

APPEAL NUMBER
2021-0123

PART C – DECISION UNDER APPEAL

The decision under appeal is the Ministry of Social Development and Poverty Reduction's ("ministry") reconsideration decision dated May 31, 2021, in which the ministry found the appellant is not eligible for disability assistance ("DA") under section 9 of the Employment and Assistance for Persons with Disabilities Regulation ("EAPWDR"). The ministry determined the appellant had unearned income from a monthly Insurance Corporation of British Columbia ("ICBC") payment, and Canada Pension Plan - Disability ("CPP-D"). The ministry determined that the appellant's net income from these payments exceeds her DA rate as calculated under Schedules A and B of the EAPWDR. The ministry determined there is no exemption for ICBC wage loss benefits and CPP-D under EAPWDR Schedule B.

PART D – RELEVANT LEGISLATION

Employment and Assistance for Persons with Disabilities Regulation - EAPWDR - sections 1, 9, and 29, and Schedule A, sections 1, 2 and 4
Schedule B, sections 1, 3, 6 and 7

PART E – SUMMARY OF FACTS

The evidence and documentation before the minister at the reconsideration consisted of:

1. Information from the ministry's reconsideration decision indicating that:

- On April 23, 2021, the appellant was advised she was not eligible for DA.
- On May 14, 2021, the appellant submitted a Request for Reconsideration ("RFR").
- On May 31, 2021, the ministry completed the review of the RFR.

The ministry record includes the following background information:

- The appellant is a sole recipient of assistance with Persons with Disabilities designation ("PWD").
- On October 7, 2020, the appellant provided confirmation of a monthly payment from ICBC, \$788.72 per month Temporary Total Disability Benefit ("TTD").
- On April 7, 2021, the appellant reported \$679.91 for CPP-D, and \$788.72 from ICBC for wage loss.
- On April 22, 2021, the appellant contacted the ministry to inquire why she did not receive her May DA cheque. The ministry noted that previously, the appellant's ICBC benefit was incorrectly treated as exempt under the annual Earnings Exemption Program. The ministry determined that both the CPP-D and the ICBC benefit are unearned income and not exempt income, and the appellant was no longer eligible for DA because her income was more than the DA rate for her family size.
- On May 14, 2021, the appellant submitted the RFR, explaining that she is receiving \$788.72 per month from ICBC that is replacing a percentage of her wages. The appellant explained that she is unable to work because she was injured in an accident and has other medical conditions as well.
- The ministry receives information from Service Canada through an electronic data match confirming the appellant receives \$679.91 per month for CPP-D.

2. The RFR, signed by the appellant on May 11, 2021 with a hand-written submission. The appellant states that she was injured in an accident in February 2019 when she was hit by a vehicle on the way home from her part-time job. The appellant says she is unable to return to work due to the accident and is receiving the TTD benefit from ICBC to replace a percentage of what her earned income would be if she was working. The appellant provided argument for the Reconsideration and explained that the ministry treated her wages as exempt to a certain amount when the appellant was working. The appellant said she received DA from the ministry in addition to her earnings from work and she depended on the DA to pay the rent at her new residence. The appellant says she has been receiving the wage loss benefit from ICBC for some time and always declared it to the ministry who treated the ICBC payments as exempt income.

3. A letter from the appellant's doctor dated May 10, 2021, written in support of the appellant's appeal to the Tribunal. The letter states that the appellant was involved in a motor vehicle accident ("MVA") in February 2019, and as a result became disabled from her part-time job and lost her employment income. The doctor understood that the appellant was able to keep the earnings from part-time work on top of the PWD benefits. The appellant's medical condition has been further complicated by a diagnosis of aggressive cancer in the Spring of 2020. The appellant is still undergoing cancer treatment and her MVA injury remains a barrier to any return to part-time work.

4. A letter from the appellant's doctor dated July 23, 2020, stating that the appellant has been re-assessed for work. The appellant is not fit to return to work due to ongoing "MSK injury sequelae" from the MVA as well as ongoing cancer treatment. In the doctor's opinion, the appellant cannot seek more treatment for the MVA injuries or undergo any further rehabilitation program.

5. Two ministry Monthly Reports, one was signed by the appellant on April 17, 2021 and the other on March 5, 2021. The appellant indicates on the form that she is still in need of assistance and has no employment changes. The appellant declares \$679.91 CPP, and \$788.82, "ICBC workers wage loss."

6. A Cheque Statement from ICBC dated September 26, 2020, indicating the appellant's claim number and the amount, \$788.72. The appellant signed the Statement and added the notation, "workers wage loss."

