

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) reconsideration decision dated November 25, 2021 which found that the appellant is not eligible for disability assistance (DA), pursuant to Section 9(2) of the *Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR), as the net monthly income of the family unit exceeded the amount of assistance payable due to unearned income received by the appellant from Crime Victim Assistance Program (CVAP).

Part D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR) – Sections 1 and 9
Schedule A – Sections 1, 2 and 4
Schedule B – Sections 1, 6, 7 and 8

Part E – Summary of Facts

Evidence at Reconsideration

1. 1-page note indicating that the appellant has a clinical appointment on December 10, 2021.
2. Partial Disability Tax Credit Certification and application instructions.
3. Memorandum from the Crime Victim Assistance Program to the ministry - list of the appellant's CVAP benefits payments from April 2020 to October 2021. As of June 2021, the appellant has received \$1409.55 per month.
4. Request for Reconsideration, (RFR) signed and dated October 25, 2021. The RFR did not include an argument or evidence in support of the appellant's position.

Evidence on Appeal

Notice of Appeal, signed and dated December 7, 2021 which was left blank.

Evidence at the Hearing

At the hearing, the ministry relied on its reconsideration decision. The ministry also stated that the appellant informed the ministry of her CVAP income from the beginning when applying to PWD designation. However, the ministry worker recorded the CVAP unearned income incorrectly as exempt.

Part F – Reasons for Panel Decision

The issue on appeal is whether the ministry's decision, which found that the appellant is not eligible for income assistance, pursuant to Section 9(2) of the EAPWDR, as the net monthly income of the family unit exceeded the amount of assistance payable, was reasonably supported by the evidence or was a reasonable application of the applicable enactment in the circumstances of the appellant.

The Appellant's Position

The appellant did not provide an argument.

The Ministry's Position

The ministry argued that the appellant received unearned income from CVAP benefits in excess of the rate of assistance for the family unit size and therefore the appellant is ineligible for DA.

In its reconsideration decision the ministry noted that CVAP benefits are classified as unearned income pursuant to section 1 of the EAPWDR. It stated that the appellant received \$1409.55 per month from CVAP benefits.

The ministry noted that Schedule A of the EAPWDR indicates that the eligibility for DA for a recipient of the appellant's classification (a sole recipient) is a maximum of \$1358.50 per month, and the Schedule B does not include CVAP benefits on the list of exemptions for unearned income.

The ministry also notes that section 9(2) of the EAPWDR indicates that a family unit is not eligible for DA if the net income of the family unit determined under Schedule B, (in this case unearned income from CVAP benefits of \$1409.50 per month), equals or exceeds the amount of DA determined under Schedule A for a family unit, (in this case \$1358.50 per month).

The Panel's Decision

The legislation clearly states that CVAP benefits are unearned income, subject to an exemption, and are included in calculating the net income of a recipient. The panel finds the ministry reasonably included this in calculating the appellant's income.

The panel notes that the legislation exempts payments under the *Criminal Injury Compensation Act* where the payments are 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. As stated previously, the appellant did not provide an argument claiming that the payments she receives from CVAP should be exempt. As there was no evidence whether the CVAP payments the appellant receives qualify for this exemption, the panel finds the ministry reasonably did not exempt the income.

Section 9(2) of the EAPWDR clearly states that a recipient is not eligible for DA if the recipient's income is equal to or exceeds the amount of DA the recipient is eligible for. As shown in the Memorandum from the Crime Victim Assistance Program, the appellant receives \$1409.55

which is greater than the \$1358.50 assistance amount the appellant would be entitled to under EAPWDR Schedule A.

The panel is empathetic to the appellant's circumstances as she did declare her CVAP income from the beginning, and the ministry made an error in initially treating it as exempt. However, the panel finds that the ministry's decision, which found that the appellant is not eligible for DA because of CVAP benefits she has been in receipt of since June 2021 exceeds of the eligible amount of DA, was a reasonable application of the applicable legislation and was reasonably supported by the evidence.

Conclusion

The panel finds that the ministry's reconsideration decision, which determined that the appellant was not eligible for DA due to the CVAP benefits she receives, was reasonably supported by the evidence and was a reasonable application of the applicable enactment, and therefore confirms the decision. The appellant is not successful on appeal.

The applicable legislation is as follows:

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: (s) awards of compensation under the *Criminal Injury Compensation Act* or awards of benefits under the *Crime Victims Assistance Act*, other than an award paid for repair or replacement of damaged or destroyed property;

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

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
 - (a.1) Repealed. [B.C. Reg. 193/2017, s. 9 (a).]
 - (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	983.50

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

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, (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.

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.

Section 1, 7 and 8 list the exemptions to unearned income and EI for sickness is not listed as an exemption to unearned income.

APPEAL NUMBER 2021-0239

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

Neena Keram

Signature of Chair

Date (Year/Month/Day)

2021/12/30

Print Name

Sarah Bill

Signature of Member

Date (Year/Month/Day)

2021/12/30

Print Name

Erin Rennison

Signature of Member

Date (Year/Month/Day)

2021/12/30