

**Part C – Decision Under Appeal**

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Poverty Reduction (the “Ministry”), dated August 12, 2021 (the “Reconsideration Decision”). In the Reconsideration Decision, the Ministry determined that the Appellant had been overpaid disability assistance in the amount of \$1,936.07 as a result of having exceeded the applicable Annual Earnings Exemption for 2020 in November, 2020, and was liable to repay that amount to the Ministry, pursuant to the provisions of the *Employment and Assistance for Persons with Disabilities Act* (“EAPWDA”) and the *Employment and Assistance for Persons with Disability Regulation* (“EAPWDR”).

**Part D – Relevant Legislation**

EAPWDA, sections 18 and 19  
EAPWDR, section 1, Schedule A - sections 1, 2, and 4, Schedule B - sections 1, 2, 3, and 9

**Part E – Summary of Facts**

The Appellant is a recipient of disability assistance who resides with a spouse and two dependent children. The Appellant also has an adult child who had been renting a room in the home of the Appellant and the Appellant's spouse for \$375.00 per month, likely starting on December 1, 2019, as the Appellant began reporting the rental income to the Ministry in February, 2020.

The information before the Ministry at the time of the Reconsideration, included the following:

- Pay stub from the Appellant's spouse's employer, as follows:

Date	Gross Pay	Net Pay
January 10, 2020	\$466.79	\$441.97
January 24, 2020	\$362.65	\$344.95
January 3, 2020	\$661.23	\$603.16
January 17, 2020	\$669.42	\$606.34
January 31, 2020	\$523.48	\$484.53
February 7, 2020	\$499.05	\$472.03
February 21, 2020	\$455.53	\$431.48
February 14, 2020	\$515.37	\$476.98
February 28, 2020	\$494.17	\$457.22
March 6, 2020	\$629.14	\$582.39
March 20, 2020	\$384.21	\$365.04
March 13, 2020	\$488.31	\$451.76
March 27, 2020	\$386.59	\$356.99
March 27, 2020	\$166.05	\$144.71
March 22, 2020	\$173.07	\$168.32
June 19, 2020	\$350.01	\$322.91
June 30, 2020	\$454.76	\$312.21
June 30, 2020	\$127.88	\$125.86
July 3, 2020	\$291.81	\$268.69
July 17, 2020	\$290.10	\$267.09
July 31, 2020	\$465.98	\$430.96
August 14, 2020	\$587.82	\$541.71
August 28, 2020	\$425.08	\$392.85
September 11, 2020	\$431.76	\$399.08
September 25, 2020	\$498.23	\$461.01
September 25, 2020	\$1,596.20	\$1,506.20

- pays stubs from the Appellant's employer as follows:

Date	Gross Pay	Net Pay
February 29, 2020	\$57.62	\$56.71
March 15, 2020	\$50.42	\$49.62

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June 5, 2020	\$441.91	\$418.81
June 19, 2020	\$363.93	\$346.14
July 3, 2020	\$330.40	\$313.04
July 17, 2020	\$363.97	\$345.99
July 31, 2020	\$325.21	\$310.06
August 14, 2020	\$437.72	\$414.89
August 28, 2020	\$352.39	\$335.39
September 11, 2020	\$364.38	\$346.56
September 25, 2020	\$325.60	\$310.43

- Overpayment notification to the Appellant and the Appellant's spouse, dated July 26, 2021;
- Letter from the Ministry, dated July 26, 2021, advising the Appellant of an overpayment in the amount of \$1,936.07, due to the rental income not having been added to the Appellant's net monthly income, as required, the Appellant's spouse having not claimed \$603.16 paid on January 3, 2020;
- Overpayment chart, dated May 12, 2021 (the "Overpayment Chart"), tracking the declared earnings, including rental income received from the Appellant's child, of the Appellant and the Appellant's spouse, as well as the balance of the annual earnings exemption for the Appellant's family unit;
- The Appellant's RFR, dated July 31, 2021, in which the Appellant stated that:
  - the Appellant had initially been credited for an underpayment of disability assistance in the amount of \$2,531.25, on account of having had the rental income received between March, 2020 and November, 2020 deducted from the Appellant's disability assistance;
  - the error which resulted in an overpayment was not the fault of the Appellant or the Appellant's spouse;

In the Notice of Appeal, the Appellant stated that the reason for the Appeal was "ministry cheque due to agent error."