Additional information

Neither party provided additional evidence requiring an admissibility determination by the panel under section 22(4) of the *Employment and Assistance Act*. Subsequent to the reconsideration decision the appellant submitted the Notice of Appeal with a hand-written statement that the appellant accepts as argument. The appellant attended the hearing with an advocate (family member) and the ministry had an observer at the hearing for training purposes. The appellant consented to the observer listening to the teleconference. Both parties provided argument at the hearing which the panel will consider in Part F - Reasons.

PART F – REASONS FOR PANEL DECISION

The issue on appeal is whether the ministry's determination that the appellant is not eligible for DA under section 9 of the EAPWDR, is reasonably supported by the evidence or a reasonable application of the legislation in the circumstances of the appellant. Was the ministry reasonable in finding that the appellant had non-exempt unearned income from CPP-D and ICBC wage loss payments in excess of her DA rate?

The ministry based the reconsideration decision on the following legislation:

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:

- (d) insurance benefits, except insurance paid as compensation for a destroyed asset;
- (f) any type or class of Canada Pension Plan benefits;

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.

Schedule A

Disability Assistance Rates (section 24 (a))

Monthly support allowance

2 (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,

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 (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 (*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:

(xlvii) orphan's benefits under the *Canada Pension Plan Act* (Canada);

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

Annual exemption — qualifying income

3 (1) In this section:

"base amount" means

(a) \$1 250, in the case of a family unit that includes only one recipient,

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 suit

Exemptions - unearned income

7 (1) The following unearned income is exempt:

[Panel note: amounts for interest payments, government benefits, injury settlements/awards, trust funds, and disability-related costs are the exemptions listed in subsections a to g]

Analysis

Appellant not eligible for DA

Arguments

The ministry's position is that the appellant is not eligible for DA because her monthly income of \$1,468.63 per month (ICBC payment and CPP-D benefit) is more than her monthly assistance rate of \$1,358.42. The ministry quotes the definition of unearned income under section 1 of the EAPWDR, explains the eligibility requirements for DA under section 9(2) of the EAPWDR based on the client's net income, and summarizes the reporting requirements under section 29. The ministry acknowledges the appellant has met the reporting requirements by declaring all of the income she received in the preceding month by the 5th day of each month. The panel finds that the reporting requirements under section 29 of the EAPWDR are not at issue in this appeal.

The ministry argues there is no exemption for CPP under the EAPWDR unless the CPP is for an orphan's benefit or for a disabled contributor's child's benefit. The ministry argues that the ICBC payment is not exempt from the calculation of the appellant's net income under the EAPWDR because it is not insurance that was paid for a "destroyed asset." The ministry argues that ICBC payments differ from WorkSafe BC payments in that wage loss benefits from ICBC are not exempt under the Annual Earnings Exemption program.

The appellant does not dispute that her CPP and ICBC payments meet the definition of unearned income under the EAPWDR nor does she dispute the amounts received for CPP-D and ICBC wage loss benefits. The appellant argues that the ministry's decision is unfair because the ministry allowed an exemption for ICBC payments for such a long time (2 years) but suddenly "cut her off" DA two days before her rent was due. The appellant explains that she budgeted her resources very carefully in order to move to her new residence and be certain that she can afford to pay the rent.

The appellant says she did "everything by the book for two years" in declaring her income; she talked to the ministry many times to explain what money she was receiving and the ministry continued to pay her the DA. The appellant says she is at risk for homelessness without the DA payments because she can no longer afford to pay her rent and her family can no longer help her.

The appellant argues she is being penalized for circumstances that are beyond her control (the accident and her cancer diagnosis) and the ministry should have to be accountable when they made a mistake on her DA benefits. The appellant argues that if she was still working part time she would "be able to make \$15,000 per year" (earnings exemption) and still receive DA. The appellant explained that by the ministry's calculation of her income, she is over the DA rate by only \$110. The appellant explained that she was already getting less money per month than when she was working because the ICBC wage loss benefit is only 70% of her part time salary.

The appellant argues that penalizing her for having an accident and getting sick with cancer "goes against poverty reduction; she knows there is "bureaucratic red tape", but she feels helpless in the circumstances. The appellant emphasized that her ICBC payment is not even guaranteed every month because it is supposed to be a "temporary" disability benefit. The appellant believes that her cancer diagnosis may be the reason that ICBC is still paying her.

In response to questions from the panel, the appellant stated that her ICBC claim is still with the lawyers and she has not received a settlement and does not know when one is coming. The appellant also explained that she never made a WorkSafe BC claim because ICBC did not consider her injury to be work related.

