

APPEAL NUMBER
2021-0151

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the Ministry) Reconsideration Decision (RD) dated July 13, 2021, which found that the Appellant is not eligible for the reimbursement of Canada Pension Plan Disability Benefit (CPPDB) amounts that had been deducted from the Appellant's Disability Assistance (DA) for the months of December 2020* and January 2021*.

** The issue in this appeal concerns the deduction of an amount from the Appellant's allowable total DA entitlement for each of the months of December 2020 and January 2021 because income received in a particular month is reported by the client on the 5th day of the month following the month in which it is received and affects the amount of DA paid by the Ministry in the month after it is reported. Therefore, any income received by a client in October 2020 and November 2020 will affect the amount of DA that the client is entitled to receive in December 2020 and January 2021 respectively.*

Part D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (EAPWA), Sections 1, 5, 8 and 9

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), Section 1, 7, 8, 24 and 29, Schedule A Sections 1(1), 2(1) and 4(2), and Schedule B, Sections 1(c) and (d), 4(1) and 6

Interpretation Act, Sections 8, 14(1), and 29

Financial Administration Act (FAA), Sections 6(3) and 16

All relevant legislation is provided in Appendix A.

Part E – Summary of Facts

The Appellant is a sole recipient of DA and has been receiving DA benefits since 2002.

The evidence before the Ministry at the time of the Reconsideration Decision (RD) included:

- The Appellant's Request for Reconsideration (RFR), dated May 31, 2021, in which the Appellant stated, in part:
 - When she contacted the Ministry on June 3, 2021, she was told that the Ministry does not have the authority to repay Service Canada for the over-payment of the CPPDB she mistakenly received, which she says is incorrect because Section 16 of the FAA says that money received by the provincial government that is erroneously paid may be refunded, subject to any Treasury Board directives;
 - She initially received the CPPDB in the amounts of \$958.37 per month for the months of October and November 2020, which she reported to the Ministry, and the Ministry subsequently deducted an equivalent amount from her DA;
 - Service Canada later determined that the October and November 2020 CPPDBs were not payable to her and that therefore she was required to repay them;
 - The Ministry's decision to deduct an offsetting amount from the DA to which she was otherwise entitled assumed that her CPPDB for October and November 2020 constituted money received from Service Canada, but because she was required to pay the benefits back to Service Canada, they did not have any value. As a result, the Ministry's decision to collect them from her by deducting an equivalent amount from her subsequent DA was an error;
 - She understands that the amount of DA to which she is entitled depends on the amount of income she receives from other sources, including the CPPDB, but because the CPPDB she received for October and November 2020 did not ultimately represent income for her, the Ministry's deduction from her DA in those months resulted in her receiving less than the correct amount; and,
 - It is clear to her that the Ministry does not have authority to repay the CPPDB that was deducted and subsequently clawed-back by Service Canada when an overpayment was assessed, but she would prefer that the Ministry make a refund payment directly to Service Canada instead of refunding her for the erroneous deductions from her DA;
- A letter from the Appellant to the Ministry dated April 20, 2021 (the April 20 Letter), in which the Appellant refers to an enclosed letter she received from Service Canada indicating that Service Canada has determined that an overpayment of the CPPDB had been sent to the Ministry on her behalf. The overpayment amount was identified as \$1,916.74 and was considered an overpayment because the Appellant had reached her maximum allowable earnings of \$5,000 (*"gross business revenue, rather than personal taxable income after business expenses"*) for that year. The April 20 Letter also expresses *"the indescribable emotional toll"* this has had on the Appellant, particularly because Service Canada calculates income differently from the way the Ministry does. In the April 20 Letter the Appellant also asks that the Ministry repay the CPPDB amount owing to Service Canada on her behalf and that *"the ministry allow me to deduct from my employment income any income tax calculated on (CPPDB) [as employed PWD's are able to]."*

- The Service Canada letter, dated April 8, 2021 and referred to above (the April 8 Letter), which also states, in part:

“The information in your file shows you started (earning self-employed income) in 2019, and reached the Allowable earnings bench mark of \$5,800 in 2020 ... A telephone conversation ... confirmed your capacity to work on a regular basis. ... Based on a successful work trial you are no longer eligible for disability benefits under the Canada Pension Plan as you no longer meet the criteria of the Canada Pension Plan legislation. Please be advised therefore that your disability benefits stopped at the end of September 2020.”;

