

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction (the Ministry) Reconsideration Decision (RD) dated February 10, 2022, which determined that the Appellant received \$12,282.31 in Disability Assistance (DA) between January 2017 and February 2019 for which she was not eligible, and that she must repay this amount to the Ministry.

Part D – Relevant Legislation

Employment and Assistance for Persons with Disabilities Act (EAPWDA), Sections 1(1), 11, 16(1)(c) and (3), 18 and 19

Employment and Assistance for Persons with Disabilities Regulation (EAPWDR), Section 1(1), 9(2), 24 and 29, Schedule A Sections 1(1), 2(1), and 4(2), and Schedule B, Sections 1, 6, and 7

The relevant legislation is provided in Appendix A.

Part E – Summary of Facts

According to the RD, Ministry records indicate that:

- The Appellant is no longer receiving DA and is currently receiving Medical Services Only (MSO);
- On November 1, 2016, the Appellant began receiving monthly pension benefits of \$795.90 after taxes from a private sector employer (the Pension) because she was named as a beneficiary of a former member of the plan;
- The Appellant told the Ministry that she was expecting the monthly pension benefits and an upcoming inheritance but did not report the monthly pension benefit amounts to the Ministry as income;
- Information routinely shared by Service Canada with the Ministry confirms that the Appellant started receiving Canada Pension Plan (CPP) Early Retirement Benefit (ERB) and Survivor's Benefit (SB) in March of 2017. These ERB and SB payments were automatically deducted from the Appellant's monthly DA; and,
- On December 29, 2021, the Ministry completed a review of the Appellant's file and determined that she had received \$12,282.31 in DA between January 2017 and February 2019 that she was not eligible for, and that she must repay this amount to the Ministry.

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

- The Appellant's Request for Reconsideration (RFR) dated January 19, 2022, in which she stated that she had informed the Ministry that she was receiving the Pension, that it was "*gifted to (her) through a will*", and that she was told by the Ministry that "*it was allowed because it was an inheritance ... (and she) did not need to declare it*". The Appellant also said that she didn't understand why it took so long for the Ministry to realize the mistake, of which she was unaware;
- A two-page pension benefit statement from the private sector employer for the year ending December 31, 2017 (the Pension Statement), indicating that a payment in the amount of \$845.90 before taxes (net \$745.60 after the deduction of a withholding tax) was made to the Appellant on December 1, 2017. The statement also indicates that the Appellant had been receiving this amount monthly since November 1, 2016, and will continue to receive the same monthly amount on the first of each month up to and including June 1, 2020, after which date "*there will be no further payments*";
- A two-page document titled "*Last Will and Testament ...*" (the Will) and dated and signed on March 28, 2013, in which the Appellant is identified as the executrix and trustee of the Will. The Appellant is given as a life estate in the deceased's property and the residue of the estate is willed to the survivors of the deceased and the Appellant absolutely.

Oral Evidence Presented at the Hearing

At the hearing, the Appellant said that she didn't think the Ministry's decision was wrong but thought that it was unjust. She said that she had "*done her due diligence*" by going the Ministry in 2016 on two separate occasions and telling them that she had been named as a beneficiary in the deceased's Will,

and that she would be receiving a beneficiary pension. She said that she was told in both instances by the Ministry that the estate would be considered an inheritance.

The Appellant said that it was two years before she realized that there had been a mistake. She said that the Ministry eventually contacted her to say that she owed over \$12,000 and stated that she didn't dispute the fact that she had received the money.

In response to a question from the Panel, the Appellant said that when she initially contacted the Ministry about the Will she had provided the details regarding the Pension including when she expected to receive it, and said that it was characterized by the Ministry as an insurance policy that would be considered an inheritance.

In response to another question from the Panel regarding the amount of the monthly Pension, the Appellant said that the gross amount was \$845.90 as stated in the Pension Statement, that \$100.00 was withheld, and that she received the difference (\$745.90) every month by direct deposit to her bank account, up to the date that the Pension expired in June 2020.

