

Part C – Decision Under Appeal

The decision under appeal is the Ministry of Social Development and Poverty Reduction’s (“ministry”) reconsideration decision dated March 24, 2022, in which the ministry determined that the appellant was not eligible for disability assistance (“DA”) for February and March 2022 because he received Employment Insurance (“EI”) benefits that were not exempt under the Employment and Assistance for Disabilities Regulation (“EAPWDR”). The ministry found that EI received for the period after November 21, 2021, exceeded the ministry assistance rates and no exemptions or deductions were available to the appellant.

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 record indicating that:

- The appellant is a sole recipient of DA.
- On December 30, 2021, an EI/MHSD *Common Claimant report* (“information sharing report”) from Service Canada showed regular EI benefits of \$532 per week (net), and the claim was still being paid at the time of the reconsideration with more weeks of eligibility for continued EI payments.
- On January 24, 2022, the appellant spoke with the ministry regarding the EI deductions and said that his EI had ended.
- On January 31, 2022, the information sharing report from Service Canada showed that the appellant was still receiving EI benefits.
- The ministry did not deduct any EI that was received prior to November 21, 2021 because EI was temporarily exempt for clients who were receiving ministry assistance on April 2, 2020. The ministry explained that “Covid-19 pandemic-related program enhancements” ended effective November 21, 2021 but the ministry continued to exempt EI payments up to and including November 30, 2021.
- The appellant did not submit monthly reports declaring his income. The ministry notes that monthly reports are due by the 5th day of each calendar month and must include all income and any changes from the last calendar month. The ministry explained that it uses the information to determine eligibility or the amount of assistance for the next DA payment.
- EI income received after November 20, 2021 is deducted from the maximum DA rate for the appellant’s family size and the appellant is not eligible for assistance where his net income exceeds his DA rate of \$1358.50 per month.
- The appellant will remain ineligible for assistance as long as he is in receipt of EI over and above ministry rates. The ministry requires the appellant to submit a monthly report and declare his net earnings in order to request further assistance.
- On February 17, 2022, the ministry advised that the appellant was not eligible for DA because the information sharing report from Service Canada showed that he received EI benefits of \$2140 per month, which were no longer exempt under the EAPWDR.
- On March 9, 2022, the appellant submitted an RFR followed by screenshots from his Service Canada account showing information about past EI claims.

2. An RFR signed by the appellant on March 9, 2022, stating that he was “cut off [assistance] due to EI.” He has not received EI and is in the middle of sorting it out with Service Canada. The appellant expects to hear back in the next few weeks.

3. Screenshots from the appellant’s Service Canada account as of March 28, 2022:

- *My Past Claim Details* showing a claim start date of September 27, 2020 and end date of September 11, 2021. Total weeks paid was 50 weeks, regular benefits. The last week paid for this claim was September 5, 2021.
- *My Past Claims* showing start and end dates for claims for the period August 9, 2008 to September 11, 2021.

4. A 1-page *Common Claimant report* print-out dated February 22, 2022, which shows the appellant’s EI information:

- The report indicates a *Benefit Commencement* date of September 12, 2021 with September 4, 2022 as the *Last renewable week*.
- EI benefits for February 2022 were \$2128, and for March 2022 the appellant received \$2140.
- The report lists EI cheque amounts for the weeks starting September 12, 2021 including cheques for the weeks of November 21, 2021 and later:
 - \$532 for the week starting November 21, 2021 (cheque date November 26);
 - \$532 for the week starting November 28, 2021 (cheque date December 10);
 - \$532 for the week starting December 5, 2021 (cheque date December 10);

- \$532 for the week starting December 12, 2021 (cheque date December 24);
- \$532 for the week starting December 19, 2021 (cheque date December 24);
- \$535 for the week starting December 26, 2021 (cheque date January 7, 2022);
- \$535 for the week starting January 2, 2022 (cheque date January 7);
- \$535 for the week starting January 9, 2022 (cheque date January 21);
- \$535 for the week starting January 16, 2022 (cheque date January 21);
- \$535 for the week starting January 23, 2022 (cheque date February 4);
- \$535 for the week starting January 30, 2022 (cheque date February 4).

