

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the ministry) reconsideration decision dated December 6, 2021, which found that the appellant's annuity must be deducted from his disability assistance (DA), pursuant to Section 24 of the *Employment and Assistance for Persons with Disabilities Regulation* (EAPWDR).

Part D – Relevant Legislation

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

Part E – Summary of Facts

Evidence at Reconsideration

1. Letter dated April 2, 2021 from the appellant's bank (the bank) confirming that the appellant has a life insurance monthly annuity of \$1,141.82 which came into affect November 1, 2016.
2. Letter dated June 10, 2021 from the bank outlining the details of the annuity, which was purchased October 5, 2016, the first payment was November 1, 2016, and it is paid out monthly for not less than 10 years.
3. 10-page annuity detail schedule, policy terms and conditions, provisions and a copy of the annuity application signed and dated on September 29, 2016 by the appellant.
4. 5-page insurance product illustration dated October 12, 2016 which includes a tax schedule.
5. 3-page wealth management 'know your client' form which details the appellant's personal and financial information.
6. Letter from the bank dated October 13, 2016 welcoming the appellant as customer.

Evidence on Appeal

Notice of Appeal, signed and dated January 21, 2022 which, in part, stated that the annuity was not set up in the appellant's best interest and he is trying to have it changed.

The panel finds that the information in the NOA represents the appellant's argument and is not evidence which requires the admissibility test.

Evidence at the Hearing

At the hearing, the appellant, in part, stated the following:

- They were told that the annuity is earned income and will be deducted dollar for dollar. However, those on DA are able to earn up to \$18,000.00 per year without deductions.
- When asked, the appellant stated that he had a lawyer and a support worker when the annuity was set up. However, it is questionable if it was in his best interest and it was considered that the appellant would find himself in a position for needing DA.

At the hearing, the ministry relied on its reconsideration decision and added that:

- Earned income up to \$18,000.00 is not deducted dollar for dollar but 'unearned income' from an annuity is per section 1.
- The defendant was not required to purchase the annuity and therefore it is not a structured settlement. If a judgement had required the defendant to purchase the annuity, then the annuity would be a structured settlement and not deducted.
- The ministry was asked if this annuity could be changed to a different investment so that it does not impact the appellant's DA. The ministry stated that if the investment was changed it would be assessed at that time and the ministry cannot give financial advice.
- When asked, the ministry stated it does not have any discretion to deal with situations like this.

Part F – Reasons for Panel Decision

The issue on appeal is whether the ministry's decision, which found that the appellant's annuity must be deducted from his disability assistance, pursuant to Section 24 of the EAPWDR, because it is considered 'unearned income', 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 argued that the annuity was not set up in his best interest and that other forms of income are deducted dollar for dollar.

The Ministry's Position

The ministry argued that the appellant receives 'unearned income' from an annuity in the amount of \$1,141.82 per month and pursuant to the legislation, this must be deducted from his DA.

In its reconsideration decision the ministry noted that the annuity is 'unearned income' as it was the appellant's investment, it is not a trust and the appellant's bank confirmed that the annuity is not part of a structured settlement. The ministry concluded that the annuity is not exempt under section 7 of the EAPWDR as a structured settlement.

The Panel's Decision***Section 24 of the EAPWDR***

The legislation states that the ministry calculates the amount of DA provided to a family unit by subtracting the family's net income from the rate of DA.

Section 1 of the EAPWDR

The legislation states the 'unearned income' is income that is not earned and includes, money or value received from annuities.

Therefore, pursuant to sections 1 and 24 of the EAPWDR, the appellant's monthly annuity of \$1,141.82 must be considered when calculating the amount DA provided to him. That is, \$1,141.82 must be subtracted from the appellant's eligibility rate of \$1358.50 to determine how much DA the appellant will receive every month.

Having said this, the legislation does allow for exemptions to 'unearned income'.

Section 1 of Schedule B of the EAPWDR

Section 1 exempts a list of types of income. The panel has confirmed that none of the exemptions apply.

Section 7 of Schedule B of the EAPWDR

Section 7 allows annuity to be exempt from the purpose of calculating net income if the annuity is part a structured settlement. A structured settlement is an agreement with a defendant as

part of a claim for damages that requires the defendant to make fixed payments, with other conditions.

In the case of the appellant, the ministry stated that on June 24, 2021, the bank confirmed that the annuity is not a structured settlement and was an investment purchased by the appellant. Since the annuity is an investment purchased by the appellant, the payments are considered an annuity and unearned income which is not subject to exemption.

The panel notes that the evidence, including the 10-page annuity detail schedule, which is signed and dated by the appellant, demonstrates that the appellant purchased the annuity on September 29, 2016 and that the defendant ICBC did not purchase it. At the hearing, the appellant confirmed that he purchased the annuity and was represented by a lawyer and support working when doing so.

The panel notes that at the time of reconsideration and the hearing the appellant did not provide any evidence or information which demonstrates that the annuity was part of a structured settlement or was not an investment made by the appellant or was purchased by the defendant.

The panel is empathetic to the appellant's circumstances. However, the panel finds that the ministry's decision, which found that the appellant's annuity must be deducted from the appellant's DA because the annuity is 'unearned income', 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 found that the appellant's annuity must be deducted from the appellant's DA because the annuity is 'unearned income', was reasonably supported by the evidence and was a reasonable application of the applicable enactment. Therefore, the panel confirms the ministry's 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.

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

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.

Exemptions — unearned income

7 (1) (d.1) subject to subsection (2), a structured settlement annuity payment made to a person referred to in section 12 (1) of this regulation if the payment is applied exclusively to or used exclusively for an item referred to in subparagraph (i), (ii), (iii) or (iv) of paragraph (d) of this subsection;

(2) Subsection (1) (d.1) and (d.3) (ii) applies in respect of a person only if

- (a) the person has entered into a settlement agreement with the defendant in relation to a claim for damages in respect of personal injury or death, and
- (b) the settlement agreement requires the defendant to
 - (i) make periodic payments to the person for a fixed term or the life of the person,
 - (ii) purchase a single premium annuity contract that
 - (A) is not assignable, commutable or transferable, and
 - (B) is designed to produce payments equal to the amounts, and at the times, specified in the settlement agreement,
 - (iii) make an irrevocable direction to the issuer of the annuity contract to make all payments under that annuity contract directly to the person, and
 - (iv) remain liable to make the payments required by the settlement agreement.

2022-0013

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)
2022/02/11

Print Name
Kevin Ash

Signature of Member

Date (Year/Month/Day)
2022/02/11

Print Name
Linda Smerychynski

Signature of Member

Date (Year/Month/Day)
2022/02/11