- A letter from the Ministry to the Appellant dated May 16, 2019 (the May 16 Letter), in which the Ministry indicates that the Appellant might be eligible for the CPPB and asks her to:
 - Complete and return an enclosed Consent to Deduction of Payment form (the Consent Form), as required under EAPWDR Section 8, and that *“signing the ... (Consent Form) is intended to prevent duplicate payment in the event you are found eligible for (the CPPDB)”*; and,
 - Obtain a Statement of Contributions from Service Canada and forward a copy to the Ministry.

The Appellant is also told in the May 16 letter that she *“is not required to apply for (the CCPDB) at this time.”*;

- The first three of five pages of a Consent Form completed by the Applicant and signed on June 21, 2019, indicating the date and amount of the initial payment and the amount and frequency of continuing payments of *“social assistance”* received by the Appellant;
- A letter from the Ministry to the Appellant dated July 26, 2019 (the July 26 Letter), in which the Ministry states that the Appellant might be eligible for the CCPDB and asking her to complete and submit to the Ministry an application for CPPDB form, a consent to disclosure of information form, and a medical report;
- A letter from the Ministry to the Appellant dated August 20, 2019 (the August 20 Letter), in which the Ministry provides the appellant with information regarding the next steps in the application for the CPPDB and asking her to provide the Ministry with a copy of Service Canada’s decision letter once received;
- A letter from Service Canada to the Ministry dated July 9, 2020 (the July 9 Letter) asking the Ministry to identify the amounts that the Ministry did pay or will pay the Appellant in each month from September 2018 to July 2020. The Ministry has provided the amounts (\$1,132.42 per month from September 2018 through March 2019 and \$1,183.42 per month from April 2019 through July 2020) and a Ministry agent has signed and dated the completed letter; and,
- A letter from Service Canada to the Ministry dated July 16, 2020 (the July 16 Letter) indicating that Service Canada has approved the CCPDB for the Appellant and that *“an amount of \$21,671.99 will be reimbursed (to the Ministry) for the period September 2018 to July 2020”*.

Additional Written Evidence Provided after the Reconsideration Decision

The Appellant did not provide any additional evidence or the reasons for her appeal in the Notice of Appeal (NOA).

On September 7, 2021, the Appellant's representative (the Representative) provided a submission on behalf of the Appellant (the Representative's Submission) in which the Representative:

- Summarizes the circumstances leading up to the Appeal from evidence included in the documents summarized above and the Ministry's decision as set out in the RD;
- Focusing on the Appellant's argument (as set out in the RFR) that FAA Section 16 applies in her circumstances, states that the Employment and Assistance Tribunal (the Tribunal) "*has previously found the FAA may apply to persons receiving DA*" citing and appending a January 27, 2020 appeal in which the Tribunal identified FAA Section 87 as part of the relevant legislation, and concluding that "*This case shows the FAA may apply to a person receiving DA. Since section 87 of the FAA may apply to persons receiving DA, there is no reason why (FAA) section 16 cannot apply.*"

Oral Evidence Presented at the Hearing

The Appellant was represented at the hearing by the Representative.

At the hearing the Representative summarized the evidence presented by the Appellant in the RFR and the Representative's Submission, and corrected a typographical error in the RFR, which the Representative acknowledged had been written with the Representative's assistance. In the RFR, the Appellant gives her reasons and numbers them. Reason #10 states "*It is clear that the Ministry **does not** have authority to repay (CPPDB) that were deducted, but then clawed back by Service Canada when an overpayment was assessed.*" (emphasis added). The Representative said that reason #10 should have read "*It is clear that the Ministry **has** authority to repay (CPPDB) that were deducted, but then clawed back by Service Canada when an overpayment was assessed.*"

The Representative provided some background information on the Appellant's circumstances that were not part of the written evidence provided to the Panel. The Representative said that the Appellant has several physical impairments, including Lyme disease, chronic fatigue syndrome and fibromyalgia, and that she has been using a wheelchair for 3 years. (The Appellant added that she also has massed cell disorder, which she said was "*very debilitating*").