## Part F – Reasons for Panel Decision

The issue in this appeal is whether the Ministry reasonably determined that the Appellant had been overpaid disability assistance in the amount of \$1,936.07 as a result of having exceeded the Annual Earnings Exemption for 2020 in November, 2020 and was liable to the Ministry to repay that amount, pursuant to the provisions of the EAPWDA and the EAPWDR.

The statutory provisions relevant to this appeal are reproduced at the end of this decision.

This appeal largely turns on the definition of “earned income” and the exemptions that are available to recipients of disability assistance in respect of earned income being included in the calculation of their net income.

Section 1 of the EAPWDR, includes a number of definitions, including for the term “earned income”, which is defined as:

- (a) any money or value received in exchange for work or the provision of a service,
- (b) pension plan contributions that are refunded because of insufficient contributions to create a pension,
- (c) money or value received from providing room and board at a person's place of residence, or
- (d) money or value received from renting rooms that are common to and part of a person's place of residence;

All of the income declared by the Appellant and the Appellant's spouse falls into one of these categories. The pay stubs represent “money or value received in exchange for work or the provision of a service” by the Appellant or the Appellant's spouse. The rental income paid by the Appellant's child represent “money or value received from providing room and board at a person's place of residence.”

Initially, the Ministry mischaracterized the rental income as “unearned income” and, after applying a 25% exemption, which is applicable to *earned* rental income, under section 2(c) of Schedule B to the EAPWDR, deducted the remainder (\$281.25) from the Appellant's disability assistance from March, 2020 to November, 2020, as unearned income.

None of the income declared by the Appellant or the Appellant's spouse meets the definition of “unearned income” set out in section 1 of the EAPWDR.

As a result of the above, all of the declared income, subject to applicable exemptions and deductions, of the Appellant and the Appellant's spouse must be included in the calculation of the Appellant's family unit's net income, the method for which is set out in Schedule B to the EAPWDR.

Section 1 of Schedule B lists a number of items that are exempt from inclusion in a family unit's net monthly income. However, none of the fifty-two items set out in section 1(a) of Schedule B to the EAPWDR apply to the income declared by the Appellant or the Appellant's spouse.

Section 2 of Schedule B to the EAPWDR sets out specific items that are deductible from the calculation of a recipient's net monthly income. These include the usual statutory and other deductions from an individual's pay cheque, including:

- income tax;
- employment insurance;
- medical insurance;
- Canada Pension Plan;
- superannuation;
- company pension plan; and
- union dues.

Section 2(c) of Schedule B to the EAPWDR also provides that 25% of the gross rental income received by a recipient for renting out a portion of their own home is also deductible from the calculation of a recipient's net income:

(c) if the applicant or recipient rents room 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.

On a review of the Overpayment Chart, it is clear that the Ministry included only the net pay, after all deductions, shown on the pay stubs provided by the Appellant and the Appellant's spouse in its calculation of their net monthly income. Likewise, the Ministry included only 75% (\$281.25) of the gross monthly rental income (\$375.00) received from the Appellant's child in its calculation of the net monthly income of the Appellant and the Appellant's spouse. As such, on its recalculation of the Appellant's family unit's net income, the Appellant was credited with all of the deductions to which the Appellant was entitled under section 2 of Schedule B to the EAPWDR.

In addition to the exemptions and deductions described in sections 1 and 2 of Schedule B to the EAPWDR, respectively, recipients of disability assistance are entitled to an annual earnings exemption, which is provided for under section 3 of Schedule B to the EAPWDR.

Under the exemption rules provided for in section 3 of Schedule B to the EAPWDR, the annual earnings exemption for a family unit like the Appellant's was \$14,400.00 for 2020.

After initially not including the net rental income received by the Appellant in the calculation of the Appellant's family unit's net monthly income, the Ministry subsequently did include it in calculating the Appellant's revised eligibility for disability assistance in view of the Appellant's annual earnings exemption.

