

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction’s (“ministry”) reconsideration decision dated February 28, 2022, in which the ministry determined that Employment Insurance income (“EI”) had to be deducted from the appellant’s disability assistance (“DA”) for February 2022 because EI for the period November 21, 2021 and later was not exempt under section 2.01(3) of the Employment and Assistance for Disabilities Regulation (“EAPWDR”). Under the formula set out in section 24 of the EAPWDR, the ministry found that the appellant was eligible for DA of \$55.50 for February 2022 instead of the usual rate for his family unit (\$2,123.50) as calculated under Schedules A and B.

Part D – Relevant Legislation

The ministry based the reconsideration decision on the following legislation:

Employment and Assistance for Persons with Disabilities Act - EAPWDA - section 3

Employment and Assistance for Persons with Disabilities Regulation - EAPWDR - sections 1, 2.01, 9, and 24, and Schedules A and B

The full text is available in the Schedule after the decision.

Part E – Summary of Facts

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

1. Information from the reconsideration decision indicating that:

- The appellant is a recipient of DA with a dependent spouse and child.
- On January 21, 2022, the ministry advised that the EI income received in December 2021 was for the period starting on November 21, 2021 and was no longer exempt from DA as it had been in the past. The ministry advised that \$2,068 EI received in December must be deducted from the appellant's February 2022 DA.
- On January 24, 2022, the appellant submitted a Request for Reconsideration ("RFR") and on February 28, 2022, the ministry completed the review of the RFR and found the appellant eligible for \$55.50 DA for February 2022.
- The ministry rate for a recipient with Person with Disabilities ("PWD") designation with a dependent spouse and one dependent child is \$2,143.50 per month DA (EAPWDR Schedule A).
- The shared report between the ministry and Service Canada indicated the appellant received 4 EI payments in December 2021 for the weeks after November 20, 2021:
 - \$517 for the week starting November 21, 2021 (paid on December 3, 2021)
 - \$517 for the week starting November 28, 2021 (paid on December 3, 2021)
 - \$517 for the week starting December 5, 2021 (paid on December 20, 2021)
 - \$517 for the week starting December 12, 2021 (paid on December 20, 2021).
- The ministry determined the appellant's net income for December 2021 was \$2,068 (\$517 x 4 payments).
- Under the ministry's reporting schedule (EAPWDR, section 29), income received in the previous month is reported by the 5th day of the current month and affects the next month's assistance; i.e., December income was to be reported by January 5, 2022 and affected the appellant's February DA.

2. The ministry record (section 2) includes the following background information:

- In April 2020, the ministry introduced temporary exemptions due to the Covid-19 pandemic. Under this scheme, EI and federal Covid-19 benefits such as the Canada Recovery Benefit ("CRB") were fully exempt for persons who were eligible for income assistance or DA on April 2, 2020. The ministry accepted that the appellant was eligible for DA on April 2nd and had been receiving both EI and the usual rate of DA for his family unit.
- The federal government enacted temporary changes to the EI program that expired after the EI period ending on November 20, 2021. The ministry's exemption for EI ended at the same time and any EI received in December 2021 for the period starting on November 21, 2021, would no longer be exempt. The ministry said it would deduct EI from the appellant's monthly DA cheque beginning January 19, 2022.
- Under Schedule A of the EAPWDR, the maximum DA the appellant could receive without any deductions was \$2,143.50. The ministry was already deducting \$20 per month for a repayment; thus, the appellant's full entitlement was \$2,123.50 per month.

3. The RFR, signed by the appellant on August 26, 2020, includes the following information in 3 separate submissions:

- On January 22, 2022, the appellant received \$55.50 DA, a reduction of \$2,088 from the usual rate of \$2,143.50, and without any advance notice from the ministry.
- The appellant has various mental illnesses and chronic physical conditions and because of his disability he faces many barriers in education and employment.
- The sudden reduction in DA resulted in financial hardship and stress including worries about homelessness and not having enough money to continue to pay for his child's activities.
- The appellant notes the following "relevant dates":
 - January 1, 2022: ministry decision (reduction in DA) became effective;
 - January 21, 2022: the appellant was informed of the decision;
 - February 18, 2022: the deadline for submitting the RFR form.