The Representative also stated that the Appellant has been participating in the Ministry's Self-Employment Program (SEP) since 2012 and has been working since then as a registered professional. The Representative said that her annual income from self employment varies significantly from year-to-year as "*she can only do the job when she feels physically capable*", and that her gross income in any given year, which has been as high as \$58,000, is substantially more than her net income due to the significant operating expenses she experiences. The Representative also said that her self-employed after expense earnings are exempt from earned income in determining the amount of DA she receives from the Ministry.

The Representative pointed out that the federal government's eligibility rules for the CPPDB are much more restrictive when it comes to employment income: a recipient becomes ineligible for the CPPDB when their cumulative gross business income exceeds \$5,800, and therefore the Appellant had been found ineligible for the CPPDB in December 2020, effective at the end of September 2020. As a result, the CPPDB the Appellant had already received in October and November 2020 had to be repaid.

The Appellant added that, after learning that she was no longer eligible for the CPPDB, she tried several times to reach Service Canada for more information and was finally able to speak with a medical adjudicator (the Medical Adjudicator) in December 2020. The Medical Adjudicator confirmed that the \$5,800 earnings limit was interpreted by the federal government to be based on gross business income, not net income after related expenses. The Appellant said that she was alarmed to learn that all the CPPDB she and the Ministry had received (i.e., the \$958.37 per month for 4 months from August 2020 through November 2020 that were paid to her and the \$21,671.99 the Ministry received in July 2020 for the period from September 2018 through July 2020) might have had to be repaid to Service Canada. However, for reasons that the Appellant did not understand, the Medical Adjudicator did not consider the Appellant's earnings before July 2020 and gave her credit for a three-month trial work period from July 2020 through September 2020, which is why Service Canada determined that she had overpaid for two months (October and November 2020).

The Appellant stated that she contacted the Ministry in December 2020 to try to have the amount of her DA adjusted to reflect the fact that she was no longer eligible for the CPPDB and was told that the Ministry's "*shared data match*" with Service Canada still showed that she was receiving a CPPDB of \$958.37 per month, and as a result the equivalent deduction from her DA would continue to apply. The Appellant stated that she was severely stressed by the delay in having the Ministry made aware of the fact that she was no longer receiving the CPPDB. She was really concerned because the longer the error went on without being corrected and reported to the Ministry on the shared data match, the longer she would have her DA reduced by \$958.37, a huge amount that she was no longer receiving.

The Appellant emphasized the unfairness of the situation she was in. She was required by the Ministry to apply for the CPPDB, the rules for CPPDB eligibility were very different from the Ministry's rules regarding income, and she was effectively being told to pay the \$1,916,74 that Service Canada said she owed twice: first when the deductions were made to her DA in December 2020 and January 2021 and now again as Service Canada has demanded repayment.

At the hearing, the Ministry relied on the RD, and stated that the Ministry has no authority to recognize changes in a client's CPPDB amount for prior periods. The Ministry said that the Appellant's only avenue of recourse would be to approach Service Canada for a reconsideration of its decision.

In response to a question from the Panel regarding the shared data match, the Ministry said that it receives information from the federal government Service Canada monthly which lets the Ministry know whenever a client receives money from Service Canada and how much was paid.

In response to another question from the Panel, the Ministry confirmed that the payment of accrued CPPDB for the period from Sep 2018 through July 2020 totaling \$21,671.99 was paid directly to the Ministry, and the monthly payments of \$958.37 made by Service Canada between Aug 2020 and Nov 2020 were paid directly to the Appellant.

Admissibility of New Evidence

Section 22(4) of the EAA says that a panel may consider evidence that is not part of the record that the panel considers to be reasonably required for a full and fair disclosure of all matters related to the decision under appeal. Once a panel has determined which additional evidence, if any, is admitted under EAA Section 22(4), instead of asking whether the decision under appeal was reasonable at the time it was made, a panel must determine whether the decision under appeal was reasonable based on all admissible evidence.

The Panel considered the new written information contained in the Appellant's Submission regarding the applicability of the FAA to be argument. The Panel has included FAA Section 16, together with other relevant sections of the FAA and relevant sections of the *Interpretation Act* in Appendix A, as they have bearing on the Appellant's argument that FAA Section 16 should apply in this case (see "Panel Decision" section of this decision below for a full discussion).

