

**Part C – Decision Under Appeal**

The decision under appeal is the reconsideration decision of the Ministry of Social Development and Poverty Reduction (“ministry”) dated December 22, 2021, in which the ministry determined that the appellant was eligible for disability assistance for November 2020, but that \$909 of student aid received in September 2020 was to be deducted from the monthly disability assistance benefit as non-exempt unearned income under Schedule B of the Employment and Assistance for Persons with Disabilities Regulation (“EAPWDR”).

The appellant received a total of \$9,027 in student grants in September 2020. The ministry treated a \$4,000 Canada Student Grant Permanent Disability as exempt unearned income under EAPWDR Schedule B section 1(a)(I). The ministry treated the rest of the grants as unearned income that was not exempt from net income, except for an allowable deduction of \$4,518 in education-related costs. The ministry determined that the appellant had a net income of \$909 in September 2020 and therefore she was entitled to \$326.42 for disability assistance for November 2020.

**Part D – Relevant Legislation**

EAPWDR, sections 1, 24; Schedule A, sections 1(1), 2(1), 4(2); Schedule B, sections 1(a)(I), 3, 8, 9  
Canada Student Financial Assistance Regulations, sections 40.02, 40.03

**Part E – Summary of Facts**

A teleconference hearing was set for February 7, 2022.

The hearing was adjourned at the appellant's request so that she could find an advocate to help her with the appeal. The hearing was re-scheduled for April 4, 2022. The appellant attended the hearing with a legal advocate.

**Evidence before the Ministry at the Request for Reconsideration**

The appellant is a sole recipient of disability benefits. In November 2020 the monthly disability assistance rate for a sole recipient was \$1,235.42, consisting of \$808.42 support allowance and \$375 shelter allowance.

In September 2020 the appellant was a full-time student at a post-secondary institution. In that month she received \$9,027 in grants through StudentAid BC, for the 4-month term from September 8, 2020 to December 18, 2020. The StudentAid BC Notification of Assessment gave details of the grants as follows:

- \$4,000 Canada Student Grant Permanent Disability
- \$2,942 Canada Student Grant Full-time
- \$785 SB Top-up - Canada Student Grant FT
- \$500 BC Access Grant
- \$800 Grant – Disability (BC).

The Notification of Assessment lists the following education-related costs:

- \$2,618 tuition
- \$1,500 books & supplies.

In addition, the ministry allowed an education-related cost of \$400 for incidentals (\$100/month for the 4 month term).

Grants are paid at the beginning of the school term, taking into account financial need for the whole term.

## Part F – Reasons for Panel Decision

The issue on appeal is whether the ministry was reasonable in its decision that \$909 of the student aid the appellant received in September 2020 was not exempt from the calculation of the appellant's net income in that month.

### Legislation:

### Calculation of disability assistance:

EAPWDR section 24 states:

s.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.

Under EAPWDR Schedule A, the monthly support allowance for a sole recipient with no dependent children is \$983.50, and the maximum monthly shelter allowance is \$375.

EAPWDR Schedule B sets out the way that net income is calculated. All income, earned or unearned, must be included in the calculation, unless it is specifically exempted in Schedule B.

Schedule B, section 9(1) states:

s.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.

### Treatment of student grants and education expenses:

Under EAPWDR, section 1, "education or training allowances, grants, loans, bursaries or scholarships" are unearned income.

Schedule B, section 1, then lists exemptions from income, including:

"(l) education and training allowances, grant, bursaries or scholarships, other than student financial assistance." [*emphasis added*]

EAPWDR, section 1 defines "student financial assistance":

- "student financial assistance" means funding provided to students under
- (a) the British Columbia Student Assistance Program,
  - (b) the *Canada Student Financial Assistance Act*, or

(c) a similar program provided by another province or jurisdiction.

Under Schedule B, section 8 (2), the ministry also may exempt from income an amount “up to the sum of the student’s education costs...for a period of study, from the total amount of student financial assistance received by the student for the period of study.” “Education costs” are defined in Schedule B, section 8(1), as “the costs, including the costs of tuition, student fees, books, equipment, supplies and transportation that...are reasonably required for the student to participate in the program of studies.”

Appellant’s Position:

The appellant does not agree that the grants were “student financial assistance” as defined by the EAPWDR.

The appellant maintains that the ministry should consider that, as a student, she is spending her efforts on her studies and is not able to earn income from employment. In effect, the grants are replacing earned income, and therefore it is reasonable to treat the student grants as if they were earned income. The appellant argues that the net amount of the grants, after deducting education expenses, should be spread over 4 months, and treated in the same way as earned income, for purposes of calculating her net income.

If the grants were treated as if they were earned income and spread over 4 months, the appellant would be deemed to have earned \$227.25 each month from September to December 2020. The amount of her monthly disability assistance would not be reduced, because she is permitted to earn more than that amount each month without affecting the amount of her disability assistance.

The appellant also says that the ministry should consider the purpose of the grants, which is to provide financial assistance with living expenses over a 4 month period, not just in the month in which the appellant receives the funds.

The appellant points out that, in previous years when the federal grant was \$2,000, her disability assistance was not affected. The federal government then increased student grant funding from \$2,000 to \$4,000 because of Covid. The appellant maintains that it is not reasonable for the ministry to deprive her of the benefit the federal government intended, by deducting it from her disability assistance.

Despite the reconsideration decision in December 2021 that the appellant was eligible for \$326.42 in disability assistance in November 2020, the appellant has not received any funds for that month. In addition, and as a result, the appellant has not received collateral covid-related funds paid to eligible recipients of disability assistance that month.