At the hearing, the Ministry acknowledged that the Appellant had approached the Ministry to explain that she was a beneficiary in the Will. The Ministry also read from a note on the Appellant's file confirming that the Appellant had contacted the Ministry on a specific date in 2016, indicating that the Will included "*insurance in the form of a pension*" and that the Appellant was told that "*any benefit received through an inheritance is exempt*". The Ministry said that the contents of the note in the Appellant's file was a written summary of the conversation between the Appellant and the Ministry and might not have reflected the exact details of the conversation, but that a lump sum payment of a pension amount specified in a will would normally be considered an inheritance, and as such would have to be declared as an asset to the Ministry so that the Ministry could determine whether it might impact a client's monthly benefits or allowances. If a client received an ongoing monthly pension amount, the Ministry said that it would have to be reported as income by the client on the monthly report submitted by the client every month.

In response to a question from the Panel, the Ministry said that clients were required to complete a monthly report as a condition of ongoing eligibility, but in recent years, and particularly since the pandemic, the Ministry no longer routinely checks every client's file to ensure that they are filing a monthly report. The Ministry also said that, while there used to be an annual review of client files, those reviews are now done as "*random spot checks*". The Ministry explained that it will explain the monthly reporting requirements to a client if a client contacts the Ministry with questions about reporting requirements; otherwise, the Ministry makes the decision about whether to contact a client to ask if there have been any changes to their monthly income or assets on a case-by-case basis. The Appellant said that she didn't remember being told she had to file a monthly report.

In response to another question from the Panel about how the total amount of the overpayment to the Appellant had been calculated, the Ministry referred to the table in the RD and explained that the Appellant was entitled to DA from November 2016 through February 2017, which had been reduced by the unearned income amount to determine the amount of the overpayment each month, that from April 2017 through October 2017 the Appellant was only eligible for the bus pass amount of \$50.00, and from November 2017 to December 2018 she was not eligible for any monthly benefits because the combination of her Pension amount and her CPP monthly benefit exceeded the amount of the MSO benefit to which she was otherwise entitled. The Ministry was unable to identify what comprised the \$50.00 difference between the \$895.90 in income received from November 2016 through February 2017 and the gross Pension amount of \$845.90 identified in the Pension Statement.

The Ministry also said that a random detailed review of the Appellant's file was completed in 2018 and that the Pension benefit monthly payment that the Appellant was receiving was identified at that time.

In response to another question from the Panel, the Ministry confirmed that the Service Canada data match of information on Canada Pension Plan (CPP) and Family Allowance Benefit payments was conducted on all clients who might be eligible for either or both of these programs, and that clients were required to sign a consent form to permit the data match upon application for assistance.

Admissibility of New Information

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.

In the Notice of Appeal (NOA), where asked why she disagrees with the Ministry's RD, the Appellant has written "*I did my due diligence ... (the Ministry's decision is) not fair*". The Panel considered the written information in the NOA to be argument.

The Panel considered the verbal evidence provided by the Ministry at the hearing, summarizing the details of a conversation between the Appellant and the Ministry about whether the Ministry would consider the pension amount as an inheritance, to be evidence that is reasonably required for a full and fair disclosure of all matters relating to the decision under appeal. Therefore, the Panel admitted the additional information in accordance with Section 22(4) of the EAA. However, for the reasons explained in the Panel decision section below, because that evidence ultimately has no bearing on the reasonableness of the Ministry's RD, the Panel assigns it no weight.

Part F – Reasons for Panel Decision

The issue under appeal is whether the Ministry's decision, which found that the Appellant received unearned income between January 2017 and February 2019 for which she was not eligible, and that the Appellant must repay this amount to the Ministry, is reasonably supported by the evidence or is a reasonable application of the applicable enactment in her circumstances.

The Ministry's position is that the Appellant is required to repay the assistance she was not eligible to receive, even though she believed the pension payments were exempt, because the payments are considered unearned income and as such would have reduced the monthly allowance to which she was otherwise entitled.

The Appellant's position is that, while the Ministry's RD might not be wrong and she is not disputing the fact that she received the pension benefits, the decision is unjust because when she asked the Ministry on two separate occasions in 2016 whether the Pension would impact her DA amount, she was told that it would be considered an inheritance and that as such it wouldn't be considered income.