The Panel considers the new verbal evidence provided by the Representative at the hearing regarding the Appellant's disabilities and reliance on an assistive device (the wheelchair) to be evidence that is not reasonably required for a full and fair disclosure of all matters relating to the decision under appeal as the Appellant has been receiving DA since 2002 and her eligibility for a Persons with Disabilities (PWD) designation is not at issue in this appeal.

The Panel considers the new verbal evidence provided by the Appellant at the hearing summarizing her conversation with the Medical Adjudicator in December 2020 concerning her ineligibility for CPPDB for the months of October and November and the implications of that decision to be reasonably required for a full and fair disclosure of all matters relating to the decision under appeal. Therefore, the Panel admitted this additional information in accordance with Section 22(4) of the EAA. While this evidence is not supported by any corroborating written evidence, the Panel assigns it full weight, as only two months of CPPDB were determined by Service Canada to have been paid in error and no evidence has been introduced to suggest that Service Canada's decision to limit the period of the Appellant's ineligibility for the CPPDB to two months (October and November 2020) was made for any other reason.

The Panel considers the new verbal evidence provided by the Appellant at the hearing summarizing her conversation with the Ministry in December 2020 concerning her ineligibility for CPPDB for the months of October and November and the implication of any future errors in the information contained in the shared data match, beyond November 2020 (i.e., that her DA would continue to be reduced by the amount of CPPDB that Service Canada said it was paying her) to be reasonably required for a full and fair disclosure of all matters relating to the decision under appeal. Therefore, the Panel admitted this additional information in accordance with Section 22(4) of the EAA.

Part F – Reasons for Panel Decision

The issue under appeal is whether the Ministry's decision, which found that that the Appellant is not eligible for the reimbursement of CPPDB amounts that had been deducted from the Appellant's DA for the months of December 2020 and January 2021 because she is required to repay those amounts to Service Canada, is reasonably supported by the evidence or is a reasonable application of the applicable enactment in his circumstances.

The Ministry's position is that the EAPWDA and the EAPWDR do not contain provisions that would permit it to recalculate retroactively after a third party (Service Canada in this case) determines that the client has received an overpayment. When the Appellant received the CPPDB benefit in October and November 2020 the Ministry correctly applied the deduction to her DA and there are no legislative requirements to revisit those calculations.

The Appellant's position is that the Ministry's deductions from the DA to which she was entitled made by the Ministry in December 2020 and January 2021 assumed that her CPPDB for October and November 2020 constituted money received from CPP. In fact, since the CPPDB she received in October and November was not actually payable to her and because she is required to pay those amounts back to Service Canada, they did not have any value. As a result, her DA benefits for December 2020 and January 2021 should be increased accordingly.

The Panel's Decision

As to Whether other Government Legislation Generally Applies

Section 14(1) of the *Interpretation Act*, when read in conjunction with the definitions of "*enactment*" and "*government*" provided in Sections 1 and 29 of that Act, says that, unless specifically provided otherwise, all provincial legislation is binding on the provincial government.

As there are no provisions in the EAPWDA that say the *Interpretation Act* and the FAA do not apply, the Panel finds that these two Acts apply to the EAPWDA and EAPWDR and are binding on the Ministry.

As to Whether any of the Provisions of the FFA Apply in this Appeal

Section 16 of the FAA says that money received by the government that is erroneously paid or collected may be refunded from the consolidated revenue fund, subject to any Treasury Board directives.

The Panel notes that the money in question, which is the Appellant's CPPDB totaling \$1,916.74 that Service Canada subsequently determined was paid in error, was originally paid by Service Canada directly to the Appellant, not the Ministry. Therefore, that money was not "*received by the government*" and, as a result, FAA Section 16 does not apply.

As to Whether the Ministry's Decision was Reasonable

Section 6(3) of the FAA says that the Ministry is responsible for the administration of its financial affairs, under the general direction of the Ministry of Finance and Treasury Board. Therefore, regarding allowances and supplements, the Ministry is expected to establish systems and rules regarding the collection of contributions from third parties, and such matters as the accounting for and payment of DA, including the establishment and application of processes to ensure that earned and unearned incomes

are properly recorded and accounted for in establishing the amount that a client receives in any given month. When errors are made, they should be corrected.