The appellant said that if there was an overpayment, the ministry told her it would be owed to the ministry. In response to questions, the ministry confirmed that there is nothing in the appellant's file citing an overpayment. At the hearing the ministry said it is very sorry for the mistake that was made but does not know the details of why it happened or which workers were involved or why the appellant continued to receive DA for 2 years when she was not eligible. The ministry explained that the monthly reports can be assessed by different ministry staff each month. The ministry confirmed that the CPP-D payments had always been deducted from the appellant's DA but the ICBC payments had not.

The ministry acknowledged that the appellant was “abruptly cut off DA” but argued that despite past errors by the ministry, the ministry has to base its current decisions on the legislation. The ministry explained that it is not because the appellant was hit by a vehicle that makes her ineligible for DA; it is because the unearned income the appellant is receiving is not exempt under the legislation.

Panel’s decision

The panel finds that the ministry reasonably determined the appellant is not eligible for DA under the EAPWDR because her net income is more than her DA rate. Section 9(2) of the EAPWDR states that a family unit is not eligible for assistance if the net income as determined under Schedule B equals or exceeds the amount of DA determined under Schedule A according to family size. As a one-person family unit, the appellant’s DA rate is \$1,358.42 per month. Under the EAPWDR, any income that is not considered exempt must be deducted dollar for dollar from the DA amount. Under the ministry’s calculation, the appellant’s non-exempt monthly income is \$1,468.63 per month (\$788.82 ICBC payment, and \$679.91 CPP-D).

With regard to exemptions, section 1 of the EAPWDR lists the types of income that are exempt from the net income calculation and says that a family unit’s net income includes both earned and unearned income except when the income is exempt under Schedule B. The panel finds that the ministry was reasonable to conclude that neither the CPP-D nor the ICBC wage loss benefit is exempt income. Under Section 1 of the EAPWDR, unearned income is any income that is not earned income and includes money received from insurance benefits except when the insurance is paid as compensation for a destroyed asset.

The appellant confirmed that her ICBC payments are a wage loss benefit. Unfortunately, in the circumstances of the appellant, a wage loss benefit under an insurance plan (ICBC) is non-exempt income under the EAPWDR. In addition, under section 7 of the EAPWDR, there is no exemption for insurance benefits. The panel therefore finds the ministry’s application of the legislation was reasonable.

Regarding the CPP-D payments, the panel finds that the ministry was reasonable in determining that the exemptions under section 1 of EAPWDR Schedule B do not include an exemption for CPP-D. The ministry acknowledges that certain CPP income is exempt for the purposes of calculating net income under section 7 of the EAPWDR. However, the exemption is only permitted for a CPP Orphan’s benefit or a *Disabled Contributor’s Child’s* benefit, not CPP-D. The panel therefore finds the ministry’s application of the legislation was reasonable.

The appellant argued that when she was working at her part-time job her earnings were exempt up to a certain amount. The appellant finds it difficult to understand why her ICBC wage loss benefits would not be exempt as well given they are paid to replace a percentage of the appellant’s employment income when she is unable to work for medical reasons.

The ministry acknowledges that under section 3 of the EAPWDR, WorkSafe BC compensation for temporary disability can be included in the annual exemption for unearned income. However, the appellant’s temporary disability benefit is from ICBC, not Work Safe BC and is therefore not exempt under the Annual Earnings Exemption set out in section 3 of the EAPWDR. The panel therefore finds that the ministry’s application of the legislation was reasonable.

Conclusion

The panel finds that the ministry reasonably determined the appellant is not eligible for DA under the EAPWDR because her income is more than the assistance rate for her family size and the exemptions set out in EAPWDR Schedule B do not apply in the circumstances of the appellant. The panel is very sympathetic to the appellant's situation acknowledging that her injuries and cancer diagnosis put her in a very difficult situation without the DA payments, especially when she budgeted so carefully to move to her current residence.

The panel does not have the authority to change what the legislation says. The ministry is obligated by law to follow the legislation. It is very unfortunate that it took so long for the ministry to catch the mistake it made, allowing an exemption for the ICBC payments when it clearly should not have exempted that money under the EAPWDR. The panel confirms the reconsideration decision as a reasonable application of the legislation. The appellant is not successful on appeal.

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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

Margaret Koren

SIGNATURE OF CHAIR

DATE (YEAR/MONTH/DAY)

2021-07-05

PRINT NAME

Effrossini (Effie) Simpson

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021-07-05

PRINT NAME

Robert McDowell

SIGNATURE OF MEMBER

DATE (YEAR/MONTH/DAY)

2021-07-05