4. A 2-page *Common Claimant Report* print-out dated January 17, 2022, which shows the appellant's EI information. The report lists EI entitlements from August 1, 2021 - January 9, 2022, and confirms there were 4 payments of \$517 each for the weeks starting November 21, November 28, December 5, and December 12, 2021.

Additional information

Subsequent to the reconsideration decision, the appellant submitted a *Notice of Appeal* with a typed submission dated March 1, 2022, which the panel accepts as argument. At the hearing, both parties provided argument but did not submit new information requiring an admissibility determination by the panel under section 24(2) of the *Employment and Assistance Act*.

Part F – Reasons for Panel Decision

The issue on appeal is whether the ministry's determination that EI was not exempt was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the appellant. The appellant does not dispute that he received 4 EI payments in December 2021 for the weeks starting November 21, 2021. The appellant disagrees with the finding that EI was not exempt because the ministry did not give him adequate notice or communication regarding the decision to reduce his DA.

Appellant's arguments

In his appeal submission the appellant argued that the ministry's decision was unreasonable for the following reasons:

- A "serious mistake" was made during the reconsideration based on the ministry's lack of efficient communication.
- The ministry's decision disregards the appellant's rights under the tenet of *force majeure* as well as the *State of Emergency Act*.
- The ministry's decision was presumably based on bias and not on the facts and reasons presented by the appellant.
- The ministry misinterpreted the law by denying the exemption for EI.

At the hearing the appellant elaborated on these reasons, explaining that when he lost his job and applied for EI, he called both the ministry and Service Canada and was told it was "no problem" to go on EI while receiving DA if he declared it. The appellant understood that pandemic measures were put in place to help people during the province-wide state of emergency.

The appellant explained that his CRB benefits "were cut" while he waited 6-8 weeks for his EI claim to be approved. The appellant said he lost \$4,000 while waiting for EI and was forced to take out "payday loans" and got behind on bills because of the delay. The appellant explained that he was very relieved when his EI was approved as his family was finally gaining some stability and he was able to pay for community programs/activities for his child.

The appellant said that no one told him that his DA for February 2022 would be substantially reduced. He was getting ready to pay the rent when he discovered a deposit of only \$50.55 for DA. When he called the ministry, they said he should have known that the law had been changed and EI was no longer exempt, but due to his disability and numerous health conditions the appellant said that he is unable to read news, follow TV reports, and keep up to date on current events. The appellant noted that pandemic restrictions were ramped up through December 2021 when cases of the Omicron variant were surging.

The appellant submits that he should have been given 3 months advance notice to adjust to the reduction in his DA. The appellant argued that the ministry misinterpreted the law by not communicating the changes in the exemption rules. The appellant said that his phone number and email have not changed, so the ministry could have called him or messaged his ministry self-serve account to communicate the program changes.

The appellant expressed his deep frustration with the ministry's lack of communication, emphasizing the negative impact the ministry's decision had on his health and his family's security. The appellant submits that "every level of government has a timeline for decisions to be effective" and he is "sure that the law says there is supposed to be a transition time" for any program changes.

The appellant argued that the ministry "had a contractual obligation" to apply *force majeure* for things that are beyond anyone's control during a state of emergency. The appellant argued that under *force majeure*, he should have been given a "grace period" where the full DA entitlement would continue while he took steps to re-arrange his finances pending the reduction to his monthly income.

The appellant said he feels the ministry is biased against him because they "automatically decline" every benefit he applies for including a dental supplement, and an emergency clothing allowance to buy his child new shoes. The appellant said the ministry tells him to "work within your budget" even though he does not have sufficient resources.