Regarding the CPPDB, the Ministry requires that any client eligible for the CPPDB apply for it and that the Ministry receive any retroactive amount of CPPDB that might apply directly from the federal government. The Ministry allows the client to receive any subsequent benefits directly from Service Canada, records those amounts, and deducts them from the DA that a client would otherwise receive.

Section 8 of the *Interpretation Act* says that “*every enactment must be construed as being remedial, and must be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects.*” The Panel notes that the objectives of the Ministry with respect to the payment of assistance and other benefits are to ensure that clients receive all the benefits to which they are entitled under the EAPWDA and the EAPWDR; no more and no less.

EAPWDR Section says that “*unearned income*” means any income that is not earned income, and includes money received from any type or class of CPPDB. In its RD, the Ministry determined that it correctly applied the deduction to the Appellant’s DA based on information provided by Service Canada, and there are no legislative requirements to revisit those calculations when a payment error is made by Service Canada and subsequent adjustments are made to the amount of the CPPDB to which a recipient is entitled.

The Panel notes that the situation in which the Appellant finds herself is exceedingly unfortunate and that the Ministry’s practice in these circumstances is procedurally unfair. The Appellant was not told that she no longer qualified for the CPPDB until December 2020, over two months after her ineligibility had gone into effect.

To make matters worse, the available evidence indicates that the Appellant was not notified in writing of her ineligibility until she received the April 8 Letter, a full four months after she said she was verbally notified of the Service Canada decision, and six months after her ineligibility went into effect. At the hearing, the Appellant said that she contacted the Ministry by telephone in December 2020 to let the Ministry know that she was no longer receiving the CPPDB. The Ministry’s decision to continue acting on inaccurate information in the shared data match database without following up with Service Canada, despite reliable evidence of a retroactive change in her in status, caused the Appellant a great deal of stress and anxiety.

The Panel finds that all the evidence shows that the Appellant did not ultimately receive unearned income in the form of the CPPDB in the months of October and November 2020. Furthermore, the Panel notes that there are clear legislative requirements to apply the legislation fairly, and to remedy the situation when errors are made; in this case, to retroactively increase the Appellant’s DA for the months of December 2020 and January 2021 to ensure she receives the DA to which she was entitled, and so that she is made whole and has the funds necessary to settle her account with Service Canada.

Conclusion

The Panel finds that the Ministry’s decision that the Appellant is not eligible for reimbursement of Canada Pension Plan Disability Benefit (CPPDB) amounts that had been deducted from the Appellant’s Disability Assistance (DA) for the months of December 2020 and January 2021 was not reasonably supported by the evidence and was not a reasonable application of the applicable enactment(s) in the circumstances of the Appellant. Therefore, the Ministry’s decision is rescinded, and the Appellant is successful in her appeal.

APPENDIX A – RELEVANT LEGISLATION

EMPLOYMENT AND ASSISTANCE FOR PERSONS WITH DISABILITIES ACT

Interpretation

1 (1) In this Act: ...

"disability assistance" means an amount for shelter and support provided under section 5 [*disability assistance and supplements*] ...

Disability assistance and supplements

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

Employment-related programs and other programs

8 The minister may establish or fund employment-related programs and other programs for ... recipients ... who have difficulty finding or maintaining employment.

Employment plan

9 (1) For a family unit to be eligible for disability assistance ... each recipient ... in the family unit, when required to do so by the minister, must

- (a) enter into an employment plan, and
- (b) comply with the conditions in the employment plan ...

(3) The minister may specify the conditions in an employment plan including, without limitation, a condition requiring the ...recipient ... to participate in a specific employment-related program that, in the minister's opinion, will assist the ... recipient ... to

- (a) find employment, or
- (b) become more employable ...

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 ...

"employment-related program" means any of the following categories of programs that are established or funded under section 8 of the Act: ...

- (d) self-employment ...

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

(f) any type or class of Canada Pension Plan benefits ...

Effect of applicant applying for other sources of income

7 (1) In this section, **"income"** does not include

- (a) earned income described in paragraphs (a), (d) or (e) of the definition in section 1, or
- (b) income exempt under section 1 of Schedule B.