The Panel's Decision

Section 1 of the EAPWDR defines "*unearned income*" to include any money received from superannuation benefits and the CPP. "*Superannuation*" is not a defined term in the EAPWDA or the EAPWDR. The Cambridge dictionary defines "*superannuation*" as "*money that people pay while they are working, so that they will receive payment when they stop working when they are old, or the payment they receive when they stop working*". Therefore, the Panel finds that a monthly pension benefit is reasonably considered superannuation.

EAPWDR Schedule B Section 1 identifies the amounts that can be deducted from total income for the purpose of determining the amount of DA to which a family unit is entitled. No deductions are permitted in this section for pension or CPP benefits. The only deductions that are permitted from the calculation of unearned income are provided in EAPWDR Section 6 and do not include pension or CPP benefits. EAPWDR Section 7 identifies amounts that are exempt from unearned income and does not include pension or, where applicable, a portion of a person's CPP benefits. The Panel finds that the Ministry reasonably determined that the Appellant's Pension and all or a portion of the Appellant's CPP benefits are considered unearned income for the purpose of determining the amount of DA to which a family unit is entitled.

EAPWDR Section 1(1) says that the maximum amount of DA before the deduction of income is the sum of the monthly support allowance and the shelter allowance for the family unit. The Ministry has calculated these allowances for the period of the overpayment in the RD.

EAPWDR Schedule B Section 1(d) says that, when calculating the net income of a family unit for the purposes of determining the amount of DA to which the family unit is entitled, all unearned income must be included, except for allowed deductions.

EAPWDA Section 18(1) says that if DA is provided to or for a family unit that is not eligible for it, recipients are liable to repay to the government the amount or value of the overpayment provided for that period. No adjustments are identified for delays in determining whether overpayments have been made. Therefore, the Panel finds that the Ministry reasonably determined that the Appellant is responsible for repaying the full amount of the overpayment.

Section 18(2) says that the Minister's decision about the amount a person is liable to repay is not appealable. Accordingly, the Panel does not have the authority to question the Ministry's calculation of the total amount the Appellant owes, or the Ministry's calculation of the amount of the Appellant's CPP benefit that was included in the Ministry's calculation of the overpayment.

The Panel sympathizes with the Appellant. The misunderstanding about the treatment of the Pension benefit and its impact on the Appellant's DA and MSO eligibility amounts, together with the long delay in identifying and correcting the overpayment, is unfortunate. Under the circumstances, it is easy to understand why the Appellant feels that she was treated unjustly. However, the legislation considers the Pension and CPP benefits to be unearned income and, as such, requires that DA and MSO benefit overpayments be recovered from the Appellant by the Ministry.

Conclusion

The Panel finds that the Ministry's decision that the Appellant is not eligible for a portion of the DA and MSO benefits she received between January 2017 and February 2019 and that therefore she must repay to the Ministry the amount of the overpayment, was a reasonable application of the EAPWDA and the EAPWDR in the circumstances of the Appellant. Therefore, the Ministry's decision is confirmed. The Appellant is not successful in her appeal.

APPENDIX A – 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*]; ...

"**family unit**" means an applicant or a recipient and his or her dependants; ...

Reporting obligations

11 (1) For a family unit to be eligible for disability assistance, a recipient, in the manner and within the time specified by regulation, must

(a) submit to the minister a report that

(i) is in the form specified by the minister, and

(ii) contains the prescribed information, and

(b) notify the minister of any change in circumstances or information that

(i) may affect the eligibility of the family unit, and

(ii) was previously provided to the minister.

(2) A report under subsection (1) (a) is deemed not to have been submitted unless the accuracy of the information provided in it is confirmed by a signed statement of each recipient.

Reconsideration and appeal rights

16 (1) ... a person may request the minister to reconsider any of the following decisions made under this Act: ...

(c) a decision that results in a reduction of disability assistance or a supplement provided to or for someone in the person's family unit; ...

(3) Subject to ... section... 18 (2) [*overpayments*], a person who is dissatisfied with the outcome of a request for a reconsideration under subsection (1) (a) to (d) may appeal the decision that is the outcome of the request to the tribunal.

Overpayments

18 (1) If disability 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.

EMPLOYMENT AND ASSISTANCE FOR PERSONS WITH DISABILITIES REGULATION

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: ...