Ministry position:

The ministry maintains that it does not have discretion under the legislation to treat the student financial assistance as anything other than unearned income in the month it is received. The rationale for deducting student financial assistance from the disability allowance is that

StudentAid BC funding and ministry funding come from the same provincial coffers, and one way or another the government is providing funding for students over and above the amount of disability benefits. The grants in question are unearned income and the legislation does not permit the ministry to treat the funds as if they were earned income, or to allocate the income to months other than the month in which it was received.

Panel Decision:

At issue in this appeal is the ministry's treatment of 2 Canada Student Grants for Full Time Students and 2 student grants from the provincial government, totalling \$5,027. In its reconsideration decision, the ministry simply states that "the ministry determines the remaining \$5,027 to be student financial assistance received under the BC Student Assistance Program or *Canada Student Financial Assistance Act*." The ministry did not explain the basis for its determination and did not address the applicable legislation. Therefore, the panel finds that ministry's reasons in the reconsideration decision are inadequate.

However, for the reasons set out below, the panel finds that the outcome of the reconsideration is reasonable.

The panel has determined that the Canada Student Grants for Full-Time Students are provided under the Canada Student Financial Assistance Regulation section 40.02. The rest of the grants in issue are provided by StudentAid BC, which is the current program for student financial assistance in British Columbia. Therefore, the panel finds that the funds in issue are "student financial assistance" as defined in EAPWDR section 1, and are not exempt from "unearned income" under EAPWDR Schedule B.

The appellant argues for an outcome that she maintains would be fairer to the appellant, and more consistent with the nature and purpose of the student grants. However, if the funds meet the definition of "student financial assistance", the legislation requires the ministry to treat the funds as "unearned income" that is not exempt from net income. The legislation does not give the ministry discretion to do otherwise.

Nor does the ministry have discretion to deduct unearned income from disability assistance in equal portions over the 4 month school term. Under EAPWDR Schedule B, sections 1 and 9(1), calculation of net income, including deductions and exemptions, occurs in the month the income is received. Further, as unearned income, student financial assistance would not be exempt from net income calculations even if it was attributed evenly over the 4 month term.

Therefore, while the ministry's reasons in the reconsideration decision are inadequate, based on the panel's review of the legislation, the evidence and the parties' submissions at the hearing, the panel finds that the outcome of the reconsideration is reasonable – that is, that the appellant was eligible for disability assistance in the amount of \$326.42 for November 2020.

The panel notes that, despite the reconsideration decision in December 2021, the ministry has failed to pay disability assistance from November 2020 that it acknowledges is due to the appellant. In addition, the appellant has raised the question of entitlement to collateral benefits resulting from eligibility for disability assistance in November 2020, which she has not received.

While payment of collateral benefits is not within the purview of the appeal, the panel appreciates the observation from the ministry representative that they would request payment of disability assistance according to the reconsideration decision, and review entitlement to collateral benefits, without waiting for the panel's decision in this appeal.

The panel confirms the reconsideration decision. The appellant is not successful in the appeal.

Schedule "A"  
Legislation:

**Employment and Assistance for Persons with Disabilities Regulation**

**Definitions**

s. 1 (1) In this regulation:

"student financial assistance" means funding provided to students under

- (a) the British Columbia Student Assistance Program,
- (b) the [\*Canada Student Financial Assistance Act\*](#), or
- (c) a similar program provided by another province or jurisdiction;

"unearned income" means any income that is not earned income, and includes, without limitation, money or value received from any of the following:

- (q) education or training allowances, grants, loans, bursaries or scholarships;

**Amount of disability assistance**

s. 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 – Disability Assistance Rates**

**Maximum amount of disability assistance before deduction of net income**

s. 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**

s. 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**

s. 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 – Net Income Calculation**

**Deduction and exemption rules**

s. 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:

(l) education and training allowances, grants, bursaries or scholarships, other than student financial assistance;

**Annual exemption — qualifying income**

s. 3 (1) In this section:

"base amount" means

(a) \$1 250, in the case of a family unit that includes only one recipient,

(b) \$1 500, in the case of a family unit that includes two recipients, only one of whom is designated as a person with disabilities, and

(c) \$2 500, 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

### **Minister's discretion to exempt education related unearned income**

s. 8 (1) In this section:

"day care costs" means the difference between a student's actual day care costs and the maximum amount of child care subsidy that is available under the *Child Care Subsidy Act* to a family unit matching the student's family unit;

"education costs", in relation to a student and a program of studies, means the costs, including the costs of tuition, student fees, books, equipment, supplies and transportation, that, in the opinion of the minister, are reasonably required for the student to participate in the program of studies.

(2) The minister may authorize an exemption for a student up to the sum of the student's education costs and day care costs, for a period of study, from the total amount of student financial assistance received by the student for the period of study.

### **Application of deductions and exemptions**

s. 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.

## **Canada Student Financial Assistance Regulation**

### **Grant for Full-time Students**

**40.02** (1) The Minister, an appropriate authority or a body authorized by the Minister for a province may make a grant to a qualifying student who

- (a) is qualified for enrolment or is enrolled as a full-time student in a program of studies of at least two years' duration that leads to a degree, certificate or diploma not beyond the undergraduate level;
- (b) meets the criteria set out in paragraphs 12(1)(a) and (b) of the Act; and
- (c) is not denied further student loans under section 15.

### **Administration of Canada Student Grants**

s. 40.03 (1) The Minister shall pay to the appropriate authority or other body authorized by the Minister for a province the amount that the authority or other body requires to make Canada student grants to qualifying students for a loan year under this Part.

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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

Susan Ferguson

Signature of Chair

Date (Year/Month/Day)

2022/04/09

Print Name

Susanne Dahlin

Signature of Member

Date (Year/Month/Day)

2022/04/09

Print Name

Emily Drown

Signature of Member

Date (Year

2022/04/09