(2) A family unit is not eligible for disability assistance if an applicant in the family unit has applied for income from another source unless

- (a) the applicant enters into a repayment agreement with the minister, ...
- (c) if the source of the other income is a benefit under the *Canada Pension Plan (Canada)*, the applicant, in addition to the requirement under paragraph (a), satisfies the minister that the applicant has made a Consent to Deduction and Payment form under the *Canada Pension Plan (Canada)* directing that
 - (i) an amount up to the amount of disability assistance provided to or for the family unit under this section be deducted from the amount of the Canada Pension Plan benefit, and
 - (ii) the amount deducted be paid to the minister.

Requirement to apply for CPP benefits

8 If a family unit includes a recipient who may be eligible for a benefit under the *Canada Pension Plan (Canada)*, for the family unit to continue to be eligible for disability assistance, the recipient, when requested by the minister, must complete a Consent to Deduction and Payment under the *Canada Pension Plan (Canada)* directing that

- (a) an amount up to the amount of disability assistance provided to or for the family unit from the date that the recipient becomes eligible for the Canada Pension Plan benefit be deducted from the amount of that benefit, and
- (b) the amount deducted be paid to the minister.

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.

Reporting requirement

29 For the purposes of section 11 (1) (a) [reporting obligations] of the Act,

(a) the report must be submitted by the 5th day of the calendar month following the calendar month in which one or more of the following occur:

(i) a change that is listed in paragraph (b) (i) to (v); ... , and

(b) the information required is ... as requested in the monthly report form specified by the minister: ...

(ii) change in income received by the family unit and the source of that income; ...

SCHEDULE A

Disability Assistance Rates

Maximum amount of disability assistance before deduction of net income

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

(a) the monthly support allowance under section 2 of this Schedule for a family unit matching the family unit of the applicant or recipient, plus

(b) the shelter allowance calculated under sections 4 and 5 of this Schedule.

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, 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 (\$) |
|------|--|--|--------------------------------|
| 1 | Sole applicant / recipient and no dependent children | Applicant / recipient is a person with disabilities | 983.42 |

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:

APPEAL NUMBER
2021-0151

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

SCHEDULE B

Net Income Calculation

Deduction and exemption rules

1 When calculating the net income of a family unit for the purposes of section 24 (b) [*amount of disability assistance*] of this regulation ...

(c) all earned income must be included, except ... any earned income exempted under section ... 4, and

(d) all unearned income must be included, except the deductions permitted under section 6 ...

Small business exemption

4 (1) In this section, ...

"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, ...
- (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, and

(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.

Deductions from unearned income

6 The only deductions permitted from unearned income are the following:

(a) any income tax deducted at source from employment insurance benefits;

(b) essential operating costs of renting self-contained suites.

INTERPRETATION ACT

Definitions

1 In this Act, or in an enactment:

"Act" means an Act of the Legislature, whether referred to as a statute, code or by any other name ...

"**enactment**" means an Act or a regulation or a portion of an Act or regulation ...

Enactment remedial

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

Government bound by enactments ...

14 (1) Unless it specifically provides otherwise, an enactment is binding on the government.

Expressions defined

29 In an enactment: ...

"**government**" ... means Her Majesty in right of British Columbia ...

"**Legislative Assembly**" means the Legislative Assembly of British Columbia constituted under the *Constitution Act*;

"**Legislature**" means the Lieutenant Governor acting by and with the advice and consent of the Legislative Assembly;

FINANCIAL ADMINISTRATION ACT

Duties and functions of ministers

6 (3) Each minister is responsible for the administration of the financial affairs of his or her ministry, under the general direction of the Minister of Finance and the Treasury Board.

Refunds

16 Money received by the government

(a) that is erroneously paid or collected ...

may, subject to directives of the Treasury Board, be refunded from the consolidated revenue fund ... in part or in full as circumstances require.

APPEAL NUMBER
2021-0151

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)

Section 24(2)(a) or Section 24(2)(b)

Part H – Signatures

Print Name

Simon Clews

Signature of Chair

Date (Year/Month/Day)

2021/09/13

Print Name

Anil Aggarwal

Signature of Member

Date (Year/Month/Day)

2021/09/13

Print Name

Barbara Sharp

Signature of Member

Date (Year/Month/Day)

2021/09/17