(e) superannuation benefits;

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

(l) a trust or inheritance; ...

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.

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 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
(section 24 (a))

Maximum amount of disability assistance before deduction of net income

- 1** (1) ... 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 ...

Prior to April 1, 2017 (according to Ministry records):

Item	Column 1 Family unit composition	Column 2 Age or status of applicant or recipient	Column 3 Amount of support
1	Sole ... recipient and no dependent children	... recipient is a person with disabilities	\$556.42

April 1, 2017 to September 30, 2017 (according to Ministry records):

Item	Column 1 Family unit composition	Column 2 Age or status of applicant or recipient	Column 3 Amount of support
1	Sole ... recipient and no dependent children	... recipient is a person with disabilities	\$606.42

October 1, 2017 to December 31, 2017 (according to Ministry records):

Item	Column 1 Family unit composition	Column 2 Age or status of applicant or recipient	Column 3 Amount of support
1	Sole ... recipient and no dependent children	... recipient is a person with disabilities	\$706.42

After December 31, 2017 (according to Ministry records):

Item	Column 1 Family unit composition	Column 2 Age or status of applicant or recipient	Column 3 Amount of support
1	Sole ... recipient and no dependent children	... recipient is a person with disabilities	\$758.42

Monthly shelter allowance

4 (2) The monthly shelter allowance for a family unit ... 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
Net Income Calculation
(section 28 (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,

(a) the following are exempt from income:

- (i) any income earned by a dependent child attending school on a full-time basis; ...
- (iv) a family bonus, except the portion treated as unearned income under section 10 (1) of this Schedule;
- (iv.1) the Canada child benefit, except the portion treated as unearned income under section 10 (1) of this Schedule;
- (v) the basic child tax benefit;
- (vi) a goods and services tax credit under the *Income Tax Act* (Canada);
- (vii) a tax credit under section 8 [*refundable sales tax credit*], 8.1 [*climate action tax credit*] or 8.2 [*BC harmonized sales tax credit*] of the *Income Tax Act* (British Columbia);
- (viii) individual redress payments granted by the government of Canada to a person of Japanese ancestry;
- (ix) individual payments granted by the government of Canada under the Extraordinary Assistance Plan to a person infected by the human immunodeficiency virus;
- (x) individual payments granted by the government of British Columbia to a person infected by the human immunodeficiency virus or to the surviving spouse or dependent children of that person;
- (xi) individual payments granted by the government of Canada under the Extraordinary Assistance Plan to thalidomide victims;
- (xii) money that is
 - paid or payable to a person if the money is awarded to the person by an adjudicative panel in respect of claims of abuse at Jericho Hill School for the Deaf and drawn from a lump sum settlement paid by the government of British Columbia, or
 - paid or payable to or for a person if the payment is in accordance with the settlement agreement approved by the Supreme Court in Action No. C980463, Vancouver Registry;
- (xiii) the BC earned income benefit;

- (xiv) money paid or payable under the 1986-1990 Hepatitis C Settlement Agreement made June 15, 1999, except money paid or payable under section 4.02 or 6.01 of Schedule A or of Schedule B of that agreement;
- (xv) a rent subsidy provided by the provincial government, or by a council, board, society or governmental agency that administers rent subsidies from the provincial government; ...
- (xvii) money paid or payable to a person in settlement of a claim of abuse at an Indian residential school, except money paid or payable as income replacement in the settlement;
- (xvii.1) money that is paid or payable to or for a person if the payment is in accordance with the Sixties Scoop Settlement made November 30, 2017, or the Federal Indian Day Schools Settlement made March 12, 2019, as amended May 13, 2019;
- (xviii) post adoption assistance payments provided under section 28 (1) or 30.1 of the Adoption Regulation, B.C. Reg. 291/96;
- (xix) a rebate of energy or fuel tax provided by the government of Canada, the government of British Columbia, or an agency of either government; ...
- (xxi) payments granted by the government of British Columbia under section 8 [agreement with child's kin and others] of the *Child, Family and Community Service Act*;
- (xxii) payments granted by the government of British Columbia under the Ministry of Children and Family Development's At Home Program;
- (xxiv) payments granted by the government of British Columbia under an agreement referred to in section 93 (1) (g) (ii) of the *Child, Family and Community Service Act*, for contributions to the support of a child;
- (xxv) a loan that is
not greater than the amount contemplated by the recipient's business plan, accepted by the minister under section 77.2 of this regulation, and received and used for the purposes set out in the business plan;
- (xxvi) payments granted by the government of British Columbia under the Ministry of Children and Family Development's Autism Funding: Under Age 6 Program, or Autism Funding: Ages 6 — 18 Program; ...
- (xxviii) payments made by a health authority or a contractor of a health authority to a recipient, who is a "person with a mental disorder" as defined in section 1 of the *Mental Health Act*, for the purpose of supporting the recipient in participating in a volunteer program or in a mental health or addictions rehabilitation program;
- (xxix) a refund provided under Plan I as established under the Drug Plans Regulation;
- (xxx) payments provided by Community Living BC to assist with travel expenses for a recipient in the family unit to attend a self-help skills program, or a supported work placement program, approved by Community Living BC;