The appellant stressed that he does the best he can to find a job and contribute to his family, but he continues to face serious barriers due to his disability and must rely on government programs for support.

Ministry's position

The ministry found that EI is unearned income under section 1 of the EAPWDR, and must be deducted from DA pursuant to section 24 unless it meets the exemption criteria set out in EAPWDR Schedule B. The ministry acknowledged that section 2.01(3) states that EI "for a period ending before November 21, 2021, is exempt when calculating net income." However, the ministry said the appellant's December EI was not exempt because it was for the weeks beginning November 21, 2021, and beyond.

The ministry noted that the only deductions from EI that are permitted under the legislation are deductions for income tax, and for the cost of operating self-contained rental suites. Furthermore, EI benefits for maternity or specific caregiver duties are exempt. The ministry noted that the EI payments the appellant received in December 2021 were regular EI benefits and not for any caregiver related purpose.

In the reconsideration decision, the ministry did not address the appellant's arguments regarding the ministry's lack of communication about the exemption ending or any infringement on the appellant's "right to 3 months notice or a grace period." At the hearing, the ministry explained that it "cannot deviate from the legislation" and it is the ministry worker's responsibility to ask pertinent questions about the client's situation. The ministry argued that the pandemic state of emergency is a fluid situation and "the ministry was trying to do its best to adjust."

The ministry said it regrets that there was no information sent to clients about the change in the exemption rules. The ministry confirmed that a communication about the legislative change was sent to stakeholders (such as community organizations and advocacy groups), and the ministry had hoped the information would filter down to clients. In response to questions, the ministry acknowledged that a lot of clients were on EI and assistance at the same time and many clients were impacted by the legislative change.

The ministry empathized with the appellant's arguments but confirmed that DA is not a contract between the ministry and the recipient. The ministry explained that DA is a legislated benefit and contract provisions such as *force majeure* are therefore not applicable. The ministry explained that the laws governing DA are not made by the ministry; the provincial legislature makes the laws and "the ministry has no discretion to contravene the law."

Panel's decision

The panel finds that the ministry's decision to deny an exemption for EI for the weeks starting on November 21, 2021, and beyond was a reasonable application of the legislation. Section 1(1)(g) of the EAPWDR confirms that EI meets the definition of unearned income. Under EAPWDR section 24, the ministry is required to deduct unearned income dollar for dollar from the recipient's DA rate subject to applicable deductions and exemptions.

The panel finds the ministry reasonably determined that the appellant's EI for the weeks beginning on November 21, 2021, was not exempt under section 2.01(3) of the EAPWDR. Subsection 2.01(3)(b) states that the only EI that is exempt in the calculation of net income under section 24(b) of the EAPWDR is "employment insurance for a period ending before November 21, 2021."

Under section 9(1) of EAPWDR Schedule B, any deductions and exemptions the recipient qualifies for, are applied to the calendar month in which the income is received despite the date that the income is payable or the period for which it is payable. The EI income in question was for the week starting November 21, 2021, through the week starting December 12, 2021. The EI was paid via 4 deposits in December 2021 as shown on the shared report between the ministry and Service Canada.

The panel finds that the ministry reasonably determined that none of the deductions and exemptions listed in Schedule B were applicable in the appellant's circumstances. The only deductions from EI that are permitted under Schedule B (section 6) are income tax which is deducted at source, and deductions for renting self-contained suites. There was no evidence to indicate the appellant rents out suites.

The only EI that is exempt under EAPWDR Schedule B is EI “for a period ending before November 21, 2021”, and special classes of EI (maternity, parental, and caregiver benefits for a critically ill child) under the *Employment Insurance Act (Canada)*. These exemptions are described in section. 7(1)(g) of Schedule B.

The shared report between the ministry and Service Canada showed only regular EI benefits and there was no evidence that anyone in the appellant’s family unit was receiving any other class of EI in December 2021. The panel finds that the ministry’s interpretation of the legislation was reasonable. The appellant was eligible for \$55.50 DA for February 2022.

