4** (1) In this section and section 5,

"permitted operating expenses" means costs, charges and expenses incurred by a person in the operation of a small business, under a self-employment program in which the person is participating, for the following:

- (a) purchase of supplies and products;
  - (b) accounting and legal services;
  - (c) advertising;
  - (d) taxes, fees, licences and dues incurred in the small business;
  
  - (e) business insurance;
  - (f) charges imposed by a savings institution on an account and interest;
  - (f.1) payments, including principal and interest, on a loan that is
    - (i) not greater than the amount contemplated by the recipient's business plan, accepted by the minister under section 70.1 of this regulation, and
    - (ii) received and used for the purposes set out in the business plan;
  - (g) maintenance and repairs to equipment;
  - (h) gross wages paid to employees of the small business, but not including wages paid to
    - (i) the person participating, or
    - (ii) a person in the family unit of the person participating;
  - (i) motor vehicle expenses;
  - (j) premiums for employment insurance or workers' compensation benefits;
  - (k) employer contributions for employment insurance, workers' compensation or the *Canada Pension Plan*;
  - (l) rent and utilities, excluding rent and utilities for the place of residence of the persons described in subparagraphs (i) or (ii) of paragraph (h) unless
    - (i) there is an increase for rent or utilities and the increase is attributable to the small business, an
    - (ii) the increase is not provided for in the calculation of the family unit's shelter allowance under Schedule A of this regulation;
  - (m) office expenses;
  - (n) equipment purchases or rentals.
- (2) Earned income of a recipient of disability assistance is exempted from the total income of the recipient's family unit if
- (a) the recipient is participating in a self-employment program, and
  - (b) the earned income is derived from operating a small business under the self-employment program in which the recipient is participating and

- (i) is used for permitted operating expenses of the small business, or
- (ii) is deposited in a separate account, established by the recipient in a savings institution, which account
  - (A) consists exclusively of funds reserved by the recipient for the purpose of paying permitted operating expenses of that small business, and
  - (B) the amount deposited does not increase the current balance of the separate account to a sum that exceeds \$5 000, or
- (iii) is used for costs of renovations to the recipient's place of residence up to but not exceeding \$5 000 in total or a greater amount approved by the minister, if the renovations are part of a business plan accepted by the minister under section 70.1 of this regulation.

APPEAL NUMBER  
2021-0106

**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

Connie Simonsen

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2021/06/16

PRINT NAME

Jean Lorenz

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021/06/16

PRINT NAME

Bill Haire

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021/06/16