- (xxxix) a Universal Child Care Benefit provided under the *Universal Child Care Benefit Act* (Canada);
- (xxxii) money paid by the government of Canada, under a settlement agreement, to persons who contracted Hepatitis C by receiving blood or blood products in Canada prior to 1986 or after July 1, 1990, except money paid under that agreement as income replacement;
- (xxxiii) money withdrawn from a registered disability savings plan;
- (xxxiv) a working income tax benefit provided under the *Income Tax Act* (Canada); ...
- (xxxvi) the climate action dividend under section 13.02 of the *Income Tax Act*;
- (xxxvii) 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;
- (xxxvii.1) money that is paid or payable to or for a person if the payment is in accordance with the settlement under the Final Settlement Agreement and Supplementary Agreement approved by the Federal Court June 22, 2018 in Court File No. T-370-17, *Todd Edward Ross et al. v. Her Majesty the Queen*;
- (xxxvii.2) money that is paid or payable to or for a person if the payment is in accordance with the settlement under the Final Settlement Agreement approved by the Federal Court January 30, 2019 in Court File No. T-1068-14, *Raymond Michael Toth v. Her Majesty the Queen*;
- (xxxviii) money that is paid or payable to or for a person if the payment is in accordance with the settlement agreement approved by the Supreme Court in Action No. S024338, Vancouver Registry;
- (xxxix) payments granted by the government of British Columbia under the Ministry of Children and Family Development's Family Support Services program;
- (xl) payments granted by the government of British Columbia under the Ministry of Children and Family Development's Supported Child Development program;
- (xli) payments granted by the government of British Columbia under the Ministry of Children and Family Development's Aboriginal Supported Child Development program;
- (xlii) money paid or payable from a fund that is established by the government of British Columbia, the government of Canada and the City of Vancouver in relation to recommendation 3.2 of the final report of the Missing Women Commission of Inquiry;
- (xlili) payments granted by the government of British Columbia under the Temporary Education Support for Parents program;
- (xliv) a BC early childhood tax benefit;
- (xliv.1) a BC child opportunity benefit;
- (xlv) child support;
- (xlvi) orphan's benefits under the *Canada Pension Plan Act* (Canada);

(xlvii) gifts, other than recurring gifts;

(xlviii) compensation paid or payable under Division 5 [*Compensation in Relation to Death of Worker*] of Part 4 [*Compensation to Injured Workers and Their Dependants*] or section 225 [*compensation in relation to worker death before July 1, 1974*] of the *Workers Compensation Act* to a dependant, as defined in section 1 of that Act, who is a child, as defined in section 165 (1) of that Act;

(xlix) money that is paid or payable by or for Community Living BC to or for a person if the payment is in accordance with an award in a legal proceeding or with a settlement agreement in respect of a claim for injury, loss or damage caused by Community Living BC, an employee of Community Living BC or a person retained under a contract to perform services for Community Living BC;

(l) money that is paid or payable by the government of British Columbia to or for a person if the payment is in accordance with an award in a legal proceeding or with a settlement agreement in respect of a claim for injury, loss or damage caused by the minister, the ministry, an employee of the ministry or a person retained under a contract to perform services for the ministry;