Regarding the lack of notice from the ministry regarding EI income no longer being exempt, the panel is very sympathetic but finds that the absence of sufficient notice does not make the reconsideration decision unreasonable. While it is unfortunate that the reduction in DA was not communicated to the appellant until the day before his cheque was deposited, the panel notes there is no statutory requirement in the EAPWDR for the ministry to provide any notice or grace period.

The heading for EAPWDR section 2.01 is *Modifications in relation to COVID-19 emergency — certain payments*, suggesting that the exemption for EI was intended to be a temporary measure in response to the pandemic crisis. Furthermore, the appellant’s contract arguments including *force majeure* do not apply to DA payments because they are governed by legislation and not by contract law.

Conclusion

The panel finds that the ministry’s decision was reasonable. EI received in December 2021 was not exempt under the EAPWDR. The ministry was reasonable to find that EI had to be deducted from the appellant’s February 2022 DA. The ministry had no discretion under the legislation to continue to exempt EI from the calculation of net income. In addition, none of the deductions or exemptions set out in EAPWDR Schedule B were applicable in the circumstances of the appellant. The panel confirms the reconsideration decision as a reasonable application of the legislation. The appellant is not successful in his appeal.

Schedule – Relevant 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:

(g) employment insurance;

Modifications in relation to COVID-19 emergency — certain payments

2.01 (1) This section applies in relation to the provision of assistance for a calendar month after April, 2020 to or for

(a) a family unit that

(i) was eligible on April 2, 2020, or includes a person who was in a family unit that was eligible on April 2, 2020, for disability assistance or hardship assistance, or

(ii) includes a person with disabilities who was a person with disabilities on April 2, 2020,

(3) Section 1 (a) of Schedule B is to be read as though it also provided that the following are exempt from income when calculating the net income of a family unit for the purposes of section 24 (b) of this regulation:

(b) employment insurance for a period ending before November 21, 2021;

(7) In this section:

"COVID-19 emergency" means the emergency that is the subject of

(a) the notice provided on March 17, 2020 by the provincial health officer under [section 52 \(2\)](#) of the *Public Health Act*, and

(b) the declaration of a state of emergency made on March 18, 2020, and any extension of that declaration, under [section 9](#) of the *Emergency Program Act*;

Division 2 — Income and Asset Restrictions

Limits on income

9 (1) For the purposes of the Act and this regulation, **"income"**, in relation to a family unit, includes an amount garnished, attached, seized, deducted or set off from the income of an applicant, a recipient or a dependant.

(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.

Division 5 — Amount and Duration of Disability Assistance

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. [am. B.C. Regs.

175/2016, App. 1, [s. 4](#); 193/2017, s. 2.]

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);

(b) the information required is all of the following, 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

(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 (\$)
6	Two applicants / recipients and one or more dependent children	One applicant / recipient is a person with disabilities, the other is not a person with disabilities and is under 65 years of age	\$1 478.50

Monthly shelter allowance

(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
3	3 persons	\$665

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,

(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 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) The following unearned income is exempt:

(g) a benefit paid under [section 22, 23](#) or [23.2](#) of the *Employment Insurance Act (Canada)* to any person in the family unit.

Application of deductions and exemptions

9 (1) The deductions and exemptions in this Schedule apply only in the calendar month in which the income is actually received, despite any of the following:

- (a) the date the income is payable;
- (b) the period for which the income is payable;
- (c) the date the income is reported to the minister;
- (d) the date the minister receives notice of the income.

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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

Margaret Koren

Signature of Chair

Date (Year/Month/Day)

2022/03/23

Print Name

Joseph Rodgers

Signature of Member

Date (Year/Month/Day)

2022/03/23

Print Name

Wesley Nelson

Signature of Member

Date (Year/Month/Day)

2022/03/23