Additional information

Subsequent to the reconsideration decision, the appellant submitted a *Notice of Appeal* which did not contain a submission. At the hearing, both parties stated their arguments and gave the panel the following information in response to questions:

Appellant

- The appellant said he called Service Canada because he was locked out of his account. Service Canada told him that they flagged his account because he had left out some information. They told him he had to send verification of his identity in order to get back into his account. The only person who can unlock his account is their officer but that can't happen until they confirm his identity.
- The appellant spoke with a verification officer who asked him to send a copy of his birth certificate, passport, and other documents. The appellant said he has sent some information.
- The investigating officer said they will get back to him once they verify his identity, but he has not heard anything despite calling every week to see if there's any update. The appellant said he had been calling them since November 2021. Whenever he calls the main number, they say that they will email the officer that's taking care of his file "and they will straighten things out" once they contact him. The appellant has not heard back.
- When asked why he wanted to get into his account (that was locked) the appellant explained that it was because he wanted to do his taxes and needed his T4 slip for EI. The appellant confirmed that he was not trying to access his account to show that he did not receive the EI cheques. The appellant said the ministry did not ask him to provide evidence to show that he didn't receive the cheques; they only asked him to sign the reconsideration form.
- When asked if he told anyone at Service Canada that the ministry said he was still receiving EI cheques, the appellant said he was told by the agent that "an officer would clear everything up" when they called him.
- When asked if he has any bank statements to show that the EI cheques had not been deposited, the appellant said he didn't receive EI by direct deposit; he received cheques by mail and Service Canada has his up-to-date address. The appellant said he did not know the exact date for his last day worked or when he last applied for EI but it was in 2020.
- When asked how he was able to access information about his past EI claims (which he submitted to the ministry) when he was locked out of his account, the appellant explained that he could get information about closed files but Service Canada has to verify his identity before they will give him any new information.

Ministry

- The ministry said that they don't request bank statements or other verification to show whether the EI cheques were cashed. The ministry relies on the information sharing *report* from Service Canada to confirm that the cheques were issued. The ministry explained that the client could submit bank statements but the ministry doesn't usually ask for them because the client could have more than one bank account or cash the cheques without going through the bank.

- The ministry said they did not have any more detail about the January 24, 2022 phone conversation with the appellant in which he told him that his EI claim had ended. It doesn't appear that there was a follow up letter or phone call prior to the decision to deny DA.

Admissibility of oral testimony

The panel admits the additional information under section 22(4) of the *Employment and Assistance Act* as evidence that is reasonably required for a full and fair disclosure of all matters related to the decision under appeal. The panel finds that the testimony provides important detail about the appellant's communication with Service Canada as well as ministry procedure when a client denies receiving payments from another source.

Part F – Reasons for Panel Decision

The issue on appeal is whether the ministry's determination that the appellant was not eligible for DA for February and March 2022 because he received EI was not exempt was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the appellant.

Appellant's arguments

The appellant argues that he did not receive EI cheques for the period after November 20, 2021. At the hearing, the appellant argued that the ministry "is incorrect in concluding" that he received EI. The appellant said that he provided the ministry with all the documents he had but he could only get information about his past claims. The appellant said he has made his best efforts to access his Service Canada account but is still waiting for Service Canada to verify his identity. The appellant argued that the ministry should have "solid evidence that [he] got the cheques" and should have known if the cheques were cashed.

Ministry's position

The ministry argues that it was reasonable to conclude that the appellant received EI benefits for December 2021 to February 2022 (affecting his February and March DA) because the information sharing report from Service Canada shows EI payments of \$2140 monthly and the appellant has not provided information about his current EI status.