(l.1) money that is paid or payable by the government of British Columbia to or for a person if the payment is in accordance with an award in a legal proceeding or with a settlement agreement in respect of a claim for injury, loss or damage caused by the Minister of Children and Family Development, that ministry, an employee of that ministry or a person retained under a contract to perform services for that ministry;

(l.2) money that is paid or payable by the government of British Columbia to or for a person because the person was a resident of Woodlands School;

(li) a disabled contributor's child's benefit paid or payable under the Canada Pension Plan;

(lii) payments granted under an agreement referred to in section 94 of the *Child, Family and Community Service Act*;

(liii) money that is paid or payable, in respect of a child, from property that comes into the control of, or is held by, the Public Guardian and Trustee;

(liv) money that is paid or payable from a settlement in respect of Treaty No. 8 agricultural benefits;

(lv) money that is paid or payable from a settlement under the Cadboro Bay Litigation Settlement Agreement, dated for reference November 1, 2017, between the Esquimalt Nation and Canada, or the settlement agreement, dated for reference October 30, 2017, between the Songhees Nation and Canada;

(lvi) money that is paid or payable under the Memorial Grant Program for First Responders established under the authority of the *Department of Public Safety and Emergency Preparedness Act* (Canada);

(lvii) money, or goods or services in kind, received or to be received by a participant in the Ministry of Social Development and Poverty Reduction's Work Experience Opportunities Grant program from a grant under the program, ...

(d) All unearned income must be included, except the deductions permitted under section 2 and any earned income exempted under section ... 4 of this Schedule, ...

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:

- (a) the portion of interest from a mortgage on, or agreement for sale of, the family unit's previous place of residence if the interest is required for the amount owing on the purchase or rental of the family unit's current place of residence;
- (b) \$50 of each monthly Federal Department of Veterans Affairs benefits paid to any person in the family unit;
- (c) a criminal injury compensation award or other award, except the amount that would cause the family unit's assets to exceed, at the time the award is received, the limit applicable under section 10 [*asset limits*] of this regulation;
- (d) a payment made from a trust to or on behalf of a person referred to in section 12 (1) [*assets held in trust for person with disabilities*] of this regulation if the payment is applied exclusively to or used exclusively for
 - (i) disability-related costs,
 - (ii) the acquisition of a family unit's place of residence,
 - (iii) a registered education savings plan, or
 - (iv) a registered disability savings plan;
- (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;
- (d.2) money expended by a person referred to in section 12.1 (2) [*temporary exemption of assets for person with disabilities or person receiving special care*] of this regulation from an intended registered disability savings plan or trust if the money is applied exclusively to or used exclusively for disability-related costs;
- (d.3) any of the following if applied exclusively to or used exclusively for disability-related costs to promote independence:

- (i) a payment made from a trust to or on behalf of a person referred to in section 12 (1) of this regulation;
- (ii) a structured settlement annuity payment that, subject to subsection (2), is made to a person referred to in section 12 (1) of this regulation;
- (iii) money expended by a person referred to in section 12.1 (2) of this regulation from an intended registered disability savings plan or trust;

(e) the portion of Canada Pension Plan Benefits that is calculated by the formula $(A-B) \times C$, where

A = the gross monthly amount of Canada Pension Plan Benefits received by an applicant or recipient;

B =

(i) in respect of a family unit comprised of a sole applicant or a sole recipient with no dependent children, 1/12 of the amount determined under section 118 (1) (c) of the *Income Tax Act* (Canada) as adjusted under section 117.1 of that Act, or

(ii) in respect of any other family unit, the amount under subparagraph (i), plus 1/12 of the amount resulting from the calculation under section 118 (1) (a) (ii) of the *Income Tax Act* (Canada) as adjusted under section 117.1 of that Act;

C = the sum of the percentages of taxable amounts set out under section 117 (2) (a) of the *Income Tax Act* (Canada) and section 4.1 (1) (a) of the *Income Tax Act*;

(f) a tax refund;

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

(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.

APPEAL NUMBER 2022-0046

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)

2022/03/23

Print Name

Jennifer Armstrong

Signature of Member

Date (Year/Month/Day)

2022/03/23

Print Name

Inge Morrissey

Signature of Member

Date (Year/Month/Day)

2022/03/23