The result of the Ministry's recalculation is that the Appellant exhausted the applicable annual earnings exemption in November, entering the month with a remaining balance of just \$509.20. The Appellant's family unit's net income for November was \$3,304.53, meaning the Appellant had net monthly income of \$2,795.39 in the month of November that was not exempt from inclusion in the calculation of the Appellant's net monthly income. As this amount was in excess of the monthly disability assistance received by the Appellant, in the amount of \$1,988.07, the panel finds that the Ministry reasonably determined that the Appellant was ineligible for all of the disability assistance that was paid in November, 2020, except for a \$52.00 transportation supplement, leaving \$1,936.07 as the amount of the overpayment.

Pursuant to section 18 of the EAPWDA, a recipient who receives disability assistance for which he or she was ineligible is liable to the Ministry for the amount of the overpayment. The legislation makes no distinction between overpayments that were the result of a Ministry error or an error on the part of the recipient:

- (1) If disability assistance, hardship assistance or a supplement is provided to or for a family unit that is not eligible for it, recipients who are members of the family unit during the period for which the overpayment is provided are liable to repay to the government the amount or value of the overpayment provided for that period.
- (2) The minister's decision about the amount a person is liable to repay under subsection (1) is not appealable under section 16 (3) [reconsideration and appeal rights].

In view of the foregoing, the panel also finds that the Ministry reasonably determined that the Appellant is liable to the Ministry for the overpayment of disability assistance in the amount of \$1,936.07. The Appellant is not successful in this appeal.

## Relevant Legislation

### *EAPWDA*

#### **Overpayments**

- 18** (1) If disability assistance, hardship assistance or a supplement is provided to or for a family unit that is not eligible for it, recipients who are members of the family unit during the period for which the overpayment is provided are liable to repay to the government the amount or value of the overpayment provided for that period.
- (2) The minister's decision about the amount a person is liable to repay under subsection (1) is not appealable under section 16 (3) [*reconsideration and appeal rights*].

#### **Liability for and recovery of debts under Act**

- 19** (1) An amount that a person is liable to repay under this Act is a debt due to the government that may be
- (a) recovered in a court that has jurisdiction, or
  - (b) deducted, in accordance with the regulations, from any subsequent disability assistance, hardship assistance or supplement for which the person's family unit is eligible or from an amount payable to the person by the government under a prescribed enactment.
- (2) Subject to the regulations, the minister may enter into an agreement, or accept any right assigned, for the repayment of an amount referred to in subsection (1).
- (3) An agreement under subsection (2) may be entered into before or after the disability assistance, hardship assistance or supplement to which it relates is provided.
- (4) A person is jointly and separately liable for a debt referred to under subsection (1) that accrued in respect of a family unit while the person was a recipient in the family unit.

### *EAPWDR*

#### **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,
- (b) Repealed. [B.C. Reg. 197/2012, Sch. 2, s. 1 (a).]
- (c) pension plan contributions that are refunded because of insufficient contributions to create a pension,
- (d) money or value received from providing room and board at a person's place of residence, or

- (e) money or value received from renting rooms that are common to and part of a person's place of residence;

### ***EAPWDR- Schedule 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,

...

- (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**

**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) If October 2017 is a qualifying month, other than an initial qualifying month, for a family unit, the exemption limit of the family unit for October 2017 is calculated in accordance with subsection (7) and then increased by the amount set out in Column 2 or 3 of the following table, as the case may be, that corresponds to the earliest initial qualifying month for the family unit in 2017 set out in Column 1 of the table.

Item	Column 1 Earliest initial qualifying month for the family unit in 2017	Column 2 Family unit that includes only one person with disabilities on October 1, 2017 (\$)	Column 2 Family unit that includes two persons with disabilities on October 1, 2017 (\$)
1	January	2 400	4 800
2	February	2 200	4 400
3	March	2 000	4 000
4	April	1 800	3 600
5	May	1 600	3 200
6	June	1 400	2 800
7	July	1 200	2 400
8	August	1 000	2 000
9	September	800	1 600

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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)

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

**Part H – Signatures**

Print Name  
Adam Shee

Signature of Chair

Date (Year/Month/Day)  
2021/October/27

Print Name  
David Handelman

Signature of Member

Date (Year/Month/Day)  
2021/October/26

Print Name  
Neena Keram

Signature of Member

Date (Year/Month/Day)  
2021/10/26