The ministry said that the EI payments meet the definition of unearned income under EAPWDR section 1(1)(g) and are not exempt from DA under section 2.01 of the EAPWDR because they were paid from November 21, 2021 onward and therefore must be included in net income calculation. The ministry also submits that the EI payments were not exempt under section 7 of EAPWDR Schedule B because they were not maternity or parental benefits.

At the hearing, the ministry argued that it is reasonable to base their finding that the appellant received EI on the information sharing reports as these are official records from Service Canada which show that the appellant received EI of \$2128 for February and \$2148 for March 2022. The ministry emphasized that these payments exceed the appellant's DA rate, and no exemptions or deductions were available under the legislation.

The ministry argued that the onus is on the appellant "to provide direct confirmation from Service Canada that the cheques were not issued." When the appellant was advised that he was not eligible for DA, "it stands to reason that he would submit something to show otherwise." The ministry is satisfied that the appellant was given the opportunity to address the issue. The ministry added that "it is not the ministry's responsibility to ask Service Canada if the cheques were actually cashed."

Panel's decision

Receipt of EI

The panel finds that the ministry's decision to find the appellant ineligible for DA for February and March 2022 because of EI payments received after November 20, 2021, was a reasonable application of the legislation. Section 1(1)(g) of the EAPWDR confirms that EI meets the definition of unearned income and the definition of unearned income in section 1(1) of the EAPWDR requires the money to be "received."

The appellant argues that he did not receive EI after 2020, but the information sharing report from Service Canada shows that EI cheques were issued on December 10 and 24, 2021, January 7 and 21, 2022, and February 4, 2022. The panel finds that the ministry was reasonable to rely on business records from Service Canada and treat them as factually correct when there wasn't any evidence to the contrary.

The appellant appreciates that the EI records he submitted only cover past EI claims but he maintains that they were the only records he could obtain despite his best efforts. The panel notes that the original denial decision (page 16 of the ministry record) gives the client the opportunity to ask for an extension of time to provide evidence but there is no indication that the appellant asked the ministry for more time to hear back from Service Canada.

The appellant was also given a list of advocates with the reconsideration package but there is no indication he contacted any of them to help him verify his EI status. The appellant testified that he contacted Service Canada about his locked account because he wanted to file his taxes. The appellant specifically said that he did not contact Service Canada to verify that he had not received the EI cheques or to confirm that the information sharing report was in error.

The ministry's communications made it clear that the onus is on the client to provide evidence to support their position. The panel is satisfied that the appellant was given a reasonable opportunity to show that he didn't receive EI for the relevant dates. The appellant can provide information to the ministry at any time once he hears back from Service Canada.

No available exemptions

The panel finds that the ministry was reasonable in finding that the EI cheques issued from December 2021 to February 2022 (according to the information sharing report) were not exempt under the EAPWDR. Section 24 of the Regulation requires the ministry 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. According to the information sharing report, which the panel considers to be reliable evidence, the appellant received EI for the weeks starting November 21, 2021, through to the week starting January 30, 2022. The report shows that EI was paid via cheques issued between December 10, 2021 and February 4, 2022.

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, but the information sharing report between the ministry and Service Canada showed only regular EI benefits and there was no evidence that the appellant received any other class of EI.

The panel finds that the ministry's interpretation of the legislation was reasonable. The appellant was not eligible for DA for February and March 2022 because the evidence indicates EI payments in excess of his monthly DA rate of \$1358.50.

Conclusion

The panel finds that the ministry's decision was reasonable. The appellant was not eligible for DA because the evidence shows that he received EI after November 20, 2021, which was not exempt under the EAPWDR. The ministry was reasonable to find that EI had to be deducted from the appellant's DA rate for February and March 2022. 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 (\$)
1	Sole applicant / recipient and no dependent children	Applicant / recipient is a person with disabilities	\$983.50

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
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,

(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.

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)

2022/05/11

Print Name

Maryam Majedi

Signature of Member

Date (Year/Month/Day)

2022/05/11

Print Name

Edward Wong

Signature of Member

Date (Year/Month/Day)

2022/05/11